

Opinion of the European Economic and Social Committee on the ‘Proposal for a directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures’

COM(2012) 614 final — 2012/0299 (COD)

(2013/C 133/13)

Rapporteur: **Madi SHARMA**

On 22 November 2012 the European Parliament and on 10 December 2012 the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures

COM(2012) 614 final – 2012/0299 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 25 January 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February 2013), the European Economic and Social Committee adopted the following opinion by 128 votes to 58 with 10 abstentions.

1. Conclusions and recommendations

1.1 In the text under consideration, the European Commission is proposing a directive for improving the gender balance among non-executive directors of companies listed on the stock exchange with a minimum objective of 40 % by 2020.

1.2 The EESC welcomes this proposal. While its preference is for voluntary measures, rather than quotas, it acknowledges that little will change as regards the gender balance in EU listed companies without legally endorsed objectives. Today, just 13.7 % of board members are women, which is evidence of clear discrimination.

1.3 The EESC and the Commission recognise the need to respect the freedom to conduct business. This directive is a minimum standard which seeks to improve the conditions for business prosperity and allows Member States to progress beyond the measures recommended. The EU social partners themselves drafted a plan in 2005, stating many of the arguments for gender equity and highlighting practical tools for Member States and companies ⁽¹⁾.

1.4 The drive for change is based on strong evidence that there is a supply of highly-skilled women across Member States

and therefore any argument for gender balance should be based on the ‘merit and preference rule’ rather than positive discrimination. Nevertheless, there are still factors that hinder women from taking the lead, such as a lack of reconciliation measures between business and family life, limited access to networks that are important for higher positions, lack of self-confidence, etc.

1.5 The EESC would hope that this minimum standard could be adopted by all public and private decision-making bodies in the spirit of self-regulation in order to avoid further legislation. This could include executive directors, boards of listed SMEs and all public-sector bodies to promote a more gender equitable environment, a condition of transparent application and appointment and a culture of inclusion and ‘choice’ in society as a whole.

1.6 The EESC would further recommend that policymakers and companies review the following issues to ensure the 40 % target is achieved and exceeded:

— better visibility of women in senior roles;

— greater transparency in headhunting talent;

⁽¹⁾ http://www.etuc.org/IMG/pdf/framework_of_actions_gender_equality_010305-2.pdf

- building and retaining a critical mass;
- challenging stereotypes around gendered roles;
- leadership succession planning;
- creation of a talent pipeline;
- disseminating examples of good practice;
- creating a European-wide coordinated database of qualified women for board positions.

1.7 The EESC congratulates Ms Reding and her supporters within the Commission, Parliament and other institutions on taking the first steps towards a more balanced Europe and challenging the perception of who should be in the boardroom, to ensure a more inclusive society. This is a substantial shift in mindset. The EESC recognises that extensive research, legal analysis and consultation with civil society have been conducted in order to present a practical directive with adequate flexibility in delivery and timeframes for both companies and Member States whilst still respecting the principles of subsidiarity and proportionality.

1.8 The barriers to achieving gender equality in decision-making are far deeper than well-rehearsed arguments on gender assumptions and supply challenges. Little will ever be achieved without the willingness of both men and women to take positive action now to move beyond words and respect each other's views. **Europe's strength is its 'unity in diversity', but diversity must first be harnessed.**

1.9 The EESC calls for this proposal for a directive to include specific provisions concerning the gender balance for members of the board of directors representing the company's employees, bearing in mind the particular terms of their appointment.

2. Context

86.3 % of board members are male

2.1 Gender equality is one of the EU's founding objectives, reflected in its Treaties (Article 3(3) TEU) and in the Charter of

Fundamental Rights (Article 23). Under Article 8 TFEU the Union must aim to eliminate inequalities and promote equality. The EU's right to act in issues of gender equality in employment and occupation stems from Article 157(3) TFEU.

2.2 There is a considerable disparity between EU Member States in the number of women on boards as a result of differing policies. The role of women on boards has been being scrutinised for decades, but especially over the last two years as the EU has renewed its commitment to the promotion of gender equality on boards of listed companies. The debate has ranged from introducing legally-binding quotas to self-imposed regulations without repercussions for non-compliance. Effective, voluntary approaches are still slow. **There was only a 0.6 % improvement in the number of women on boards in the last year**, with only 24 companies having signed the 2011 pledge.

2.3 Member States' measures lie along a continuum ranging from legally-binding quotas with sanctions to self-regulation in specific sectors, and, as expected, the representation of women on boards is equally varied. However **countries with binding quotas generally demonstrate a 20 % increase in women on boards**. Six countries that have not implemented any action have experienced a reduction in the number of women on boards. (See Appendix 1)

2.4 By the end of 2011, 11 Member States had adopted laws establishing quotas or targets for gender representation on company boards. France, Italy and Belgium have established quotas including sanctions for non-compliance; Spain and the Netherlands have adopted quota laws without sanctions; Denmark, Finland, Greece, Austria and Slovenia have implemented rules applicable only to boards of state-controlled companies; and in Germany the gender dimension is covered by regulations covering workers' representations on boards.

2.5 Inevitably, the variations between the different Member States have influenced the presence of women on boards. Countries with legislative quotas have experienced a 20 % increase, although Italy has only shown a 4 % increase. Where countries have implemented corporate governance codes the percentage increase ranges from 11 % to 2 %.

2.6 With current levels of attainment, **France is the only country on course to achieve the target of 40 % female representation on boards by 2020**. If current levels of female board representation are extrapolated further, the EU as a whole will not achieve 40 % female representation by 2040 ⁽²⁾.

2.7 Objectives will only be effective if they go hand in hand with penalties, and so there must be sufficient sanctions for non-compliance. The directive allows for proof of non-compliance in all cases, with the onus on the company to prove its due diligence in the recruitment process. Sanctions will work most effectively where they are specified, imposed and implemented by the country concerned, and hence the Commission has only made recommendations as guidelines for possible sanctions.

2.8 The Commission recognises the need to respect the fundamental freedom of businesses to operate without interference, but believes that this freedom should not override the rule of law or fundamental rights. This directive is a minimum standard which seeks to improve the conditions for business and the internal market by creating a level playing field for companies trading in several Member States.

2.9 The directive sets a timeframe for implementation of the quantitative objective of 40 % by 2020 to allow for the cycle of board appointments within individual companies. The directive also has a sunset clause of 2028, after which time it should no longer be required.

2.10 Only an EU-level measure that is flexible in order to take account of diversity across Member States whilst fully respecting the principle of subsidiarity can optimise the potential of female talent.

3. Gender equality is a fundamental right and a common value of the EU

3.1 The EESC believes that increasing the proportion of women in decision-making positions is a goal shared by all civil society players who actively promote gender equity. The EESC has issued many opinions on gender balance in society, and its report on 'The role of the ESCs and Similar Institutions in the new economic, social and environmental world governance' stressed that '(...) political parity, true democracy

and equality will not be established without legal mandates demanding equal representation'.

3.2 As well as being a precondition for true democracy and an equitable society, it is an essential condition for the achievement of the EU objectives of smart, sustainable and inclusive growth. World Bank and Transparency International research shows that transparency increases and corruption decreases where women are well represented in decision-making. Good governance in all walks of life is good for society.

3.3 Over 51 % of the EU's population is female, with women accounting for 45 % of employment and women providing the driving force behind more than 70 % of purchasing decisions. Hence the EESC would have liked to see the introduction of obligatory legal measures with sanctions at all levels of society, on all decision-making bodies, to improve gender balance. This would challenge the perception of who should be included in the decision making process and ensure an inclusive society.

'Today it is clear that women and men cannot be discriminated against on the grounds of gender' ⁽³⁾

BUT the fact is 96.8 % of chairmen are men

3.4 The expansion in global economies is a direct result of human capacity, spearheaded by women who are drivers for geopolitical change impacting on health, education, social welfare, the environment and economic productivity, and this creates a strong business case for women in the boardroom. Gender diversity is not only an asset for the corporate image but also because it tightens the links between the company, employees, shareholders and customers. Thus, diversity is recognised as a fundamental aspect of all private sector CSR policies because of its value, but it has yet to be actually put into practice in many companies.

3.5 Quotas, however uncomfortable, provide an effective means to promote women into board positions, as stressed by Laurence Parisot, President of MEDEF, during a speech at an EESC Plenary in 2012 **'Quotas should not be needed – but they are the only way to break men's prejudices towards women's incompetences'**.

⁽²⁾ Impact assessment document.

⁽³⁾ COM(2012) 615 final.

3.6 On the other hand, some women in leading positions have come out strongly against legally binding quota, as they feel these devalue their own achievements. There is a concrete fear that quotas stigmatise women taking on a leading position.

3.7 To promote women into board positions, it is important to put in place the necessary policies that will encourage women to take the lead, including measures to reconcile business and family life, to encourage networking and career progression at all levels and to raise awareness and change attitudes.

4. Drivers for smart, sustainable and inclusive growth

4.1 Economic potential

4.1.1 As Europe continues to struggle economically, its revival is dependent on the activity of a fully-functioning workforce, and this means the active participation of women. Even before the crisis the EU social partners, UNICE/UEAPME, CEEP and ETUC1 committed to enhancing gender equality on the labour market and in the workplace. In 2005 they identified promoting women in decision-making as one of their key priorities, and in their report recommended practical tools to promote the inclusion of women ⁽⁴⁾.

4.1.2 The competitiveness of European companies puts the focus on growth with innovation, research, training, skills, consumer protection and Corporate Social Responsibility (CSR) – key targets for Commission intervention to best promote increased business opportunities. All these require a balanced gender dimension to attain sustainable results.

4.1.3 51 % of the EU population are female. Many are highly educated and skilled, and thus are an important contributor to the workforce. Female students outnumber their male counterparts at tertiary education level, resulting in **50 % more highly qualified women than men available in the labour market**. The Davies report identified a gap in the UK workforce which could be compensated for by the recruitment of 2 million qualified workers over the next 10 years, most of which would need to be highly qualified women ⁽⁵⁾.

⁽⁴⁾ http://www.etuc.org/IMG/pdf/framework_of_actions_gender_equality_010305-2.pdf

⁽⁵⁾ Davies, Women on Boards, One Year On, March 2012 <http://www.bis.gov.uk/assets/biscore/business-law/docs/w/12-p135-women-on-boards-2012.pdf>

4.1.4 Moreover, female economic participation has far-reaching financial and social benefits for countries. The Global Gender Gap Index for 2011 demonstrated that **countries with higher gender equality had a higher GDP per capita** ⁽⁶⁾.

4.1.5 According to Goldman Sachs, more women in the workforce could boost GDP by:

— 21 % in Italy;

— 19 in Spain;

— 9 % in France and Germany; and

— 8 % in the UK.

4.1.6 A wide range of research on the economic rationale for women on boards presents a compelling argument supporting the advance of company performance. Research by Credit Suisse (2012) ⁽⁷⁾ McKinsey (2007) ⁽⁸⁾ and Catalyst (2004) ⁽⁹⁾ has all independently identified a correlation between the share of women on boards and the company's financial performance. For example:

— The McKinsey report identified a **41 % higher Return on Equity (ROE) for companies with the highest proportion of women on boards** compared to companies with no women on their boards.

— Catalyst found that **companies with 14.3 – 38.3 % women in top management had a ROE 34.1 % higher** than companies without similar levels of women in senior positions.

⁽⁶⁾ Global Gender Gap Index for 2011; World Economic Forum, <http://www.uis.unesco.org/>

⁽⁷⁾ Credit Suisse Research Institute August 2012; Gender diversity and corporate performance.

⁽⁸⁾ McKinsey, Women Matter: Gender Diversity: a corporate performance driver (2007).

⁽⁹⁾ The Bottom Line: Connecting Corporate Performance and Gender Diversity, January 2004, Catalyst.

— Credit Suisse **identified companies with women on boards as demonstrating a higher share price performance** compared to their counterparts without women on boards.

4.1.7 There are studies that demonstrate that gender diversity on boards has had little or no impact on financial performance, but the overwhelming trend is largely one showing a positive correlation between a female presence on boards and the financial performance of companies.

4.2 Business case

4.2.1 There are numerous reasons explaining the improved performance of companies that have diverse gender representation on their boards. One of the main arguments lies in the willingness to engage in diverse critical thinking around business decisions, creating a more proactive business model.

4.2.2 Understanding diversity in the marketplace has immense financial value and is a pre-requisite for corporations in an international market.

4.2.3 **Innovation and board performance** – The strength women bring to the board lies in their diversity, their experience, how they address problems, new markets and opportunities through their own consumer expertise. Diverse thinking underpins innovation and better business performance; it challenges assumptions and encourages a greater external focus on existing and new markets. The impact of cross-fertilisation of ideas is immense and this can be applied to cross-border opportunities for representation on boards. The challenge for boards is to adapt to truly diverse membership and recognise how to harness business challenges in a productive manner.

4.2.4 Diversity on boards means true diversity in the widest sense. The EESC is not advocating confining board positions to a small range of women who circulate around a number of boards. This practice, commonly called the ‘golden skirts’ argument, undermines the central pillar of diversity on

boards. Norwegian results showed that 62 % of men were holding only one board position while the figure was 79 % for women. The EESC is advocating the right for men and women to have choice and equal access to board positions based on merit.

5. Implementation

5.1 Achieving the quantitative targets of women on boards requires measures in place to ensure success. A combination of short and mid-term measures must be implemented to ensure that board diversity is maintained beyond 2028. The following should be considered:

5.1.1 **Greater visibility of women in senior roles** – profiling women across different Member States that have achieved board-level positions, raising awareness of these women in the wider business community and demonstrating the impact of board diversity on business success.

5.1.2 **Greater transparency in head hunting talent** – The process of recruitment onto boards is largely opaque, relying on personal networks. To attract the broadest range of talent, opportunities need to be promoted and presented in a manner that encourages applications from all talented individuals.

5.1.3 **Building and retaining a critical mass** – The value of diverse thinking on a board is only realised when there is enough of a critical mass to challenge assumptions; it is therefore imperative for women to make up 40 % of membership on a board. Increased transparency during the recruitment process will ensure the widest range of candidates are considered and remove the risk of the ‘golden skirt’ rule⁽¹⁰⁾.

5.1.4 **Challenging stereotypes around gendered roles** – A lot of progress has been made regarding domestic roles constituting barriers to female economic participation. The measures are a step in the right direction and will serve to help increase participation of women on boards.

⁽¹⁰⁾ ‘Golden Skirts fill the board rooms’ Article from BI Norwegian Business School, 31.10.2012. Edited from Morten Huse (2011): The ‘Golden Skirts’. Changes in board composition following gender quotas on corporate boards.

5.1.5 **Creation of a pipeline** – The sustained benefit of diverse boards requires a steady stream of highly-qualified individuals who have both the aspiration and the aptitude to take on board positions. It is imperative to create an environment that enables women to navigate their way through the labyrinth ⁽¹⁾ during their careers and achieve board positions. A strong pipeline will emerge from the above points; the presence of female role models, more transparent recruitment processes and clear leadership succession planning provide the foundations for gender diversity on boards.

5.1.6 Creating a European-wide coordinated database – with details of women who are qualified for Board positions. This would address concerns regarding the invisibility of women who are eligible for board positions. The database would further reduce the risk of a small minority of women being recruited into multiple positions and create greater transparency in the recruitment process. A European-wide database would support the argument for cross-fertilisation of skills and experience across different Member States along with opportunities to work across different sectors.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁾ See 'Through the Labyrinth: The Truth About How Women Become Leaders' by Alice Eagly and Linda Carli.

APPENDIX 1

to the opinion of the European Economic and Social Committee

The following amendments were rejected, although they did receive at least a quarter of the votes cast:

Point 1.2

Amend:

The EESC welcomes the fact that the share of women on company boards has risen from 13.7 % in January 2012 to 15.8 % in January 2013. Commitment within companies is the prerequisite for the continuation of this trend, which is why the EESC cannot support quotas in general although it acknowledges that the Commission's proposal has made a considerable contribution to raising awareness and thereby commitment to enhancing this trend proposal. While its preference is for voluntary measures, rather than quotas, it acknowledges that little will change as regards the gender balance in EU listed companies without legally endorsed objectives. Today, just 13.7 % of board members are women, which is evidence of clear discrimination.

Voting

For: 78

Against: 102

Abstentions: 5

Point 1.5

Amend:

The EESC ~~would hope~~ believes that the 40 % target can be achieved by all public and private decision-making bodies through voluntary measures, peer pressure and by raising the number of women (and men) available at senior levels in every sector concerned and that this minimum standard could be adopted by all public and private decision making bodies in the spirit of would prefer self-regulation and soft measures in order to avoid further legislation. This could include executive directors, boards of listed SMEs and all public-sector bodies to promote a more gender equitable environment, a condition of transparent application and appointment and a culture of inclusion and 'choice' in society as a whole. The EESC emphasises that a large number of Member States have already launched a wide range of initiatives to promote women on company boards; any EU initiative should respect such national initiatives.

Voting

For: 75

Against: 107

Abstentions: 3

Point 1.7

Delete text:

The EESC congratulates Ms Reding and her supporters within the Commission, Parliament and other institutions on taking the first steps towards a more balanced Europe and challenging the perception of who should be in the boardroom, to ensure a more inclusive society. This is a substantial shift in mindset. The EESC recognises that extensive research, legal analysis and consultation with civil society have been conducted in order to present a practical directive with adequate flexibility in delivery and timeframes for both companies and Member States whilst still respecting the principles of subsidiarity and proportionality.

Voting

For: 79

Against: 107

Abstentions: 5

Point 2.2

Add text:

*There is a considerable disparity between EU Member States in the number of women on boards as a result of differing policies. The role of women on boards has been being scrutinised for decades, but especially over the last two years as the EU has renewed its commitment to the promotion of gender equality on boards of listed companies. The debate has ranged from introducing legally-binding quotas to self-imposed regulations without repercussions for non-compliance. Effective, voluntary approaches are still slow. **There was only a 0.6 % improvement in the number of women on boards in the last year**, with only 24 companies having signed the 2011 pledge. However, the EESC points out that the term of office of non-executive directors is usually between three and five years. It would have therefore preferred European companies to have been given more time to sign the 2011 Pledge in order to increase the number of women on boards.*

Voting

For: 82

Against: 90

Abstentions: 8

Point 2.7

Amend:

~~*Objectives will only be effective if they go hand in hand with penalties, and so there must be sufficient sanctions for non-compliance. The directive allows for proof of non-compliance in all cases, with the onus on the company to prove its due diligence in the recruitment process. Sanctions will work most effectively where they are specified, imposed and implemented by the country concerned, and hence the Commission has only made recommendations as guidelines for possible sanctions. The EESC, however, requests assurance that the sanction of nullity or annulment of the appointment or election of non-executive directors does not affect the decisions that have been taken by this board. Otherwise, the companies concerned would be seriously damaged.*~~

Voting

For: 71

Against: 93

Abstentions: 7

Point 2.10

Add text:

Only an EU-level measure that is flexible in order to take account of diversity across Member States and the diversity of board structures whilst fully respecting the principle of subsidiarity and private ownership rights can optimise the potential of female talent. A company's needs vary with its product range and customers; they also vary over time, depending on the company's type, size, owner structure, operations, phase of development, etc.

Voting

For: 80

Against: 100

Abstentions: 8

New point 2.11

Therefore the EESC would have preferred self-regulation as the right way to improve the situation, as this would provide the necessary flexibility to manage equal opportunities at all levels and a proper and appropriate mix of both genders represented at board levels, according to their own cycle, renewal and long-term growth prospects. The EESC emphasises that a large number of Member States have already launched a wide range of initiatives to promote women on company boards; any EU initiative should respect such national initiatives.

Voting

For: 78

Against: 99

Abstentions: 9
