European Commission

Improving the gender balance in company boardrooms

(Proposal for a directive - adopted by the Commission on 14 November 2012)

June 2014

What does the Commission's proposal aim to do?

The aim is to accelerate progress towards a better balance of women and men on boards of listed companies, while allowing companies sufficient time to make the necessary arrangements.

It sets a quantitative objective of at least 40% representation for each gender among non-executive directors (supervisory board members in a dual board system) by 2020 (or 2018 for State-owned undertakings).

This objective is not a rigid quantitative quota obligation that would result in sanctions if it is not reached. It is a procedural quota : the proposed Directive sets out a fair and transparent board selection process until the 40% objective is achieved.

Companies, which have not yet reached this threshold, have to ensure that their selection procedures are objective and transparent and based on clear and gender-neutral criteria. Companies also have to disclose the qualification criteria applied in case of a challenge to an appointment. This approach guarantees that qualification and merit remain the key criteria for a job on the board. Only where two candidates are equally qualified, will priority be given to the candidate of the under-represented sex.

Who will be affected?

The Commission's proposal applies to companies listed on stock exchanges in the EU Member States, but excludes all small and medium-sized companies (SMEs), even if they are listed on stock exchanges. It applies to listed companies irrespective of whether they are privately or publicly owned. There is a possibility for Member States to exclude companies with a very strong gender imbalance in the workforce where the under-represented sex makes up less than 10% of the employees.

Of the 7,500 listed companies in the EU, the proposed Directive would affect roughly 5,000 companies (listed companies which are not SMEs).

What does the proposal require?

The proposal is fully in line with the principle of subsidiarity - meaning the EU is only acting to the extent necessary and leaving the rest up to the Member States. The new law thus gives Member States the possibility of reaching the set objectives by different means. A clause in the law foresees that Member States that have legislative or other measures in place to ensure a more balanced representation in company boards would not need to change those measures, if they show that they are equally effective in reaching the objective of 40%. Those Member States could opt to maintain their existing measures instead of the procedural requirements under the proposed Directive. Put differently, Member States which have already taken action achieving the desired results do not need to apply the Directive. If in 2020 it emerges that those Member States do not manage to achieve the 40% objective, the procedural obligations under the proposed Directive would kick in.

For executive directors, Member States have to ensure that companies undertake individual commitments and set their own objectives to achieve a better gender balance. The same deadlines apply. However, Member States also have the possibility of including all directors, executive and non-executive, in one overarching objective of 33% for the use of procedural quota rules.

Member States and the Commission will have to report on and monitor the application of the proposed Directive. Listed companies will have to report on an annual basis on the gender composition of boards and on measures taken to reach the objectives. Companies which do not reach the objectives will have to specifically report on the reasons and on the steps they intend to take to achieve progress.

Member States will have to introduce effective, proportionate and dissuasive sanctions – for breaching the procedural obligations concerning the selection of board members and the reporting obligations. No sanctions apply for failing to reach the 40% objective if companies have properly applied these procedural obligations. The proposal lists examples for such sanctions but the decision concerning the appropriate system is left to Member States.

The measure is meant to be temporary and in principle is set to expire in 2028.

What is the European Parliament's position?

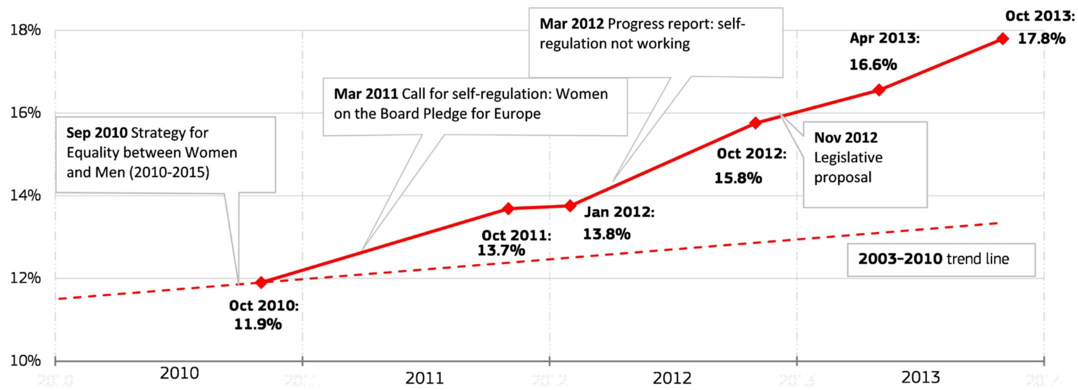
In the Parliament, there is broad cross-party support for the proposal. The Parliament's report on the Proposal was adopted on 20 November 2013 by a very large majority (459 for, 148 against and 81 abstentions). The main amendments adopted were compromise amendments agreed between the major parliamentary groups. They are very moderate and do not substantially depart from the Commission proposal.

Negotiations in the Council

The proposed Directive is being discussed among Member States in the Council, which are generally all in favour of improving gender balance on company boards, but have different preferences on the best approach to achieve this objective. The Italian Presidency taking office in July 2014 will treat this initiative as a priority in order to achieve a compromise solution.

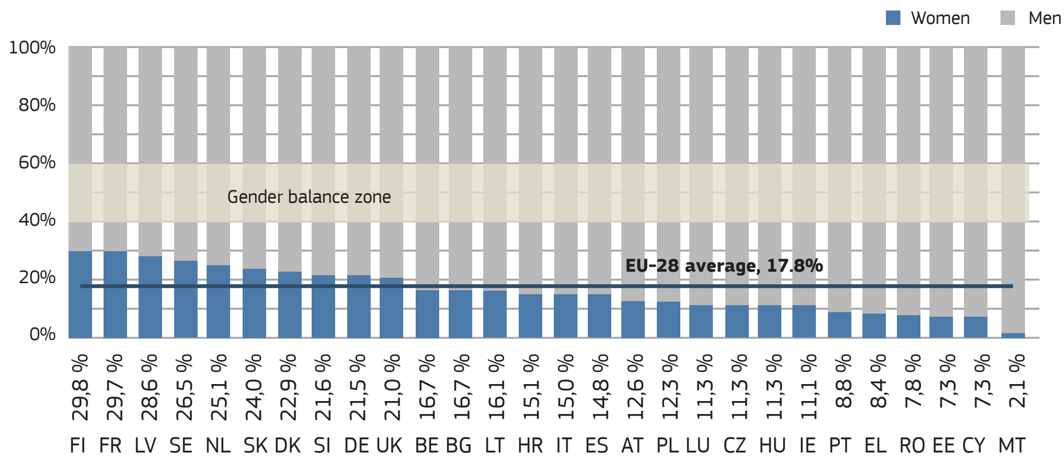
Cracks in the "glass ceiling" following EU political and regulatory pressure

Representation of women and men on the boards of large listed companies in the EU (October 2003 – October 2013)



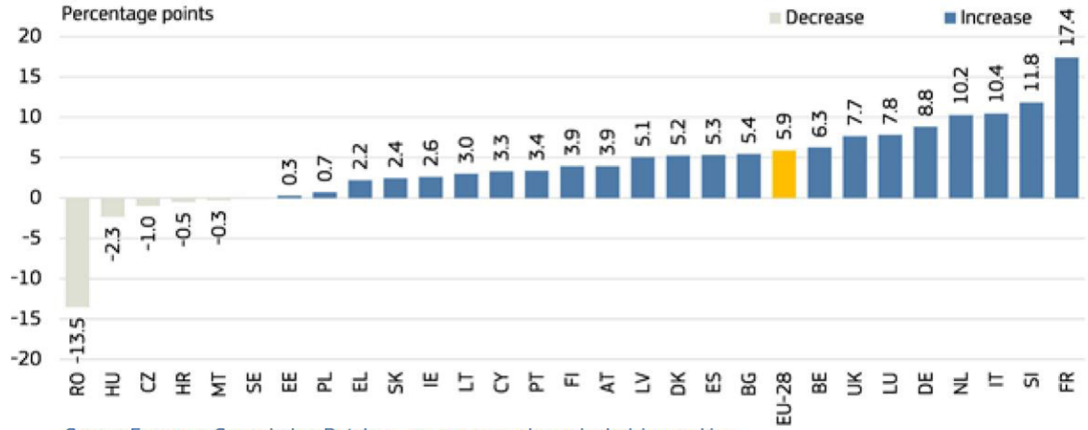
Share of women on the boards of large listed companies in the EU (October 2013)

In EU-28, 17.8% of board members of the largest listed companies registered in the EU (610 companies covered) are women. Women represent 11.8% of executives and 18.8% of non-executives. 2.8% of CEOs are women.



Change in the share of women on boards, EU-28 (October 2010 – October 2013)

In the three years from October 2010 to October 2013 the share of women on boards increased in 22 of the 28 Member States. The largest percentage point increases were recorded in France (+17.4 pp), Slovenia (+11.8 pp), Italy (+10.4 pp), the Netherlands (+10.2 pp) and Germany (+8.8 pp). Most of the significant improvements took place in countries that have taken or considered legislative action or had an intensive public debate on the issue.



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

Statistics, national measures in place and implementation prospects of the proposed Directive

Member State	Share of women on boards[1], *EU-28 average 17.8 %*	Quotas in place	Other national measures in place	Will MS have to change its current legislation?[2]
Austria	12.6 %	Yes: only state-owned companies (35 % for supervisory boards by 2018)	Self-regulation: The corporate Governance Code of 2009 recommends representation of both genders in appointments to supervisory boards	Yes
Belgium	16.7 %	Yes: 33% for executives and non-executives in state-owned and listed companies- by 2017 and by 2019 (including listed SMEs)	Self-regulation: The corporate governance code of 2009 recommends that the composition of a board is determined on the basis of gender diversity	**No**
Bulgaria	16.7 %	No	No	Yes
Croatia	15.1 %	No	No	Yes
Cyprus	7.3 %	No	No	Yes
Czech Republic	11.3 %	No	No	Yes
Denmark	**22.9 %**	No	Yes, from 2013 - obligation to self-regulate and set their own targets. Company can be fined if it hasn't set any target figures or hasn't submitted any reporting	Yes
Estonia	7.3 %	No	No	

Member State	Share of women on boards[1], *EU-28 average 17.8 %*	Quotas in place	Other national measures in place	Will MS have to change its current legislation?[2]
Finland	**29.8%**	No	State-owned companies are required to have an 'equitable proportion of women and men'; corporate governance code for listed companies contains recommendation that 'boards shall consist of both sexes'	**No**
France	**29.7 %**	Yes: from 2011 - 40 % by 2017. Applicable to executives and non-executives in listed and non-listed large companies	AFEP-MEDEF corporate code: recommendation containing same quotas as in the Law of 2011, applicable to all board members	**No**
Germany	**21.5 %**	Planned from 2015 - 30% strict quota for supervisory boards of the biggest listed companies; a flexible quota to be defined by the company for the others	Soft positive action and self-regulation: supervisory boards of listed companies establishes targets for their composition + reporting obligation	Yes
Greece	8.4 %	Yes, 33 % - only companies fully or partially owned by the State. Applicable to all board positions (executives and non-executives)	Soft positive action measures in public sector	Yes
Hungary	11.3 %	No	Soft positive action measures in public sector	Yes
Ireland	11.1 %	No	A policy target of 40 % female participation on all state boards and committees; Soft positive action measures in public sector employment	Yes
Italy	15.0 %	Yes: 33 % by 2015 for listed companies and state-owned companies. Applicable to management boards and supervisory boards (i.e. executives and non-executives).	Yes	**No**
Latvia	**28.6 %**	No	Soft positive action measures in public sector employment	Yes
Lithuania	16.1 %	No	No	Yes
Luxembourg	11.3 %	No	Soft positive action measures; Corporate Code of 2009 recommends the board to have an appropriate representation of both genders. The rule is applicable to all board members	Yes
Malta	2.1 %	No	No	Yes
Netherlands	**25.1 %**	Target of 30 % in the executive boards and supervisory boards of large companies - "comply or explain" mechanism. Measure to expire in 2016.	Self-regulation: diversity clauses in the Dutch Corporate Governance Code of 2009, applicable to both executives and non-executives; voluntary Charter with targets for more women in management	Yes

Member State	Share of women on boards[1], *EU-28 average 17.8 %*	Quotas in place	Other national measures in place	Will MS have to change its current legislation?[2]
Poland	12.3 %	No	The executive ordinance of Minister of State Treasury obliges state-owned companies to "choose adequately prepared members of supervisory boards, taking into account the balanced participation of women and men". The Code of good practices attached to that ordinance establishes a target of 30% for 2015 and a priority rule for equally qualified women. No sanctions are envisaged.	Yes
Portugal	8.8 %	No	Government resolution: gender diversity plans (obligation for state-owned companies and recommendation to others) aiming, inter alia, at promoting gender balance in management and executive positions	Yes
Romania	7.8 %	No	Soft positive action measures in public sector employment	Yes
Slovakia	**24.0 %**	No	No	Yes
Slovenia	**21.6 %**	No	Regulation on state-owned companies: A principle of 40% representation of each sex applies to the nomination or appointment of government representatives to management and supervisory boards of state-owned enterprises (executives and non-executives). No sanctions apply if the principle is not respected.	Yes
Spain	14.8 %	Yes: 40 % (both executives and non-executives) by 2015 (but no sanctions, thus rather a recommendation by nature) in state-owned companies with 250 or more employees. New possible models under discussion	Soft positive action measures in public sector employment	Yes
Sweden	**26.5 %**	No	Self-regulation: Corporate Governance Code of 2004 has a voluntary goal of parity for listed companies – "comply or explain" mechanism	Yes
United Kingdom	**21.0 %**	No	Self-regulation – from 2012 on the basis of principles of UK Corporate Governance Code (following the Lord Davies' recommendation). The recommended target for listed companies in FTSE 100: 25%, by 2015 is applicable to all board members. FTSE 350 companies recommended setting their own aspirational targets to be achieved by 2013 and 2015.	Yes

1 Data: October, 2013; Source: European Commission, Database on women and men in decision-making)
2 This assessment is provisional. The results will depend on the assessment of whether national measures are equally effective in reaching the objective of 40% (or 33% for all directors).