EUROPEAN COMMISSION

MEMO

Brussels, 14 November 2012

Questions and Answers: Proposal on increasing Gender Equality in the Boardrooms of Listed Companies

Why do we need legislation to improve the gender balance on the boards of listed companies?

At present, 91.1% of executive board members, 85% of non-executive board members and 96.8% of the boardroom chairs are men, while women make up 8.9%, 15% and 3.2% respectively. This is despite suggested evidence of the benefits of gender diversity for company performance (see separate fact sheet with economic arguments). A wide range of voluntary initiatives at national and European level have so far failed to improve the situation.

The European Commission has therefore adopted a proposal for legislation (a Directive). The aim of the proposal is to substantially increase the presence of the under-represented sex on corporate boards throughout the EU by setting a **minimum objective of 40% by 2020** for members of the under-represented sex for **non-executive members** of the board. The proposal obliges listed companies with a lower percentage (than 40%) of the under-represented sex among non-executive directors to make appointments to those positions on the basis of a comparative analysis of the qualifications of each candidate, by applying pre-established, clear, neutrally formulated and unambiguous criteria, in order to meet the 40% objective.

Why do we need legislation at European level? Is this not something to be left to the Member States?

Due to the slow progress of self-regulatory initiatives, several EU Member States have already started to act and have introduced legally binding laws for company boards. **11 EU Member States** (Belgium, France, Italy, the Netherlands, Spain, Portugal, Denmark, Finland, Greece, Austria and Slovenia) as well as the European Economic Area Member State Norway have introduced legal instruments to promote gender equality on company boards. In **eight of the EU countries the instruments cover public undertakings** (Austria, Belgium, Denmark, Finland, Greece, Italy, Portugal and Slovenia). Meanwhile, in two thirds of the Member States , no legal measures were introduced and no significant progress has been made in recent years (see also separate fact sheet on the situation in the different Member States).

This piecemeal approach can create practical problems for the internal market, as different company laws and sanctions for not complying with different quotas, could lead to complications, in particular for multinational companies. Legal uncertainty can have a deterrent effect on companies' cross-border investments and on the establishment of subsidiaries in other Member States.

The current legally fragmented approach risks hampering the functioning of Europe's Single Market – this is why we need to act at European level, to ensure we create an EU-wide framework for these positive action rules.

What is the current situation for women on boards in the different Member States?

On average, a mere 13.7% of board members of the largest companies listed on stock exchanges in the 27 Member States are women. This breaks down into **15% for the non-executive posts and 8.9% for the executive posts** on the boards (see also separate fact sheet on the figures in the different Member States). Women are barely visible among top business leaders – more than 96 out of 100 company presidents are men. And the differences between Member States are enormous – in Malta, 3% of board members are women, while Finland has 27% women on the boards of the largest companies listed on the stock exchange.

Progress over the past ten years has been slow: an incremental average increase of the number of women on boards of just 0.6 percentage points per year has been recorded since 2003. Progress in individual countries varies as well. In some countries the share of women has even fallen. At such a pace, it would take around 40 more years to approach a situation of real gender balance (that is around 40%).

France is the motor of change: the proportion of women on the boards of French companies (on the CAC 40 index) increased by 10 percentage points to 22.3% in January 2012, up from 12.3% in October 2010. This change, prompted by the binding quota adopted in 2010, makes up more than 40% of the total EU-wide change recorded between October 2010 and January 2012. France's quota is 40% by 2017 with an intermediate target of 20% by 2014.

What is the legal basis for this proposal?

The EU's competence to legislate in gender equality matters dates back to 1957 (see SPEECH/12/702). The EU's right to act in issues of gender equality in employment and occupation follows from **Article 157(3) TFEU**. This provision is the specific legal basis for any binding measures aiming at ensuring the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including so-called *positive action* providing for specific advantages in favour of the under-represented sex.

How many companies will be affected?

The measures will only affect companies listed on stock exchanges in the EU's Member States. It will not apply to small and medium-sized enterprises (companies with less than 250 employees and an annual worldwide turnover not exceeding 50 million EUR) and non-listed companies. This means an **estimated 5 000 companies** in the whole of the EU will be affected.

Why does the proposal only apply to non-executive board members?

The proposal's objective of 40% only applies to non-executive directors who – while being important actors in particular in relation to corporate governance – are not involved in the day-to-day running of a company. This is so as not to interfere with the freedom to conduct a business and property rights – two fundamental rights guaranteed by the EU's Charter of Fundamental Rights.

The proposal also includes, as a complementary measure a **'flexi-quota'**, an obligation for listed companies to set themselves individual, self-regulatory targets regarding the representation of both sexes among executive board directors to be achieved by 2020 (or 2018 in case of public undertakings). Companies will have to report annually on the progress made.

Why does the proposal place a special emphasis on public undertakings?

The proposal places a special focus on public undertakings because Member States exercise a dominant influence over these (by virtue of their ownership or their financial participation therein) and have therefore more instruments to bring about change more rapidly. Public undertakings will have two years less time (until 2018) to meet the 40% objective set out in today's proposal. Examples of public undertakings likely to be affected by the proposal include EDF (France), Belgacom (Belgium), TeliaSonera (Sweden, Finland, Norway), Transelectrica (Romania) and Österreichische Post AG (Austria). The definition of public undertakings is set out in Commission Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings.

"Public undertakings" means any undertaking over which public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it (for example controlling the majority of the votes attached to shares issued by undertakings or appointing half of the members of the undertaking's administrative, managerial or supervisory body), their financial participation therein (for example holding a major part of the underrtaking's subscribed capital), or the rules which govern it.

Why does the proposal only set an objective of 40% and not full parity?

The proposed objective of 40% for the minimum share of both sexes among non-executive board members strikes the right balance: it is situated between the minimum of the 'critical mass' of 30% found to be necessary for gender diversity to have a sustainable impact on board performance and full gender parity (50%).

Why does the proposal harmonise requirements relating to board appointment decisions?

The proposal requires only such changes to national company law that are strictly necessary for the **minimum harmonisation of requirements for the appointment decisions** and it respects the different board structures across Member States.

Member States that already have an effective system in place will be able to keep it provided it is equally efficient as the proposed system in attaining the objective of a presence of 40% of the under-represented sex among non-executive directors by 2020. And Member States remain free to introduce measures that go beyond the proposed system. **Inbuilt safeguards** will make sure that there is no unconditional, automatic promotion of the under-represented sex. In line with the Court of Justice of the European Union's case law on positive action, preference shall be given to the equally qualified under-represented sex - unless an objective assessment taking into account all criteria specific to the individual candidates tilts the balance in favour of the candidate of the other sex

Why is gender equality good for the economy?

Getting more women into the labour market can be an important factor in improving Europe's competitiveness. Having more women in the workforce will help achieve the EU's goal of raising the employment rate for adults to 75% – a target to which all EU Member States have signed up to in the context of the Europe 2020 strategy, the EU's economic growth strategy.

A growing number of studies suggest there may be a link between gender balanced boards and financial performance. Studies from various countries show that companies with a higher share of women at top levels deliver strong organisational and financial performance.

For instance, in a study carried out by Catalyst[1], companies with more women on their boards were found to outperform their rivals with a 42% higher return in sales, 66% higher return on invested capital and 53 % higher return on equity. The World Bank also finds that eliminating discrimination against female workers and managers could significantly increase productivity per worker by 25 to 40%.

60% of university graduates are female. Drawing on women's professional skills for leadership positions is likely to become all the more necessary as ageing populations and skills shortages put an increased brake on economic growth. Ageing European societies have to make full use of their talent if they are to successfully compete in a globalised world.

What has already been done at EU level to promote gender equality on company boards?

In 1984, the Council adopted a recommendation on the promotion of positive action for women (84/635/EEC).

In 1996, the Council adopted a recommendation, upon proposal by the Commission, on the balanced participation of women and men in the decision-making process (96/694/EC).

In 2010, the Commission identified 'equality in decision making' as one of the priorities of the **Women's Charter** (COM(2010)0078) and of its **Strategy for Equality between Women and Men 2010-2015** (COM(2010) 491).

In 2011, Vice-President Viviane Reding launched the **'Women on the Board Pledge for Europe'** calling for publicly listed companies in Europe to voluntarily commit to increasing women's presence on their boards to 30% by 2015 and 40% by 2020. A year later, only 24 companies had signed the pledge.

In March 2012, the **Commission took stock of the situation** and found only an average improvement of just 0.6 percentage points over the past years. At this slow rate of progress it would take around 40 years before companies would naturally reach gender balanced representation in boards.

The **European Parliament** called for legislation in its resolutions of **6 July 2011** and **13 March 2012** on equality between women and men in business leadership in the European Union.

Between 5 March and 28 May 2012, the Commission held a **public consultation** inviting the public – individual businesses, social partners, interested NGOs and citizens – to comment on what kind of measures the EU should take to tackle the lack of gender diversity in boardrooms. The results have fed into the proposal presented by the European Commission today.

What are the next steps for this proposal?

The Commission's proposal will now pass to the European Parliament and Council of the European Union (representing Member States' national governments) for consideration under the normal legislative procedure (also known as 'co-decision procedure' between the two institutions who decide on an equal footing, with the Council voting by qualified majority and the European Parliament voting by simple majority).

[1]Catalyst Inc., 'The Bottom Line: Corporate Performance and Women's Representation on Boards', 2007

What about women in senior positions in the EU institutions?

European Commission

In the Commission as a whole women make up 52.4% of staff, men account for 47.6%.

Thanks to President Barroso's insistence on having female candidates for the College of Commissioners in 2009, 1 in 3 (33%) of the **European Commissioners** are today women. This is the best gender balance yet – up from 5.6% in 1994/1995. It also compares favourably with the situation in national governments of EU Member States, where an average of 1 in 4 (26%) of senior ministers are women.

In December 2010, the Commission adopted a Strategy on Equal Opportunities for Women and Men within the Commission (2010-2014), setting targets for gender balance in senior management as well as in other posts (middle management and non-management policy level).

By 1 October 2012, the percentage of women in management positions had increased to the extent that the Commission has met or is on course to meet all three targets for 2012. It has been so successful in recruiting women in top jobs that on 1 October 2012 it had already reached 27.2% women in senior management, exceeding its target of 25% for 2014 (see also separate fact sheet on gender equality in the European Commission).

European Parliament

In the **European Parliament**, women make up 35% of members of the European Parliament (MEPs), compared to 65% who are men. This compares favourably with the situation in national parliaments in the Member States, where an average of 26% of members of lower houses and 23% of those in upper houses are female.

European Council

The **European Council**, representing heads of state and government of the EU Member States, is made up of 11% women, or 3 out of the 27 members.

European Central Bank

The Governing Council of the **European Central Bank**, the ECB's main decision-making body, currently includes no women. All 22 members are men, while one position is vacant. The institution in charge of these appointments is the European Council. In national central banks, all Governors are also men.

Are there actually enough qualified female candidates for board positions?

In September 2011, European Business Schools and Senior Executive Women launched a call to action to shatter the glass ceilings which impede senior women executives from acceding to corporate boardroom seats throughout Europe. Their ever growing list of "Board Ready Women" – up to 7 500 today from 3 500 in March 2012 – makes it clear that there are more than enough eminently qualified women to help lead Europe's and the world's corporations into the 21st century. All of these women fulfil stringent criteria for corporate governance as defined by publicly-listed companies, are well qualified and ready to go on the boards as of tomorrow. The pool of talent is there – companies should now make use of it.

How does the proposal take into account the principles of subsidiarity and proportionality?

The lack of sufficient and sustainable progress in achieving gender balance on boards is a challenge common to all EU Member States. The impact of existing barriers across the EU can only be reduced through a common approach, and the potential for boosting competitiveness and growth can be better achieved through coordinated action at EU level rather than a patchwork of national initiatives of varying scope, ambition and effectiveness.

Scattered and divergent regulation at national level is bound to create practical problems in the EU's internal market, as different company law rules for not complying with a binding quota could lead to complications in business life and have a deterrent effect on companies' cross-border investments.

At the same time, EU action is only necessary as long as the problem persists and needs to be proportionate to its objectives. That is why the directive is a **temporary measure**, which will automatically expire once the objectives are attained.

The proposal will only apply to publicly listed companies, due to their economic importance and high visibility. It will not apply to **small and medium enterprises** (companies with less than 250 employees and an annual turnover not exceeding EUR 250 million).

The proposal is based on a **minimum harmonisation approach** and is limited to setting **common objectives and general rules**, thereby giving Member States sufficient freedom to determine how these should be best achieved at national level, taking into account national, regional or local circumstances including national company law and company board recruitment practices. Sanctions must be effective, proportionate and dissuasive, though Member States have been granted discretion to specify the sanctions, in line with their individual company law systems.

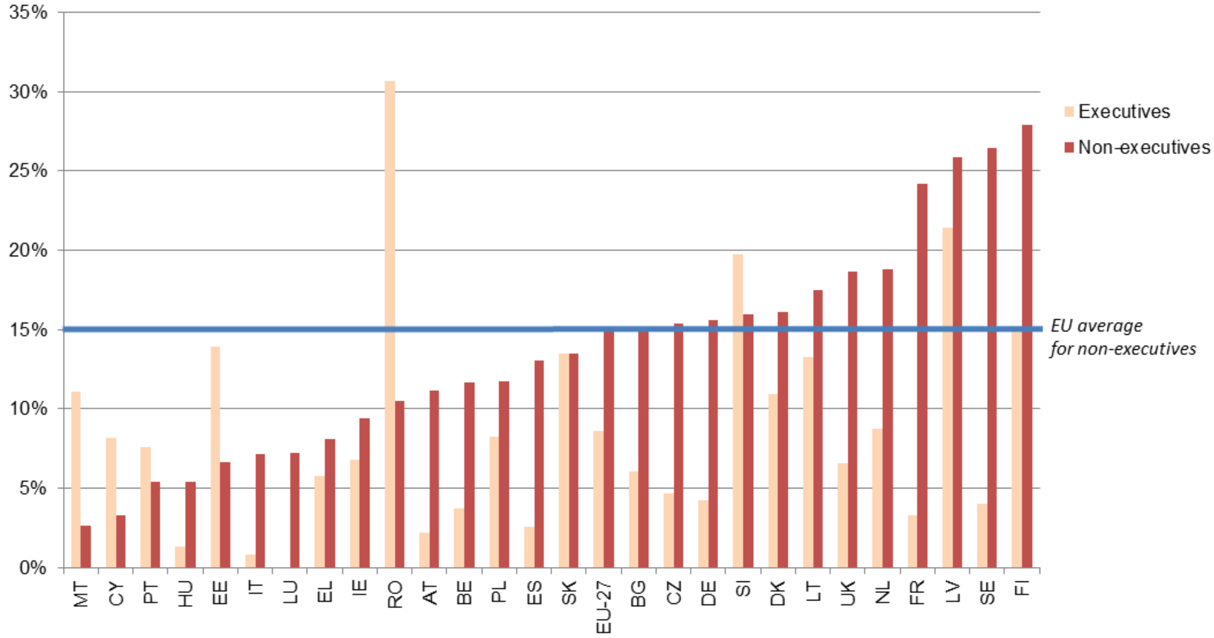
The proposal does not require undue changes to national company law and respects the different board structures across Member States. Its 40% objective **focuses on the non-executive director posts** of company boards in order not to interfere with the freedom to conduct a business and property rights – two fundamental rights guaranteed by the EU's Charter of Fundamental Rights.

The proposal also provides for a possibility of justifying **non-compliance** with the objective where the members of the under-represented sex represent **less than 10 per cent of the workforce**.

Annex 1

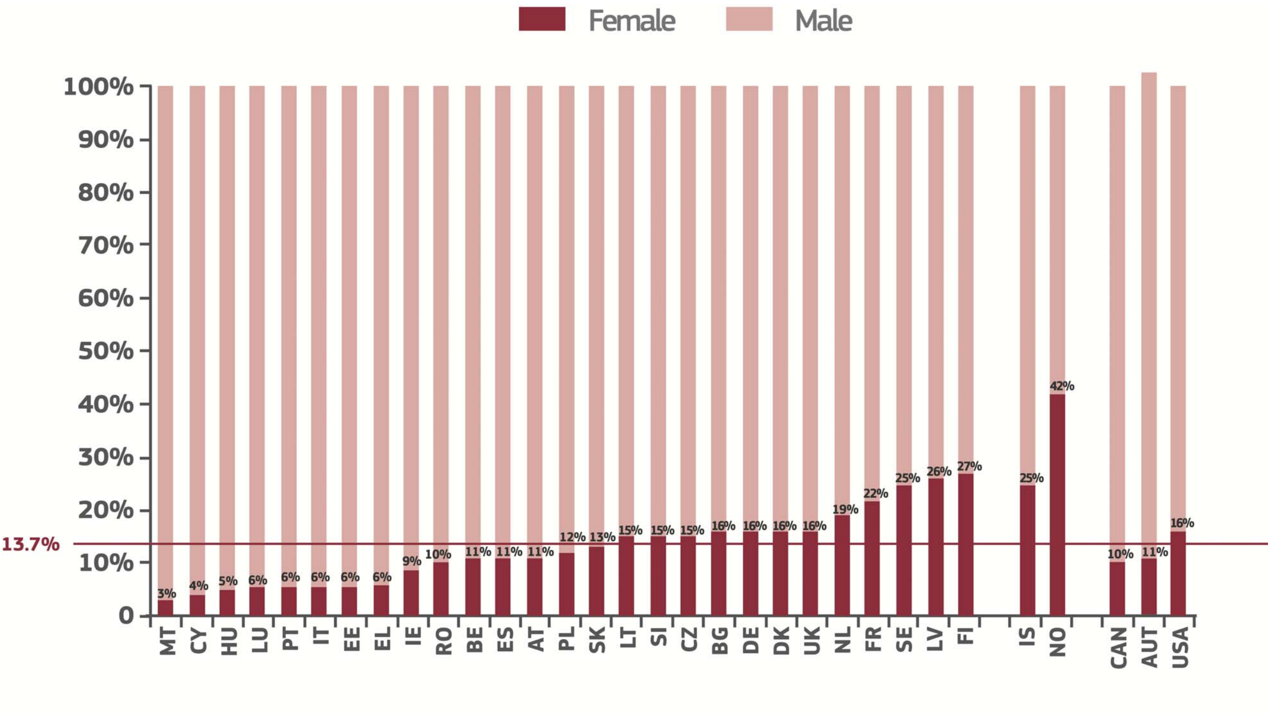
Percentage (%) women on boards

Women on the boards of the largest listed companies: executive and non-executive members (January 2012)



Source: *European Commission's Database on women and men in decision-making*
Note: *In a one-tier system data on non-executives refer to non-executive members of the board and data on executives refer to executive members of the board. In a two-tier system data on non-executives refer to members of the supervisory board and data on executives to members of the executive/management board. Occasionally, it is possible for the supervisory board to include one or more executive members (e.g. CEO and CFO). In this case these are included in the executive figures, though individuals participating in both boards are counted only once. Non-executive figures in this case still refer to the total members of the supervisory board and could, therefore, include some executives but the numbers concerned are not significant and should not affect the final result.*

Share of Women among Members on Boards for Listed Companies in EU Member States and some other countries (Iceland, Norway, Australia, Canada and the US)[2]

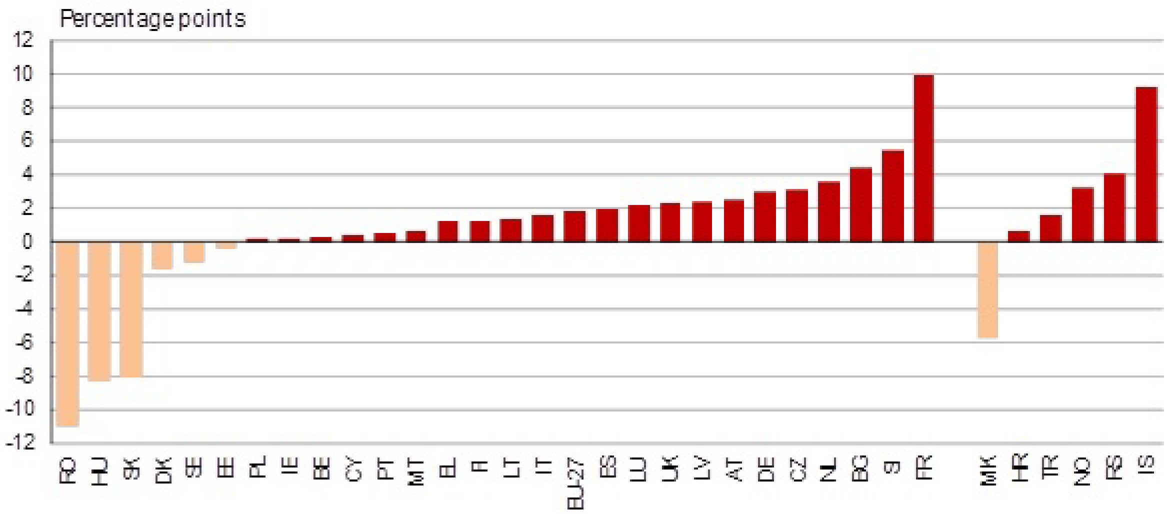


Source: European Commission. Database: women & men in decision making, [Online] Available from: http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/quoted-companies/index_en.htm and Catalyst, Women on Boards, Quick takes, [Online] Available from: http://www.catalyst.org/publication/433/women-on-boards

Notes: data on European countries refer to members of the board of directors (supervisory board in case of separated supervisory and executive functions. Count includes the chairperson). Data on countries outside Europe derive from different sources with different coverage and reference years

2 The EC database does not report figures for Australia, Canada and the US. Catalyst instead reports figures only for some EU countries and Anglo-Saxon countries. Since the EU figures reported by Catalyst are in line with those reported by the EC database figures, we believe that the two databases are comparable.

Change in the share of women on corporate boards between October 2010 and January 2012



Source: European Commission, Database on women and men in decision making

Men and Women presidents/chairpersons of large companies, EU-27

%	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Men	98,4	97,4	96,9	96,3	97,1	97,2	97,0	96,6	97,3	96,8
Women	1,6	2,6	3,1	3,7	2,9	2,8	3,0	3,4	2.7	3,2

Source: European Commission, Database on women and men in decision-making. 2003 data exclude CZ, LT, MT and PL.
Note: Data are normally collected in the final quarter of the year but the data for 2012 was collected in January, just 3 months after the 2011 data, and should therefore not be treated as part of the annual time series.

Annex 2

Gender Equality in the European Commission

European Commission	Current rate (%women)	Target 2012 (%women)	Target 2014 (%women)
Senior management	27.2%	24.8%	25%
Middle management	28.7%	27.7%	30%
AD non-management	42.4%	42.7%	43%