Gender imbalance in corporate boards in the EU

Stephen Hine
Head of Responsible Investment Development
EIRIS
80-84 Bondway
London
SW8 1SF
stephen.hine@eiris.org
+44 0207 840 5716

BY EMAIL

European Commission
DG Justice / D1
LX 46 – 1/101
‘Consultation gender balance’
B-1049 Brussels
BELGIUM
JUST-GENDERBALANCE-CONSULTATION@ec.europa.eu

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Dear Sir / Madam,

Details on the Respondent

Contact name: Stephen Hine
Contact role: Head of Responsible Investment Development
Contact address: 80 – 84 Bondway, London, SW8 1SF, United Kingdom
Level at which organisation operates: global
Type of organisation: non-profit responsible investment research organisation.

The EIRIS Foundation (www.EIRISFoundation.org) is a leading UK charity working in the area of responsible investment.

The Foundation has over 25 years’ experience of providing free, objective and trusted information on ethical finance to charities and members of the public. A not-for-profit organisation, its mission is to empower investors with independent assessments of companies and advice on integrating them with investment decisions.

The Foundation’s subsidiary, EIRIS, with company name Ethical Investment Research Services (EIRIS) Ltd, researches the environmental, social, governance (‘ESG’) and ethical aspects of over 3,000 companies globally. EIRIS provides services to fund managers, banks, pension funds, charities and NGOs worldwide.

Consultation Response

EIRIS welcomes the public consultation on gender imbalance in corporate boards in the EU. We commend the public discussion of diversity on corporate boards as this is an important issue for corporate governance, the economic competitiveness of companies and therefore the investors that we strive to inform. The Progress Report ‘Women in economic decision-making in the EU’ (the ‘Progress Report’) gives a thorough and informed summary of progress to date across the EU.
Our response reflects EIRIS’ perspective as an organisation that researches companies on ESG grounds for investors. Most investors would likely agree that a diverse board of directors make better decisions, but investors tend to have different opinions about the types of diversity that are most important. Diversity in the context of director qualifications can encompass a broad array of features including gender, ethnicity, education, background and experience.

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

The Progress Report effectively collates the types of legislative measures and voluntary initiatives that some EU Member States have taken to address gender diversity on corporate boards.

The Progress Report finds that whilst voluntary measures offer greater ‘flexibility’ and ‘sense of ownership’, they ‘have not given a marked impetus to the improvement of gender balance on boards’ and it comments that figures indicate legislative measures are much more effective, particularly if accompanied by sanctions.¹

Whilst EIRIS is in favour of increasing gender balance on boards, EIRIS would not support mere ‘placing’ of women on boards to meet gender balance requirements.

We would question whether voluntary measures have been unable to give the impetus needed. The Progress Report acknowledges the progress made in some cases of voluntary initiatives (for example, it refers to the increase in the UK of women to 14.2% of FTSE 100 directors, up from 12.5% in 2012).² It is inevitable that progress from voluntary initiatives is going to be at a slower pace than legislative change. If further time was given to collate information on the impact of voluntary initiatives, this might indicate even more positive results.

In the US self-regulation has been relatively effective. In the US, shareholders have filed resolutions requesting that companies adopt policies committing them to consider gender diversity in board candidate searches. Many large US companies have adopted such policies and now report on how diversity was considered in director searches. Nonetheless, in the US the financial regulator introduced rules in 2009 requiring public companies to define and disclose their diversity policy.³ In the UK self-regulation has been less effective. Since the launch of the Davies report, progress on improving the gender balance on UK boards has been limited. According to the 30 per cent club, a group of Chairpersons voluntarily committed to bringing more women onto UK boards – only 15 per cent of FTSE-100 board directorships are now held by women. Whilst the ratio of female appointments has doubled over the last few years, it is still only c. 27 per cent.⁴ The stricter regimes in other countries, where policymakers have taken a different approach to increasing board diversity through the use of quotas for the number or percentage of women on corporate boards, appear to

¹ Progress Report, p. 13
² Progress Report, p. 13
have been more successful than countries where there has just been self-regulation, and have not necessarily resulted in the mere ‘placing’ of women on boards.

However, within a limited time frame, legislative measures are bound to have a more immediate effect. The danger of legislative measures, particularly binding quotas with sanctions, is the potential ‘placing’ of women on corporate boards in order to meet targets and avoid penalties. It might also mean that there has not been enough time for a company to fully consider the issue, establish policies and procedures that will be reviewed, to ensure that the objectives for gender diversity on boards are met in a sustainable long-term way. The Progress Report states on page 13 that ‘the figures show that it is the legislative measures that result in substantial progress, especially if they are accompanied by sanctions. However, figures by themselves will not tell us how many of those women have been ‘placed’ on corporate boards to meet targets and avoid sanctions.

One suggestion for consideration might be that the EU could bring into effect legislation that encourages EU Member States to explore the gender diversity issue on corporate boards and requires Member States to implement some form of measures (whether legislative or voluntary), evaluate and analyse the effects of such measures within a set time frame, and to report on these. This would avoid any potential danger from imposing quotas across the EU Member States and would allow further time to gather information to make an even more informed comparison between legislative and voluntary measures.

Self-regulation by companies can be extremely effective, particularly for example if required by stock exchanges.

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

The EU includes various different markets which may respond differently to regulation, voluntary targets by government or shareholder pressure, for example. For this reason, we would suggest that imposing regulation in a quota fashion across the EU may not be the solution.

A lack of regulation in some jurisdictions (e.g. US) has not stopped at least some degree of women on boards, however it is apparent that stricter regimes (in Norway for example) have been successful, without resulting in mere ‘placing’ of women on boards.

It may be that EU regulation can encourage national governments to explore gender balance on boards in a way that national government and stakeholders feel will be most effective for the national market. This could require Member States to implement some form of measures (whether legislative or voluntary), evaluate and analyse the effects of such measures within a set time frame, and to report on these. This would avoid the potential danger of imposing quotas across the EU Member States and would allow further time to gather information to make an even more informed comparison between the effect of legislative and voluntary measures.

The Progress Report refers to a wealth of different measures in various countries, which could be suggested to Member States as potential ways forward. Encouragement should be given to stock exchanges, which also have a role to
play in encouraging, and requiring, that companies increase diversity at board level.

Similarly, investors are well placed to challenge the composition and diversity of boards. Through direct engagement with companies, shareholders can put pressure on companies to take affirmative action in moving toward a better gender balance at all levels in their organisations. Greater awareness around this issue, and greater information for investors about the economic benefits of companies with greater diversity on their boards, could help drive change here.

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

EIRIS supports the points made in chapter 1 of the Progress Report which gives both microeconomic and macroeconomic reasons for the economic importance of gender diversity on corporate boards.

In particular, we support the suggestions that gender diversity on corporate boards can bring improved company performance; that it can potentially mean that boards have a broader insight into economic behaviour and consumer choices; that it can mean enhanced quality of decision making due to evaluation of greater alternatives; and that it can encourage companies to think more fully about corporate governance and ethics, as well as being a potential indicator to investors that this is the case.

In EIRIS’ opinion, ESG risks and opportunities, such as diversity on company boards, can have a potential impact on the financial health of a company. Often financial value can be placed upon ESG information by analysts.

A forthcoming study conducted by academics from the Centre for Responsible Banking & Finance of the University of St Andrews and the Principles for Responsible Investment Academic Network sets out to explore if there is any evidence of a link between women on the board and financial performance. The study focuses on over 1,500 companies, from 26 developed countries, over a 90 month period. Financial performance data is combined with EIRIS’ research data which categorises companies according to the percentage of women on their boards.5

Globally, a value weighted portfolio of those companies with more than 33% women on boards of directors is found to generate significant positive excess financial returns. In the US, those companies with more than 33% of women on the board are found to outperform market and investment style benchmarks. However, in Greece and Italy, the situation looks less promising for business women, as those companies with no women on the board perform well.6

Whilst there are other factors which may account for positive and negative returns, the study’s findings tend to support initiatives that bring women on corporate boards in developed countries.7

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However, the Progress Report suggests that the ‘emergence of divergent national rules’ in gender diversity on corporate boards in some EU Member States and not in others, ‘may have a bearing on the functioning of the internal market’ as companies ‘need legal certainty and not conflicting rules’.  

Whilst EIRIS agrees that legal certainty is desirable, it needs to be acknowledged that the EU is made up of a diversity of countries, with various histories, cultures and economic situations. The array of measures that have been brought forward by some Member States to date may not work effectively in other countries and may be a reflection of what works well in certain national markets. It would be a shame if the result of quotas imposed across all EU countries was the mere ‘placing’ of women on corporate boards.

Measures, whether legislative or voluntary, that strive towards greater gender diversity on corporate boards, would appear not to be ‘conflicting’, but to be working towards the same aim: encouragement of greater gender diversity on corporate boards, that recognise the contribution to be made by women and do not result in mere ‘placing’ of women in these roles.

Those companies that have cross-border establishments need to be encouraged to meet best practice standards and lead the way, in order to meet the higher standards of certain EU countries where they may be operating. Stock exchanges may have a role to play here in raising the general standards of all the companies listed on particular exchanges.

The EU may wish to consider encouraging those Member States that have not brought any form of legislative or voluntary initiatives into place around gender diversity on corporate boards, to do so.

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?

If any such objective were developed we would be in favour of a recommendation rather than binding requirement. Whilst binding requirements in Norway and other countries have been successful, different market contexts may mean that a degree of flexibility between EU countries is desired. National governments can then determine what might be most appropriate in the national market context.

A lower target may encourage progress in those companies that have done very little on this issue to date, but a higher percentage may not incentivise those companies that are already leading the way. The Progress Report comments that ‘women are still strongly outnumbered by men in the boardrooms of the largest listed companies in all EU countries’. Given this, it may be worth initially encouraging progress across majority of companies, thereby starting with a lower target (20% or 30%) and then increasing this in subsequent years.

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

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8 Progress Report, p. 7
9 Progress Report, p. 9
In our view, any such initiative that is implemented should cover all publicly listed companies, irrespective of size.

Information on gender balance on boards (whether a company is large or small) is of importance to investors and others.

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

Without being prescriptive, we would suggest that best practice would be for any initiative to apply to both executive and non-executive directors. However, the proportion applied between executive and non-executive directors should not necessarily be determined for each EU Member State, but left for them to determine themselves.

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?

Whilst the Progress Report states that substantial progress seems to have been made on gender diversity on boards where legislative measures with sanctions have been imposed, if imposed across the EU Member States this may result in short-term ‘placing’ of women on corporate boards to avoid sanctions.

We would be in favour of measures that encourage long-term sustainable growth in diversity and that do not involve mere ‘placing’ of women on corporate boards to meet targets.

In summary, EIRIS fully supports the public consultation on gender diversity on corporate boards. This is an important issue and we hope a way forward can be found that offers progress, as well as flexibility, for EU Member States and companies that operate within the EU. Gender diversity on boards is part of a wider need for greater diversity on corporate boards, whether that be in gender, ethnicity, education, background and experience.

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