ecoDa

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Confédération Européenne des Associations d'Administrateurs
European Confederation of Directors' Associations

Reg: EU Commission Consultation on Gender Equality in Corporate Board Rooms

25 May 2012

The European Confederation of Directors' Associations, ecoDa is a not-for-profit association based in Brussels, acting since March 2005 as the "European voice of directors". Through its national institutes of directors (the main national institutes existing in Europe), ecoDa represents around fifty-five thousand board directors from across the EU member states.

ecoDa's mission is to promote Corporate Governance at large, to promote the role of directors towards shareholders and other corporate stakeholders, and to promote the success of its national institutes.

To perform its mission, ecoDa has clearly undertaken:

1- to promote the role of directors, to develop professionalism and European governance standards by acting as a standing body where national experiences are shared and discussed in detail,
2- to influence the European decision-making on corporate governance by reacting to pending issues in the European pipeline or by pro-actively taking own initiatives to generate European debate and reflection,
3- to provide services to its members, mainly by providing information regarding relevant European issues,
4- to facilitate the development of new national director institutes and attract new members in order to strengthen its European representativeness.

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EU Interest Representative Register ID : 37854527418-86

Level at which the organisation operates : European

The type of organisation: business or industry association

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ecoDa, representing the voice of European directors considers the question of gender diversity key to its mission and core business. At the same time **ecoDa makes a clear distinction between the issue of *gender diversity from a governance point of view* versus the issue of *gender quotas as part of a political agenda*.**

- *From a governance point of view recruiting more female board members* is embedded in a principle of diversity as beneficial to business. According to the numerous

European Member States' governance recommendations, the composition of a board of directors should reflect a sufficient degree of diversity in order to improve board decision making in the short and long term interest of the firm. In this light, gender diversity is an important element.

- However, the point of mandatory gender quota can also be regarded as an element of social justice and as such as part of the political agenda. Whereas there is widespread support for such uncontroversial social justice arguments, opinions substantially differ as to whether legislation is the best way forward in fostering this agenda.

ecoDa's members differ in their views on how to best achieve gender diversity. These differences in opinion reflect the scattered landscape of cultural, social and economic perceptions throughout the European Member States.

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

The discussion on how to solve the gender imbalance in corporate boards has been answered differently throughout Europe. Illustrative in this respect is the quite different route followed in the Scandinavian countries. Whereas Norway opted some years ago for a mandatory quota, which is currently regarded as successful, other Scandinavian countries followed the route of self-regulation, based on a "comply or explain" principle. Countries like Finland and Sweden have shown that this route can indeed be efficient. In other countries (like France, Spain or Belgium) attempts towards self-regulation were introduced more recently, but politicians were afraid that such route would take too long and therefore introduced mandatory gender quota. Others (like the UK) remain with the self-regulatory route, but are pushing the business world to speed up the process of nominating female directors.

It is therefore hard to determine one common route to diversity throughout Europe. **ecoDa is of the opinion that it is the direction which is important, not the method chosen and that the EU will not be able to define a general regulation with which every country will feel comfortable. Therefore, ecoDa suggests a route of self-regulation, with the stipulation that each national government should be able to decide its own route towards promoting gender diversity**

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

Whatever route followed to achieve gender diversity (either self-regulation or mandatory quota), the challenges for the business world are considerable. **A vitally limiting factor today is the availability of women with relevant board or management experience. Institutes of Directors could become important partners for transition initiatives, so ecoDa is stimulating to support the companies in coping with the specific national requirements they are faced with**.

ecoDa is of the opinion that a first important step is to encourage boards to look at the **diversity policy at large**. In order to get more female representation in boardrooms it is of utmost importance to stimulate gender diversity throughout the company and especially in the ranks of middle and top management. This is the most relevant pool from which to attract future female board members.

Another important action line is the **professional development of potential directors**. More attention for **director education and training** is crucial in this respect. Complementary to the director education programs already offered by ecoDa and its members, ecoDa also wants to promote **mentoring programs** throughout the European Union. Facilitating the transfer of practical knowledge from experienced directors to candidates for board mandates has proven to be a fruitful path towards enlarging the talent pool of female directors. Indeed, some member organizations, such as GUBERNA (Belgium) and IFA (France) have mentoring programs already in place. ecoDA would like to stress that such initiatives are equally relevant whether regulations are self-imposed or a legal requirement. We also hold that these initiatives should be of equal interest – and should be offered equally – to both genders.

In order to stimulate the companies to comply in a timely manner with the gender diversity recommendations, ecoDa would also like to suggest **full transparency of the gender diversity policy, as well as of the concrete steps taken to implement this policy**.

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

Although an increasing number of academic and more main stream research documents have shown the positive 'correlation' between gender diversity, corporate performance and long term sustainability, there is no evidence of causality between gender diversity and performance.

However, from the governance literature it has become clear that diversity pays off in board decision making. There is academic evidence that risk perception and risk attitude is linked to age and gender. Therefore, **ecoDa is of the opinion that a more diverse board, including gender diversity, promotes a richer debate on corporate risk in the board room**.

Also, restricting recruitment to the male half of the population makes poor use of the other half of the talent pool and of society's investments in education. Simply said, **to remain competitive, companies and countries will need to make optimal use of its resources, including education, experience, and manpower**.

Moreover, ecoDa wants to point out that if we want business to reflect societal norms, women should play a role, otherwise business will not be legitimate.

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?

As already pointed out before, ecoDa is of the opinion that an EU-wide harmonisation of the approach towards gender diversity is infeasible We therefore **suggest that the EU stimulate the Member States to decide on a national approach towards promoting gender diversity in general and female board representation in particular**.
As the nature and cultures of businesses vary quite considerably within Europe, exact thresholds may have to be set at a national level. ecoDa proposes to stick to the subsidiarity principle for defining the targets to be reached and the pace of such evolution. **The local situation of female board members as well as the potential talent pool should be taken into consideration when defining the most suitable route to follow**.

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

Corporate Governance has come on the political agenda, especially for listed companies. Those companies are increasingly considered as 'public property', but such a perception should be critically discussed. Being listed on a public market does not change the fact that they are most of the time 'private' property. Moreover **the listed companies may be faced with such increasing burdens that a level playing field with non-listed companies and foreign non-EU companies becomes problematic for growth and competitiveness. Therefore, if the goals can be achieved by self-regulation, this seems to be the best route ahead**. This is valid for many governance aspects, including the gender diversity ambition.

If, on the other hand, national governments should opt for a mandatory quota system, they should also consider whether diversity is only relevant for listed companies. **ecoDa would like to propose investigating to what extent state-owned enterprises, as well as financially sensitive non-listed companies should be subjected to the same or similar recommendations or rules** (whatever the system chosen).

For mandatory rules, where the flexibility offered by the comply or explain option is missing, special attention should be paid to potential differentiation criteria. Indeed a mandatory system with a onesize quota regulation might be problematic, given the huge heterogeneity between companies. Differentiation factors used in EU Member States include volume of market capitalization, level of free float, shareholding structures, IPO versus long established listing etc.

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

In several of its policy documents and reactions to EU consultations, ecoDa pointed to the need for a clearer distinction between the executive and the non-executive directors. This foremost holds for the discussion on 'director' remuneration, but is also valid for the discussion on gender quota.

Up to now, the discussion on gender quotas has mainly, if not solely, been directed towards non-executive board mandates. In this context ecoDa already pointed out that **we should pay more attention to promoting gender diversity in middle and top management**. This is a far more logical step for 'growing' the pool of potential female board candidates and is also very important for stimulating a culture of gender diversity within all layers of a company.

However, ecoDa is of the opinion that copying the actual quota approach to executive board mandates and executive management is going too far for the time being. The female representation in the top management levels is much lower than for board mandates. Moreover, a management function is a full-time position and the fruit of a career of business expertise. Imposing quota for management layers therefore is unrealistic. This said, ecoDa wants to point again to the need for more sensibilisation and self-regulation to install concrete policies and engage in a broader gender diversity culture within the European business world.

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

Based on the EU regulations, all Member States (have to) oblige their listed companies to comply with a corporate governance code and if they do not follow a specific recommendation they are legally forced to give a 'grounded' explanation for such deviation. Therefore, **whenever the self-regulatory route is followed to foster a certain level of female directors, flexibility is offered within the boundaries of a relevant explanation**. ecoDa would like to plead that in such cases, companies should not only carefully explain any deviation from the specific requirements, but they should as well as disclose how they plan to improve their compliance with the required standard.

The situation is different in Member States that opted for the mandatory quota system. Here no flexibility is offered, so companies have to live up to the legal standards in the proportions and time schedule set out. Numerous sanctions exist, such as the nullity of the nomination of new directors that do not comply with the quota, up to the nullity of board decisions made by an incorrectly composed board. To this end, **ecoDa would like to plead for making sure the sanctions do not harm normal business transactions**. An alternative to sanctions could be provided in the shape of a potential incentive scheme for companies that are in compliance. Examples of such incentives are tax breaks, state investments and priority in award of state tenders. **More attention should be given to further investigating what are the most effective sanctions.**

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