EUROPEAN WOMEN'S LOBBY
EUROPEEN DES FEMMES

CONTRIBUTION

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European Commission public consultation on 'Gender imbalance in corporate boards in the EU'
Reply from the European Women's Lobby (EWL)

The European Women's Lobby (EWL)[1] welcomes the European Commission's initiative to carry out a public consultation on *Gender imbalance in corporate boards in the EU.* The promotion of the equal representation of women and men in decision-making has been at the core of the European Women's Lobby's work since its creation in 1990. This work includes in particular the EWL 50/50 Campaign for Democracy launched in 2008 and focusing on the European elections of 2009 and subsequent allocation of EU 'Top Jobs'. For the EWL, parity in decision-making is an issue of democratic representation and of social progress at EU and national levels, in line with the EU's Treaty commitments to democracy and fundamental rights as well as with the European Strategy for equality between women and men 2010-2015.

The equal representation of women and men on corporate boards is, furthermore, related to the broader question of equality in employment, an area where the European Union has a strong competence. Promoting women's career development prospects and their equal access to management and decision-making positions at all levels is essential to achieving equality in the labour market and to achieving the goals of the Europe 2020 Strategy for the EU to become a 'smart, sustainable and inclusive economy'.

In consequence, the EWL sees EU-level binding legislation to ensure the equal representation of women and men on corporate boards as an essential tool to move towards the objectives of the EU in terms of social progress and gender equality.[2]

1. How effective is self-regulation by businesses to address the issue of gender imbalance in corporate boards in the EU?

European institutions themselves have recognised that self-regulation has not been effective enough to address gender imbalances on corporate boards. The European Parliament[3] has called on the Commission to introduce EU level legislation if self-regulation does not provide results, and European Commission Vice-President Viviane Reding has in several instances said that the Commission will take action if progress towards the targets set is not fast enough.

In many EU countries, the business world has taken steps towards increasing the number of women on company boards (Austria, Belgium, Denmark, Finland, France, Germany, Luxembourg, the Netherlands, Poland, Spain, Sweden and the UK). The most common form of self-regulation is the inclusion of a non-binding gender balance clause and/or an obligation to disclose progress or explain non-compliance in Corporate Governance Codes. Despite the positive efforts to self-regulate, the European boardrooms are still overwhelmingly filled with men. According to the report[4] of the EC all over Europe the proportion of women on corporate boards increased by 1,9

[1] The European Women's Lobby (EWL) is the largest umbrella organisation of women's associations in the European Union (EU), working to promote women's rights and equality between women and men. EWL membership extends to organisations in all 27 EU Member States and three of the candidate countries, as well as to 20 European-wide organisations, representing a total of more than 2000 associations.
[2] See Annex for a full list of studies.
[3] European Parliament resolution of 6 July 2011 on women and business leadership (2010/2115(INI)
[4] European Commission, DG Justice – Women in economic decision-making in the EU: Progress report, 2012.

percentage points between October 2010 and January 2012. The Progress remains still too slow as more than six out of every seven board members are men (86,3 %).[5]

The clauses on gender balance in Corporate Governance codes in Austria, Denmark, Finland, Germany, Luxembourg, Poland, Slovenia Sweden, and the UK have, on average, produced an increase of around two percentage points in women's representation on boards in the two years following the adoption of the Code. [6] The example of Denmark gives further evidence for the modest results of self-regulation: Even though Denmark has a very detailed clauses on gender balance in the Corporate Governance Code (adopted in 2008 and amended in 2011), the representation of women has decreased from 17% in 2008 to 16% in 2012[7] If self-regulation should be effective, it requires targets, deadlines and monitoring in order for progress to be ensured as can be seen in the United Kingdom.[8]

These figures reveal that to achieve parity, other measures than self-regulation have to be put into place in order to address adequately and effectively the issue of gender imbalance in corporate boards in the EU.

In almost all the countries that have now introduced binding legislation, this was preceded by clauses on gender balance in Corporate Governance Codes. However, countries like Belgium, Italy, France, Netherlands and Spain have finally opted for legislation as self-regulatory initiatives (notably clauses on gender balance in Corporate Governance Codes) have not been effective enough in moving towards more equality. Binding legislation brings progress in a higher scale as one can observe in France (see the next question).

The experience shows that boardrooms do not become gender-balanced naturally and therefore, intervention makes a difference. Self-regulation is a useful step before legislation, as it helps to change attitudes, encourages the business world to start looking for women candidates and creates public debate, but is not sufficient to achieve equal representation of women on corporate boards in Europe. Therefore, self-regulation builds ground for legislation, but has been failed to be the appropriate mean to abolish the gender imbalance on corporate boards.

2. What additional action (self-regulatory/regulatory) should be taken to address the issue of gender imbalance in corporate boards in the EU?

The EWL considers that regulation is necessary to ensure the equal representation of women and men on corporate boards. Strong EU intervention can ensure the equal representation of women and men in economic decision-making in all EU Member States. Women are still underrepresented in the boardrooms all over the EU, even though some marginal progress was made in 2011, thanks to gender quotas introduced EU member states as for example by France. Nevertheless, according to the European Commission's "Women in decision-making in the EU: Progress report" the proportion of women in decision-making remains very low. Women still occupy just 13, 7 % of board seats of the largest publicly listed companies in EU Member States. At this tempo, since 2003 the proportion of women in corporate boards in the EU increased of around 0,6 percentage points per year and by 1,9 percentage points between October 2010 and January 2012.[9]

The best results in moving towards the equal representation of women and men on boards can be found in countries that have adopted binding regulation, notably France and Norway.

[5] Ibid.
[6] EWL Report on Progress, Gaps and Good Practice Women on Boards in Europe From Snail's Pace to a Giant Leap, 2012
[7] European Commission Database on Women in Decision-Making, 2012.
[8] http://www.bis.gov.uk/news/topstories/2011/Feb/women-on-boards
[9] EC Women in economic decision-making in the EU: Progress report, 2012

In 2011, France adopted legislation that gives companies six years to ensure that women make up 40% of board positions. Companies must reach a mid-term target of 20% in three years. The law applies to all listed companies and companies that have more than 500 employees and a revenue of over 50 million Euro. From 2017 onwards, board nominations which do not comply with the law will not be valid. Half of the 40 largest companies have already reached the mid-term target of 20%, and since the bill was adopted, the majority of new director appointments have been women. Boards are showing willingness to explore further new candidate pools.[10] The result of this legislation is that **whereas France had about 12% women on boards at the end of 2010, within one year the representation of women in the 40 largest companies amounted to 22% at the beginning of 2012**. We can see an increase of 10% percentage points within one year after the adoption of the quota legislation in 2011.

Norway was the first country to introduce binding legislation to increase the participation of women on boards including for non state-owned companies. The binding quota law adopted in 2005 set a threshold of 40% of the least represented sex on the boards of listed and non-listed public limited companies, inter-municipal companies, state companies, municipal companies and co-operative companies. Newly established companies had to comply immediately; existing companies had two years and one month to comply. If the enterprise fails to comply with the law, the sanction is the dissolution of the company. The government actively pursued companies who failed to reach the target, and in the end no companies had to be dissolved. **The result is that the target of 40% of women was been reached in Norway in 2009.** Before the binding law, Norway put in place non-binding legislation in 2003 with a similar target, but as the desired effect was not achieved, legislation with sanctions was adopted with the positive results in terms of more women on boards as mentioned above.

Evidence therefore shows that binding regulation is the only efficient way to move forward swiftly if the EU wants to meet its goals and commitments regarding social progress and gender equality.

However, when it comes to Chief Executive Officers (CEO's) even in Norway and France the situation is unsatisfactory, and the EWL is of the view that it is **necessary to take additional measures to increase the proportion of female presidents of chairs of boards or Chief Executive/Financial Officers**. No binding measure to this effect exists at present in Norway and 89% of boards are still chaired by men[11] and only a small number of the Chief Executive Officers (CEO) of companies listed on the Oslo stock exchange are women. This means that companies have only complied with the minimum standard set in legislation, and have not yet included more women in the highest positions. The EWL suggests moving towards the introduction of systems of co-chairing of executives by a woman and a man through codes of good governance and legislation. In addition to this, the EWL suggests the introduction of systems of alternate chairing between women and men at the start of new mandates. In the same way, systems of alternation could be introduced for the posts of CEO/CFO.

While the EWL outlined above why binding legislation is the appropriate regulative measure to be adopted by the EU and Member States to address adequately the issue of gender imbalance on corporate boards, the EWL highlights the following additional actions that are necessary:

- **Effective self-regulation requires targets, deadlines and monitoring.** In most cases, Corporate Governance Codes lack targets and deadlines for attaining them. For example, the Finnish Code only sets an obligation to have both sexes in a board, but does not define a target. The UK on the other hand, provides a better example. The State is actively pushing companies to set targets, and a Committee appointed by the government meets every six months and reports on progress annually. The State has also recommended strengthening the Corporate Governance Code. However, as companies are allowed to choose their targets and the target recommended by the government is only 25% of women, it is unlikely that parity will be reached any time soon in the UK.

[10] Spencer Stuart 2011: Female Director Trends in Europe 2011.
[11] European Commission Database on Women in Decision-making 2012

- **Limit concurrent mandates.** The EWL proposes that the number of mandates that an individual can cumulate be limited in order to ensure that board members have sufficient time to fulfill their duties and to avoid possible conflicts of interests. In addition, the limitation of concurrent mandates would ensure a larger number of senior posts open to new candidates, including women and other under-represented groups, in a context of improved transparency in selection procedures and effective measures to reach out to a broader range of candidates.

- **Favour companies with a commitment to gender-equal boards in public procurement.** The EWL suggests that enterprises which have a proven commitment to gender equality and parity or which have an equal representation of women and men on their boards should be encouraged and rewarded in the framework of public procurement processes at European and national level. Such measures should be introduced into EU and national public procurement rules. Such legislation already exists in Spain and should be used as an example of good practice.

- **Introduce accompanying measures**
  - **Targeted awareness-raising** regarding the benefits of gender equality for business leadership is needed in order to demystify the idea of quotas and other equality-friendly measures and to show their usefulness to society as a whole. There could be training for men and women board members on elementary aspects of gender equality and sex-based discrimination and about gender aspects of managing businesses.
  - **New ways of working in selection committees and transparent selection procedures** are needed in order to reach out to new potential board members. Clear and formally outlined duties and profile criteria would make the selection more transparent, ensuring that the most suitable persons are chosen. With formal recruitment policies, recruiters may have to expand their perspective and also motivate/justify their choice. This will help recruiting beyond traditional circles, including among the huge pool of competent women available in Europe who are ready to serve on boards.
  - The EWL also suggests **funding and developing online databases of competent women**. Such databases already exist in Norway, giving women interested in board positions the opportunity to publicise their skills to companies seeking appropriate candidates. This is a good example of how to make recruitment more transparent and possible to monitor, and also to give visibility to the vast number of qualified women that are in fact eligible for the positions. Databases can be established by different actors. For instance, in Norway, two databases were set up by the State, another by a lawyer's association and the forth by the largest employers' association in order to train and recruit CEO's and managers and not only board members. Other possibilities are regional level or sector-specific databases. Other accompanying measures could be targeted at potential new board members themselves, such as training or mentoring but should not be mandatory.
  - A compulsory **evaluation of the functioning of the board of directors**, carried out by an external evaluator, should be put in place in order to increase transparency. Such an evaluation should also encompass a gender equality assessment, i.e. how well the boards succeed in progressing towards the equal representation of women and men, but moreover towards more diversity in terms of other factors (age, background, etc.).
  - **Awareness-raising** and workshops for board members to ensure the equal integration of female colleagues should also be envisaged. Training against the use of domination techniques has been done all over the world, for women getting involved in politics and could be used in other areas. Men should be trained in a different way than women in order to deconstruct and eliminate conscious and unconscious reaction and behaviour related to entering a new power area or welcoming new comers.

- Propose **specific targeted measures for women facing multiple discrimination** and diverse layers of exclusion to allow them equal access to decision-making positions.

3. In your view, would an increased presence of women on company boards bring economic benefits, and which ones?

Several European and international studies have demonstrated a correlation between companies' improved **commercial and financial performance** and the presence of women in their decision-making bodies.[12] When women are present and integrated into companies, including at the highest level, companies perform better, are more efficient and turn in better results and profits. Moreover, having more women in decision-making has a spill over effect in relation to other aspects in particular, retaining highly skilled staff, which is an important aspect for many companies. An analysis of the Karlsruher Institut für Technologie found out that a high proportion of women in a company in turn attracts high-skilled and motivated female staff.

Furthermore, these studies also point out that the presence of women on boards enhance the level of **innovation**, reduces the level of conflict and ensures high quality of board **development activities**. The de-facto exclusion of women from boardrooms is a blatant proof of the absence of equality. At present, candidates are generally chosen (by predominantly male selection boards) from a restricted pool of predominantly male candidates. Broadening this pool to include the other half of the population opens vast new opportunities for business. Women's stronger presence brings **diversity, fresh perspectives and competences** given the academic, professional and personal achievements of women and can lead to the introduction of new or neglected issues to the agenda, because women have different social roles and needs as compared to men. Increasing the presence of women has also been shown to have a positive impact on the profile of board members. For instance, a Norwegian study[13] shows that female board members are younger (72% are less than 50 years old, whereas 66% of male board members are more than 60 years old), more highly educated (36% of women have studied for more than 6 years (PhD) as compared to only 23% of men), and have less ownership interests (56% of men as opposed to 23% of women). There is furthermore strong evidence that having a gender equal board has a positive impact on Board's effectiveness and ways of working. The Norwegian study shows that attaining a critical mass – going from a token one or two women to at least three women (consistent minority) – makes it possible to enhance the level of innovation. There is also new scientific evidence[14] showing that women's representation in company boards and audit committees as well as women Chief Financial Officers and auditors have a positive impact on financial reporting, auditing and organisation of internal control.

4. Which objectives (e.g. 20%, 30%, 40%, 60%) should be defined for the share of the underrepresented sex on company boards and for which timeframe? Should these objectives be binding or a recommendation? Why?

The EWL recommends introducing binding legislation to reach 50% of women in boards in Europe by 2020. In order to take into account the constraints of companies and to allow for the introduction of accompanying measures (see question 2 above), such legislation should allow for gradual implementation, with a first goal of 40% of women on boardrooms of European companies by 2015. Mid-term targets, such as those introduced in France,

[12] See Annex
[13] Aagoth Storvik and Marie Teigen, Women on Board – The Norwegian Experience, 2010.
[14] Ernst and Young, Mixed Leadership, Germany, 2012; Prof. Dr. Hagen Lindstädt, Dr. Kerstin Fehre und Professur für Management und Controlling, Georg-August-Universität Göttingen Prof. Dr. Michael Wolff, Institut für Unternehmensführung – Karlsruher Institut für Technologie (KIT), Frauen in Führungspositionen " Auswirkungen auf den Unternehmungserfolg, 2011.

shorten the transition period and motivate companies to take action before the final deadline. They help to ensure that the final target will be reached in due time, without time pressure.

The legislation must be binding. Prior to introducing binding measures in 2005, Norway already had a non-binding target of 40% women on boards to be reached by 2005. By the deadline, there were only 15% women on boards compared to a little less than 10% when the target was introduced. However, the binding law introduced in 2005, which threatened non-complying companies with dissolution, was a success, as all companies met the 40% target by 2008. In Spain little progress towards the non-binding target of 40% women has been made in the first five years after adoption of the law, and it seems unlikely that the target will be reached.

5. Which companies (e.g. publicly listed / from a certain size) should be covered by such an initiative?

This measure should apply to companies with more than 50 employees and all owned-state companies. An interesting aspect of the Belgian law is that the transition period is adjusted to the needs of different types of companies. Government enterprises must comply immediately – every new director to be nominated must be a woman until the 30% target is reached. The transition period for large quoted companies is five years and seven years for small and medium-sized listed companies. Therefore, for small and medium sized companies one can give different transition periods as foreseen in Belgium.

6. Which boards/board members (executive / non-executive) should be covered by such an initiative?

Executive and non-executive/supervisory board members should be covered as in several member states as for example in Austria, Germany or Netherlands both are existing , as to guarantee parity on all exiting boards.

7. Should there be any sanctions applied to companies which do not meet the objectives? Should there be any exception for not reaching the objectives?

The EWL considers that **sanctions are essential for the efficiency** of such measures. This is shown by the Norwegian case (see question 4 above). A counter example if provided by Spain, where, in the absence of sanction, legislation does not seem to work. Five years after the adoption of the non-binding 40% target to be reached by 2015, progress is slow (11% in 2012), and it is estimated that only 18% of board members will be women by the 2015 deadline.

The **type of sanctions also matters**. In Norway, the dissolution of companies in case of non-compliance proved effective. Experience from parity legislation in political decision-making suggests that financial sanctions are not effective. In France, wealthy political parties have preferred to pay fines rather than include equal numbers of women and men in their electoral lists for national elections. However, the 1,000,000 Euro fine in France may be more effective with companies, whereas the 25,000 Euro fine for German DAX companies foreseen by the Ministry for Family, Senior, Women and Youth is unlikely to have an impact on them. The EWL insists that the means and sanctions have to be effective, dissuasive and appropriate.

Annex

Studies relative to women in corporate boards in Europe

EWL, Women on Boards in Europe: From Snail's pace to a Giant leap? EWL Report on Progress, Gaps and good practice, 2012: http://www.womenlobby.org/spip.php?article3188&lang=en
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