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ANNEXES

**COMMISSION STAFF WORKING DOCUMENT**

**ANNEXES TO THE IMPACT ASSESSMENT ON COSTS AND BENEFITS OF  
IMPROVING THE GENDER BALANCE IN THE BOARDS OF COMPANIES  
LISTED ON STOCK EXCHANGES**

*Accompanying the initiative to improve gender balance in company boards*

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#### *Accompanying the initiative to improve gender balance in company boards*

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## 2. ANNEX 2: RESULTS OF THE STAKEHOLDER CONSULTATION

### 2.1. Introduction

On the basis of the Progress Report "Women in economic decision-making in the EU" presented on 5 March 2012, the Commission launched a public consultation of stakeholders on the gender imbalance on corporate boards in the EU and possible EU measures to be taken in that context.

The consultation was announced on the Commission website<sup>1</sup>, and was widely publicised through a Commission press release<sup>2</sup>, articles in European newspapers, social media (Facebook, Twitter), and interventions of Commission representatives in meetings with other institutions and stakeholders.

The target group of this consultation was composed of Member States, business, industry and employer organisations, individual companies, civil society organisations with an interest in gender and/or social issues, trade unions, equality bodies, and other organisations or individuals.

Stakeholders wishing to contribute to the consultation were invited to answer the following questions:

- How effective is self-regulation by businesses to address the issue of gender imbalance in corporate boards in the EU?
- What additional action (self-regulatory/regulatory) should be taken to address the issue of gender imbalance in corporate boards in the EU?
- In your view, would an increased presence of women on company boards bring economic benefits, and which ones?
- 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?
- Which companies (e.g. publicly listed / from a certain size) should be covered by such an initiative?
- Which boards/board members (executive / non-executive) should be covered by such an initiative?
- Should there be any sanctions applied to companies which do not meet the objectives? Should there be any exception for not reaching the objectives?

The deadline for sending contributions was 28 May 2012.

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<sup>1</sup> [http://ec.europa.eu/justice/newsroom/gender-equality/opinion/120528\\_en.htm](http://ec.europa.eu/justice/newsroom/gender-equality/opinion/120528_en.htm).

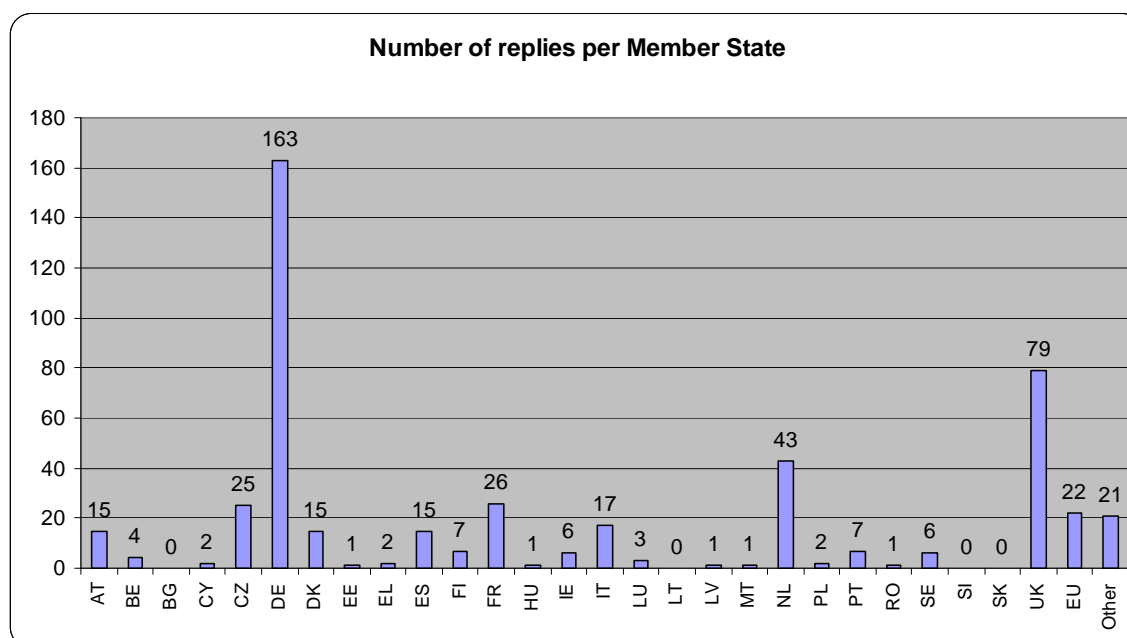
<sup>2</sup> IP/12/213.

## 2.2. Number of contributions and profile of respondents

The amount of feedback was significant, showing the considerable amount of interest in the topic among European stakeholders. In total, the Commission received 485 contributions to the public consultation, of which 161 were sent by individuals and 324 by organisations (public authorities, business or industry associations, companies, NGOs and women organisations, trade union and professional organisations and other bodies).

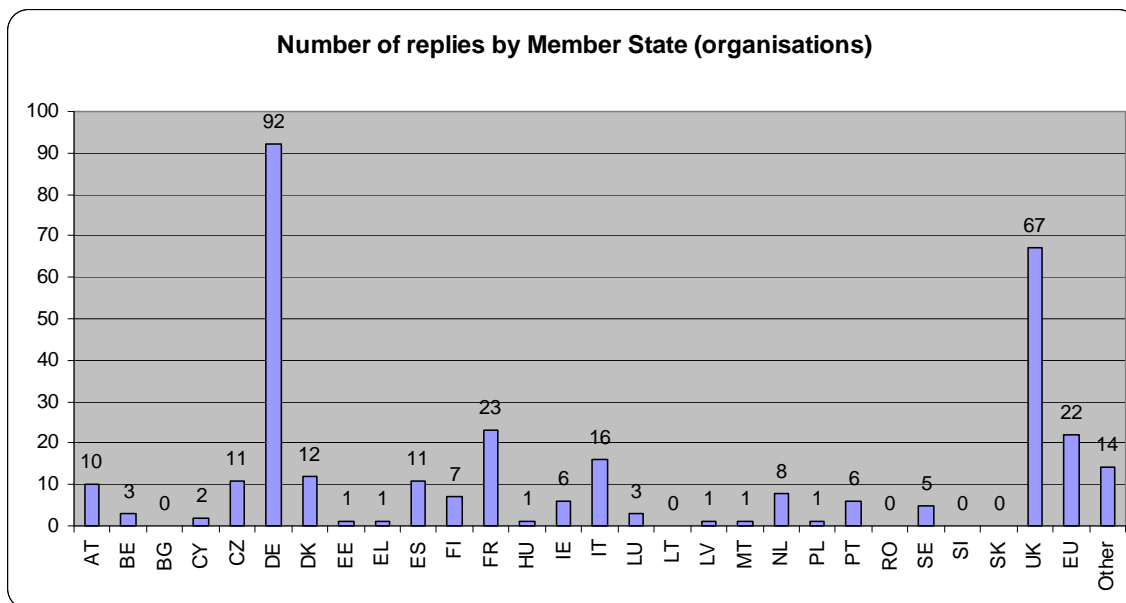
Replies were received from 23 EU Member States (all but Bulgaria, Lithuania, Slovenia and Slovakia), by far most of them from Germany (163) and the United Kingdom (79), followed by the Netherlands (43), France (26), the Czech Republic (25), Italy (17), Spain (15), Denmark (15) and Austria (15). 22 EU-level organisations responded, as well as citizens and organisations from third countries and international bodies.

Graph 1: Replies to the public consultation per Member State



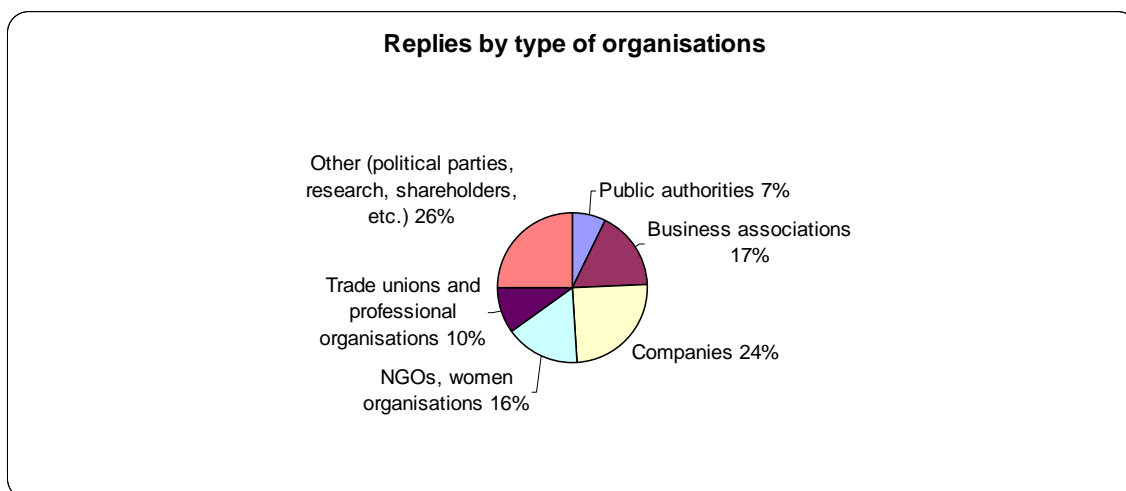
Among the replies from individual citizens, which include those received from researchers, most of them were also sent from Germany (71), followed by the Netherlands (35), the Czech Republic (14) and the UK (12). Almost half (159) of the organisations contributing to the consultation are based in Germany and the UK, showing the extensive debate in those two Member States on the issue of women in corporate management.

Graph 2: Replies of organisations to the public consultation per Member State



The following graph shows the type of organisations that have contributed to the consultation.

Graph 3: Replies by type of organisations



Central governments in 13 Member States have responded (AT, CZ, DE, DK, FI, FR, HU, IE, LV, NL, PL, SE, UK). Replies were also sent by regional governments (Nordrhein-Westfalen, Berlin, Emilia-Romagna) and cities / municipalities (Barcelona, München, Frankfurt, Nürnberg, Würselen, Ozzano Emilia), as well as by the Czech National Bank.

Many individual companies of all sizes and from different sectors of industry (in total 79) have sent contributions, including some of the major listed companies in Europe (e.g. Allianz, Aviva, BASF, BMW, BNP Paribas, BP, Deutsche Telekom, GlaxoSmithKline, Novo Nordisk, Siemens, Sodexo, SONAE, ThyssenKrupp). Several SMEs as well as a few micro-businesses run by female entrepreneurs have also participated.

In total 56 business, industry and employer associations at both EU and national level (19 from Germany) have responded to the consultation, including both European umbrella organisations (e.g. BUSINESSEUROPE, ERT, EUROCHAMBRES, UEAPME, EuroCommerce, CEEMET) and many major national business organisations (e.g. CBI, Medef, BDA/BDI, Confindustria, VNO-NCW, SN, WKÖ, CIP, DI, IBEC, UEL) and chambers of commerce. Some associations of listed companies have also responded.

The contributors include 53 NGOs, most of them women's organisations (and one men's organisation). The European Women's Lobby (EWL) and many of their national members, as well as associations of businesswomen (including local branches of the European PWN) or women lawyers have all responded to the call.

Several trade unions at EU (e.g. ETUC, CESI) and at national level (e.g. DGB, CFDT, CFE-CGC, TUC, ÖGB, LO) as well as professional organisations, such as the European Confederation of Directors' Associations (ecoDa), national institutes of directors (e.g. in IE and FI) and associations of accountants, engineers and financial analysts were among the respondents.

Among the other stakeholders, notable contributions were received from the actors in financial services (e.g. London Stock Exchange and NASDAQ OMX), associations of investors or shareholders, bodies dealing with corporate governance, research institutions, and several specific initiatives to bring more women into corporate boardrooms. Some political actors, in particular parties' women organisations (e.g. EPP Women, Social Democratic Women (CZ and DE), Green Women Vienna) as well as several individual MEPs and national MPs also replied.

### **2.3. Summary of replies to the questions**

There is a broad agreement among stakeholders that the underrepresentation of women on company boards is a problem that needs to be tackled. Therefore, the objective of increasing the proportion of women at all company levels is widely shared. Views diverge, however, on how this should be achieved, namely through regulation or through self-regulatory or corporate initiatives.

The vast majority of stakeholders also recognise that a gender-diverse workforce and board structure creates a committed and creative atmosphere and is a driver of innovation and good governance. Many share the view that a gender-balanced board can reflect a company's customer base more accurately and that it would be short-sighted to leave untapped the economic potential of qualified women who constitute half of the talent pool. Only a few organisations deny the existence of a business case for more gender diversity in companies and on boards, stating that qualification is the only relevant factor.

In their detailed comments, most of the respondents followed the structure of the questionnaire proposed by the Commission. Their replies are summarised below<sup>3</sup>.

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<sup>3</sup> Due to limited space, not all individual opinions can be reflected here. This summary necessarily focuses on the views that could be found in a certain number of replies and tries to portray general trends and interesting convergences in views among stakeholders.

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

Stakeholders' views vary widely about how successful self-regulation had been or could be in addressing the issue of gender imbalance on company boards.

The business community in particular, i.e. companies and industry associations, sees self-regulation as the most appropriate approach, as it allows taking into account the starting point of different companies and sectors and provides for tailor-made solutions. In their view, the self-regulatory method ensures ownership and a substantial change in corporate culture, through a bottom-up approach and realistic targets, without undue interferences into the freedom of business.

Examples of a successful self-regulatory approach sometimes referred to are Sweden and Finland, but also Latvia. Many stakeholders from the UK point to how the debate on the issue has picked up since the publication of Lord Davies' report on women on boards and to the increase in the number of women directors being appointed to boards in the last one or two years. They think the voluntary method suggested in the UK should be given a chance. Similarly, the change in speed since Commission Vice-President Reding's call for self-regulation in March 2011 is often noted positively.

Other stakeholders consider that self-regulation may be a first step, but has not (yet) delivered. The disappointment about the failure of the approach to produce satisfactory results is strongest among women NGOs and trade unions. They consider that only the recent threat of legislation to impose a higher share of women business leaders has triggered some change, but this change is not fast enough, as it would still take decades at the current pace to achieve a sufficient level of gender balance on company boards.

These stakeholders often point to disappointing experiences with self-regulation in their own Member States, e.g. in Germany, where a 2001 self-commitment of the business community was – in their view – not followed up by any concrete action, but also in other Member States (e.g. IE, PT, NL). Others recall the Norwegian experience, where after years of unsuccessful self-regulation, only a regulatory approach brought about a change in numbers.

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

Depending on their views on the merits of self-regulation, stakeholders have different opinions on additional action that should be taken to strengthen women's positions in the management and supervision of companies. Actions proposed include both measures to directly tackle the gender imbalance on boards and flanking measures to create a business environment conducive to a better promotion of women's careers in business management.

The actors favouring self-regulation advocate a voluntary approach, notably through corporate governance codes and industry or individual corporate initiatives. They argue that change will be led by the market, as the business case argument will convince more and more companies that diversity pays off. Some also argue that



developing a talent pool of sufficiently qualified women for board positions is a matter of time, and the composition of company boards will change naturally.

Other stakeholders, including in the business community, acknowledge that public authorities, including at EU level, have a role to play in triggering a change of mentality and can support that change through soft measures, such as recommendations and awareness-raising. Many also think that the role of the State is to create the necessary environment in which women can take on decision-making positions, notably through measures ensuring a better reconciliation of work and family life (e.g. childcare institutions).

Other proposals include specific actions to help women progress in their careers, e.g. mentoring and training programmes, professional networks for women, databases of CVs of women with board potential. Companies could contribute through a better human resources diversity management and clear job descriptions, profile criteria and transparent selections procedures for board positions.

Finally, a substantive share of contributors consider that the current gender imbalance on boards can at least partly be explained by prejudice and stereotypes in a male-dominated business culture, where many appointment decisions are taken in backroom deals, so that even the highest qualified women never get a chance. In their view, only clear targets or quotas for women on company boards will break the glass ceiling that many women in middle-management of companies currently face.

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

The replies to this question show the greatest degree of consensus among stakeholders, as there is broad agreement that diverse boards, including in terms of gender, take better decisions and produce better economic outcomes for companies. This is explained by the fact that gender diversity leads to a better understanding of the market, openness to new ideas and visions and boosts creativity and innovation. They also argue that companies with a higher share of women in management attract even more highly educated women.

Many contributions refer to existing research and studies (notably by some consultancy firms such as McKinsey and Ernst&Young) showing a positive correlation between the presence of women on company boards and overall corporate performance and financial results, including turnover, profit and shareholder value.

Some stakeholders underline, however, that the causality of these findings has not been proven yet and contest that the sex of a person can have any direct influence. While they highlight the exclusive importance of competence, qualifications and experience, they also acknowledge the importance of having heterogeneous profiles of directors.

Finally, several stakeholders also point to the macro-economic benefits that a higher share of women directors can bring in terms of attracting more women into the labour market and to management positions, with positive effects on the gender pay gap.

They underline the importance of female role models for providing incentives for women to start businesses.

- **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?**

This question, again, draws very different answers, depending on the approach that stakeholders favour– regulatory or self-regulatory – to address the issue of gender imbalance on company boards.

Advocates of a self-regulatory approach consider that, while public or corporate governance initiatives can make suggestions, each company should be free to set its own targets in relation to the promotion of women in management and company boards. They consider that one-size-fits-all quotas would not do justice to existing initiatives and not take account of different starting positions of certain companies and industries. Therefore, any objectives set by public authorities should not be binding. However, some business representatives would accept soft law initiatives with a suggested target (e.g. 30% of women by 2018), if it is acknowledged that this may not be achievable for all, while others may be able to advance faster.

Proponents of a more ambitious approach support binding objectives for company boards at levels generally ranging from 30% to 50%. Many favour a gradual scheme, with objectives rising with time, or depending on company type or size. The proposed timeframe varies in most cases from 3 to 8 years, most stakeholders acknowledging that a sufficient time span is required to achieve substantial progress, without putting companies in difficulty, in particular since board elections in some Member States take place only every 3 or 4 years. Some of them argue that binding gender objectives should be limited in time.

Interestingly, a considerable number of stakeholders support the targets and timeframes proposed in March 2011 by Commission Vice-President Reding as a benchmark for self-regulation and supported by the European Parliament, i.e. a share of 30% of women by 2015 and 40% by 2020.

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

When asked about the companies that should be covered by an initiative to increase the number of women on boards, the respondents often replied differently, according to their preference as regards the nature of such initiative.

Those favouring more far-reaching – in particular binding – measures argued that the target group should be restricted, both for reasons of feasibility and the possibility to control compliance. Many contributors thought that such an initiative should focus on companies listed on stock exchanges, where the public interest rationale for external intervention is greatest, due to these companies' visibility in the public domain. Others preferred targeting the companies with the highest market capitalisation, as they did not consider the criterion of listing as relevant. The size in terms of employees was

often cited as a relevant criterion, with different thresholds suggested, such as 250 or 500 employees – which would exclude small and medium-sized enterprises (SME) from the scope. Finally some stakeholders thought that state-owned or publicly owned companies should be covered as well, some even including 'high-growth SMEs'.

Stakeholders pleading in favour of voluntary commitments and self-regulation thought that companies of all sizes and types could make their own contribution to improving the situation. It was acknowledged, however, that soft law or corporate governance initiatives in many cases also concern only publicly listed companies, but that other companies should launch their own (voluntary) initiatives.

Quite some stakeholders pleaded in favour of a gradual or differentiated approach, namely by starting an initiative with listed and/or state-owned companies and then extending it to a wider target group, or by having different requirements for different sizes of companies.

Other criteria quoted included companies participating in public procurement or companies with a compulsory works council (which is a legal category in German company law).

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

There was no clear trend in the replies to this question. Many stakeholders argued that both management and supervisory boards (in the dual board system) or both executive and non-executive directors (in the unitary board system) should be covered by an EU-level initiative, while other favoured covering only one or the other group.

Many contributions underlined the need to take into account the diversity of board systems across Member States, when designing an initiative. Several German organisations (including women NGOs) argued that the initiative should focus on supervisory boards only (including both shareholder and employee representatives on those boards), and also some Finnish organisations argued that only the non-executive boards should be covered.

Some stakeholders suggested starting an initiative with non-executive board members, as it would constitute a less significant interference with the daily management of companies and could be done faster, while executive board members should follow later.

Quite a few stakeholders stressed the importance of not only focusing on company boards, but also to think of how women could be promoted in higher and middle management to ensure a 'sustainable pipeline' or 'supply chain' of qualified women for board positions. However, in most cases, it was argued that this should be achieved by way of self-regulation and corporate initiatives.

- **Should there be any sanctions applied to companies which do not meet the objectives? Should there be any exception for not reaching the objectives?**

The views of whether sanction should be applied to companies not ensuring a sufficient gender balance in company boards heavily depended on whether stakeholders favoured or opposed binding objectives.

Those calling for binding measures usually called for strict sanctions and made a number of suggestions including: invalidity of appointment of board members; invalidity of board decisions; suspension of board members' remuneration; exclusion from public subsidies and/or public procurement; financial sanctions (fines), many highlighting that these should be dissuasive and thus not too low; exclusion from fiscal deductions. Some pleaded for using the habitual company law sanctions in each Member State. Many highlighted how essential sanctions were for the efficiency of binding objectives, citing Norway as a good example and Spain as a counter-example.

A few stakeholders argued that legal measures should only be backed up by a 'comply-or-explain' approach, i.e. the duty to report on progress in the company's annual report and to develop a strategy if the objectives have not been reached.

Incentive mechanisms were sometimes suggested as a type of 'positive sanctions' for those companies who abide by the objectives. Such incentives included 'gender certification' of companies or advantages in public procurement.

Some contributions also suggested a gradual approach for non-complying companies, starting with mild dissuasive measures such as warnings or progressive monetary sanctions and then increasing to harsher actions such as the forfeiture of offices of appointed board members.

The importance of a monitoring system was often highlighted, as was the need to guarantee the proportionality of sanctions, taking into account the nature, size and complexity of a company, as well as the degree of infringement. It was stated that the sanctions should not prevent a company from carrying out its usual business.

As concerns the question for exceptions for not reaching the objectives should be allowed, many stakeholders expressed their reservations, as this would open a way out for companies. However, some stakeholders advocated exceptions to take account of company-related specificities, for instance in cases where women were strongly underrepresented in the employee structure of a company.

### 3. ANNEX 3: BUSINESS CASE LITERATURE REVIEW

Women on boards: positive effects			
Name(s)	Title	Year	Findings
Renée Adams Daniel Ferreira	Diversity and Incentives in teams: evidence from corporate boards	2003	Tobin's Q is positively related to the percentage of female directors on the board.
Renée Adams Daniel Ferreira	Women in the boardroom and their impact on governance and performance	2009	Diversity is found to have a positive impact on performance in firms that otherwise have weak governance, as measured by their abilities to resist takeovers (although this does not hold for firms with strong governance, see below).
Renée Adams Stephen Grey John Nowland	Does Gender Matter in the Boardroom? Evidence from the Market Reaction to Mandatory New Director Announcements	2011	On average, shareholders value additions of female directors more than they value additions of male directors. This suggests that appointing female directors may help resolve value-decreasing stakeholder conflicts.
Roy Adler	Women in the Executive Suite Correlate to High Profits	2007	An extensive 19-year study of 215 Fortune 500 firms shows a strong correlation between a strong record of promoting women into the executive suite and high profitability.
Stephen Bear Noushi Rahman Corinne Post	The impact of board diversity and gender composition on corporate social responsibility and firm reputation	2010	Having more female directors can enhance critical board processes including analysis and decision-making. This positive impact of women on boards can improve ratings for CSR which can, in turn, enhance corporate reputation and positively impact financial performance, institutional investment, and share price.
Stephen Brammer Andrew Millington Stephen Pavelin	Corporate Reputation and Women on the Board	2009	The presence of women on the board is favourably viewed in only those sectors that operate close to final consumers. It is argued that the nature of this effect reflects an imperative for equality of representation that highlights the need to reflect gender diversity among customers.
Lissa Broome John Conley Kimberly Krawiec	Dangerous categories: narratives of corporate board diversity	2011	Interviewing board members who face board diversity themselves, the authors find that all of the interview subjects agree with the abstract proposition that board diversity is a good thing. On the more specific question of why it is good, there is broad agreement, though not necessarily quantifiable—a master narrative of sorts – that board diversity results in functional improvements to board or corporate operations—a "qualitative "business case" for board diversity.

Women on boards: positive effects			
Kevin Campbell Antonio Minguéz-Vera	Gender Diversity in the Boardroom and Firm Financial Performance	2008	Gender diversity has a positive effect on firm value. The study suggests that investors in Spain do not penalise firms which increase their female board membership and that greater gender diversity may generate economic gains.
David Carter Betty Simkins Gary Simpson	Corporate Governance, Board Diversity and Firm Value	2003	This study examines the relationship between board diversity and firm value for Fortune 1000 firms and finds that Tobin's Q is positively related to both the percentage of female directors and the percentage of minority directors.
David Carter Frank D'Souza Betty Simkins Gary Simpson	The diversity of corporate board committees and firm financial performance	2007	Empirical analysis supports the hypothesis that board diversity positively affect financial performance as measured by Tobin's Q. However, the board committee evidence also indicates that the process through which gender and ethnic diversity impacts financial performance is subtle and complex. Some functions of the board may benefit from diverse directors while other functions may actually suffer. Furthermore, the type of diversity appears to matter.
Alessandra Casarico Paola Profeta	Quote rosa: svolta in Italia	2011	Legislative instruments, such as quota, are useful in attaining equality in economic and political decision-making, especially because it addresses market failures and makes the market of competent employees more competitive (by widening the recruitment pool). Positive effects are not only felt directly at the management level, but also indirectly on the labour market as the measures encourage female participation.
Catalyst	Women in leadership; The bottom line; Women on boards ...	2002 2004 2005 2006 2007 2008 2009	Companies with the highest representation of women board members outperform companies with the least representation of women board members in terms of return on equity (ROE), return on sales and return on invested capital.
Cerved	Donne al comando delle imprese: il fattore D	2009	This econometrical analysis shows that more women on company boards reduce the risk of default (factor D). When women are prevalent on company boards, the firm is 15% less likely to receive a bad rating (indicative of risk of default), than firms which have very few or no women on board. Likewise, only 13% of 'female companies' have become insolvent. In addition, 'female companies' tend to grow faster, are more prevalent among emerging companies and generate more profit.

Women on boards: positive effects			
Credit Suisse research Institute	Gender diversity and company performance	2012	Over six years, companies with at least one female board member outperformed those with no women on the board in terms of share price performance by 26% for companies with a market capitalisation greater than USD 10 billion, and by 17% for small-to-mid cap stocks. The sample comprised 2,360 companies constituting the MSCI AC World index.
Larelle Law Chapple Pamela Kent James Routledge	Board Gender Diversity and Going Concern Audit Opinions	2012	Boards with at least one female director are less likely to receive an emphasis of matter going concern opinion. The authors attribute this result to the improved monitoring that the board is able to provide as a result of the qualities brought to bear by female directors. This finding is indicative of the important role of the audit committee in relation to the integrity of financial reporting and that the existence of female members on the committee expectation enhances its operation.
Harald Dale-Olsen Pål Schøne Mette Verner	Diversity among Directors - The Impact on Performance of a Quota for Women on Company Boards	2011	The average impact of the reform on firm performance is negligible. However, the reform contributed to increased return on assets for a priori badly performing surviving firms. This may have followed from the recruitment of highly competent female board members following the reform.
Harald Dale-Olsen Pål Schøne Mette Verner	Women on Boards of Directors and Firm Performance: Evidence from Denmark and Norway	2012	The results for Denmark reveal no significant relationships between the proportion of women on boards and firm performance. As there was no quota policy in place in Denmark in this period and the proportion of women on boards has been quite constant, this is hardly surprising. The results for Norway reveal first a positive relationship between the proportion of women on boards of directors and firm performance. This relationship does hold after controlling for a wide set of firm characteristics.
Lord Davies	Women on boards	2011	The business case for increasing the number of women on corporate boards is clear. Women are successful at university and in their early careers, but attrition rates increase as they progress through an organisation. When women are so under-represented on corporate boards, companies are missing out, as they are unable to draw from the widest possible range of talent. Evidence suggests that companies with a strong female representation at board and top management level perform better than those without and that gender-diverse boards have a positive impact on performance.

Women on boards: positive effects			
Niclas Erhardt James Werbel Charles Shrader	Board of Director Diversity and Firm Financial Performance	2003	Our findings are that diverse boards are found in conjunction with increased firm financial performance. Correlation and regression analyses indicate board diversity is positively associated with these financial indicators of firm performance. And regardless of whether it is the cause or result of performance, it does appear that firms should seriously consider the potential for the enhanced representation and perspective diversity might create.
Ernst&Young	Mixed leadership	2012	The study comparing European top companies from 2005 -2010 came to the result that companies with higher female presence have better financial performance indicators (turnover, shareholder value, revenue)
EVA (Finnish Business and Policy Forum)	Female leadership and Firm profitability	2007	Female leadership is good for business from three standpoints: social, corporate social responsibility and profitability. EVA finds that a firm with a gender-balanced board is on average about 10% more profitable than a similar firm with an all-male board. Same results hold for firms with a female CEO. Though clearly stating this is a correlation and no causality, and not necessarily supporting female quotas, EVA concludes that they could be called for in a transitional period to 'normalise' the presence and role of women in business.
Finland Chamber of Commerce	Men lead business operations of listed companies - Women end up in support functions	2011	Generally supportive of board gender diversity as a means of securing the availability of the best possible employees and top management for businesses (without necessarily being in favour of quota, see below): "Companies lose potential if top management is selected only among the most knowledgeable and suitable men, not among the best persons".
Ruth Mateos Ricardo Gimeno Lorenzo Escot	Disentangling Discrimination On Spanish Boards Of Directors	2010	Manifestation of Becker's model according to which most competitive companies that have survived are those with more diverse boards. In this sense, the authors observe that those companies with fewer women directors in 2005 were more likely to become extinct in the following three years.
Ruth Mateos Ricardo Gimeno María Nieto	Gender Diversity On European Banks' Boards Of Directors: Traces Of Discrimination	2011	There is empirical evidence that highlights the benefits of diversity for corporate governance in terms of both efficiency and better monitoring. As women directors add to the diversity of the boards their inclusion can improve their corporate governance.



Women on boards: positive effects			
Morten Huse	The “Golden Skirts”: Changes in board composition following gender quotas on corporate boards	2011	Women are generally getting the independent director positions, and the traditional old boys network on corporate boards are replaced by “Golden Skirts” and “Gold Sacks”. Competence and not independence has been the main criteria for selecting them. Many women have become very visible as good board members. There is no shortage of highly qualified women for board positions. Highly qualified women are numerous. They are now getting more experiences and are becoming more visible. Imitating or mimicking processes take place. It has become a reputation-building initiative to have women on the board.
Jasmin Joecks Kerstin Pull Karin Vetter	Women on Boards and Firm Performance: What Exactly Constitutes a 'Critical Mass'?	2012	Based on critical mass theory and with the help of a hand-collected panel data set of 151 listed German firms for the years 2000-2005, the authors explore whether the link between gender diversity and firm performance follow a U-shape. Controlling for reversed causality, they find gender diversity in fact to at first negatively affect firm performance and – only after a 'critical mass' of about 30 percent women has been reached – to be associated with higher firm performance than completely male boards.
Mijntje Lückeraath-Rovers	Women On Boards And Firm Performance	2010	This article adds to the international debate and applies useful methods to 99 listed companies in the Dutch Female Board Index. Firms with women perform better than those without women. The differences are statistically significant for return on equity. Regression analyses confirm these findings. Both results are indications that on average the presence of women on the board could be a distinctive feature of companies that perform better. This study does not suggest that there is causality.
McKinsey and Company	Women Matter (series)	2007 2008 2009 2010 2012	McKinsey consistently argues that the companies where women are most strongly represented at board or top-management level are also the companies that perform best. Insights include the importance of a critical mass of at least three women, criteria of organisational excellence and leadership styles (2008), a call for more women leaders as a competitive edge in and after the economic crisis (2009), CEO commitment and women's individual development programmes (2010), gender diversity programmes and low women's representation on executive committees in particular (2012). However, position on quota remains ambivalent and cautious.

Women on boards: positive effects			
Pam Watson Korbel and Donna Evans	Women on boards = Peak performance	2012	Women significantly impact on organizations' performance, particularly when three or more women serve on the same board. Organizations benefit from women serving in the boardroom including: 1. Improved financial performance; 2. Improved governance; 3. Higher level of board independence from management; 4. Stronger commitment to social responsibility; 5. Increased number of women role models in society
Toyah Miller Maria del Carmen	Demographic diversity in the boardroom: Mediators of the Board Diversity – Firm Performance Relationship	2009	The authors explain how board (racial) diversity is related to firm performance. Applying signalling and behavioural theory to a sample of Fortune 500 firms, it is concluded that board diversity enhances a firm's reputation and innovation – indirectly leading to better firm performance. In addition, the authors find a positive relationship between board gender diversity and innovation – although no direct relationship was found with firm performance. The lack of a direct relationship does not necessarily mean that gender equality does not help firms – it is suggested that maybe the firm's environment is not set up to allow the firm to reap the benefits of a diverse board.
Antonio Mínguez-Vera Raquel López-Martínez	Female directors and SMEs: An empirical analysis	2010	A mix of men and women on the board has a positive effect on firm performance. This result suggests that gender diversity not only advances social equity in Spanish boardrooms but serves to improve the firms' economic situation.
Knut Nygaard	Forced board changes: Evidence from Norway	2011	Firms with low information asymmetry experience positive and significant cumulative abnormal returns (CAR) at the introduction of the quota, whereas firms with high information asymmetry show negative but insignificant CAR.
Emilia Peni	Essays on the Effects of Female Executives and Experts on Corporate Governance and Financial Reporting Practices	2012	The results indicate that male- and female led firms differ in several aspects. For example, the firms with female executives are associated with better corporate governance quality, more conservative financial reporting practices, and better financial performance. In general, the findings provide support for the existence of gender-based behavioural differences at the executive and expert level.

**Women on boards: positive effects**

Luis Rodríguez-Domínguez, Isabel-María García-Sánchez Isabel Gallego-Álvarez	Explanatory factors of the relationship between gender diversity and corporate performance	2010	Mixed evidence might indicate the importance of the business context and the optimum size of the female presence in decision-making bodies. The results obtained show that when working conditions and academic backgrounds are similar, women achieve better performance in sectors traditionally dominated by men. Moreover, to take the best advantage of gender diversity it is recommended that boards of directors should be balanced or have a slightly higher female presence.
Nina Smith Valdemar Smith Mette Verner	Do women in top management affect firm performance? A panel study of 2,500 Danish Firms	2006	The proportion of women in top management jobs tends to have positive effects on firm performance, even after controlling for numerous characteristics of the firm and direction of causality. The results show that the positive effects of women in top management depend on the qualifications of female top managers.
Nina Smith Valdemar Smith Mette Verner	Women in Top Management and Firm Performance (DK)	2008	The analysis suggests that the proportion of women in top management jobs has from none to positive influence on firm performance. However, the results show that the strength of the effects of women in top management depends on how top CEOs are defined and on the method of estimation of the model.
Carol Stephenson	Leveraging diversity to maximum advantage: The business case for appointing more women to boards	2004	As the research proves, companies with female board members can expect significantly higher returns and better overall financial performance. More female representation also translates into improved risk management and audit control, increased ethical oversight and a broader, more accurate assessment of the company's success. Equally important, with more female leadership, companies are better able to attract more female talent. They send a powerful message to the women who already work for their organizations that their contributions are valuable - that their voices are heard.
Siri Terjesen Ruth Sealy Val Singh	Women Directors on Corporate Boards: A Review and Research Agenda	2009	The evidence shows that gender diversity on corporate boards contributes to more effective corporate governance through a variety of board processes, some of which do not show up as a direct influence on the firm's bottom line, as well as through individual interactions. As well as governance outcomes, women directors contribute to important firm level outcomes as they play direct roles as leaders, mentors, and network members as well as indirect roles as symbols of opportunity for other women, and inspire them to achieve and stay with their firm.

Women on boards: positive effects			
Mariateresa Torchia Andrea Calabro` Morten Huse	Women Directors on Corporate Boards: From Tokenism to Critical Mass	2011	The results suggest that attaining critical mass – going from one or two women (a few tokens) to at least three women (consistent minority) – makes it possible to enhance the level of firm innovation. This study highlights that heterogeneous boards are better than homogeneous male-dominated boards in terms of contribution to firm organizational innovation.
Mohamed Triki Zied Bouaziz II	The Impact of the Board of Directors on the Financial Performance of Tunisian Companies	2012	Testing for the impact of gender diversity on boards in terms of ROA (return on assets), ROE (return on equity) and Tobin's Q, the authors conducted research on a sample of 26 companies listed on the Tunisian stock exchange Tunis (Tunis Stock Exchange) over a period that spans four years (2007-2010). The estimated models show satisfactory results showing the importance of the impact of board diversity on financial performance of Tunisian companies.
Sabine Verboom Marieke Ranzijn	Connecting Corporate Performance and gender diversity	2004	A significant correlation was found between the percentages of women on the Supervisory Board and the Total Return to Shareholders. Concluding, there is a relationship between the number of women at the top management layer and the bottom line performance of a company. When looking at the performance of the companies, divided into three groups by percentages of women in the Supervisory Board, a trend showing a positive increase in the Total Return of Shareholders can be found. There are no significant relationships found between company financial performance and the percentages of women in the Board of Directors and the Higher Management layer.
J. Verstegen	Women in corporate boards: Do they create financial value?	2011	By estimating an ordinary least squares regression it follows that board gender diversity has a positive effect on firm value. After controlling for endogeneity by estimating a two-stages-least squares regression this conclusion stays unchanged, it even becomes stronger. In practical terms, this means that firms which have women on their corporate board perform better.
Virtcom Consulting	Board diversification strategy: realizing competitive advantage and shareowner value	2009	This research suggests that companies with more diverse boards, especially gender based diversification, have higher performance and key financial metrics such as: Return on Equity, Return on Sales and Return on Invested Capital. A selected group of companies with a high representation of diverse board seats exceeded the average returns of the Dow Jones and NASDAQ Indices over a 5 year period. The Business Case for Diversity has evolved to a proven Diversity Return on Investment (DROI) model that can be implemented across industries and on a global scale.

Women on boards: positive effects			
Harvey M. Wagner	The Bottom Line: Corporate Performance and Gender Diversity in the C-Suite (2004-2008)	2011	This research makes the bottom-line business case for gender diversity in the C-Suite (most important senior executives, CEOs, CFOs etc), with data from 2004-2008. Finds that companies with the most women consistently outperform those with the least, in terms of return on sales (ROS, 17%), return on invested capital (ROIC, 45%) and return on equity (ROE, 25%). Figures are even higher in the case of sustained representation (= critical mass).

Women on boards: neutral effects			
Name(s)	Title	Year	Findings
Douglas Branson	No seat at the table: how corporate governance and law keep women out of the boardroom	2007	Analysis of Fortune 500 companies based on 2001-2005 data. Greater gender diversity improves corporate decision-making by helping to ensure a variety of perspectives at the boardroom table, reducing negative stereotypes and encouraging women and minority employees. No correlation as such between board diversity and corporate performance.
Lissa Broome Kimberly Krawiec	Signalling Through Board Diversity: Is Anyone Listening?	2008	Although signalling is frequently mentioned by researchers as a rationale supporting board diversity, it is concluded that the distribution of costs and benefits of board diversity in “good” firms versus “bad” firms is unknown.
David Carter Frank D'Souza Betty Simkins Gary Simpson	The Gender and Ethnic Diversity of US Boards and Board Committees and Firm Financial Performance	2010	The results of our analysis do not support the business case for inclusion of women and ethnic minorities on corporate boards. However, there is no evidence of any negative effect either. Our evidence implies that decisions concerning the appointment of women and ethnic minorities to corporate boards should be based on criteria other than future financial performance.
Harald Dale-Olsen Pål Schøne Mette Verner	Women on Boards of Directors and Firm Performance: Evidence from Denmark and Norway	2012	The results indicate that the short-term relationship between gender diversity and firm performance is negligible. Neither for public limited firms nor for limited firms, can firm performance during this period really be attributed to women on boards. Thus, from a gender equalisation point of view, it appears that one has achieved increased gender diversity on Norwegian boards, without affecting firm performance.
Kathleen Farrell Philip Hersch	Additions to Corporate Boards: The Effects of Gender	2005	No evidence that the addition of a female board member affects Return on Assets (ROA) or market returns to shareholders.

Women on boards: neutral effects			
Alan Gregory Emma Jeanes Rajesh Tharyan Ian Tonks	Does the Stock Market Gender Stereotype Corporate Boards? Evidence from the Market's Reaction to Directors' Trades	2012	Short-run market reactions may retain a 'gender bias', reflecting the prevalence of negative stereotypes, where the market reacts to 'beliefs' rather than 'performance'. Allowing for firm and trade effects, some evidence is found that, in the longer term, markets recognize that female executives' trades are informative about future corporate performance, although initially markets underestimate these effects. This has important implications for research that has attempted to assess the value of board diversity by examining only short-run stock market responses.
Jasmin Joecks Kerstin Pull Karin Vetter	Women on Boards and Firm Performance: What Exactly Constitutes a 'Critical Mass'?	2012	Based on critical mass theory and with the help of a hand-collected panel data set of 151 listed German firms for the years 2000-2005, the authors explore whether the link between gender diversity and firm performance follow a U-shape. Controlling for reversed causality, they find gender diversity in fact to at first negatively affect firm performance and – only after a 'critical mass' of about 30 percent women has been reached – to be associated with higher firm performance than completely male boards.
Joana Marinova Janneke Plantenga Chantal Remery	Gender Diversity and Firm Performance: Evidence from Dutch and Danish Boardrooms	2010	Our findings indicate that there is no effect of board gender diversity on firm performance. This implies that the business case for board gender diversity is not supported for this particular sample of Dutch and Danish firms.
Sabina Nielsen Morten Huse	The contribution of women on boards of directors: going beyond the surface	2010	Women's ability to make a contribution to the board may be attributable to their different leadership styles. The presence of women on corporate boards seems to increase board effectiveness through reducing the level of conflict and ensuring high quality of board development activities.
Joao Paulo Torre Vieito	Gender, Top Management Compensation Gap, and Company Performance: Tournament versus Behavioral Theory	2011	Companies managed by a female CEO perform better, and have a smaller compensation gap between the CEO and Vice-Presidents than companies managed by a male CEO. In companies managed by a female CEO, a smaller difference in the total compensation gap between CEO and Vice-Presidents leads, on average, to higher company performance, however, when the CEO is a male, a higher compensation gap is required to obtain higher company performance.

**Women on boards: neutral effects**

Deborah Rhode Amanda Packel	Diversity on Corporate Boards: How Much Difference Does Difference Make?	2010	The relationship between diversity and financial performance has not been convincingly established. The review does, however, find some theoretical and empirical basis for believing that when diversity is well managed, it can improve decision making and can enhance a corporation's public image by conveying commitments to equal opportunity and inclusion. To achieve such benefits, however, diversity must extend beyond tokenism and corporations must be held more accountable for their progress.
Caspar Rose	Does Female Board Representation Influence Firm Performance? The Danish Evidence	2007	Contrary to a number of other studies, this article does not find any significant link between firm performance as measured by Tobin's Q and female board representation. It is argued that board members with an unconventional background are socialised unconsciously adopting the ideas of the majority of conventional board members, which entails that a potential performance effect does not materialise.
Amira Roula Per Stånge	The Norwegian gender quota law and its effects – a natural experiment	2010	The results suggest that the law has not affected firm performance, firm risk taking or the cost of equity. The authors reach the conclusion that the law has not affected companies in a significant way, when looking at their performance, firm risk taking or their cost of capital.
Miriam Schwartz-Ziv	When All Are A-board: Does the Gender of Directors Matter?	2012	The findings stress that gender-balanced boards work harder than non gender-balanced boards, and have a more diverse set of skills. Gender was not found to impact upon financial performance of Israeli companies.
Charles Shrader Virginia Blackburn Paul Iles	Women in Management and Firm Financial Performance: An explanatory study	1997	No relationship between the percentage of female directors and profit margin, Return on Assets (ROA) or Return on Equity (ROE).
Gary Simpson David Carter Frank D'Souza	What Do We Know About Women on Boards (US)?	2010	Evidence for the business case for women directors is mixed, but tends to support the view that the ability of women directors to influence profitability and shareholder value is contingent on the specific circumstances of each company. Nevertheless, the lack of consistent evidence in support of the business case for women on boards does not negate the equity case.



Women on boards: negative effects			
Name(s)	Title	Year	Findings
Renée Adams Daniel Ferreira	Women in the boardroom and their impact on governance and performance	2009	Diversity is found to have a positive impact on performance in firms that otherwise have weak governance, as measured by their abilities to resist takeovers. In firms with strong governance, however, enforcing gender quotas in the boardroom could ultimately decrease shareholder value. No evidence suggests that quota would improve firm performance on average.
Kenneth Ahern Amy Dittmar	The changing of the boards: The value effect of a massive exogenous shock	2010	The constraint imposed by the NO law resulted in a significantly negative impact on firm value. The value loss was not caused by the sex of the new board members, but rather by their younger age and lack of high-level work experience
Kenneth Ahern Amy Dittmar	The changing of the boards: the impact on firm valuation of mandated female board representation	2011	The constraint imposed by the NO quota caused a significant drop in the stock price at the announcement of the law and a large decline in Tobin's Q over the following years. The quota led to younger and less experienced boards, increases in leverage and acquisitions, and deterioration in operating performance, consistent with less capable boards
Sabine Boerner Hannah Keding Hendrik Huttermann	Gender Diversity und Organisationserfolg Eine kritische Bestandsaufnahme (Gender diversity and organisational success – a critical review)	2012	They conclude that the effects of gender diversity and team performance or organisational performance can be described as contradictory; hence it seems problematic to justify the need for gender diversity by economic/business reasoning. According to some of the studies there are positive effects in specific circumstances and under specific conditions. However, this can not be generalised to all possible teams and all possible circumstances.
Frank Dobbin Jiwook Jung	Corporate board gender diversity and stock performance: the competence gap or institutional investor bias?	2011	Findings are consistent with the proposition that bias is affecting stock price. Female directors have negative effects on stock value but no effects on company performance as such. An adverse reaction to the introduction of women on company boards may thus denote an investor bias – rather than a competence gap.

**Women on boards: negative effects**

Finland Chamber of Commerce	Men lead business operations of listed companies - Women end up in support functions	2011	When quotas are enforced, many new women candidates are needed at the same time. In Norway some women have held numerous parallel board positions, even well over ten directorships. Quota legislation has also failed to increase the number of women CEO's or top positions in line management in Norway. The quota led to younger and less experienced boards, causing a decline in Tobin's Q. Therefore it is concluded that "In Finland gender quotas for company boards may turn out to be a new barrier to growth and stock exchange listings".
Alexander Haslam Michelle Ryan Clara Kulich Grzegorz Trojanowski Cate Atkins	Investing with Prejudice: The Relationship Between Women's Presence on Company Boards and Objective and Subjective Measures of Company Performance	2010	There is no relationship between women's presence on boards and 'objective' accountancy-based measures of performance (return on assets, return on equity). However, consistent with 'glass cliff' research there was a negative relationship between women's presence on boards and 'subjective' stock-based measures of performance. Findings indicate that perceptions and investment are not aligned with the underlying realities of company performance.
David Matsa Amalia Miller	A Female Style in Corporate Leadership? Evidence from Quotas	2011	Using financial data for publicly listed firms in Norway, and a matched control sample of unlisted firms in Norway and all firms elsewhere in Scandinavia, there is evidence of a relative decline in annual profits over assets associated with the quota. Decomposing the change in profits, the authors identify increased labour costs, from fewer layoffs and higher relative employment, as the primary cause. This suggests that compliance with the quota was costly for firms in the short term, but raises important questions about the long-term impacts.
Rohini Pande Deanna Ford	Gender Quotas and Female Leadership: A Review	2011	While female entry on boards is correlated with changing management practices, this change appears to adversely influence short-run profits. Whether this is partly driven by negative perceptions of female management choices remains an open question.

#### 4. ANNEX 4: BACKGROUND TO THE PROBLEM DEFINITION

##### Female labour market participation

Figure 1: Share of Women and Men amongst All Workers (across the EU, Iceland, Norway, Australia, Canada and the US)

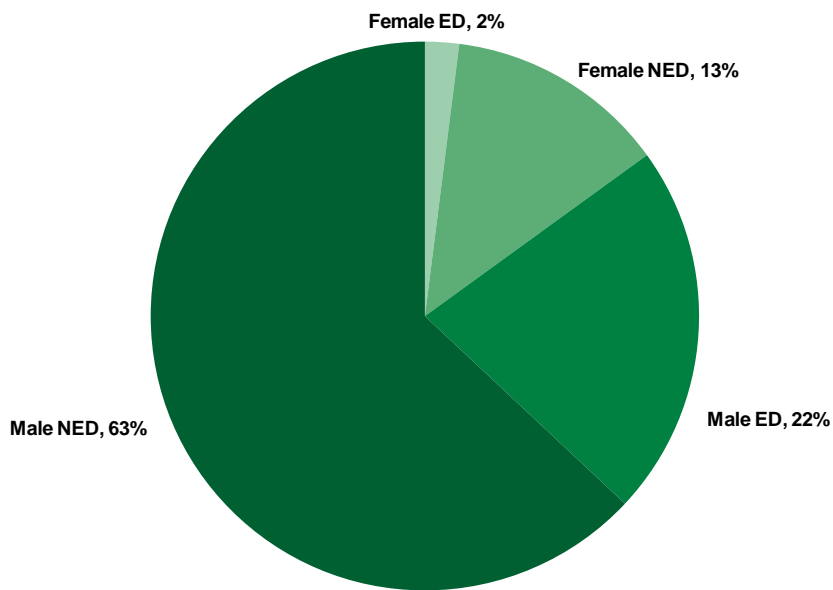


Source: Eurostat, Labour Force Survey 2011

##### Gender composition of publicly listed company boards across the EU

The figure below outlines the typical gender composition of boards in listed companies across the EU, distinguishing between executive (ED) and non-executive (NED) directors. On average then, 85% of board directors are male with only 15% of female board directors, with only 2% of all directors being executive females.

Figure 2: Average Gender and Role Composition of Listed Company Boards across the EU (2011)



Source: Matrix calculation

### Literature review of "glass ceiling"

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## 5. ANNEX 5: BACKGROUND ON THE BOARD STRUCTURE AND THE APPOINTMENT OF BOARD MEMBERS IN PRACTICE

### 5.1. General Board Structure

The corporate board consists of a group of elected directors that oversee the activities of a company or an organisation. Its main purpose is to act in the long-term interest of the company's shareholders and to ensure company's prosperity. Board responsibilities are usually formulated in the national corporate governance codes. Despite differences among national legal structures and corporate models, **all corporate governance systems recognise a managerial (executive) and a supervisory (non-executive) function of the board.**

- **Executive/Managerial Board:** The executive part of the board is in charge of day-to-day management of the corporation. It is composed of **executive directors** who generally work for the company and each have a specific area of responsibility.
- **Non-Executive/Supervisory Board:** The supervisory part of the board is primarily tasked with ensuring that financial reporting and control systems are functioning appropriately and that the corporation is in compliance with the law.<sup>4</sup> It is composed of **non-executive directors**, which are usually shareholder representatives and so-called independent members, who have no stake in the company. In some countries, the non-executive role is also assumed by employee representatives whose right to be represented on board is enshrined in national company law.<sup>5</sup>

**In order to improve the functioning of the board, governance codes recommend establishing board committees.**<sup>6</sup> Each committee is predominantly composed of non-executive directors. While executive directors can also be part of a committee, corporate governance codes advice that the committee chair be a non-executive in order to prevent a conflict of interests with the executive team.<sup>7</sup>

Each board might comprise up to four committees. While their nature may vary by industry (e.g. risk committees for companies in the financial sector, committees for corporate social responsibility in the energy sector), companies most commonly put in place audit, remuneration and nomination committees.<sup>8</sup> These are found in between 70% and 90% of European organisations.<sup>9</sup>

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<sup>4</sup> Weil, Gotshal and Manges, 2002

<sup>5</sup> Conchon, 2011

<sup>6</sup> RiskMetrics Group et al., 2009

<sup>7</sup> Higgs, 2003

<sup>8</sup> RiskMetrics Group et al., 2009

<sup>9</sup> Heidrick and Struggles, 2011

## 5.2. Board Systems

It is generally possible to distinguish between three broad types of board systems: unitary, dual and mixed.<sup>10</sup> The distinction lies in the level of separation between the management and the supervision of the company, which are clearly separated only in the dual system.<sup>11</sup>

**The unitary (or single-tier) system has a single board structure with executive and non-executive directors sitting together on a single board of directors.**<sup>12</sup> In the case of a unitary system, national company law does not draw a distinction between statutory duties of executive and non-executive directors.<sup>13</sup> Hence, all members of the unitary board are equally accountable to shareholders<sup>14</sup>, have equal legal status and have equal responsibilities<sup>15</sup>.

**The dual system has two officially separated boards – a supervisory board of non-executive directors, headed by a Chairman and a management board of executive directors, headed by a CEO.**<sup>16</sup> This system does not allow members to sit on management and supervisory boards at the same time. The main role of the supervisory board is to appoint and dismiss the members of the management board and to supervise the latter in performing its duties. The role of the management board is to coordinate the company's strategic approach and to inform the supervisory board on any issues related to business development

**The mixed system is a system of two separate boards (non-executive board and executive board), but with only one person holding both the roles of CEO and Chairman.** In addition, some executives might sit on the non-executive board. While the advantage of a mixed system is a better information flow between the two boards, its main challenge resides in the joint exercise of chairman and CEO duties.<sup>17</sup>

As illustrated in the table below, **the unitary system is most commonly used in Anglo-Saxon countries while the dual system is predominantly found in continental Europe.** Mixed systems are the form of corporate governance in Belgium<sup>18</sup> and Italy.

Table 1: Existing and Prevalent Board System by Country

Country	Existing Board System			Prevalent Board System*
	Unitary	Dual	Mixed	
Austria		✓		Dual

<sup>10</sup> Heidrick and Struggles, 2011

<sup>11</sup> Tse, 2009.

<sup>12</sup> Jungmann, 2008.

<sup>13</sup> Banginsky & Cohen, 2011.

<sup>14</sup> Freshfields Bruckhaus Deringer, 2011.

<sup>15</sup> Jungmann, 2008.

<sup>16</sup> Governance Commission on the German Corporate Governance Code, 2010.

<sup>17</sup> Heidrick and Struggles, 2011.

<sup>18</sup> Since 2009, the Belgian corporate governance code advises a clear separation of the role of the chairman of the board of directors and the CEO.

Country	Existing Board System			Prevalent Board System*
	Unitary	Dual	Mixed	
Belgium <sup>19</sup>	✓		✓	Mixed
Bulgaria	✓	✓		Unitary/Dual
Cyprus	✓			Unitary
Czech Republic		✓		Dual
Denmark	✓	✓		Dual
Estonia		✓		Dual
Finland	✓	✓		Dual
France	✓	✓		Unitary
Germany		✓		Dual
Greece	✓			Unitary
Hungary	✓	✓		Dual
Ireland**	✓	✓		Dual
Italy	✓	✓	✓	Unitary
Latvia <sup>20</sup>	✓	✓		Unitary/Dual
Lithuania	✓	✓		Dual
Luxembourg	✓	✓		Unitary
Malta	✓			Unitary
Netherlands**	✓	✓		Dual
Poland		✓		Dual
Portugal*	✓	✓	✓	Unitary
Romania	✓	✓		Unitary

<sup>19</sup> Statutory provisions only allow for a unitary system but in practice the board usually appoints a management committee that effectively creates a two-tier system.

<sup>20</sup> Joint stock companies are obliged to have a two-tier system but limited liability companies can use a one-tier system.



Country	Existing Board System			Prevalent Board System*
	Unitary	Dual	Mixed	
Slovakia		✓		Dual
Slovenia**	✓	✓		Dual
Spain	✓			Unitary
Sweden	✓			Unitary
United Kingdom	✓			Unitary

Source: Kluge et al. - European Trade Union Institute. 2010. Table: Worker board-level participation in the EU-27. \*Material provided by the European Commission on 6<sup>th</sup> of October 2011

\*\* Information collected through desk research shows countries have more board systems than indicated in European Commission's document

Source: Kluge et al. - European Trade Union Institute. 2010. Table: Worker board-level participation in the EU-27.

\*Material provided by the European Commission on 6<sup>th</sup> of October 2011

### 5.3. Board Member Selection Procedures

**The recruitment process of board members represents one of the most critical tasks for a company's business.** Directors are responsible for a company's strategy and overall control of a company's progress. It is therefore very important to choose candidates who can make a visible and lasting difference to the business. However, as evidenced by the following, the recruitment process still remains opaque and subjective with detrimental consequences for the appointment of female board members.

The selection procedures for board directors differ entirely from normal recruitment procedures. Across all board systems, they typically involve shareholders and other board members engaging in nomination and election procedures and include a pre-selection stage and a voting stage:

- **Pre-Selection Stage:** At this stage, a pool of relevant candidates for board positions is identified. Board nomination committees are usually involved at this stage; they might also be supported by subcontracted head-hunters. The purpose of this stage is to identify candidates with the skills, competencies and experience required to occupy the specific board position.
- **Voting Stage:** At this stage candidates shortlisted during the pre-selection are presented for election to the GSM<sup>21</sup>. This second stage can involve both board members and shareholders, depending on whether executive or non-executive directors are to be appointed and depending on the board system. Candidates can be elected by means of bundled or individual elections.<sup>22</sup> Whereas bundled elections restrict shareholders to elect the board as a whole, individual (i.e. unbundled) elections allow

<sup>21</sup> General shareholder meeting.

<sup>22</sup> RiskMetrics Group et al., 2009.

**voting on directors separately. Generally, a new director is elected by an ordinary majority of shareholders' votes. There is a growing tendency to elect board members through unbundled elections. In 2008, 49%<sup>23</sup> of elections in Europe were individual (unbundled) as opposed to 44% which were bundled<sup>24</sup>. In Finland, Greece, Italy, Portugal and Sweden all elections were bundled, while individual elections prevailed in France, Germany, Ireland and the United Kingdom.**

In companies governed by a **unitary board system**, candidates for board positions (executives and non-executives) are pre-selected by the nomination committee and are subsequently presented to the GSM. Generally, a new director is appointed by an ordinary majority of shareholders' votes. Chairman and CEO are selected among and appointed by the board of directors.<sup>25</sup>

In companies governed by a **dual board system** the selection procedures for non-executive and executive board members differ. Members of the supervisory board (non-executives) are in most cases pre-searched by the nomination committee and appointed by the GSM. In contrast, members of the management board (executives) are most commonly pre-selected and appointed by the supervisory board. Chairman and CEO are selected among supervisory and management board members respectively and they are appointed by members of supervisory board.

**The nomination committee is usually responsible for the selection of board members.** Non-executive board members that are part of the nomination committee usually rely on their formal or informal networks in order to identify candidates in the pre-selection phase of the selection procedure. This practice could favour candidates that are part of the network of existing board members and instead be detrimental to candidates without a strong network.<sup>26</sup> Through this practice the nomination committee runs the risk of appointing a director because of his/her personal relationship or share ownership rather than his/her professional merits.<sup>27</sup> This practice might ultimately undermine company's performance. A study on 2500 Danish firms observed a negative correlation between candidates with family ties to the owners of a company and its financial performance.<sup>28</sup>

#### **(a) The regulation of the recruitment and appointment procedure of board members in national law**

It seems that the procedure for nominating and electing the board members is largely left for the company to regulate in its articles of association. In many Member States there is no legislation on this procedure. Even where such rules exist in the company laws, they are either default rules that come into play only where a company has not

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<sup>23</sup> Percentages based on a sample of 216 European companies. .

<sup>24</sup> RiskMetrics Group et al., 2009.

<sup>25</sup> Company Law Club, 2011?

<sup>26</sup> Macarie and Moldovan (2012: 7) have suggested that women are excluded from formal and informal networks which could provide the necessary social capital for advancement into senior management position. This would suggest that selection procedures carried out exclusively by nomination committee, with no support from external head-hunters, could be particularly detrimental for women.

<sup>27</sup> Businesslink, 2012.

<sup>28</sup> Smith et al. (2006).

addressed these matters in its articles of association or they are dispositive and can be departed from by the statutes of the company.

Therefore, any interference or conflict with national law in this respect appears to be rather unlikely since a) the EU instrument would not comprise any specific rules on recruitment or appointment and b) any indirect implications of the EU instruments<sup>29</sup> would not necessitate a modification of national law but could be accommodated by companies in their own rules.

Given this general legal situation the following observations shed light on the **habitual practices of companies** in Member States (rather than on legal obligations) concerning two issues that are of relevance to the transferability of the CJEU case law.

#### **(b) The identification and (pre-)selection of candidates to be presented to the assembly of shareholders**

The recruitment for director's posts tends to be informal and based on agreements and coalitions between the main shareholders, which has a decisive influence on the identification of potential candidates. The notable exceptions are Member States in which special formalised procedures (competition-like) are prescribed for members of the board of state companies (AT, PL, EL, IE). In PL, in addition, candidates to posts of boards of state companies need to have a special certificate.

In some systems (UK, FR, Nordic states, SI) it is common practice (recommended rather than required) that a nomination committee of the board prepares the list of candidates, 'analysing the skills and experience of the candidates' (FI) – which is then presented to the shareholders (or first to the board and then to shareholders).

Sometimes under the articles of association a given principal shareholder or authority may have a right to nominate or even to directly appoint its own candidate(s) for board membership (DA, AT, EL), a situation which would be somewhat analogical (but not identical) to the election of workers' representatives and which would move the identification and selection of candidates to the remit of those shareholders thus tending to yet increase the informal nature of this process (except possibly again where it is a public authority that can nominate or appoint).

#### **(c) The election of board members by the assembly of shareholders**

Again, it is important to note that national law generally does not regulate the specifics of the election procedure and leaves these matters to the companies. In a number of Member States it appears to be common practice that individual candidates are appointed to individual posts but in these Member States it would generally also be admissible to vote on the basis of lists. Where candidates are individually appointed there appears to be no obligation to give the assembly a choice between several candidates and often (based on informal agreements before the vote is taken) there is only one candidate per post. The vote on a list (or lists) of candidates appears

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<sup>29</sup> It is difficult to see what such implications should be since the target as such leaves it entirely to MS and companies what specific measures are to be undertaken to reach that target at company level.

to be the option favoured in practice in a number of other Member States – in several of them (e.g. CZ, FI, DE, IE) this routinely excludes an expression of support to individual candidates due to an 'en bloc' procedure presenting only the whole list(s) to the assembly for an up or down vote.

**(d) The average board size in listed companies**

The average board in EU 27 has 7.76 members (8.31 in a scenario excluding SMEs). The details per Member State can be found in the table below.

Table 2: Average board size

Average size of the board	All listed companies			Listed companies excluding SMEs		
	Total directors	Executive directors	Non-executive directors	Total directors	Executive directors	Non-executive directors
<b>EU27</b>	<b>7.76</b>	<b>1.87</b>	<b>5.89</b>	<b>8.31</b>	<b>1.91</b>	<b>6.39</b>
AT	9.60	0.70	8.90	9.87	0.71	9.16
BE	9.66	1.97	7.69	9.77	1.95	7.83
BG	6.42	2.08	4.33	5.57	1.62	3.95
CY	6.86	1.87	4.99	6.77	1.82	4.94
CZ	10.00	2.95	7.05	10.44	3.12	7.32
DK	8.57	1.23	7.34	8.45	1.31	7.13
EE	5.92	0.54	5.38	6.00	0.56	5.44
FI	10.00	1.36	8.64	10.05	1.49	8.57
FR	8.01	1.85	6.16	8.23	1.89	6.34
DE	9.13	2.74	6.39	9.38	2.81	6.57
EL	8.56	3.15	5.41	8.73	3.25	5.48
HU	12.97	2.73	10.23	13.45	2.97	10.48
IE	8.83	2.58	6.25	9.35	2.60	6.75
IT	14.32	2.00	12.31	14.45	2.34	12.11
LV	6.18	0.48	5.70	7.00	0.72	6.28
LT	5.53	1.80	3.73	5.72	1.82	3.90
LU	9.49	1.59	7.89	9.91	1.94	7.97
MT	7.30	1.35	5.96	6.67	1.33	5.33
NL	6.91	0.93	5.99	7.23	1.09	6.15
PL	5.76	0.54	5.21	5.79	0.57	5.22
PT	10.96	3.06	7.90	10.78	3.16	7.62
RO	5.51	1.41	4.11	5.56	1.65	3.91
SK	9.10	2.40	6.70	8.29	0.93	7.36
SI	7.67	0.57	7.10	9.22	2.33	6.89
ES	10.26	1.90	8.36	10.30	1.95	8.35
SE	7.59	0.80	6.79	7.63	0.81	6.82
UK	6.42	2.30	4.12	7.10	2.31	4.78

Source: Matrix calculations based on data provided by S&P IQ Capital

## 6. ANNEX 6: BACKGROUND TO THE BASELINE SCENARIO

### 6.1. Methodology to calculate change in female presence in boards by 2020

The legislative quotas in place in Member States will affect the natural trend of female participation in company boards. Female participation in company boardrooms in the countries that have introduced binding quotas will rely on the level of compliance with binding legislation. More precisely, the number of women that will sit on listed company boards in 2020 will vary depending on the sanctions and monitoring systems in place in the different countries with binding legislation. Therefore, in order to draw informed assumptions on future<sup>30</sup> level of compliance and thereby establishing the baseline scenario, it is important to evaluate the monitoring and sanction system in place in the different countries. **The degree of compliance in Member States with legislation that does not envisage any monitoring or sanction system is likely to be lower** than the degree of compliance in Member States with legislation that introduces a strong and credible sanction system.

Drawing on an effectiveness scoring which takes into consideration both the sanction system in place and the recent progress made, the table below summarises the expected change in gender-diverse boards subject to binding quotas, with notable implications for the calculation of the baseline scenario in the next section.

Table 1: Likely Level of Compliance with National Binding Quotas in 2020

MS	Year of Adoption	Type of sanction	Recent progress	Effectiveness (3 very effective, 1 least effective)
FR	January 2011	Annulment of nominations	12pp (from 10% in 2009 to 22% in 2012)	3
NL	May 2011	The target is not binding; in case of non-compliance, companies need to explain in the annual report why the target was not respected	4pp (from 15% in 2010 to 19% in 2012)	2
BE	June 2011	Temporary loss of benefit for board members	1pp (from 10% in 2010 to 11% in 2012)	1.5
IT	July 2011	Official warning; fines; forfeiture of offices of elected board members	1pp (from 5% in 2010 to 6% in 2012)	1.5
ES	2007	No formal penalties but considered in public	7pp increase (from 4% in 2006 to 11% in 2012)	1

<sup>30</sup> In many countries legislative quotas have been introduced in 2011 and the deadline for compliance has not passed yet. Thus, at the time of conducting this impact assessment, there is no information available yet on the compliance rate of companies with the regulation.

MS	Year of Adoption	Type of sanction	Recent progress	Effectiveness (3 very effective, 1 least effective)
		procurement		

Source: Matrix

## 6.2. Overview of natural trend in each Member State by 2020

On the basis of past trends and taking into consideration the recent introduction of national measures, it is possible to estimate how female presence on company boards will evolve in the future. In particular, the table below presents the estimates of the level of female presence on company boards, distinguishing between executive and non-executive positions. In order to produce these estimates the following steps were undertaken:

Data on female participation in boards, for each Member State and for the period 2003-2011 was retrieved from the EC database on women and men in decision making. Estimates for each Member State, for the period 2012-2040 were made assuming that the trend observed during the period 2003-2011 will continue throughout this period. This trend was assumed to be linear.

Excluded methods: Three other extrapolation methods were evaluated before the linear model was selected:

- **Annual growth rates: the year on year percentage increase (decrease) from 2003 to 2011 was applied each year until 2040.**
- **Excel growth calculation: The function was used to estimate the relationship between time and female participation for the period 2003 to 2011. The excel growth function assumes exponential growth. This function was then applied to predict female board participation until 2040.**
- **A linear function was used to estimate the relationship between time and female participation for the period 2003 to 2011. This function was then used to predict participation until 2040.**

For each method, each country's current regulation was taken into account to produce the estimations. After observing the figures generated by each method, the linear method was deemed most appropriate, as the first two methods were thought to overestimate the growth in female participation in boards. As they tended to exponentially increase the percentage of women in the board, with some countries presenting more than 100% of board members being female by 2040.

The linear model was applied to all countries, except Estonia, Cyprus and Slovenia. For these countries assuming a linear trend would mean that by 2020 the percentage of women in the board would be zero. As this was considered unrealistically low, rather than imposing a decreasing trend, it was assumed that the percentage of women would remain at the minimum value observed during 2003-2011.

Table 2: Estimated Percentage of Women on Boards by 2020 (in listed companies excluding SMEs)<sup>31</sup>

<sup>31</sup> All the averages in the table are weighted, i.e. they depend on the number of executive and non-executive directors in the company. As in general there are more non-executive directors in a company, the average-figure is more

MS	2004			2011			2020		
	(Estimated)			(Estimated)			(Predicted)		
	ED	NED	Average	ED	NED	Average	ED	NED	Average
AT	1%	10%	6%	2%	19%	11%	3%	25%	15%
BE	3%	8%	7%	4%	12%	11%	9%	27%	25%
BG	62%	0%	18%	52%	0%	15%	40%	0%	12%
CY	12%	10%	7%	8%	6%	5%	4%	3%	2%
CZ	4%	0%	11%	6%	0%	16%	8%	0%	20%
DE	4%	16%	12%	5%	20%	15%	6%	23%	18%
DK	8%	2%	11%	12%	3%	16%	20%	6%	28%
EE	28%	38%	15%	13%	17%	7%	11%	15%	6%
EL	6%	31%	7%	5%	28%	6%	3%	16%	4%
ES	1%	10%	4%	3%	27%	11%	7%	40%	29%
FI	9%	8%	16%	15%	13%	26%	22%	19%	38%
FR	1%	5%	6%	4%	19%	22%	7%	36%	40%
HU	3%	26%	9%	2%	15%	5%	3%	33%	12%
IE	5%	4%	6%	7%	6%	9%	10%	9%	13%
IT	0%	2%	2%	1%	7%	6%	3%	28%	23%
LT	9%	5%	11%	11%	7%	14%	15%	9%	18%
LU	0%	19%	4%	0%	27%	6%	0%	32%	7%
LV	8%	4%	10%	22%	9%	27%	31%	13%	37%
MT	5%	6%	2%	6%	7%	2%	7%	8%	3%
NL	3%	0%	5%	9%	1%	18%	16%	3%	31%
PL	6%	9%	9%	9%	12%	12%	10%	15%	14%
PT	5%	4%	4%	7%	5%	6%	6%	4%	5%

influenced by the figures for non-executive directors. Figures were estimated by Matrix based on data from EC Database for Women and Men in Decision-Making and Standard & Poor's. Differences with other figures presented in the report are due to recalculation of raw data in order to provide sufficient breakdown of the figures for the purpose of the analysis.

MS	2004 (Estimated)			2011 (Estimated)			2020 (Predicted)		
	ED	NED	Average	ED	NED	Average	ED	NED	Average
RO	32%	11%	17%	19%	7%	10%	23%	8%	12%
SE	3%	23%	21%	4%	27%	25%	5%	35%	32%
SI	22%	20%	19%	17%	15%	14%	12%	10%	10%
SK	9%	8%	9%	15%	13%	15%	33%	30%	33%
UK	6%	16%	13%	7%	21%	16%	8%	22%	17%
EU	9%	11%	9%	6%	17%	14%	8%	25%	21%

Average = overall presence of women in corporate boards; the average is weighted, i.e. it depends on the number of executive and non-executive directors

ED = Executive Directors

NED = Non-executive Directors

Source: 2004 and 2011 figures were estimated by Matrix based on data from EC Database for Women and Men in Decision-Making and Standard & Poor's; 2020 data have been extrapolated by Matrix on the basis of the above.

Table 3: Overview of Regulatory and Self-Regulatory Measures Adopted across the EU<sup>32</sup>

MS	Regulation			Self-Regulation		
	Level	Coverage	Year of Adoption	Source	Type	Year of Adoption
AT	Non-binding targets: 25% (by 2013) 35% (by 2018)	-Supervisory Board of State-owned companies	2011	Corporate Code	Recommends representation of both genders in appointments in the supervisory board.	2009
BE	33%	-State-owned Companies (2012); -Public Limited Companies (2018); -Public Limited SME (2020)	2011	Corporate Code	Recommends board's composition to be determined on the basis of gender diversity	2009

<sup>32</sup>

For the purpose of this table State-owned Companies are companies where the state owns a controlling interest (>50%); Public Limited Companies are companies listed on the stock exchange; Private Limited Companies are companies not listed on the stock exchange and not owned by the state.



MS	Regulation			Self-Regulation		
	Level	Coverage	Year of Adoption	Source	Type	Year of Adoption
BG	No Regulation/Self-regulation					
CY	No Regulation/Self-regulation					
CZ	No Regulation/Self-regulation					
DK <sup>33</sup>	No Regulation			Corporate governance code; Charter	Recommends considering the need for gender diversity in the nomination process of new board candidates.	2008
EE	No Regulation/Self-regulation					
FI	40%	State-owned companies	2005	Corporate Code	Recommends both genders to be represented on the board; if one gender is not represented, the company has to explain the reason (comply or explain principle)	2008
FR	20% (by 2014) 40% (by 2017)	-Public Limited Companies -Private Limited Companies (with more than 500 employees or over EUR50mln revenues)	2011	Corporate Code	Recommends gender diversity on board	2010
DE	No Regulation			Corporate governance code;  Companies Initiatives	Recommends taking women into consideration when filling management and supervisory board positions  Some companies have introduced voluntary targets for women on boards	2010
EL	No Regulation/Self-Regulation					
HU	No Regulation/Self-Regulation					
IT	20% (2012) 33% (by 2015)	-Public Limited Companies -State-owned Companies	2011	No Self-Regulation		

<sup>33</sup>

In DK, since 2012 there is a law underway which will set targets for 1100 biggest firms. See further details below in the part on Denmark

MS	Regulation			Self-Regulation		
	Level	Coverage	Year of Adoption	Source	Type	Year of Adoption
LV	No Regulation/Self-regulation					
LI	No Regulation/Self-regulation					
LT	No Regulation/Self-regulation					
LU	No Regulation			Corporate Code	Recommends the board to have an appropriate representation of both genders.	2009
MT	No Regulation/Self-regulation					
NL	30% (by 2016)	-Private Limited Companies and (with more than 250 employees) - Public Limited Companies (with more 250 employees)	2010	Corporate governance code covering only supervisory (not management) boards	Recommends the supervisory board should have a diverse gender composition.	2008
PL	No Regulation			Corporate Code	Recommends public companies to ensure a balanced gender proportion in management and supervisory boards. Companies are required to report on their compliance with the code	2010
PT <sup>34</sup>	No Regulation/Self-regulation					
IE	No Regulation/Self-Regulation					
RO	No Regulation/Self-regulation					
SK	No Regulation/Self-regulation					
SI	No Regulation/Self-regulation					
ES	40% (by 2015)	-Public Limited Companies -Private Limited Companies (with more than 250 employees)	2007	Corporate Code	Recommends the Board of Directors to have adequate gender diversity based on the <i>comply or explain</i> principle	2006

<sup>34</sup>

Since March 2012, a ministerial decision recommended to have more women on boards.

MS	Regulation			Self-Regulation		
	Level	Coverage	Year of Adoption	Source	Type	Year of Adoption
SE		No Legislation		Corporate Code	<p>Recommends an equal gender distribution on the Board of Directors, based on comply or explain principle.</p> <p>Compulsory annual statement containing the rationale for selection of new board members in relation to board requirements.</p>	2004
UK		No Legislation		Corporate Code	Recommends the search for board candidates to be conducted with due regard for the benefit of gender diversity on the board (Recommended quota: 25%)	2010

Source: Matrix

### 6.3. Binding quota legislation for listed companies in Member States

#### Belgium

In Belgium the relevant rules were introduced by the Act of 28 July 2011.<sup>35</sup> The Act amended the Company Code (concerning companies which are quoted on the stock exchange) and the laws regulating state-owned enterprises.

According to the Act at least one third of board members of publicly-listed companies and state-owned companies need to be of each sex. Belgium's listed companies in the majority have a **unitary** board system.

The Act is applicable to state enterprises from the financial year following the adoption of the law (i.e. applicable as of 2012). However, the amendment to the Company Code is applicable to listed companies after a longer implementation period ranging from six to eight years depending on the size of the company measured by several criteria, i.e. the number of employees, the total annual balance sheet and annual turnover. Thus the amendment will be fully applicable only in 2019.

<sup>35</sup>

Law modifying the law of 21 March 1991 on the reform of certain public economic enterprises, the Company Code and the law of 19 April 2002 concerning the rationalisation of functioning and management of the National Lottery aiming to guarantee the presence of women in the boards of autonomous public enterprises, listed companies and National Lottery, published in Moniteur Belge/Belgisch Staatsblad of 14 September 2011, p. 59600, original texts: Loi modifiant la loi du 21 mars 1991 portant réforme de certaines entreprises publiques économiques, le Code des sociétés et la loi du 19 avril 2002 relative à la rationalisation du fonctionnement et la gestion de la Loterie Nationale afin de garantir la présence des femmes dans le conseil d'administration des entreprises publiques autonomes, des sociétés cotées et la Loterie Nationale/ Wet tot wijziging van de wet van 21 maart 1991 betreffende hervorming van sommige economische overheidsbedrijven, het Wetboek van vennootschappen en de wet van 19 april 2002 tot rationalisering van de werking en het beheer van de Nationale Loterij teneinde te garanderen dat vrouwen zitting hebben in de raad van bestuur van de autonome overheidsbedrijven, de genoteerde vennootschappen en de Nationale Loterij; Gesetz zur Änderung des Gesetzes vom 21. März 1991 zur Reform bestimmter Aktiengesellschaften, des Unternehmensgesetzes und des Gesetzes vom 19. April 2002 zur Rationalisierung der Funktion und des Managements der Nationallotterie mit dem Ziel, die Vertretung von Frauen in den höchsten Entscheidungsgremien eigenständiger Aktiengesellschaften, börsennotierter Unternehmen und der Nationalen Lotterie zu gewährleisten.

As long as the quota is not fulfilled, a person belonging to the minority sex must be appointed to any vacant position and any appointment which does not comply with this rule is void. In relation to listed companies the amended Company Code provides a specific sanction consisting in suspension of any advantage, financial or otherwise, attached to the position of director for all the members of the board as long as the composition of a board does not comply with the quota.

## France

In France (**mixed system** of roughly 77% of all companies; 23% of all companies have a **two-tier board**) the relevant rules were introduced by the Law of 27 January 2011,<sup>36</sup> under which companies will have to ensure that members of each sex occupy at least 20 % of boardroom seats within three years (i.e. by 2014) and 40 % within six years from the entry into force of the law (i.e. by 2017). These requirements apply to companies listed on the stock exchange and non-listed companies with at least 500 workers and with revenues of over EUR 50 million over the previous three consecutive years. It is estimated that around 2000 companies will be affected by the law. Public companies regulated by commercial law, such as state-owned companies are also covered.

Non-compliant companies face nullification of their board elections, but the decisions adopted by the board remain valid. The law envisages also the suspension of benefits of directors of infringing companies.

Additionally, the law established the same quotas for other public bodies, such as universities and administrative institutions.

## Italy

In Italy all three board systems are present, but the majority (68%) of companies have a **mixed** board which works with the so-called traditional system. The executive board and the controlling board is elected by the general assembly.

The relevant quota rules were established by Law 120 of 12 July 2011<sup>37</sup> and are applicable to companies listed on the stock-exchange and to state-owned companies. The law provides for at least one-third representation of each sex among members of the mixed board system composed by the management board and the supervisory board. In the mixed system, all board members are elected by the general assembly.

The law also applies to any other board system if the board is made up of at least three members. The one-third quota (33%) must be reached until 2015 (and 20% by 2012).

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<sup>36</sup> Loi n° 2011-103 du 27 janvier 2011 relative à la représentation équilibrée des femmes et des hommes au sein des conseils d'administration et de surveillance et à l'égalité professionnelle publiée au Journal Officiel du 28 janvier 2011.

<sup>37</sup> Act No. 120 of 12 July 2011, published in Official Journal No. 174 of 28 July 2011 (Legge 12 luglio 2011, n. 120 Modifiche al testo unico delle disposizioni in materia di intermediazione finanziaria, di cui al decreto legislativo 24 febbraio 1998, n. 58, concernenti la parità di accesso agli organi di amministrazione e di controllo delle società quotate in mercati regolamentati, GU n. 174 del 28-7-2011 ).

For listed companies the enforcement of the rules is ensured by the National Securities and Exchange Commission (*Consob*) which will apply progressively the following sanctions in case of non-compliance:

- (1) a warning to apply the quota system within four months; followed by
- (2) a fine from EUR 100 000 to EUR 1 000 000 (from EUR 20 000 to EUR 200 000 in the case of supervisory boards) together with a second warning that the quota system be accomplished within three months; followed by
- (3) forfeiture of the offices of elected members of the board which does not comply with the quota.

## The Netherlands

In the Netherlands the majority of companies have a **two-tier** board. The relevant quota rules were adopted by means of a law amending the Civil Code.<sup>38</sup> The amended Civil Code now obliges public limited companies and private limited companies<sup>39</sup> to strive for a balanced representation of members of each sex on the company's management board and on the supervisory board. The law defines a 'balanced representation' as having at least 30% representation of each sex on the board.

This norm only applies to larger private and public limited companies. These companies need to take into account a balanced representation of both sexes *in as far as possible* in their procedures to select new members of the management board or the supervisory board, and in the drafting of the specification of any vacancy.<sup>40</sup>

Small and medium-sized companies, i.e. companies that do meet at least two of the following three criteria, do not fall under this legal obligation. The three criteria are: the total value of company's assets is no more than €17.5 million, its net annual turnover is no more than €35 million and its annual average number of employees is less than 250.

If a larger company does not reach a representation of at least 30% of each sex on its board, it must explain in the annual report to the shareholders why the balanced representation has not been achieved, which measures have been taken to achieve it and what measures the company plans to introduce to achieve it in the future ('comply or explain' mechanism). There are no sanctions for not meeting the 30% norm.<sup>41</sup>

The measure has a temporary character and expires on 1 January 2016.

## Spain

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<sup>38</sup> Law of 6 June 2011, published in the *Staatsblad* 2011, 275. (*Wet van 6 juni 2011 tot wijziging van boek 2 van het Burgerlijk Wetboek in verband met de aanpassing van regels over bestuur en toezicht in naamloze en besloten vennootschappen*).

<sup>39</sup> See Art. 2:166 and Art. 2:276 Civil Code respectively. Only public limited companies (*Naamloze Vennootschappen, NV*) can be listed on the stock exchange.

<sup>40</sup> See Articles 2:166 paragraph 2 and 2:276, paragraph 2 of the Civil Code read in conjunction with Art. 2:379 of the Civil Code. There are no specific additional requirements for public limited companies that are listed on the stock exchange.

<sup>41</sup> See Art. 2:391 paragraph 7 Civil Code.

Article 75 of the Spanish Organic Law on gender equality of 2007<sup>42</sup> encourages large companies<sup>43</sup> to alter the membership of their boards gradually until each sex makes up at least 40 % by 2015. The rule has the character of a recommendation.<sup>44</sup> No sanction for failure to comply with that rule is envisaged. Nevertheless taking measures to reach the target of a balanced composition on the company board may be taken into account in practice in awarding the company with the “equality label”<sup>45</sup> and in the procedures to award a public contract with the Administration.<sup>46</sup> The measure can be described as a recommendation.

Table 4: Overview of Regulatory Gender Quotas in Company Boardrooms

Country	Year of Adoption	Level of the Quota	Deadline	Penalties for Non-Compliance	Preliminary Effects on Female Representation on the Board <sup>47</sup>
ES	2007	40%	2015 (8 years from introduction)	No formal penalties but considered in public procurement	5pp increase (from 6% in 2007 to 11% in 2012)
FR	January 2011	20% (2014) 40% (2017)	2013 2017	Annulment of nominations	10pp (from 12% in 2010 to 22% in 2012)
NL	May 2011	30%	2016	The target is not binding; in case of non-compliance, companies need to explain in the annual report why the target was not respected	4pp (from 15% in 2010 to 19% in 2012)
BE	June 2011	33%	First fiscal year after publication 2017-20 for listed	Temporary loss of benefit for board members	1pp (from 10% in 2010 to 11% in 2012)

<sup>42</sup> Law 3/2007 of 22 March 2007 on effective equality between men and women; Ley Orgánica 3/2007 de 22 de marzo, para la igualdad efectiva de mujeres y hombres.

<sup>43</sup> Companies which are obliged to present the full accounts of losses and profits, i.e. which is determined by assets, turnover and number of employees.

<sup>44</sup> Organic Law 3/2007 of effective equality between women and men contains also some other provisions related to women on company boards or in management jobs. Art. 37.2 states that the public enterprise of radio and television (*Radio Televisión Española, RTVE*) will promote women’s incorporation into management jobs. The equivalent requirement is set out in Art. 38.2 for the Spanish press agency EFE. Art. 54 states that the General State Administration and the public bodies connected with it will observe the principle of balance composition in the appointments for company boards on those companies in whose capital the Administration participates.

<sup>45</sup> The Royal Decree 1615/2009 of 26 October regulating the grant and usage of the corporate “Equality label”, article 10.

<sup>46</sup> Articles 33 and 34 of the Organic Law 3/2007. See also Article 102 Law 30/2007, of 30 October, regulating the Public Sector Contracts, in.

<sup>47</sup> Including both Executives and Non-executives.

Country	Year of Adoption	Level of the Quota	Deadline	Penalties for Non-Compliance	Preliminary Effects on Female Representation on the Board <sup>47</sup>
			companies		
IT	July 2011	20% (2012) 33% (2015)	2012 2015 The law will be effective only for a limited period of time (three board renewals)	Official warning; fines; forfeiture of offices of elected board members	1pp (from 5% in 2010 to 6% in 2012)

Source: Matrix

#### 6.4. Other legislative measures

##### Germany

Germany has a **two-tier system**. Although Germany does not have gender quota legislation for boards of companies, some existing legislative measures affect gender balance on boards. This is the case of the rules regulating **workers' representation** on boards and recommending that men and women should be represented there proportionately to their representation among the workforce.<sup>48</sup>

Furthermore a vivid public debate is currently taking place in relation to the “flexi-quota” plan of the German Federal Ministry for Family, Senior Citizens, Women and Youth, which would contain essentially a legal obligation of self-commitment. Listed companies and certain other companies (those with complete workers' representation, which are determined by size, sector and organizational form of company) would be obliged by law to establish a self-determined quota for women both in their executive and supervisory boards and to make it public. This obligation would be conditional and only enter into force in 2013 if by that date the companies concerned have not tripled the average percentage of women in supervisory and management boards. The quota would have to be achieved within a specified period. If the companies fail to reach their targets, corporate law sanctions, such as the possibility to contest the appointment of members of the board, would apply. The legal obligation will cease to apply to individual companies once (and as long as) they have achieved a female share of 30% on their supervisory and management boards.<sup>49</sup>

<sup>48</sup> Such rules are set out in several statutes: *Gesetz über die Mitbestimmung der Arbeitnehmer bei einer grenzüberschreitenden Verschmelzung* [Law on the Participation of Employees in the event of a Cross-border Merger] of 21 December 2006, Official Journal (*Bundesgesetzblatt BGBI*), part I p. 3332; *Gesetz über die Beteiligung der Arbeitnehmer in einer Europäischen Gesellschaft* [Law on the Participation of Employees in a European Company] of 22 December 2004, Official Journal (*Bundesgesetzblatt BGBI*), part I p. 3675; *Gesetz über die Drittelbeteiligung der Arbeitnehmer im Aufsichtsrat* [Law on One-Third Participation of Employees on Supervisory Boards] of 18 May 2004, Official Journal (*Bundesgesetzblatt BGBI*), part I p. 974.

<sup>49</sup> German Federal Ministry for Family, Senior Citizens, Women and Youth, <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=172756.html>.

## 6.5. Regulation of gender balance on boards of state-owned companies by legislative means

The following Member States regulate the gender composition of boards of state-owned companies, which may include companies listed on the stock exchange, either in legislation (Denmark, Finland, Greece) or by means of administrative regulations (Austria, Slovenia).

### Denmark

The relevant provisions have been in force since 1990. Section 11 of the Danish Gender Equality Act<sup>50</sup> stipulates that boards in state-owned companies should, 'as far as possible', have an equal gender balance. According to Section 12 of that Act ministers and authorities that are empowered to suggest a member of a board are obliged to suggest a man and a woman for each post. The competent minister has a duty to report on the gender composition of the boards every third year.

In May 2012, the Danish government announced their plan (the 'Danish model') for getting more women into company boards. It will be done through legislative changes in company law and the annual accounts law. The reform looks similar to what has been envisaged in the 'flexi-quota' model of the German family minister, Kristina Schröder, but includes elements of the Dutch comply-or-explain approach. There are no details available yet, but the main points are:

The 1100 largest companies will have to set 'realistic and ambitious' targets for the underrepresented sex in the highest company board (which in Denmark typically is a supervisory board).

They will also have to introduce a policy to increase the number of members of the underrepresented sex in management in general.

They will have to report on the achievement of the targets and the implementation of the policy in their annual report. If that does not happen, there is a possibility for imposing a fine (which, however, does not seem automatic in case of not reaching the target).

State-owned companies will have to do the same, whatever their size. (So far they should have equal representation, as far as possible.)

### Finland

In 2004, the Finnish government set a target of 40% for female board members in state-owned companies. This objective was achieved in 2006. In 2010, women's share in state-owned companies was 45%. In listed companies with a state majority ownership in 2010 there were 39% of board members were women<sup>51</sup>.

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<sup>50</sup> Consolidation Act no. 1095 of 19 September 2007.

<sup>51</sup> Leena Linnainmaa, Promoting board diversity in Finland, 2011, in: Aktionärinnen fordern Gleichberechtigung 2011, djb.



Furthermore, the Corporate Governance Code which is binding for listed companies recommends that both genders are represented on the board. If a company does not comply with this, it has to explain the departure from the code. After this recommendation was issued in 2008, more and more boards had a female board member. In 2011, in 80% of the company boards there was at least one female member.

In November 2011, the government adopted a resolution stressing the need to promote gender equality by ensuring equal opportunities for both sexes in appointment to board positions. Non-executive boards have a share of 26% of female members in January 2012.

## Greece

In Greece the Gender Equality Act<sup>52</sup> imposes a **1/3 quota** requirement for state-appointed members of boards of all executive bodies, including companies fully or partially state-controlled. Appointment decisions failing to respect the quota requirement are subject to annulment by administrative courts. Moreover, decisions adopted by those boards not respecting the quota rule are subject to annulment by civil courts.

## Austria

In March 2011, the Austrian Council of Ministers issued an **administrative decision** to gradually implement quotas for boards of companies owned 50% or more by the state. Such companies need to achieve 25% representation of women in their company boards before 31 December 2013 and 35% representation before 31 December 2018. If possible, the quota mentioned should be applied not only to board members representing the public owners but also to the board as a whole, progress being monitored by an annual report.<sup>53</sup> If this objective is not achieved, Austria plans a legislative measure.

Also, the governance Code recommends equal representation of both genders. There are no sanctions if companies do not follow this recommendation.

## Slovenia

The **Regulation** on Criteria for Respecting the Principle of Gender Balanced Representation<sup>54</sup> adopted by the government in 2004 establishes a principle of 40% representation of each sex in nominating or appointing government representatives in public enterprises and other entities of public law, including management and supervisory boards of state-owned enterprises. There are no sanctions for not respecting the principle.

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<sup>52</sup> Law 2839/2000 of 12 September 2000.

<sup>53</sup> Federal Chancellery/Federal Minister of Women's Affairs and Public Service, 14.03.2011, No. GZ BKA-140.200/0048-II/1/2011, 93/23.

<sup>54</sup> *Uredba o o kriterijih za upoštevanje načela uravnotežene zastopanosti spolov (Uradni list RS, No 103/04).*

## 6.6. Female presence in the board throughout all Member States

Table 5: Female Presence in Corporate Boards across Countries between 2004 and January 2012 (across the EU, Iceland and Norway)<sup>55</sup>

	2004	2007	2010	2011	Jan-12
Austria	6%	5%	9%	11%	11%
Belgium	7%	6%	10%	11%	11%
Bulgaria	18%	15%	11%	15%	16%
Cyprus	7%	2%	4%	5%	4%
Czech Republic	11%	11%	12%	16%	15%
Denmark	11%	15%	18%	16%	16%
Estonia	15%	10%	7%	7%	7%
Finland	16%	18%	26%	27%	27%
France	6%	9%	12%	22%	22%
Germany	12%	11%	13%	15%	16%
Greece	7%	11%	6%	7%	7%
Hungary	9%	11%	14%	5%	5%
Ireland	6%	6%	8%	9%	9%
Italy	2%	3%	5%	6%	6%
Latvia	10%	17%	23%	27%	26%
Lithuania	11%	18%	13%	14%	15%
Luxembourg	4%	3%	4%	6%	6%
Malta	2%	4%	2%	2%	3%
Poland	9%	12%	12%	12%	12%
Portugal	4%	3%	5%	6%	6%
Romania	17%	18%	21%	10%	10%
Slovakia	9%	24%	22%	15%	13%
Slovenia	19%	14%	10%	14%	15%
Spain	4%	6%	10%	11%	11%

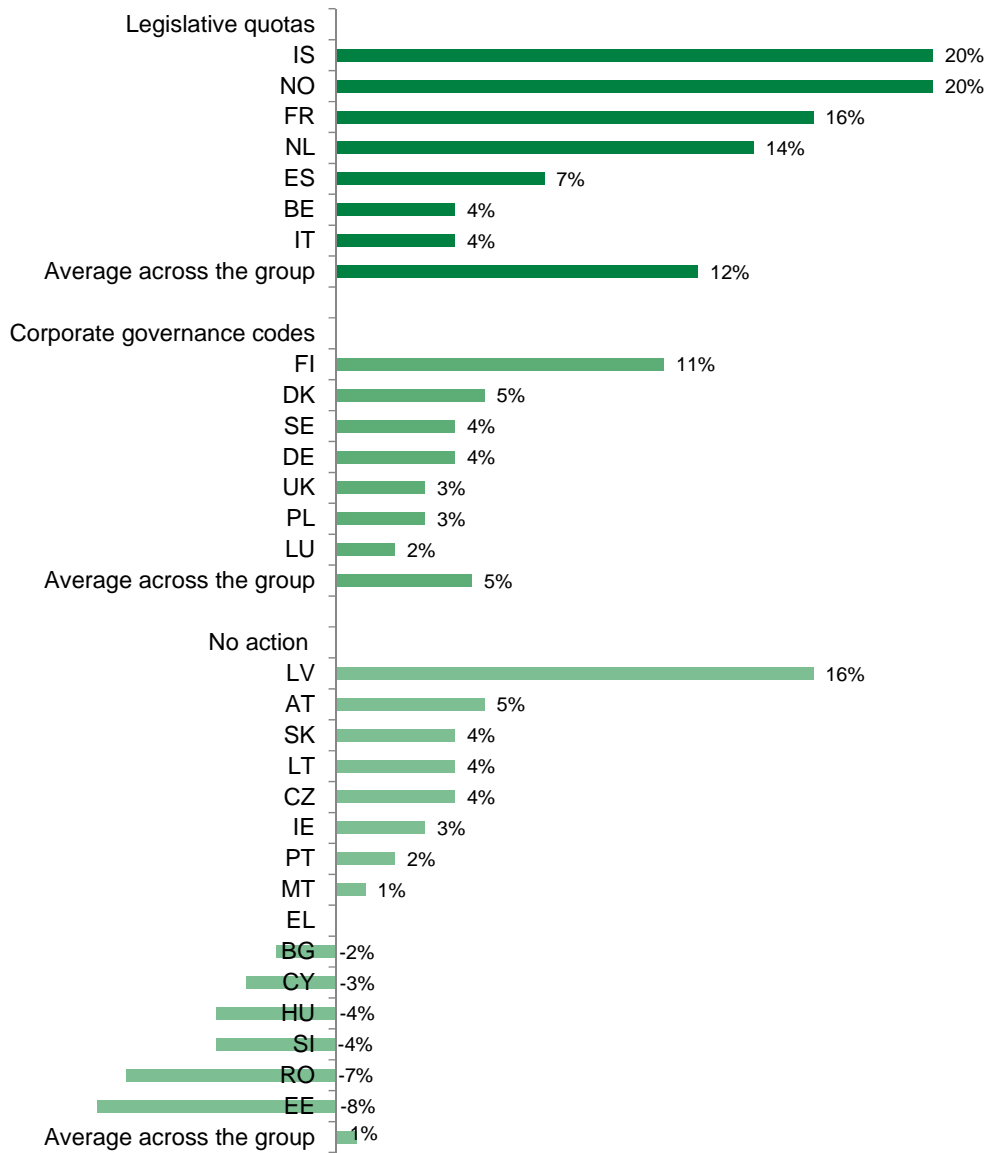
<sup>55</sup> These figures may be slightly different from those estimated by Matrix due to difference in calculation method and data-base for calculation.

	2004	2007	2010	2011	Jan-12
Sweden	21%	24%	26%	25%	25%
The Netherlands	5%	14%	15%	18%	19%
United Kingdom	13%	12%	13%	16%	16%
<b>EU 27</b>	<b>9%</b>	<b>10%</b>	<b>12%</b>	<b>13%</b>	<b>14%</b>
Iceland	5%	10%	16%	21%	25%
Norway	22%	34%	39%	41%	42%

Source: European Commission. Database: women & men in decision making. Available from: [http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/quoted-companies/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/quoted-companies/index_en.htm)

The figure below shows the percentage point change in female presence on company boards between 2004 and January 2012, thereby grouping countries into categories which correspond to the different types of measures taken.

Figure 1: Percentage Point Change in Female Presence in Corporate Boards between 2004 and January 2012 (across the EU, Iceland and Norway)



Source: European Commission. Database: women & men in decision making. Available from: [http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/quoted-companies/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/quoted-companies/index_en.htm)

## 7. ANNEX 7: FUNDAMENTAL RIGHTS

EU legislation must fully comply with the provisions of the EU Charter of Fundamental Rights (hereinafter referred to as "the Charter"), which has become legally binding following the entry into force of the Lisbon Treaty. All legislative proposals of the Commission are subject to a systematic check to ensure their compliance with the Charter<sup>56</sup>.

It should be underlined that the Charter does not constitute a legal basis upon which the EU could adopt secondary legislation, but lays down a legal framework in order to ensure that EU law will stay in conformity with the fundamental values of human rights, democracy and the rule of law.

Moreover, the fundamental rights contained in the Charter can be subject to limitations provided that they comply with the principle of proportionality<sup>57</sup>. When a measure impact various fundamental rights, it is necessary to assess the impact on each of these rights in order to ensure that all fundamental rights concerned will be respected.

This annex assesses in detail how the envisaged EU legislative instrument whose aim is to increase the gender balance on company boards (hereinafter referred to as "the instrument") will impact on the relevant fundamental rights embodied in the Charter.

It will first look at the different fundamental rights of the Charter that could be positively or negatively affected by the instrument (chapter 1), and then analyse the differences in impact that the various policy options considered in the Impact Assessment would have on those fundamental rights (chapter 2).

### 7.1. Fundamental rights' check

The fundamental rights in the Charter that could be affected by the instrument include:

- Article 23 on equality between women and men and Article 21(1) on non-discrimination on the basis of sex ,
- Article 16 on the freedom to conduct a business,
- Article 17 on the right to property,
- Article 15(1) on freedom to choose an occupation and right to engage in work, and
- Article 47(1) on the right to an effective remedy.

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<sup>56</sup> Communication from the Commission Strategy on the effective implementation of the Charter, COM(2010) 573 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:EN:PDF>.

<sup>57</sup> Article 52 of the Charter: "Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others".

– These will be analysed in turn.

## 7.2. Article 23 on equality between women and men and Article 21(1) on non-discrimination on the grounds of sex

### *Article 21*

#### **Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

[...]

### *Article 23*

#### **Equality between women and men**

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

The principle of non-discrimination on grounds of sex (among other grounds) in Article 21(1)<sup>58</sup> of the Charter flows from the general principle of equality before the law which is enshrined in Article 20 of the Charter and in all international human rights instruments<sup>59</sup> and national Constitutions.

The right to non-discrimination means that no person must be treated less favourably on grounds of his or her sex than another is, has been or would be treated in a comparable situation<sup>60</sup>. The principle of equal treatment therefore naturally takes an individual perspective in that it compares the situations of individual persons and the treatment they receive. It gives a remedy to persons who have been discriminated against, by granting them reparation or compensation of damages. It does not,

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<sup>58</sup> Article 21(1) draws on Article 19 of the TFEU and Article 14 of the ECHR. There is no contradiction or incompatibility between Article 21(1) of the Charter and Article 19 of the TFEU which has a different scope and purpose: Article 19 confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in Article 21(1) does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under the Treaties, and by Member States only when they are implementing Union law. Article 21(1) therefore does not alter the extent of powers granted under Article 19 nor the interpretation given to that Article.

<sup>59</sup> Including the Universal Declaration of Human Rights whose Article 1 provides that "all human beings are born free and equal in dignity and rights".

<sup>60</sup> See, for instance, Article 2 (1) (a) of Directive 2006/54/EC (equal treatment of men and women in matters of employment and occupation – recast).

however, allow tackling structural discrimination, for instance gender segregation in the labour market.

By contrast, Article 23 of the Charter requires equality between men and women in all areas – this goes beyond individual equality of treatment and extends to equal opportunities and participation in all spheres of society, including positions of responsibility. This is not simply a matter of social policy, but a collective expression of the fundamental right of all persons, men and women, to be treated as equals. This principle does not only look at the individual situation of persons, compared to others, but also at the equality outcomes at a societal level.

This collective principle of equality between women and men is also reflected in Article 8 of the Treaty on the Functioning of the European Union (TFEU) which provides that "in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between women and men" and which contains a clear mandate to fight structural inequalities.

The second sentence of Article 23 of the Charter indicates the possible tension between the individual principle of equal treatment and the societal objective of equality between men and women. It stipulates that, under certain conditions, the collective aim of eliminating structural inequalities must be reconciled with the individual interest in equal treatment. Positive action, i.e. "the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex", with the aim of achieving *de facto* equality is therefore accepted.

The Charter provision is practically identical in substance with Article 157(4) TFEU (relevant for employment matters), which provides that, with a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

In this respect, the aim of redressing a pre-existing situation of inequality has been accepted as a legitimate objective of differential treatment and the Court of Justice of the European Union (hereinafter referred to as "the Court") has further specified the conditions under which positive action is permissible.

As the instrument intends to increase the participation of women in company boards, it will be necessary to take into consideration the Court's case-law on positive action.

The case law of the Court<sup>61</sup> accepted that priority may in certain cases be given to women in employment under the following cumulative conditions:

- there are fewer women than men in the relevant department or sector (i.e. the female sex is clearly underrepresented);

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<sup>61</sup> Case C-409/95 *Marschall* [1997] ECR I-6363, paragraph 35. See also case C-450/93 *Kalanke* [1995] ECR I-3051, paragraphs 22 to 24, case C-158/97 *Badeck* [2000] ECRI 2000 p. I-1875, as well as case C-407/98 *Abrahamsson* [2000] ECR I-5539.

- the female candidate is equally qualified as the male competitor in terms of suitability, competence and professional performance,
- the priority is not automatic and unconditional, but may be overridden if reasons specific to an individual male candidate tilt the balance in his favour,
- the candidature of all candidates is subject of an objective assessment which will take account of all criteria specific to the individual candidates (but such criteria must not indirectly discriminate against the female candidates).

Moreover, the Court has seen positive action measures in favour of women as an exception to the principle of equality. In this context, the Court has emphasised that positive action measures have to respect the principle of proportionality. In its *Lommers*<sup>62</sup> ruling, for example, the Court stated that:

*"(...) according to settled case-law, in determining the scope of any derogation from an individual right such as the equal treatment of men and women laid down by the Directive, due regard must be had to the principle of proportionality, which requires that derogations must remain within the limits of what is appropriate and necessary in order to achieve the aim in view and that the principle of equal treatment be reconciled as far as possible with the requirements of the aim thus pursued (...)"*.

In so far as the instrument would impose a binding preference (at least to a certain degree) for the underrepresented sex in appointments to company boards, it would also derogate from the individual right to equal treatment with the aim of achieving de facto equality in practice. As this derogation implies a potential limitation of Article 21 (1) of the Charter, it has to be proportionate and must not go beyond what is necessary to achieve the intended aim.

To be proportionate, the instrument must, first, intervene in situations where one sex is obviously underrepresented. This is clearly the case of boards of listed companies throughout the EU. In January 2012, women occupied on average just 13.7% of board seats of the largest publicly listed companies in EU Member States. Even in the best-performing Member States, this share does not rise beyond 27%, which indicates that the underrepresentation is a general feature and does not only concern a few Member States. This criterion further implies the requirement to maintain a positive action measure only as long as it is indispensable to redress continuing underrepresentation. Provisions ensuring, from the outset, the temporary nature of the instrument and its expiration or repeal as soon as the disadvantages that justify positive action have sustainably been removed would thus underpin the proportionality of such action.

Another element for ensuring the proportionality of the instrument is to set an objective for the gender composition of company boards that leaves sufficient flexibility for shareholders to select the candidates of their choice. An objective of 40% would seem to leave a sufficient margin of choice, as 50-50 equality may be difficult to achieve in practice, while being ambitious enough for creating a situation of *de facto* equality. As from that threshold one sex can no longer be considered as underrepresented.

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<sup>62</sup> Case C-476/99 *Lommers*, paragraph 39.



Moreover, the instrument would have to respect the case-law of the Court set out above defining the conditions under which positive action can be accepted. Concretely, the instrument can only give priority to equally qualified female candidates over male candidates. Furthermore, it must not give automatic and unconditional priority to equally qualified candidates but has to include a 'safeguard clause' which includes the possibility of granting exceptions in justified cases which take into account the individual situation of all candidates.

If these conditions are respected, the limitation to Article 21 (1) of the Charter will be proportionate and not go beyond what is necessary to achieve the aim of *de facto* equality between women and men in decision-making bodies of companies. In addition, such a measure would have a beneficial impact in that it would promote the fundamental right enshrined in Article 23 of the Charter.

### 7.3. Article 16 on the freedom to conduct a business

#### *Article 16*

#### **Freedom to conduct a business**

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

The freedom to conduct a business, provided under Article 16 of the Charter, is based on the Court's case-law which has recognised the freedom to exercise an economic or commercial activity<sup>63</sup> and the freedom of contract<sup>64</sup> and on Article 119(1) and (3) TFEU, which recognises free competition.

The freedom to conduct a business is a fundamental economic freedom, and one that is central to the principles of a liberal market economy upon which the EU was founded. The notion of 'business' is deliberately broad, and includes a very wide range of economic or commercial activities, including both small local businesses run by self-employed and large corporations operating internationally.

It is also important to note that Article 16 provides that this freedom is recognised "in accordance with Union law and national laws and practices", making this right subject to other principles of law in the European and national legal orders, including the principle of equality between men and women.

The right to decide how and by whom a company is managed or supervised is intrinsically linked to the quality of owner/shareholder of a company and must be seen as part of the freedom to run a business. The instrument, if it takes the form of binding objectives for the gender composition of company boards, would affect the entrepreneurs' and/or shareholders' right to freely appoint members of the company board and thereby have the effect of restricting their freedom to conduct a business, i.e. a negative impact on the right in Article 16.

<sup>63</sup> See judgments of 14 May 1974, Case 4/73 *Nold* [1974] ECR 491, paragraph 14, and of 27 September 1979, Case 230-78 *SpA Eridiana and others* [1979] ECR 2749, paragraphs 20 and 31.

<sup>64</sup> See, *inter alia*, judgment of 16 January 1979, Case 151/78 *Sukkerfabrikken Nykøbing* [1979] ECR 1, paragraph 19, and judgment of 5 October 1999, Case C-240/97 *Spain v Commission* [1999] ECR I-6571, paragraph 99.

Indeed, setting up a numerical objective on the gender composition may limit in certain situations the pool of candidates for the positions in question and the shareholders could be required to appoint board members they would not have otherwise chosen (e.g. if the shareholders would prefer to appoint an all-male board).

In accordance with Article 52 of the Charter, any such restriction of the freedom to conduct a business would have to be provided by law and to respect the essence of the freedom and the principle of proportionality. The principle of proportionality requires that limitations be made only if they genuinely meet objectives of general interest recognised by the Union. Moreover, the measure must be appropriate to achieve the objective of general interest or to protect the rights and freedoms of others, the measure must not go beyond what is necessary to achieve this objective, and there should be no less restrictive alternative measures to achieve this objective.

It is clear that the measure in question pursues an objective of general interest since, as explained above, it aims at promoting equality between women and men as enshrined in Article 23 of the Charter and the aim of redressing a pre-existing situation of inequality has been accepted as a legitimate objective of differential treatment by the Court.

The proportionality of the limitation of the freedom to conduct a business would have to be ensured through the following means:

- a targeted scope of the instrument: it would only apply to listed companies and would explicitly exclude small and medium-sized enterprises (SME) from its scope, even if they are listed<sup>65</sup>. Thereby it would only target relatively large companies with a widespread net of shareholders, who tend to have larger boards and therefore more leeway to accommodate gender requirements for board members. They will be able to search for appropriate female candidates for board positions, possibly with the professional help of executive search firms, in a wider pool of candidates. Meeting the gender requirements therefore constitutes less of an obstacle for listed companies than for other companies, where family ties often play an important role in the appointment of board members. The instrument would therefore not apply to companies where the limitation to the right to conduct a business would have the most intrusive effect.
- not providing for a ban or prohibition of certain kind of activities or regulating the business model of the companies concerned: the instrument only concerns a particular aspect of the organisation of the management of the supervision. Contrary to what was at stake in the cases *Scarlet extended*<sup>66</sup> and *Sabam*<sup>67</sup> where the Court concluded to a violation of the freedom to conduct a business, the measure envisaged does not require establishing a costly and complicated system,

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<sup>65</sup> This differentiation between companies could in itself raise a question of unequal treatment on grounds of legal status or size and therefore possibly discrimination within the meaning of Article 21 of the Charter (as its list of possible discrimination grounds is not limited). However, company law in general applies different rules to different types of companies, and in particular to listed companies, which generally face more legal requirements in view of their level of responsibility towards shareholders and the economy in general. Moreover, the protection of SMEs from administrative and other burdens in order not to hinder their development is enshrined in EU law. There is therefore a broad margin in discretion in defining the precise scope of the instrument in view of both its effectiveness and proportionality.

<sup>66</sup> See judgment of 24 November 2011, Case C-70/10, *Scarlet v SABAM*.

<sup>67</sup> See judgment of 16 February 2012, Case C-360/10, *SABAM v Netlog*.

at the expense of the company, for carrying systematically a particular task. The interference would consist in limiting (and not eliminating), in certain specific situations, the discretionary power to choose the members of the board. This as such does not represent a specific cost affecting directly the business model of the companies.

- limiting the interference with decision on boards members: the measure would not interfere with the concrete choice of individual board members from a potentially very wide pool of male and female candidates and there would be in addition a 'saving clause' which allows to depart from the rules in cases where equally qualified candidates from the underrepresented sex could not be found. The instrument would not exclude any particular candidates for board positions, nor would it impose any individual board members on shareholders. The compliance with the requirements resulting from the Court's case law guarantees that qualification remains the decisive criterion for the selection of board members and that shareholders do not have to lower or modify their qualification standards. The instrument would thus fully respect the essence of the freedom to conduct a business and to choose the persons managing and supervising the company.

The limitation of the fundamental freedom would further be eased if the instrument focused on those board members who are not involved in the daily management of the company but rather in charge of supervisory tasks. While non-executive directors are important actors in corporate governance as they have a say on the strategic orientation of an enterprise and perform essential control functions, they are not involved in the day-to-day running of operations. Restricting the binding gender objectives to non-executive directors would further alleviate the limitation of the freedom to conduct a business.

Finally, and more generally, it should be noted that the freedom to conduct a business is limited by numerous legal instruments at EU and national level in the field of company law, labour law, environmental law, competition law etc., which often directly interfere with the way businesses are run. These include rules on the legal form of companies, their registration, the structure of management and supervisory bodies, qualification requirements for certain positions, accounting and reporting, information and consultation of workers (works councils etc.) and, in several Member States, rules on the membership or presence of worker representatives in management or supervisory boards.

Compared to these rules and their degree of interference with the freedom to conduct a business (which has to be seen in the light of the objectives they pursue), an instrument that lays down requirements for the overall gender composition of boards but does not interfere with the concrete choice of individual board members, and that is moreover mitigated by a 'saving clause' (as explained above), would not constitute a disproportionate restriction of the fundamental freedom, in particular if considered in light of the important objective to improve equality between men and women in economic decision-making positions.

#### 7.4. Article 15(1) on the freedom to choose an occupation and right to engage in work

*Article 15*

##### **Freedom to choose an occupation and right to engage in work**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

[...]

The right to work is mainly based on the Court's case-law<sup>68</sup> and is meant to ensure that all persons are free to engage in work and to share the benefits that flow from it, both in terms of securing an adequate standard of living for themselves and promoting economic prosperity in general. Another way of understanding the right to work is to ensure that nobody is excluded from participation in the economic sphere<sup>69</sup>.

In practical terms, the right to engage in work and to pursue a freely chosen or accepted occupation does not require Member States to provide EU residents with work or even the opportunity to obtain work. The State is only under an obligation to guarantee the freedom to work, i.e. by regulating a free market for the provision of labour, goods and services. Instances of this kind of regulation may include positive legislation to promote access to employment, e.g. prohibiting discrimination on the grounds of ethnicity, gender, disability, etc. In this regard, the promotion of a high level of employment is enshrined among the tasks assigned to the Union (Article 3 TEU and Article 9 TFEU). As such, improving access to employment facilitates the completion of this objective.

The freedom to choose an occupation also encompasses a person's right to choose a career path and the freedom to progress in their career to positions of responsibility. This principle applies both to employed workers and self-employed persons or persons in other forms of occupation. It allows persons to freely compete for any position and guarantees that one's application shall be objectively assessed without biases.

An instrument pursuing the objective of a gender-balanced composition of company boards would strongly contribute to breaking the "glass ceiling" that currently hampers the career progression of many women, due to a male-dominated business culture and intransparent selection procedures, and despite excellent qualifications of many female candidates for such positions. It could therefore reinforce the freedom of women to choose an occupation, as a whole range of senior management positions and new career opportunities would become accessible to them, whereas, under the present circumstances, the social bias would prevent them from attaining such a position. Such binding objectives could thus have a complementary effect with the prohibition of discriminatory practices in occupation and employment.

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<sup>68</sup> See, *inter alia*, judgments of 14 May 1974, C-4/73, *Nold*, and of 13 December 1979, C-44/79, *Hauer*.

<sup>69</sup> Judgment of 15 December 1995, C-415/93, *Bosman*.

Furthermore, it is unlikely that the instrument would produce the adverse effect of restricting the right of men to choose an occupation. Indeed, the establishment of gender objectives for company boards would merely affect a restricted number of positions and would not automatically disqualify male candidates when applying for these positions. It also has to be noted that, in respect with Court's case-law as regards the lawfulness of positive action in EU law (see above in section 1.1), applications from male candidates must be objectively assessed in any case, the priority accorded to female candidates shall only be given in case of equally qualified candidates, and shall be overridden where one or more of those criteria tilt the balance in favor of the male candidates. As such, male candidates shall neither be automatically nor unconditionally excluded when applying for senior management positions.

Therefore, while having a beneficial impact on the right of women to seek an occupation as members of company boards, the instrument would not have a negative effect on men's exercise of this fundamental right.

### 7.5. Article 17(1) on the right to property

*Article 17*

#### **Right to property**

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

[...]

The right to property is based on Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and has been recognised as a fundamental constitutional right in all Member States of the EU. As such, it has been repeatedly confirmed as a fundamental right in the case-law of the Court (*Nold* and *Hauer* judgments)<sup>70</sup>.

Article 17 of the Charter specifically protects the right to peaceful enjoyment of one's lawfully acquired possessions, including the right to have, use, dispose of, pledge, lend, and even to destroy one's belongings. The term 'possessions' has been interpreted broadly. It includes all 'real property' (i.e. land and interests in land), chattels (i.e. any thing or moveable property) and also acquired rights involving economic interests such as shares<sup>71</sup>, patents, fishing rights, alcohol licenses, planning consent, the ownership of a debt, and even commercial goodwill.

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<sup>70</sup> See footnote 11. The Court also stressed that it would be legitimate to set up certain limits to these rights, justified by goals of general interest pursued by the Union, provided that the substance of these rights was not affected. The Court distinguished between measures of deprivation of property and measures of restriction on the use of property. Although the Union could not be prevented from a possibility to control or restrict the use of property in a context of common market regulation, the Court examined whether the restrictions corresponded to the general interest and were not a disproportionate interference in the rights of the owner.

<sup>71</sup> Eur. Comm. H.R., *Bramelid and Malmström v. Sweden*, (dec.) 1982, DR 29.

Article 17 nonetheless allows public authorities to interfere with individual property rights: deprivation of property is possible so long as it is "in the public interest" and subject to "fair compensation". Similarly, it is permitted to regulate the use of property by law "insofar as is necessary for the general interest". Moreover, Member States will be responsible only for interferences which affect the economic value of property.

The first sentence of Article 17(1) provides protection for the right to property in situations not covered under the second and third sentence, which constitute the exceptions. The third sentence includes the regulatory possibility to control the use of property. The use of property is a general term which covers various kinds of interference with property that are considerably milder than deprivation and thus subject to less strict conditions, depending on the specific degree of interference, in line with the principle of proportionality.

The instrument might restrict the shareholders' voting rights with regard to the appointment of company board members in a way that is similar to the limitation of their freedom to conduct a business (see above in section 1.2). The right of shareholders to vote freely in general meetings of public limited companies can be considered as expression of their property rights on their shares which confer upon the shareholders the possibility to make use of them as they see fit.

It is important to note that if such a restriction affected the use of property, it would certainly not constitute deprivation of property. It is generally accepted that restrictions on the use of property have a much less severe impact than deprivation. Moreover the restriction concerns only one aspect of the property right, as other voting rights, the right to a dividend or other advantages for shareholders as well as the right to sell or otherwise dispose of the share would not be affected in any way.

As mentioned above, Article 17 stipulates that the use of property may be regulated by law in so far as is necessary for the general interest. The promotion of women in company boards, due to their current and significant underrepresentation, clearly constitutes an objective of general interest in the light of the fundamental principle of gender equality (see above in section 1.1).

Moreover, similarly as for the right to conduct a business, the voting right attached to the property of the share would only be restricted in a very light way, as only the overall composition of the board would be regulated, without any interference in the choice of individual candidates. Reference can be made to the more detailed considerations in section 1.2 above.

Finally, in the cases of listed companies (which usually have the legal form of public limited companies, with a very large number of owners of shares), the actual role of individual shareholders in the management of the company is very limited, and their right of property to shares rather consists in the right to receive payment of dividends and the right to sell the share at any given moment.

The limitation that the instrument would impose the shareholders' right to property would therefore seem necessary and proportionate to the objective pursued, and would fully preserve the essence of the right.

## 7.6. Article 47 on the right to an effective remedy

*Article 47*

### **Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

[...]

Article 47 combines protection for two formerly distinct rights: the right to a fair trial and the right to an effective remedy before a court. Recognised by the Court as a general principle of Union law<sup>72</sup>, the right to an effective remedy also applies to the Member States when they are implementing Union law. The right to access to a court is one of the most basic prerequisites of an effective system of justice.

The right to an effective remedy means in essence that everyone is entitled to a judicial remedy if their rights have been violated<sup>73</sup>. An instrument imposing binding objectives for a gender-balanced composition of company boards would as such not confer any individual, enforceable rights on any particular person. Therefore no general individual remedy for unsuccessful candidates for a board position must be provided.

Nevertheless, if the objective is meant to be binding and to be applied in an equivalent manner across the European Union, the instrument should provide for effective, proportionate and dissuasive sanctions for companies that do not comply with the requirements of the instrument. Naturally, deriving from the principle of the right to an effective remedy, companies that would be targeted by such sanctions should be given the possibility to appeal against these decisions, notably by providing sufficient evidence that in a particular case they exhausted all reasonable means to find qualified directors of the underrepresented sex.

Furthermore, Member States would need to provide judicial remedies for cases where the case-law requirements on positive action have not been respected, e.g. where a male candidate considers that he was more qualified than a female candidate who was given the post. This would require that selection procedures are conducted in a transparent way with clear criteria and that candidates have access to a court.

The instrument would therefore fully respect the right to an effective remedy, as long as Member States provide for effective administrative and/or judicial procedures to appeal against any measures or sanctions that would be imposed pursuant to the provisions of EU law.

## 2. IMPACT OF VARIOUS POLICY OPTIONS ON FUNDAMENTAL RIGHTS

<sup>72</sup> See judgment of 15 May 1986, case 222/84 *Johnston* [1986] ECR 1651; see also judgment of 15 October 1987, case 222/86 *Heylens* [1987] ECR 4097 and judgment of 3 December 1992, case C-97/91 *Borelli* [1992] ECR I-6313.

<sup>73</sup> See judgment of 15 May 1986, case C-222/84, *Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary*; and judgment of 27 November 2001, case C-424/99, *Commission v Austria*.

This chapter will analyse the differences in impact that the five policy options selected for the Impact Assessment would have on the various fundamental rights examined above.

**Option 1:** No further action at EU level (baseline scenario).

This policy option would obviously have the smallest impact on the fundamental rights enshrined in the Charter, or even no impact at least as far as the EU level is concerned. There would neither be a beneficial impact on equality between women and men (Article 23) and the freedom to choose an occupation and right to engage in work (Article 15), nor would there be any negative impact on the freedom to conduct a business (Article 16) and the right to property (Article 17).

Obviously, binding measures or soft regulation in Member States do have an impact on those fundamental rights, but as they would not be implementing Union law, the Charter would not be applicable pursuant to its Article 51(1).

**Option 2:** A Commission Recommendation encouraging Member States to achieve an objective of at least 40% of board members of each gender by 2020 for executive and non-executive directors of listed companies.

The impacts of a Recommendation are difficult to assess in general due to the high uncertainty with regard to how Member States will react to a non-binding measure. This is also true for its impact on fundamental rights.

Nevertheless, to the extent that the Recommendation will achieve its objective of increasing the proportion of women on company boards and in managerial positions in the economy and thereby reducing gender gaps, it will positively contribute to the promotion of the right to equality between women and men in the labour market (Article 23) and of women's freedom to choose an occupation and to engage in work (Article 15).

Inasmuch as action by Member States following up to the Recommendation has to be considered as implementing EU law within the meaning of Article 51(1) of the Charter, Member States would have to ensure that the negative impact on the freedom to conduct a business (Article 16) and the right to property (Article 17) is minimised as far as possible in order to respect the essence of these fundamental rights. As outlined above, the proportionality of these limitations can be ensured.

**Option 3:** A Directive introducing an objective of at least 40% of each gender by 2020 for non-executive directors of listed companies.

A binding objective of 40% for non-executive directors backed by proportionate sanctions would certainly achieve the intended objective of bringing more women into economic decision-making positions and therefore also have a clear beneficial impact on equality between women and men (Article 23) and on women's freedom to choose an occupation and right to engage in work (Article 15).



It clearly also represents a limitation to the freedom to conduct a business (Article 16) and the right to property (Article 17) of owners and shareholders of companies in that it restricts their right to determine by whom the company is managed and supervised. However, as argued above in sections 1.2 and 1.3., such limitation still respects the principle of proportionality since it leaves a sufficiently wide margin of choice for selecting board members and does not go beyond what is necessary to achieve the intended objective. Companies do not face restrictions in defining qualification requirements and in the appointment of the best qualified candidates and the instrument only affects the overall gender composition of the body. Moreover, the limitation is lighter if the binding objective only covers non-executive directors who are not involved in day-to-day management tasks.

**Option 4:** A Directive introducing both a) an objective of at least 40% of board members of each gender by 2020 for non-executive directors of listed companies and, in addition to option 3, also b) a flexible objective for executive directors of listed companies.

The impact on fundamental rights of this option would be very similar to option 3. As a result of a not too prescriptive provision acting as an incentive for companies to raise their share of female executive directors and thereby bring more women into the highest management posts, the beneficial impact on promoting equality between women and men (Article 23) and on women's freedom to choose an occupation and right to engage in work (Article 15) could be even more substantial.

At the same time, the negative impact on the freedom to conduct a business (Article 16) and the right to property (Article 17) of owners and shareholders of companies would not increase, as each company would be free to set their own objective and only the company's own ambition would determine the extent of its duties.

**Option 5:** A Directive introducing an objective of at least 40% of board members of each gender by 2020 for executive and non-executive directors of listed companies.

The positive impact on gender equality (Article 23) and on women's freedom to choose an occupation and right to engage in work (Article 15) would undoubtedly be strongest for this option, which extends the binding objective of gender composition to executive directors of listed companies. It would achieve the furthest-reaching and most sustainable change in management and business culture, with the strongest positive effects for the position of women on the labour market.

As argued above in sections 1.2 and 1.3., the limitation to the fundamental freedom to conduct a business (Article 16) and the fundamental right to property (Article 17) of owners and shareholders of companies would be more significant if gender equality considerations would limit the choice of those persons who run the enterprise on a daily basis and decide on important business transactions.

Nevertheless, other restrictions of these fundamental rights in company law, labour law, environmental law etc. would not make this limitation appear disproportionate, especially given the importance of the intended aim of gender equality which is recognised both in the Charter and the Treaties. It can, however, be argued that such

limitation needs in any case to be mitigated by a 'saving clause' which allows departing from the binding gender objective where equally qualified candidates of the underrepresented sex cannot be found, e.g. in sectors where female participation in the workforce and management is particularly low and for executive positions which require specific expertise and experience in that sector. Policy makers would have to consciously take into consideration the extent of the restricting shareholders' fundamental rights when choosing this option.

## 8. ANNEX 8: BACKGROUND ON METHODOLOGY OF CALCULATION OF THE IMPACTS

### 8.1. Assessing the Effectiveness

#### 8.1.1. *Calculating the impacts of policy option 2 on female presence in company boards*

Policy option 2 would be a Recommendation encouraging Member States to introduce appropriate measures (binding or non-binding) to achieve a target of at least 40% of board members of each gender by 2020 for executive and non-executive boards/board members of listed companies

Recommendations are not legally binding on Member States. This policy option would hence leave it to the discretion of each government to choose its own level of compliance. In particular, Member States will decide whether to:

- Follow the Recommendation and introduce binding measures;
- Follow the Recommendation and introduce non-binding measures;
- Not follow the Recommendation.

Naturally, the impact of the policy option would materialise only in those Member States which decide to follow the Commission Recommendation.

While it is not possible to establish with any certainty how national governments would react to the introduction of an EU level Recommendation (predictions should thus not be viewed as prescriptive), the assumptions were based on assessment of the following factors:

The **current national policy framework** in a given Member State with respect to gender quotas in corporate boardroom, in the public sector or in state-owned companies, namely whether the Member States has introduced any binding or non-binding policy to increase the number of women in corporate boards and the **existence of a proposal for gender quotas** in corporate boards which has been discussed at the national level.

On this basis, **the following reactions** of Member States<sup>74</sup> can be identified:

- (1) Member States that have not introduced any type of measure to ensure gender equality in boards of listed companies, public companies or state-owned companies<sup>75</sup> are assumed to be highly likely not to adopt the Commission Recommendation.

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<sup>74</sup> Changes in Member States' situation have only been taken into account until December 2011

<sup>75</sup> These include Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Romania, Slovakia and Slovenia

- (2) Most of the Member States that have introduced measures (binding or non-binding) on gender equality in the board of public sector companies, in the board of state-owned companies or on corporate boards of listed companies are assumed to stay at the level of their current national measures and not adopt any additional measures following the Commission Recommendation (Policy Option 2).
- (3) 5 Member States are assumed to be likely to adopt non-binding measures following the Commission Recommendation (Policy Option 2). This is however a highly uncertain assumption. In the past – as has been shown for the baseline scenario - recommendations at EU level have not had a measurable impact. However, as currently the discussion on measures how to achieve better gender balance in boards of companies has some momentum in certain Member States, the assumption that 5 Member States will react seems a realistic optimism.
- (4) 2 Member States will take binding measures. Again, considering the effect of previous recommendations at EU level, this seems optimistic.

#### **Non-executive directors:**

Where **non-binding measures are introduced at the Member State level**, estimates on the effect of this recommendation on female presence in corporate boards have been based on progress made in countries where non-binding measures to improve gender equality in corporate boards have been introduced. Of all the Member States, which have introduced non-binding measures to increase the number of women on boards of listed companies, the UK has been the only country to set a specific target. For this reasons, UK figures are used as a basis for extrapolation for the 5 Member States that take non-binding action.

In the United Kingdom, the corporate governance code sets specific targets that companies should aim to achieve. An *Independent Review into Women on Boards*, led by Lord Davies and concluded in February 2011 (Department for Business Innovation & Skills. 2011), recommends that UK listed companies in the FTSE 100 should be aiming for a minimum of 25% female board member representation by 2015. This recommendation has contributed to accelerated progress in the percentage of women in corporate boards in the United Kingdom. The number of women in executive positions in the UK has increased by 11.11% between October 2010 and January 2012 (25 months)<sup>76</sup> and the number of women in non-executive positions in the UK has increased by 22.22% in the same period<sup>77</sup>. These – rather optimistic - growth rates have been used in order to estimate the possible effects of Policy Option 2 on the percentage of women in corporate boards.<sup>78</sup> It was further assumed that all companies

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<sup>76</sup> From 18 female executive directors to 20 female executive directors between 2010 and 2012 among FTSE 100 companies (Cranfield University 2012)

<sup>77</sup> From 117 female non-executive directors to 143 female non-executive directors between 2010 and 2012 among FTSE 100 companies (Cranfield University 2012)

<sup>78</sup> The effect extrapolated from the UK has been applied as a one-off in the other Member States. Applying it as an annual growth rate over a period of 8 years would in fact result in an overestimation of the effects (e.g. 80% women among non-executive directors by 2020). We have furthermore decided not to assume full compliance with the EC target (40%) under Policy Option 2 and 3 for two main reasons: (a) the target set in the UK Lord Davies report (25%) is different from the EC target (40%) and (b) the UK corporate governance framework is different from other countries' and level of compliance might be higher than in other countries.

in the Member States concerned would set themselves a non-binding target of 40%, which again is probably too optimistic.

As to the two Member States that will introduce binding measures with a 40 target, this probably is also too optimistic.

Therefore, the figures have to be seen only as a highly speculative estimate which is most likely to overstate the likely effect of a recommendation and have to be treated with great caution.

### **Executive directors:**

For this part of the Commission Recommendation it was also assumed that companies following the Recommendation set themselves a target of 40%, which again is probably too optimistic. However, it was assumed that Member States and companies would be less willing to follow this recommendation, because, in general, rules for the management board are assumed to be more difficult to implement. Therefore, for this part of the Recommendation, it was assumed that the effect might be comparable to the effect of PO4 on executive board members (flexiquota), though less significant. As a consequence, it was assumed that, due to the non binding nature of a Recommendation and the fact that only a few Member States will take action, the recommendation would only have one tenth of the effect of PO 4 on the number of executive board members (see further explanation for PO4 below). This would mean that only one out of ten companies replaces a male by a female executive board member.

#### *8.1.2. Calculating the impacts of the other policy options*

For the other options, it was assumed that Member States will comply with binding measures. Therefore, for **PO 3 and 5** the effect of the policy option was calculated as the difference between the target set in the policy option and the percentage of board members who would be female in 2020 (baseline scenario).

For **PO4** which is a combination of a target and a ‘flexiquota’ a combination of the approaches was used.

**Executive directors:** Listed companies across Europe will be required to set their own individual targets for female presence in the executive board. Once the target has been communicated to the relevant national authority, should the company not comply with it, sanctions will apply. The flexible quota set by individual companies is likely to depend on:

- The current female representation on boards;
- the sector in which the company operates;
- the existence of a talent pool of women to be promoted to board position; and
- company performance before the introduction of the quota.

A small number of listed companies across Europe have introduced voluntary and independent initiatives to increase female participation in board. Among these, approximately half have set specific targets (mainly for non-executive board members), which tend to vary from doubling female presence in corporate board to maintaining the current share of women or ensuring that at least one woman sits on the board.

On this basis, and due to the lack of consistency across listed companies, it was decided to predict the effects of the policy option using a “conservative” estimate. Taking the average board size (8.31 members in the scenario excluding SMEs) and average number of female directors (1.1) as starting point, we assume that under a flexi quota, each company would replace one man with one woman (leaving the average board size unchanged<sup>79</sup>). This results in nearly doubling the number of females from 1.1 to 2.1.

For the **non-executive directors**, it was assumed that Member States would comply with a 40% target.

### 8.1.3. Assessing the impacts on company performance: corporate governance

Research shows that companies with more women on their boards have better corporate governance. Based on 26 studies relevant to this purpose, the following **nine non-financial performance dimensions were identified**, which appear to be positively affected by female presence in corporate boards. The corporate governance indices, which were developed by governance rating firms, include several hundred factors, designed to help evaluate the quality of corporate boards and the impact their governance practices may have on performance. Notwithstanding the challenges around disaggregating complex governance mechanisms into a single integrated yet informative indicator, Ertugrul and Hegde (2009) have identified seven key dimensions of dynamic governance structures which provide positive and reliable evidence of their information content in predicting the multiple dimensions of firm performance. These are outlined in the table below and linked to specific non-financial performance dimensions.

Table 2: Overview Corporate Governance Indicators – Female Performance

Non-financial Performance Dimensions	Corporate Dimension	Balanced Score Card Dimension
Accountability, risk and audit	Accounting	Business Process Perspective
Monitoring and Control	Litigation and Regulatory Problems	Business Process Perspective
Innovation and creativity		Learning & Growth Perspective

<sup>79</sup> According to Egon Zehnder International (2010), there has been a declining trend in the average board size over the last decade. For this reason it is assumed that the companies will leave the board size unchanged as opposed to increasing it.

Non-financial Performance Dimensions	Corporate Dimension	Balanced Score Card Dimension
Work environment and values		Learning & Growth Perspective
Direction and leadership	Shareholders' Responsiveness	Learning & Growth Perspective
Pay policies	Compensation	Business Process Perspective
Corporate Reputation and Corporate Social Responsibility (CSR)	Shareholders' Responsiveness	Customer Perspective
Improved understanding of the market	Shareholders' Responsiveness	Customer Perspective
Board Dynamics	Board Composition	Business Process Perspective

The next paragraphs present each of the performance indicators separately and discuss:

- the relationship between good corporate governance as defined by the abovementioned dimensions and a company's financial performance, and
- the relationship between greater gender diversity in corporate boards and the performance dimension.

### **Accountability, Risk and Audit**

One of the main tasks of the corporate board is to evaluate individual and company performance to ensure accountability and responsibility for business results. Non-executive directors hold top management and executive directors accountable for company performance. Accountability is associated with positive company performance if expectations and targets are defined clearly and if the achievement of targets is rewarded (McKinsey, 2008). In addition, the audit committee, which is typically composed of non-executive directors, is charged with oversight of financial reporting and disclosure; and, the risk committee, also composed of non-executives, assists the board in assessing the different types of risks to which the company is exposed. However, the relation between risk exposure and company performance is difficult to determine and it is likely to depend on the sector in which the company operates, as well as other factors.

Existing evidence suggests that there is a positive relationship between gender diversity on the board and accountability and audit. According to McKinsey (2008), women use leadership behaviours such as expectations and rewards more frequently than men. Thus, they set clear targets for top management and for the company in general and they reward their achievement more frequently than men do. Similarly, according to the Association of British Insurers (ABI, 2011), boards with better gender balance pay more attention to audit and control. Female auditors are associated with higher audit fees than male auditors, suggesting that they are attributed a higher value (Peni, 2012).

The evidence on the relationship between gender diverse boards and risk is instead mixed. While the Association of British Insurers (2011) concludes that boards with better gender balance pay more attention to risk oversight, Miller and del Carmen (2009) and Adams and Funk (2011) conclude that female directors are slightly more risk loving than male directors. This suggests that having women on the board does not lead to more risk-averse decision-making.

### **Monitoring and Control**

In their capacity as ‘guardians’ of the corporate good, non-executive directors monitor executive actions, question executive decisions and are required to ensure that the company is acting in a ‘responsible’ way and in the best interests of the shareholders and other stakeholders (Pass, 2002). Monitoring and control are thus one of the main responsibilities of the non-executive board and, in particular, of the monitoring committees. Both monitoring and control influence company financial performance as they allow the identification of possible errors and gaps and the development of any possible corrective measure needed.

According to the evidence, there is a positive relationship between female presence on board and monitoring and control. Watson et al. (1993) and Fondas and Salsalos (2000) argued that diversity in board composition via greater female representation would improve the board’s monitoring role in protecting shareholder interests by better top management control, reducing agency costs. Board with better gender balance appear to be better at explicitly identifying criteria for measuring and monitoring the implementation of corporate strategy as compared to all male boards (ABI, 2011). Moreover, women are more likely to join monitoring committees on non-executive boards, suggesting that if the number of women on the board increases, more efforts would be allocated to monitoring (Adams and Ferreira, 2009). However, Adams and Ferreira (2009) also stress how gender diversity on the board has beneficial effects in companies with weak shareholder rights, where additional board monitoring could enhance firm value.

### **Innovation and Creativity**

Another important non-financial indicator of company performance is the level of innovation and creativity. A flow of ideas would allow the company to adapt to the ever-changing market dynamics and face upcoming challenges (McKinsey, 2008), ultimately leading to improved company performance. Board members need to be involved in the initiation and implementation phases of the strategic process in order to affect innovation (Torchia et al., 2011). In addition, they should identify strategies that provide new opportunities for the firm to create products or services. Intellectual stimulation is particularly important in order to challenge assumptions and encourage risk taking and creativity (McKinsey, 2008). Similarly, teamwork and the introduction of a new perspective within the board or top management team will contribute to a more innovative environment (Dezsö and Ross, 2011).

Gender diversity in corporate boards is positively related to innovation. According to Torchia et al. (2011) going from one or two women to at least three women on the board enhances the level of firm innovation. There are two main reasons for this: firstly, female management style favours teamwork (Dezsö and Ross, 2011) and



intellectual stimulation (McKinsey, 2008), which are the main drivers of innovation; secondly, women on the board bring new perspectives, which lead to innovation. While the first explanation relates particularly to female management style, the second explanation relates more broadly to the fact that heterogeneous groups produce a broader range of ideas and information, because they contain a diverse body of knowledge (Miller and Triana, 2009). Thus, in the second case, it is not gender diversity but diversity in general that brings new perspectives that lead to innovation (Teigen, 2010b).

### **Work Environment and Values**

Work environment and values influence company performance, as they affect labour force productivity. According to McKinsey (2008), a well-functioning company should shape employee interactions and foster a shared understanding of values. In this sense, it should also inspire and encourage employees to perform and stay. Finally, it should ensure that the right internal skills and talent to support strategy are identified. Top management and executive board members play a key role in creating a productive work environment, setting the right values, communicating them to the workforce and motivating the staff. In particular, in order to have a positive impact on work environment and values in the company, the top management should build a team atmosphere in which everyone is encouraged to participate in decision-making ('participative decision-making', McKinsey, 2008). Moreover, they should spend time teaching, mentoring, listening to individual needs and concerns ('people development', McKinsey&Company, 2008).

Gender diversity generally leads to improvements in workers motivation and loyalty (Brammer et al., 2009), as it helps bring closer the company, its employees, its shareholders and its customer (McKinsey, 2007). According to a study conducted by the European Commission (2003), diversity programmes have had a positive impact on employee motivation for 58% of the companies that have implemented them. More specifically, the leadership style of women in top management or executive board positions is conducive to more productive work environment and values (McKinsey, 2008). For this reason, having three or more women on the board would help improve the company's work environment and values. This appears to be related to the fact that women apply leadership styles such as people development and participative decision-making more frequently than men do. The role of female directors as providers of much-needed mentoring for more junior colleagues has often been cited as a spur for employees endeavour to reach their career goals within the firm (Brammer et al., 2009).

### **Direction and Leadership**

A company's financial performance is driven by the choices and the leadership of its top management. Executive and non-executive directors should shape and inspire the action of others to drive better company performance. They should also articulate where the company is heading, instruct the team on how to get there and align employees to these goals. In this sense, the leadership style of executive and non-executive board members can influence company performance. In particular, directors should a) act as role models, b) present a compelling vision of the future and inspire

optimism about its implementation (inspiration) and c) communicate effectively and efficiently with charisma (McKinsey, 2008).

Gender diverse boards play a more active role in setting the strategic direction of the company (Brown et al, 2002), thus contributing to better company performance. It appears that female executive and non-executive directors add organisational value through the quality of their decision making, because they add (Insync Survey, 2010): fresh thinking and wider debate; increased focus on problem solving; more productive discussion and greater unity; increase conscientiousness; and greater self-reflexivity.

Thanks to their leadership style, female directors bring specific advantages to board decision-making, particularly when it comes to boards' strategic tasks, such as setting the direction of the company (Nielsen and Huse, 2010). Women in fact use leadership style such as role model and inspiration more frequently than men, while men tend to use efficient communication as frequently as women (McKinsey, 2008).

### **Compensation Policies**

Compensation of directors and CEO is crucial to company performance, because performance pay in particular is an important mechanism to ensure that directors and managers act in the interests of shareholders (Adams and Ferreira, 2009). The remuneration committee, composed primarily of non-executive directors, is usually in charge of establishing pay policies, in particular when it comes to bonus structures for executives and top management.

Evidence suggests that gender diverse boards are more likely to design remuneration packages and incentives structures, which drive strategy and performance (Campbell and Minguez-Vera, 2008 and Insync Survey, 2010). Boards that are gender diverse have a greater propensity to interrogate the structure of remuneration packages and the incentive capacity of remuneration packages to drive strategy and performance (Campbell and Minguez-Vera, 2008). This appears to be related to the fact that women define expectations and responsibilities more clearly than men and they also reward the achievement of targets more consistently than men (McKinsey, 2008). If gender-diverse boards take a more critical and broader view on remuneration and incentives schemes, one would expect that, over time, those boards will embed improvements in the alignment of remuneration with strategy (Insync Survey, 2010). A better alignment of company goals and employee objectives results in highly incentivised employees helping the company achieve its targets, and ultimately driving company performance.

### **Corporate Reputation and Corporate Social Responsibility (CSR)**

Corporate Social Responsibility (CSR) refers to a relatively broad category of actions for instance, firm activities benefiting community or social concerns, protecting the environment and the like (Miller and Carmen, 2009). Reputation is the perceptual representation of a company's past actions and future prospects that describe the firm's overall appeal to all its key constituents when compared to other leading rivals (Fombrun, 1996). CSR initiatives are usually promoted by the board; corporate reputation is influenced by the direction and leadership style of executive and non-executive board members. Moreover, CSR is usually a mediator of company

reputation (Bear et al, 2010). Both CSR (directly or as a mediator) and company reputation can affect the company's attractiveness and customer loyalty, ultimately affecting market share.

The evidence suggests that there is a positive relationship between female presence on corporate boards, corporate social responsibility (CSR) initiatives and corporate reputation. Women on board are more likely than men to be support specialists or community influential; hence, having more women on the board may increase the number of CSR initiatives. This is supported by evidence that firms with a higher percentage of female board members have a higher charitable giving (Bear et al, 2010). Miller and del Carmen (2009) also confirm this by arguing that, because female directors care less about power and more about universalism than male directors, gender diverse boards consider stakeholders interests more broadly. Finally, female directors embrace values that precede ethical decisions more strongly than male directors (Miller and del Carmen, 2009). The positive relationship between female representation in corporate boards and CSR also suggests that a higher percentage of women in the board might have a positive impact on corporate reputation. CSR is in fact a mediator of corporate reputation (Bear et al., 2010). While confirming the reputation effect associated with a female presence at board level, Brammer et al. (2009) argues that this effect varies across sectors. There is an indication that the presence of women on the board is favourably viewed only in those sectors that operate close to final consumers. For instance, the relationship between female presence in board and corporate reputation is positive in the consumers' good sector but negative in the banking sector. This demonstrates the influence of a firm's stakeholder environment in determining whether a female presence on the board enhances or harms the reputation of the firm (Brammer et al., 2009).

### **Understanding of the Market**

The understanding of the market is a key driver of company performance. In order to increase the market share, the company governance needs to engage in constant two way interactions with customers, suppliers and other partners (McKinsey, 2008) to understand needs, requirements and demand trends. Ultimately, this would affect the company image and its ability to reap market share.

Women may have a better understanding of certain market segments, which may improve the creativity and quality of the decision-making (Singh and Vinnicombe, 2004). For instance, women now have a major influence on purchase decisions: in Europe, they are the driving force behind more than 70% of household purchases, including some traditionally male-dominated fields such as car purchase or PC purchases (McKinsey, 2007). In order to successfully capture the relevant markets, it would make business sense to include women in the strategic decision making of the company. This evidence is also supported by the fact that diversity programmes have had a positive impact on customer satisfaction for 57% of the companies that have implemented them, while 69% of the companies noted an improvement in their brand image (European Commission, 2003).

### **Board Dynamics**

Board dynamics influence the way a company is managed and run, its direction, leadership, goals and market position. The most relevant board dynamics include board governance, attendance, motivation, conflict management, integrity, clarity of roles and responsibilities and, finally, the influence of board decisions on company management.

As suggested in the previous paragraphs, the presence of three or more women on the corporate board might positively impact company non-financial performance, such as accountability, work environment and values, understanding of the market, etc. This is due to the fact that female directors exert influence on board decisions and dynamics through: (a) their non-traditional professional experiences (Hillman et al., 2002; Singh, Terjesen and Vinnicombe, 2007) and (b) their different values (Selby, 2000). Accordingly, Nielsen and Huse (2011) argue that the impact of female board members on board decision-making and effectiveness depends not on their gender per se but rather on the prior professional experiences and particularly the values they bring along. In particular, women's presence on the corporate board is associated with a lower level of detrimental conflict in the boardroom (Nielsen and Huse, 2010). Women have better board attendance record and prepare more thoroughly for board meetings, possibly leading to better decision making (Adams and Ferreira, 2008).

Table 3: Qualitative Analysis – Impact of Gender Diversity on Non-Financial Company Performance

Dimension	Definition	Keywords	# Studies	Relationship	Case Study Evidence
<b>Accountability, Risk &amp; Audit</b>	Evaluate individual and company performance to ensure accountability and responsibility for business results.	Accountability, Audit, Risk oversight, Audit fees	4	All studies confirm a positive relationship between more gender-diverse boards and accountability. Boards with better gender balance pay more attention to audit, risk oversight and control. A study shows that female auditors <sup>80</sup> diligence and higher level of preparation are associated with higher audit investment and higher audit fees. The evidence on the relationship between gender diverse boards and risk is mixed.	Three case studies support the secondary research evidence. The responses confirm a positive relationship between more gender-balanced boards and accountability.
<b>Monitoring &amp; Control</b>	Measure and evaluate business performance and risk.	Number of 10K investigations, Monitoring, Control, quality of financial reporting,	5	Four out of five studies confirm a positive relationship between more gender-diverse boards and better coordination and control. A positive	Four out of five case studies support the secondary research evidence. The responses confirm that more gender

<sup>80</sup> Female board members with audit specialisation

Dimension	Definition	Keywords	# Studies	Relationship	Case Study Evidence
				<p>relationship between firms with female CEOs and CFOs and the quality of financial reporting was also verified.</p> <p>One study shows a negative relationship between gender-diverse boards and monitoring. In some instances, such boards are inclined to overcontrol and ultimately decrease firm's value. Gender diverse boards appear to be particularly valuable for firms with otherwise weak governance.</p>	<p>balanced boards can positively affect the monitoring and control of the company. The Norwegian case study respondents think no relationship exists between having more women on board and the monitoring of a company.</p>
<b>Innovation and Creativity</b>	<p>Generate flow of ideas that the company adapt.</p> <p>Identify new market perspectives.</p>	Innovation, Creativity, New perspectives, External Orientation	5	All studies confirm a positive relationship between more gender-diverse boards and innovation in the company. Diversity generates new perspective and brings creativity into the board. The innovation sector seems to be particularly positively affected by higher female presence.	<p>Three out of four case studies<sup>81</sup> support the secondary research evidence. The responses confirm that more gender balanced boards can improve company thinking about further market opportunities. The German case study respondents think more gender balanced boards might have a negative impact on innovation.</p>
<b>Work Environment &amp; Values</b>	<p>Shape employees interactions, generate discussions through team work and foster a shared understanding of</p>	Work environment and values, team work, discussions, organizational value	6	All studies confirm a positive relationship between more gender-diverse boards and work environment. Female managers seem to have different styles of contribution which add value to the team work and foster unity.	All case studies support the secondary research evidence. The responses confirm that more gender balanced boards can positively affect working relations, working

<sup>81</sup> No answers were provided by other countries.

Dimension	Definition	Keywords	# Studies	Relationship	Case Study Evidence
	organizational values.			Having more women on boards can lead to more board agenda discussions and ultimately, enhance the organizational value.	conditions and the communication with employees. The French case study respondents think that women are more emphatic than men, caring more about relationships with employees than men.
<b>Direction &amp; Leadership</b>	Ensure leaders shape and inspire the actions of others to drive better performance.	Direction, board operational control, board strategic control, decision making, esteem for chair, leadership team, leadership	4	All studies confirm a positive relationship between more gender diverse boards and greater decision making. Women seem to bring in fresh thinking, different styles of contribution and personal capabilities that build unity. Members of diverse boards are more likely to regard their chair as a better manager of boardroom dynamics, as demonstrating greater personal integrity, having a more effective leadership style and conducting a more effective decision making process.	All case studies support the secondary research evidence. The responses confirm that more gender balanced boards can have positive impact on the strategic direction of a company and leadership. The German case study respondents add that any change in company direction requires the commitment of the top management.
<b>Compensation Policies</b>	Ensure board members' earnings reflect company's performance and personal achievements.	Pay, satisfaction with the connection between remuneration and outcomes on gender diverse boards, earnings, earnings management strategies	3	All studies confirm a positive relationship between more gender-diverse boards and more equity based pay for directors. Gender diverse boards are more critical of the appropriateness of management remuneration and its alignment with performance and they are more questioning of the effective use of remuneration to drive organisation strategy. One study shows that	This dimension was not initially covered by case studies.

Dimension	Definition	Keywords	# Studies	Relationship	Case Study Evidence
				firms with female CFOs follow less aggressive earnings management strategies.	
<b>Corporate Reputation and Corporate Social Responsibility (CSR)</b>	A broad category of actions including firm activities benefiting community or social concerns, protecting the environment, and the like	CRS control, CSR, philanthropy, female executives, potential female board members, women in top management, corporate reputation	9	All studies confirm a positive relationship between more gender-diverse boards and corporate social responsibility strategies. Five studies confirm a positive relationship between more gender-diverse boards and the corporate reputation and the quality of corporate governance. The reputational effect is especially positive in sectors which operate close to final consumers. The effect is negative in producer services and banking sector. Studies show that having gender issues in the CSR strategies positions the organisation in the support for sustained growth, and the payoff extends beyond the company to society. There may also be a feedback cycle in which the presence of more female managers increases the qualified pool of potential female board members leading to greater female board membership and then further increases in female executives. Studies show a positive market reaction to the appointments of female directors. One study shows a negative relationship between more gender-diverse boards and investors'	This dimension was not initially covered by case studies.

Dimension	Definition	Keywords	# Studies	Relationship	Case Study Evidence
				reactions to the announcement of female CEO.	
<b>Understanding of the Market</b>	To engage in constant two way interactions with customers, suppliers and other partners and to understand needs, requirements and demand trends.	Customers, suppliers, interaction, needs and demand trends	4	Studies show that women may have a better understanding of certain market segments, which may improve the creativity and quality of the decision-making.	This dimension was not initially covered by case studies.
<b>Board Dynamics &amp; Governance</b>	The way a company is managed and run, its direction, leadership, goals and market position. Ensure board roles and responsibilities are clearly defined.	Governance, attendance, motivation, conflict, integrity, clarity of roles and responsibilities, influence of board decisions, stock price informativeness , investors' reactions, market reaction to the appointment of female director	7	All studies confirm a positive relationship between more gender-diverse boards and board dynamics. Gender diverse boards are more critical to the appropriate codification of roles and responsibilities of members and chairs. Studies confirm that such boards show better attendance records, more motivations and fewer conflicts.	This dimension was not initially covered by case studies.

Source: Matrix

## Scoring the impact on corporate governance indicators

Table 4: Key Aspects of the Policy Options on Non-financial Performance

Non-financial Performance Dimension	Corporate Dimension	Group		Strength of Relationship (from 1 to 3)
		Executive Directors (or Top Management) (ED)	Non-executive Directors (NED)	



Non-financial Performance Dimension	Corporate Dimension	Group		Strength of Relationship (from 1 to 3)
		Executive Directors (or Top Management) (ED)	Non-executive Directors (NED)	
Accountability, risk and audit	Accounting	-.82	√	1
Monitoring and Control;	Litigation and Regulatory Problems	-	√	2
Innovation and creativity		√	-	1
Work environment and values		√	-	3
Direction and leadership	Shareholders' Responsiveness	√	√	2
Pay policies	Compensation	-	√	2
Corporate Reputation and Corporate Social Responsibility (CSR)	Shareholders' Responsiveness	√	√	2
Understanding of the market	Shareholders' Responsiveness	√	-	3
Board Dynamics	Board Composition	√	√	3

#### 8.1.4. Assessing the impacts on company financial performance

The calculation in this impact assessment was based on data and results presented by Catalyst in research from 2004.<sup>83</sup>

Catalyst assessed the gender diversity and financial performance of Fortune 500 companies from 1996 to 2000. Eleven industry sectors were represented in the sample including: Aerospace & Defence, Consumer discretionary, Consumer staples, Energy, Financials, Health care, Industrials, Information technology/ Telecommunication services, Materials, Pharmaceuticals and Utilities. This list was narrowed to include only those companies for which there existed at least four years of data on financial

<sup>82</sup> As discussed in the previous paragraphs, executive and non-executive board members play different roles and ultimately have various degrees of influence on the different indicators of non-financial performance. In some cases, dimensions of non-financial performance are related to either executive or non-executive directors only.

<sup>83</sup> Catalyst, *The Bottom Line, Connecting Corporate Performance and Gender Diversity*, 2004.

performance (return on equity and total return to shareholders), as well as the gender diversity of the top management team. The final sample included 353 companies.

**Basis for Comparison:** Catalyst divided the companies into quartiles based on the percentage of female representation in their top management teams. Eighty eight companies were categorised as “top quartile” and had an average of 20.3% women in the top management teams. 89 companies were reported as “bottom quartile” and had an average of 1.9% women in the top management teams.

**Financial Performance Indicator:** Financial performance was measured in terms of return on equity (ROE) – i.e. the profit on every Euro invested by the company’s shareholders. The average ROE for top and bottom quartile companies was compared, finding that top quartile companies financially outperformed bottom quartile companies by 35.1%. Top quartile companies, on average, had an ROE of 17.7%, whereas bottom quartile companies had an ROE of 13.1%. The difference between 17.7% and 13.1% was found statistically significant. Using ROE as a measure for financial performance of a company indicates how the value of a company is growing. It is also an accounting indicator, meaning that the inputs to calculate ROE (shareholders equity and net income) are published in the company accounts, allowing for accurate measurement of the indicator.

As a result, Catalyst concludes that companies with the highest representation of women on their top management teams experienced better financial performance than companies with the lowest women’s representation. This finding holds for both financial measures analyzed: Return on Equity (ROE), which is 35 percent higher, and Total Return to Shareholders (TRS), which is 34 percent higher. In each of the five industries analyzed, the companies with the highest women’s representation on their top management teams experienced a higher ROE than the companies with the lowest women’s representation. In four out of five industries, the companies with the highest women’s representation on their top management teams experienced a higher TRS than the companies with the lowest women’s representation.

The data of this study was then adapted to this impact assessment.

**Calculating the Effect Size:** populating the formula below with the estimates provided above in the ‘Basis for Comparison’ and the ‘Financial Performance Indicator’ it was estimated that a 1% point increase in women among board members is associated with a 0.25% point increase in the average ROE. The methodology to obtain this estimate is described below. To calculate the effect size – i.e. the change in ROE associated with a change in the percentage of board member who are female – the following formula was used:

$$\text{Effect size} = \frac{ROE_T - ROE_B}{WOB_T - WOB_B}$$

Where:

$ROE_T$  = ROE of the top quartile = 17.7%

$ROE_B$  = ROE of the bottom quartile = 13.1%

$WOB_T$  = percentage of women in top management teams for the top quartile = 20.3%

$WOB_B$  = percentage of women in top management teams for the bottom quartile = 1.9%

The above effect size was multiplied by the percentage point change in the percentage of board members who are female as a result of the policy options and then added to the average baseline ROE of the companies in each Member State (estimates based on data for listed companies based in the EU27 provided by Standard and Poor's). The results of this calculation shows how the average ROE would be affected after the implementation of the policy options, if all of the differences in performance between companies could be explained by differences in the share of their boards who are women. In the main text, the effect on ROE of assuming that differences in the share of women on company boards account for a smaller share of observed differences in company performance are also shown.

In order to calculate the impact of the policy options on companies' financial performance in terms of the companies' net income the following method was used:

- **Financial data for all publicly listed companies in Europe for the period 2005-2010 was obtained from Standard&Poor's. Data included total assets, total liabilities and ROE.**
- **Financial data reported in currencies other than Euros was converted to Euros using exchange rates published in the EC Financial Programming and Budget website.**<sup>84</sup>
- **Total assets were subtracted from total liabilities to estimate the shareholders equity. From there, shareholders equity was multiplied by ROE to produce an estimate of net income for each company.**

#### 8.1.5. *Assessing the impacts on investment costs*

Investment costs reflect the investment in mechanism to increase participation of women on company boards. Companies can either invest in broadening the talent pool in their company (training, mentoring etc.), or, particularly where there are few women, increase the efforts of recruitment of qualified women from the outside (with the help of executive search companies). We assume that the overall additional costs of both options are roughly "equivalent". The calculation focuses on the costs caused by mentoring and training programs as well as on the costs for more transparency in the selection procedure in general.

In order to understand the calculation, the factors allowing a calculation are presented here.

The amount of investment costs incurred in companies by each country will vary depending on existing provisions (binding or non-binding) already introduced in each country and on the policy option and current levels of female participation in

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<sup>84</sup> [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/infoeuro/infoeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm)

corporate boards in each country. Therefore, in a first step the existing provisions in Member States related to the policy option will be presented. Furthermore, it will be explained that investment costs have to be calculated separately for two periods (until 2020 and after 2020). Moreover, the mechanisms causing investment costs will be presented and clarified that costs occur as financial and non-financial investment costs. Finally, the formula of calculation will be discussed in detail.

### *Existing provisions in the Member States*

In countries where there is already a binding quota in place, it is unlikely that companies will have to face additional investment costs in terms of mechanisms to increase female presentation on boards. The investment costs are likely to be incurred regardless and therefore are not costs to be related to or caused by the policy option.<sup>85</sup> These costs will therefore not be presented in the framework of this impact assessment. In comparison, it is likely that countries with no binding quotas in place will face large investment costs.

An overview as to the Member States that would have to incur costs to comply with the policy options is outlined in the table below.<sup>86</sup> The assumptions regarding the Member States for each policy option is based on determining which Member States would require changes in their current provision in order to adopt the policy options. For example, Member States, which already have binding quotas in place, are not included in the costing analysis as these costs are likely to be incurred regardless of the policy options. Therefore, BE, ES, FR, IT and NL are excluded from the analysis as they already have binding quotas in place. In addition, for PO2 the Member States included are based on the assumed compliance with the option for a recommendation.

Table 5: Compliance costs associated with each policy option

Policy option	Description	Member States
PO1	Status Quo – Baseline Scenario	No MS has to take specific action
PO2	Recommendation to Member states to introduce binding (or non-binding) measures with a target of at least 40% of board members of each gender by 2020 for non-executive boards/and executive board members of listed companies	General assumptions: 5 Member States take non-binding action, 5 Member States take legislative action
PO3	Binding target of at least 40% of each gender by 2020 for non-executive boards/board members of listed companies	AT, BG, CY, CZ, DE, DK, EE, EL, FI, HU, IE, LT, LU, LV, MT, PL, PT, RO, SE, SI, SK, UK

<sup>85</sup> Binding quotas on gender quotas in the board of listed companies have been introduced in Belgium, France, Italy, Spain and the Netherlands. In these countries, the quota will come into effect before 2020. For this reason, these countries have been excluded from the costing of the policy options. Austria has also introduced binding quotas, but only covering the board of state-owned companies. In order to reflect this, Austria will be included in the costing.

<sup>86</sup> Member States' situation is only taken into account until December 2011.

Policy option	Description	Member States
PO4	Binding target of at least 40 % of board members of each gender by 2020 for non-executive boards/board members of listed companies+ flexi target for executive directors:	AT, BG, CY, CZ, DE, DK, EE, EL, FI, HU, IE, LT, LU, LV, MT, PL, PT, RO, SE, SI, SK, UK
PO5	Binding target of at least 40% of each gender by 2020 for executive and non-executive boards/board members of listed companies	AT, BG, CY, CZ, DE, DK, EE, EL, FI, HU, IE, LT, LU, LV, MT, PL, PT, RO, SE, SI, SK, UK

*Two time periods for assessing investment costs*

The investment costs have to be measured separately for two periods, namely until 2020 and from 2020 onwards. Companies will face a one-off investment cost between the year of adoption and 2020 as by 2020 the targets will need to be met. For the purpose of the costing analysis, it is assumed that companies will begin to invest in meeting the target a few years before it is required to be complied with – that is from 2017. This assumption is based on case studies of Member States with gender quotas in place which indicate that investment in meeting quotas occurs 2 to 5 years prior to the year in which targets need to be met. A conservative estimate of 4 years was chosen, as longer periods of times would marginally increase investment costs. Therefore, the investment costs are incurred from 2017 to 2020. After 2020, the percentage of women in boards will need to be maintained. Therefore, post 2020 there is an on-going annual investment cost associated with maintaining the participation of women in company boards going forward. For the purpose of this assessment, the on-going cost of each policy options is estimated from year 2021 to year 2030.

*Mechanisms which will cause investment costs*

The following three mechanisms for increasing female participation in the boards have been identified:

- **Informal mentoring programs:** Informal mentoring programs involve senior executives within companies providing mentoring support to women in the company who are currently not part of the board but have the potential to be elected into boardrooms in the future.
- **Formal mentoring programs:** Formal mentoring programs involve providing women within companies the opportunity to attend structured networks which focus on helping women position themselves to be elected into boardrooms.
- **Formal training programs:** Formal training programs involve giving women access to training classes which will provide them with the skill set required to be elected into boardrooms. Examples of training courses are: “communication to senior management”, “advanced negotiation

skills”, and “assertiveness for women – how to compete without being aggressive” (Management Centre Europe, 2012).

- **Costs of more transparency: if selection procedures or board members are made more transparent, this might contribute to investment costs for better procedures, more information distributed, external consultants to advise on the criteria and procedure to follow, etc.**

### *Financial and Non-Financial Investment Costs*

The cost of each of the above mechanisms can be disaggregated into **financial** and **non-financial** costs. Financial costs represent the monetary costs incurred by the company to pay for the mechanism – e.g. cost of training program, fees. Non-financial costs represent the monetary value of the time associated with individuals participating in the mechanisms – e.g. the value of the time spent by an individual attending a training program.

### *Calculation of the investment costs*

**Calculation of annual financial investment cost per Member state (2017-2020) =** (number of listed companies in each Member State) \* (conversion factor) \* (additional number of women required to achieve quota per company by policy option (2017-2020)/number of years of investment) \* (average unit financial cost) \* (discount rate).

The factors/elements necessary to calculate:

The total **number of listed companies** (SMEs excluded) in EU27 is 5009. The country data is outlined in the table below.

Table 6: Listed companies (excluding SMEs) per Member State

Member State	Listed companies
AT	79
BE	122
BG	30
CY	103
CZ	15
DE	714
DK	134
EE	12
EL	217
ES	271

Member State	Listed companies
FI	109
FR	536
HU	24
IE	60
IT	235
LT	33
LU	48
LV	16
MT	11
NL	137
PL	540
PT	56
RO	173
SE	356
SI	21
SK	9
UK	947
EU 27	5009

Source: Matrix calculation

The **conversion factor** is outlined in the table below. The conversion factor is used to translate the UK unit investment costs to Member State specific costs.

Table 7: Conversion factor per Member State

Member state	Conversion factor
AT	1.47
BE	1.40
BG	0.21
CY	0.95
CZ	0.60

Member state	Conversion factor
DE	1.83
DK	0.47
EE	1.46
EL	1.33
ES	1.32
FI	0.89
FR	0.43
HU	1.28
IE	1.52
IT	0.35
LT	0.36
LU	3.57
LV	0.65
MT	1.54
NL	2.76
PL	0.71
PT	0.25
RO	0.53
SE	0.77
SI	1.00
SK	1.61
UK	1.18

Source: Matrix calculation

The number of additional women required to achieve the quota per policy option (2017-2020) is outlined in the table below.

Table 8: Additional number of women required to achieve gender quota of 40% (2017-2020) per Member State in an average company (SMEs included)

Member State	PO2	PO3	PO4	PO5
AT	2.2	2.2	2.2	2.5



Member State	PO2	PO3	PO4	PO5
BE	0.9	0.9	0.9	1.5
BG	1.6	1.6	1.6	1.6
CY	0.0	1.9	1.9	2.6
CZ	0.0	1.1	1.1	2.1
DE	1.1	1.1	1.1	2.1
DK	0.7	0.7	0.7	1.0
EE	0.0	1.9	1.9	2.0
EL	2.0	2.0	2.0	3.2
ES	0.5	0.5	0.5	1.1
FI	0.0	0.0	0.0	0.3
FR	0.0	0.0	0.0	0.6
HU	0.0	2.7	2.7	3.8
IE	1.8	1.8	1.8	2.5
IT	0.9	1.7	1.7	2.6
LT	0.0	0.8	0.8	1.3
LU	2.6	2.6	2.6	3.3
LV	0.0	0.2	0.2	0.2
MT	2.0	2.0	2.0	2.5
NL	0.2	0.4	0.4	0.7
PL	1.3	1.3	1.3	1.5
PT	2.7	2.7	2.7	3.8
RO	0.0	1.2	1.2	1.5
SE	0.3	0.3	0.3	0.6
SI	0.0	2.1	2.1	2.7
SK	0.0	0.6	0.6	0.6
UK	0.9	0.9	0.9	1.6

Source: Matrix calculation

It is assumed that investment starts in year 2017 to achieve the quota in year 2020. Therefore the number of years of investment is 3 years.

The average unit financial cost is outlined in the table below:

Table 9: Parameters for Calculation of Cost of Investment Mechanisms

Parameter	Value	Calculation/Source
Wage of senior level staff per hour (min)	£47.20	UK (2009) Annual Survey of Household Earnings. These wages are used to estimate the non-financial cost associated with informal and formal mentoring outlined below.
Wage of senior level staff per hour (max)	£74.59	
<b>Informal mentoring program</b>		
Hours of mentoring per person per year	24	Assumption
Total financial cost (min)	€0	No financial cost
Total financial cost (max)	€0	No financial cost
Total nonfinancial cost (min)	£1,133	Total nonfinancial cost (min) = hours of mentoring per person per year * wage of senior level staff per hour (min) = 24 * £47.20 = £1,333
Total non financial cost (max)	£1,790	Total nonfinancial cost (min) = hours of mentoring per person per year * wage of senior level staff per hour (min) = 24 * £74.59 = £1,790
<b>Formal mentoring program</b>		
Registration fee	£500	Assumption
Hours of mentoring per person per year	30.4	Average time outlined in various mentoring programs ( <a href="http://www.peer.ca/mentorlinks.html">http://www.peer.ca/mentorlinks.html</a> ). Specifically: Commonwealth Institute Program, Peer Power, Global Executive Forum Group, Inner Circle International Peer Mentoring Group)
Total financial cost (min)	£500	Only financial cost is the registration fee
Total financial cost (max)	£500	Only financial cost is the registration fee
Total nonfinancial cost (min)	£1,453	Total non-financial cost (min) = hours of mentoring per person per year * wage of senior level staff per hour (min) = 30.4 * £47.20 = £1,453
Total non financial cost (max)	£2,268	Total non-financial cost (max) = hours of mentoring per person per year * wage of senior level staff per hour (min) = 30.4 * £74.59 = £2,268
<b>Formal training programs</b>		
Average cost of training program	£4,750	Average cost of training programs specifically for senior level management ( <a href="http://www.mce-ama.com/">http://www.mce-ama.com/</a> ).
Average duration of training program (in hours)	30.4	Average duration of training programs specifically for senior level management ( <a href="http://www.mce-ama.com/">http://www.mce-ama.com/</a> ).
Total financial cost (min)	£4,750	Only financial cost is the fee
Total financial cost (max)	£4,750	Only financial cost is the fee
Total nonfinancial cost (min)	£1,435	Total non-financial cost (min) = number of hours in formal mentoring * wage of senior level staff per hour (min) = 30.4 * £47.20 = £1,435
Total non financial cost (max)	£2,268	Total non-financial cost (max) = number of hours in formal mentoring * wage of senior level staff per hour (min) = 30.4 * £74.59 = £2,268

Parameter	Value	Calculation/Source
<b>Average total unit investment cost</b>		
<b>Average financial cost</b>	£5,250	Average financial cost = (Average financial cost of informal mentoring) + (average financial cost of formal mentoring) + (average financial cost of formal training) = £0 + £500 + £4750 = £5,250
<b>Average non-financial cost</b>	£5,164	Average financial cost = (Average non- financial cost of informal mentoring) + (average non-financial cost of formal mentoring) + (average non-financial cost of formal training) = £1,461 + £1,851 + £1,851 = £5,164

Source: Matrix calculation

A 4.0 % discount rate is applied according to the Commission’s Impact Assessment Guidelines. The average number of years before turnover of directors is assumed to be 5 years.

It should be noted that the same method and formula is used to estimate the annual **non-financial investment** costs per Member State except that the average unit non-financial cost value (see last row in the table above) is used.

### Overview of total investment costs per Member State

The table below provides an estimate of the total and national average investment cost of each policy option across EU-27. These estimates are based on data provided during the cases studies Matrix undertook. It is evident from the table below that the investment costs vary significantly by policy option. The variation in investment costs is mainly driven by the specific population to which each policy option applies. For example, Policy Option 2 is the least costly due to the fact it is non-binding. Therefore, only selected Member States adopt the policy option; and within Member States which adopt the policy option it is assumed only 50 per cent of listed companies adopt the regulation. In comparison, Policy Option 5 is the most expensive as it applies to both the executive and non-executive boards in all listed companies (SMEs excluded). Also, there is a difference between the costs until 2020 and the costs occurring on an annual basis as of 2020. The investment costs necessary to achieve the target until 2020 are higher than for the later period when the current level of gender balance only has to be maintained.

Table 10: Annual Investment Costs of Policy Options in Present Value Terms – Excluding SMEs (in € and €1’000, 2010 prices)

Total Investment cost	PO2		PO3		PO4		PO5	
	Avg annual (2017-2020)	Avg annual (2021-2030)	Avg annual (2017-2020)	Avg annual (2021-2030)	Avg annual (2017-2020)	Avg annual (2021-2030)	Avg annual (2017-2020)	Avg annual (2021-2030)
Avg per company (€)	€ 1,125	€ 197	€ 3,327	€ 600	€ 3,673	€ 700	€ 5,311	€ 1,011
Average per Member State	€ 168,800	€ 29,600	€ 757,000	€ 136,000	€ 836,200	€ 159,400	€ 1,2 mill.	€ 230,200

<b>Total EU</b>	€ 3,7 mill	€ 651,800	€ 16,6 mill.	€ 3 mill	€ 18,3 mill.	€ 3,5 mill.	€ 26,5 mill.	€ 5 mill
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## 8.2. Economic impact

### 8.2.1. Calculating the impact on the Gender Pay Gap (GPG)

The policy options lead to an increase in female salaries at board and managerial level. The table below presents the effect of each policy option on average annual female salaries in listed companies by Member State in 2020.

Table 11: Average Impact of the Policy Options on Female Salaries in Listed Companies excluding SMEs – Euros

MS	Level	Baseline (2020)				
			PO2	PO3	PO4	PO5
<b>EU27</b>	Board	73,648	No estimates possible	66,895	72,690	99,316
	Executive	161,249		162,984	166,870	199,471
	Non-Executive	65,372		61,279	62,508	69,319
<b>AT</b>	Board	95,093		95,409	97,021	118,498
	Executive	276,897		282,886	284,873	310,938
	Non-Executive	92,299		94,295	94,958	103,646
<b>BE</b>	Board	85,506		82,967	90,920	113,037
	Executive	223,754		224,790	229,251	242,554
	Non-Executive	74,585		74,930	76,417	80,851
<b>BG</b>	Board	27,820		14,401	17,448	14,699
	Executive	27,820		27,820	28,630	27,889
	Non-Executive	9,273		9,273	9,543	9,296
<b>CY</b>	Board	83,260		58,438	62,492	106,130
	Executive	127,894		164,932	168,382	206,924
	No- Executive	42,631		54,977	56,127	68,975
<b>CZ</b>	Board	33,174		31,266	35,339	49,685
	Executive	80,906		81,384	83,808	93,268
	No- Executive	26,969		27,128	27,936	31,089
<b>DE</b>	Board	71,407		66,950	74,713	113,585

MS	Level	Baseline	PO2	PO3	PO4	PO5
		(2020)				
	Executive	177,286		178,663	183,991	212,972
	Non-Executive	59,095		59,554	61,330	70,991
<b>DK</b>	Board	124,390		119,628	134,305	136,344
	Executive	305,340		306,632	311,383	312,079
	Non-Executive	101,780		102,211	103,794	104,026
<b>EE</b>	Board	38,150		32,353	34,034	37,217
	Executive	84,739		91,878	92,663	94,205
	Non-Executive	28,246		30,626	30,888	31,402
<b>EL</b>	Board	56,856		41,703	45,770	101,424
	Executive	106,872		115,426	119,414	174,358
	Non-Executive	35,624		38,475	39,805	58,119
<b>ES</b>	Board	59,566		59,040	63,558	83,636
	Executive	164,148		164,457	167,565	182,082
	Non-Executive	54,716		54,819	55,855	60,694
<b>FI</b>	Board	94,966		94,966	106,612	106,507
	Executive	243,081		243,081	246,678	246,644
	Non-Executive	81,027		81,027	82,226	82,215
<b>FR</b>	Board	73,287		73,287	80,109	110,390
	Executive	200,481		200,481	205,094	226,918
	Non-Executive	66,827		66,827	68,365	75,639
<b>HU</b>	Board	24,874		23,518	24,917	41,047
	Executive	65,915		67,342	68,798	85,453
	Non-Executive	21,972		22,447	22,933	28,484
<b>IE</b>	Board	101,476		84,745	96,440	123,034
	Executive	212,013		216,272	222,179	237,160
	Non-Executive	70,671		72,091	74,060	79,053
<b>IT</b>	Board	67,778		67,277	69,856	108,132
	Executive	195,178		196,504	199,668	245,075

MS	Level	Baseline				
		(2020)	PO2	PO3	PO4	PO5
	Non-Executive	65,059		65,501	66,556	81,692
<b>LT</b>	Board	24,267		20,871	24,692	28,023
	Executive	47,830		48,326	49,851	51,363
	Non-Executive	15,943		16,109	16,617	17,121
<b>LU</b>	Board	182,689		191,324	191,324	266,263
	Executive	548,068		573,971	573,971	573,971
	Non-Executive	182,689		191,324	191,324	191,324
<b>LV</b>	Board	24,451		24,262	27,037	25,235
	Executive	62,453		62,508	63,155	62,728
	Non-Executive	20,818		20,836	21,052	20,909
<b>MT</b>	Board	66,850		45,158	48,775	62,984
	Executive	99,154		124,557	126,543	134,967
	Non-Executive	33,051		41,519	42,181	44,989
<b>NL</b>	Board	99,150		97,439	107,448	115,249
	Executive	258,187		258,793	262,677	265,883
	No- Executive	86,062		86,264	87,559	88,628
<b>PL</b>	Board	27,549		26,029	27,389	30,455
	Executive	72,388		74,005	74,717	76,378
	Non-Executive	24,129		24,668	24,906	25,459
<b>PT</b>	Board	54,530		38,057	42,139	64,287
	Executive	93,979		102,490	105,251	121,554
	Non-Executive	31,326		34,163	35,084	40,518
<b>RO</b>	Board	23,441		16,280	19,534	18,882
	Executive	33,464		34,793	35,786	35,569
	Non-Executive	11,155		11,598	11,929	11,856
<b>SE</b>	Board	98,578		98,349	101,853	125,103
	Executive	285,670		286,205	289,239	309,631
	Non-Executive	95,223		95,402	96,413	103,210

MS	Level	Baseline	PO2	PO3	PO4	PO5
		(2020)				
SI	Board	57,552		44,384	50,579	60,050
	Executive	108,555		112,207	114,958	119,621
	Non-Executive	36,185		37,402	38,319	39,874
SK	Board	38,726		37,633	42,318	38,960
	Executive	94,905		95,190	96,255	95,479
	Non-Executive	31,635		31,730	32,085	31,826
UK	Board	65,989		60,412	68,981	98,729
	Executive	153,488		154,713	159,727	179,263
	Non-Executive	51,163		51,571	53,242	59,754

Source: Matrix calculation

The figures are presented separately for: executive board members, non-executive board members and managers. For example, in Austria the average salary of a female board member in listed companies (without SMEs) at baseline (2020) is on average €95,093 per annum. If PO2 is implemented, a female board member would be expected to earn on average €109,055 per annum.

Average salaries in the baseline (2020) were estimated based on salary data for male and female directors and chief executives of major organisations available for the UK (Annual Survey of Hours and Earnings 2010, Office for National Statistics) and adjusted for each Member State based on the GDP ratio between the UK and the Member State (IMF).

The average salaries as a result of each policy option capture the one-off effect of the policy option in the year of implementation (2020) on the number of female employees and on their average salaries based on evidence drawn from Matsa and Miller (2011). The impact of the policy options on the GPG – i.e. the resulting change on the difference between male and female salaries – was estimated using the following assumptions:

Matsa and Miller (2011) estimated that:

- a 10% increase in female **non-executive** board members increases female top management compensation share by 6%;
- a 10% increase in female board members, both **executive and non-executive**, increases female top management compensation share by 14%.

The figures above were used to estimate the impact that the policy options would have on female salaries via the effect on the percentage of women in company boards. Thus, for instance, for every 10% increase in the percentage of non-executive female board members generated by the policy options, female salaries at board and manager level were increased by 6%. The estimates relate to ‘top management’. It was thus considered appropriate to

extrapolate this effect to a proportion of employees – namely, 25%. Hence, any increase of female participation in board would impact on 25% of employees at managerial level.

The resulting female salaries were then compared against male salaries to estimate the impact on the GPG at board and manager level. Female salaries at junior level were assumed to remain constant at 2020 baseline levels given that an extensive search of the literature did not provide evidence on the potential impact of female board members other than on top level female managers.

In policy options where the number of female non-executive board members increases whilst the number of female executive board members remains constant, the weighted average female salary at board level decreases. At managerial level, however, the impact of the policy options is always favourable, with no change at junior level.

The reason for this reduction is that female salaries at board level are calculated as the weighted average of the salaries for executive and non-executive female board members. The average salary for non-executive female members is consistently lower than the average salary for executive female members. This means that changes in the relative weights may lead to increases or decreases of the weighted average at board level. Therefore although for all policy options (except policy option 1) the average salary for executive and non-executive increases, the average at board level may decrease.

The policy options may lead to a reduction in the gender pay gap (GPG). The calculation of the baseline GPG involved two main steps:

Calculation of the GPG at each level: This was calculated as the difference between male and female annual salaries, divided by male salaries. Thus, for example, a GPG of 31% at board level indicates that the difference between male and female salaries at board level is equivalent to 31% of the male salaries at the same level.

Calculation of the GPG across all levels: This was calculated as the weighted average of the GPG at board, manager and junior level where the weights are given by the proportion of employees at each level relative to the total number of employees.

The calculation of the effect of the policy options was done by estimating the average salaries following implementation of the policy options and the GPG post policy following the same steps described above. The table below presents the effect in % of the policy options on the GPG in listed companies (without SMEs) by Member States in 2020. The figures represent the average change across all levels: board, manager and junior level.

Table 12: Impact of policy options on the gender pay gap (percentage point change compared to baseline)

MS	Baseline Percentage of Women on Board by 2020 Baseline	PO1	PO2	PO3	PO4	PO5
EU27	23.72%	0.00%	-0.09 (further estimates not possible)	-0.10%	-0.79%	-4.50%
AT	24.34%	0.00%		-0.54%	-0.72%	-3.15%



<b>MS</b>	<b>Baseline Percentage of Women on Board by 2020 Baseline</b>	<b>PO1</b>	<b>PO2</b>	<b>PO3</b>	<b>PO4</b>	<b>PO5</b>
<b>BE</b>	23.02%	0.00%		-0.14%	-0.87%	-3.06%
<b>BG</b>	24.34%	0.00%		0.48%	-0.76%	0.38%
<b>CY</b>	24.86%	0.00%		-5.27%	-5.84%	-12.31%
<b>CZ</b>	24.28%	0.00%		-0.13%	-1.11%	-4.93%
<b>DE</b>	24.42%	0.00%		-0.16%	-0.92%	-5.10%
<b>DK</b>	24.03%	0.00%		-0.06%	-0.54%	-0.62%
<b>EE</b>	24.42%	0.00%		-4.05%	-4.54%	-5.51%
<b>EL</b>	25.32%	0.00%		-2.69%	-4.03%	-22.59%
<b>ES</b>	22.48%	0.00%		-0.07%	-0.77%	-4.06%
<b>FI</b>	23.86%	0.00%		0.00%	-0.77%	-0.76%
<b>FR</b>	23.54%	0.00%		0.00%	-0.78%	-4.47%
<b>HU</b>	23.12%	0.00%		-0.69%	-1.46%	-10.29%
<b>IE</b>	23.72%	0.00%		-0.65%	-1.87%	-4.99%
<b>IT</b>	22.16%	0.00%		-0.19%	-0.69%	-7.89%
<b>LT</b>	23.67%	0.00%		-0.45%	-2.21%	-3.96%
<b>LU</b>	24.59%	0.00%		-0.99%	-0.99%	-1.13%
<b>LV</b>	24.01%	0.00%		-0.03%	-0.72%	-0.26%
<b>MT</b>	23.70%	0.00%		-7.07%	-7.80%	-10.91%
<b>NL</b>	23.62%	0.00%		-0.08%	-0.66%	-1.13%
<b>PL</b>	24.23%	0.00%		-0.79%	-1.15%	-1.99%
<b>PT</b>	24.72%	0.00%		-2.44%	-3.30%	-8.40%
<b>RO</b>	24.17%	0.00%		-0.70%	-1.40%	-1.24%
<b>SE</b>	24.32%	0.00%		-0.05%	-0.39%	-2.70%
<b>SI</b>	24.67%	0.00%		-1.56%	-1.86%	-2.38%
<b>SK</b>	22.54%	0.00%		-0.04%	-1.30%	-0.38%
<b>UK</b>	24.92%	0.00%		-0.11%	-1.76%	-8.23%

Source: Matrix calculation

The model provides quantitative estimates of the impact of the policy options on the following ways in which women can participate in the labour force:

- Women who would have been inactive now deciding to participate in the labour force.
- Part-time female employees being incentivised to work for longer hours.
- Women reducing the amount of time they take out of employment to have children.
- The impact of the above dynamics on the probability that women claim low income benefits.
- Women being motivated to stay longer in education, thus increasing their chance of employment.

The timing of these impacts stretches from short-term to long-term. All impacts occurring in the future have been discounted using a 4% annual rate.

The impact of the options on the gender pay gap at EU level is presented in the table below.

Table13: Impact of policy options on gender pay gap at EU level

Policy options	Impact on gender pay gap in p.p. compared to baseline in companies (without SMEs)
Policy option 1 (baseline)	(23.72%)
Policy Option 2	- 0.09
Policy Option 3	- 0.10
Policy Option 4	-0.79
Policy Option 5	- 4.50

Source: Matrix calculation

### 8.2.2. Calculating the impact on the Gender Employment Gap (GEG)

In estimating the overall impact of the policy option on the GEG, a distinction was made between the following two effects:

- an effect of the policy options on board composition; and
- a ‘governance effect’ of the change in board composition on employment of females elsewhere in the organisation.

An extensive review of the literature on female participation on company boards was used to identify the best quality evidence on the ‘**governance effect**’. Matsa and Miller’s (2011) estimates were used in the analysis, as the method they employed was considered better than that available in other studies.<sup>87</sup> Based on data on US companies’ from 1997 to 2009 Matsa and Miller (2011) estimated that:

<sup>87</sup> The authors tested for endogeneity to establish whether female boards hire female top managers or vice versa finding that changes in board composition precede changes in management.

- a 10% increase in female non-executive board members increases the average female top manager share by 4%;
- a 10% increase in female board members (both executive and non-executive) increases the average female top manager share by 7%.

Based on this model, the impact of the different policy options on the gender employment gap at EU level is presented in the table below.

Table 14: Impact of options on gender employment gap at EU level

Policy options	Impact on gender employment gap: % change of females at board and managerial level
Policy Option 1 (Baseline)	(343%/118%)
Policy Option 2	-18.74%/-0.23%
Policy Option 3	-58.36%/-0.96%
Policy Option 4	-62.74%/-2.26%
Policy Option 5	-76.32%/-8.48%

Source: Matrix calculation

### 8.2.3. Calculating the return on education

Based on the average increase in female salaries across levels, the impact on return to education was estimated. In the context of this impact assessment, the impact on return on education is interpreted as the contribution of the policy options to increasing the individual and public sector benefits of education. The analysis is thus based on the fact that increasing participation of women at board level represents an opportunity for increasing the benefits from education these women already invested in.<sup>88</sup> In this context it is reasonable to assume that women who will be brought to board level have already invested in formal education and that they have achieved tertiary education. The analysis then accounts for the costs and benefits of tertiary education (compared to secondary education).

The approach and data to estimate the impact of the policy options on return to education were obtained from the OECD *Education at a Glance* 2011 report. A summary of the approach and methodology applied in such report is provided in the Box below. Following OECD (2011), return to education was defined as the internal rate of return which is given by the rate that makes the financial benefits equal the costs.

<sup>88</sup> From this perspective then, the analysis does not value the returns on formal education itself (as there is no further educational investment, except for training and mentoring programmes) but the increase in private benefits generated by the policy options. The contribution of the policy options to increasing the incentives to invest in education on younger women are covered separately as one of the impacts resulting from the narrowing of the GPG. This analysis accounts for the benefits of education through higher participation in the labour market.

The analysis on incentives in education brings together available information on education investments and the benefits that education brings in terms of employment and earnings. Using information on taxes and benefits makes it possible to calculate the net benefits for individuals and for the public sector. The approach is that of an investment analysis from the financial literature. The calculations are made by comparing the specific costs associated with achieving a certain educational level and the benefits that flow from this level over the working life. These cash-flows are then discounted back in time to the start of the investment decision.

The basis for an investment approach is the discount rate (the time-value of money), which makes it possible to compare costs or payments (cash flows) over time. The discount rate can be estimated by raising it to the level at which financial benefits equal costs, which is then the internal rate of return. The financial benefits and costs considered are:

Direct cost of education.

Forgone earnings while in education.

Gross earnings benefits given by the difference in earnings between varying educational groups over their lifetimes.

Income tax effects applied on earnings.

Social contribution effect capturing contributions paid by individuals.

Social transfer effect capturing social welfare benefits.

Grant effect capturing student loans and grants received by students, often charged at an interest rate.

Unemployment effect capturing the effect of how different unemployment rates impact differently on individuals depending on their educational level.

Whether the above components constitute a cost or a benefit depends on the perspective of the analysis. For example, whilst the income tax applied on earnings represents a cost to individuals, it is considered a benefit for the public sector.

Based on these data, OECD estimated a private internal rate of return for a women obtaining tertiary education across OECD countries of 11.5% and a public internal rate of return of 9.2%.

The effect of the policy options on return to education was estimated through the following process:

First, the components of the financial net benefits and costs of investment in education described in the Box above were used to replicate the calculation of the internal rate of return.<sup>89</sup> This required making an assumption on the number of years over which those benefits span (as the information was not available through OECD

<sup>89</sup> For individuals: (a) net benefits are calculated based on gross earnings, income tax, social contributions, transfers, unemployment benefits, and grants; and (b) costs are calculated based on direct costs and forgone earnings whilst in education. For public sector: (a) net benefits are calculated based on forgone taxes on earnings, income tax, social contributions, transfers, unemployment benefits, and grants; and (b) costs are calculated based on direct costs.

report, a period of 40 years was assumed). Following this process it was estimated that the internal rate of return to tertiary education across the EU member states included in the OECD for which data was available is 18.20% for private individuals and 22.11% for the public sector.<sup>90</sup>

Second, as the policy options would lead to the promotion of women at managerial level to board level, we applied the average difference in female salaries between board and managerial level to the gross earnings component of the internal rate of return calculation. A proportional change was applied to income tax payments and social contribution payments. These changes were then feed into the calculation of the net present value and the internal rate of return to education following implementation of the policy options. The difference in salaries was applied to the last 20 years, thus assuming that female would be at the mid-point of their professional career (spanning over 40 years). The impact of the different policy options on the return on education rate at EU level is presented in the following table.

Table 15: return on education for individuals and for the public sector (EU level)

Policy Options	Return on education in % for individuals/ for the public sector
Policy Option 1 (Baseline)	18.20% / 22.11% (baseline)
Policy Option 2	18.95%/22.87%
Policy Option 3	18.91%/22.83%
Policy Option 4	19.01%/22.93%
Policy Option 5	19.36%/23.28%

Source: Matrix calculation

### 8.3. Calculating the administrative burden

Two types of administrative costs are included in this analysis:

- the **cost of complying** from the perspective of the companies (costs of compliance, costs or reporting) and
- the **cost of monitoring compliance** from the perspective of Member States (costs of monitoring).

These costs will be incurred on an annual basis from year 2020. In addition, both of these costs will be incurred independently of the policy option chosen. For example changing the quota percentage or changing the board type to which it applies to

<sup>90</sup> It is likely that the difference with the rates reported in OECD report is not due to the different sample of countries, but to the fact that our estimations are based on a number of assumptions not transparent in the OECD calculation.

(executive or non-executive board) does not change the need of companies to provide information on compliance and of Member States to monitor compliance. In this annex it will first have to be defined, in which Member States administrative burden will be incurred for companies and for public authorities. Then the calculation for companies' compliance costs will be presented in detail.

In countries where there is already a binding quota in place, it is unlikely that companies will have to face additional investments and costs in terms of mechanisms to increase women in boards and report about women on boards. The costs of complying are likely to be incurred regardless and therefore are not costs to be related to the policy option.<sup>91</sup> In comparison, it is likely that countries with no binding quotas in place will face costs or reporting.

An overview of Member States in which companies would incur administrative burdens linked to the policy options is outlined in the table below. The assumptions regarding the Member States for each policy option is based on determining which Member States would require changes in their current provision in order to adopt the policy options. For example, Member States which already have binding quotas in place are not included in the costing analysis as these costs are likely to be incurred regardless of the policy options. Therefore, BE, ES, FR, IT and NL are excluded from the analysis as they already have binding quotas in place. In addition, for PO2 the Member States included are based on the assumed compliance with the recommendation.

Table 16: Administrative burdens linked to the policy options per Member State

Policy option	Description	Member States
PO1	Status Quo – Baseline Scenario	No MS has to take specific action
PO2	Recommendation to Member states to introduce binding (or non-binding) measures with a target of at least 40% of board members of each gender by 2020 for non-executive boards/and executive board members of listed companies	5 Member States move from no action to non-binding, 2 Member States take binding action
PO3	Binding target of at least 40% of each gender by 2020 for non-executive boards/board members of listed companies	AT, BG, CY, CZ, DE, DK, EE, EL, FI, HU, IE, LT, LU, LV, MT, PL, PT, RO, SE, SI, SK, UK
PO4	Binding target of at least 40 % of board members of each gender by 2020 for non-executive boards/board members of listed companies and flexi –target for executive	AT, BG, CY, CZ, DE, DK, EE, EL, FI, HU, IE, LT, LU, LV, MT, PL, PT, RO, SE, SI,

<sup>91</sup> Binding quotas on gender quotas in the board of listed companies have been introduced in Belgium, France, Italy, Spain and the Netherlands. In these countries, the quota will come into effect before 2020. For this reason, these countries have been excluded from the costing of the policy options. Austria has also introduced binding quotas, but only covering the board of state-owned companies. In order to reflect this, Austria will be included in the costing.

Policy option	Description	Member States
	directors	SK, UK
PO5	Binding target of at least 40% of each gender by 2020 for executive and non-executive boards/board members of listed companies	AT, BG, CY, CZ, DE, DK, EE, EL, FI, HU, IE, LT, LU, LV, MT, PL, PT, RO, SE, SI, SK, UK

(a) Methodology for assessing the cost of compliance for companies

Case studies were utilised to identify the cost of compliance from the perspective of companies. Specifically, the cost of compliance was identified as the cost of reporting on a company level the percentage of women on boards to a public authority. Data from case studies indicated that the cost of reporting would be minimal as several existing company reports could be utilised to report/estimate the percentage of women on boards.

In order to measure the compliance costs for companies, the time necessary for an employee to establish a compliance report had to be assessed

Table 17: Parameters for Calculation of Administrative Burden for compliance costs

Parameter	Value	Calculation/Source
<b>Cost of complying</b>		
Time required to compile report on percentage of women in boards by staff type (in hours):		
HR Manager	1.9	DG MARKT (2007): Study on administrative costs of the EU Company Law Acquis; Matrix Insight (2011) Study to Support an Impact Assessment on further Action at European Level regarding the Pay Gap between Men and Women
HR Personnel	0.2	
Employee representative	0.9	
Wage of HR Manager per hour (min)	£18.6	UK (2009) Annual Survey of Household Earnings
Wage of HR Manager per hour (max)	£25.3	
Wage of HR Personnel per hour (min)	£9.8	
Wage of HR Personnel per hour (max)	£11.8	
Wage of employee representatives (min)	£9.5	
Wage of employee representatives (max)	£10.5	
Total financial cost (min)	€ 0	No financial cost
Total financial cost (max)	€ 0	No financial cost
Total nonfinancial cost (min)	£46.3	Total non-financial cost (min) = $\sum(\text{hours per staff type} * \text{wage of staff (min)}) = (1.9 * £18.6) + (0.2 * £25.3) + (0.9 * £9.5) = £46.3$
Total nonfinancial cost (max)	£59.6	Total non-financial cost (min) = $\sum(\text{hours per staff$

Parameter	Value	Calculation/Source
		type * wage of staff (max) = (1.9*£25.3)+(0.2*£11.8)+(0.9*£9.5) = £59.6
<b>Average total unit cost</b>		
<b>Average unit non-financial cost of complying</b>	£52.9	Average unit non-financial cost of complying = (non-financial cost min + non financial cost max)/2 = (£46.3+£59.6)/2=£52.9

The parameters above (the average unit of non-financial cost of £52.9) were transformed into costs per Member States via a conversion table (see table above). The conversion factor is used to translate the UK unit investment costs to Member State specific costs.

Furthermore, the calculation was based on the numbers of listed companies per Member State, thereby exempting SMEs (see table above).

### *Cost of Monitoring Compliance for Member States*

It can be assumed that the cost of monitoring compliance would be minimal, as reviewing a report on the percentage of women in boards would not be time consuming. However, it is not possible to provide an exact estimate of the time required to review each company report.

The values used to calculate the monitoring costs are based on the parameters in the table below.

Table 18: Parameters for calculation of Administrative Burden Member States' monitoring

Parameter	Value	Calculation/Source
<b>Cost of monitoring compliance</b>		
Time required of government officials to review report submission (in hours)	1.75	DG MARKT (2007): Study on administrative costs of the EU Company Law Acquis
Wage of government official (min)	£10.7	UK (2009) Annual Survey of Household Earnings
Wage of government official (max)	£31.6	
Total financial cost (min)	£0	No financial cost
Total financial cost (max)	£0	No financial cost
Total nonfinancial cost (min)	£19.2	Total non-financial cost (min) = hours of government officials time required to review report * wage of government official (min)= (1.75*£11)= £19.2
Total nonfinancial cost (max)	£55.3	Total non-financial cost (min) = hours of government officials time required to review report * wage of government official (min)= (1.75*£32)= £55.3
<b>Average unit non-financial cost of monitoring</b>	£37.2	Average unit non-financial cost of monitoring= (non-financial cost min + non financial cost max)/2 = (£19.2+£55.2)/2=£37.2

The above parameters for companies' compliance were transformed into costs per Member States via a conversion table (see values in the conversion table above under the methodology for company compliance costs).



It was assumed that time required to review a report submitted by companies was constant across Member States. However, the cost of the time varied by Member State based on variation in wages.<sup>92</sup>

It is evident that the cost of complying and monitoring compliance varies by policy option. Policy Option 2 has the lowest average administrative costs as it is only adopted by certain Member States, and within each Member State is only adopted by 50 per cent of listed companies. In comparison, binding measures in Policy Option 4, 5 and 6 apply to all Member States and all listed companies within Member States.

### *Administrative costs per Member State*

Company level costs refer to costs incurred by listed companies. In comparison, monitoring costs are costs associated with public authorities. The EU-27 averages refer to the average Member State cost for each policy option and cost type.

It is evident that the cost of each policy option varies significantly. As stated before, the main cause of variation in costs across policy options is due to the population in which the policy option applies to. For example, Policy Option 2 is the least costly as it is a non-binding recommendation which will only have effect in certain Member States and a percentage of listed companies within each Member State. In comparison, Policy Option 6 is the most expensive as it is a binding instrument which applies to both executive and non-executive boards in all listed companies.

Table 19: Average Annual Administrative Burden in Present Value Terms by Member State – excluding SMEs (€, 2010 prices)

MS	PO2		PO3		PO4		PO5	
	Report	Monitor	R	M	R	M	R	M
AT	N/A	N/A	€ 3,409	€ 2,743	€ 3,409	€ 2,743	€ 3,409	€ 2,743
BE			€ 0	€ 0	€ 0	€ 0	€ 0	€ 0
BG			€ 180	€ 145	€ 180	€ 145	€ 180	€ 145
CY			€ 2,842	€ 2,287	€ 2,842	€ 2,287	€ 2,842	€ 2,287
CZ			€ 269	€ 217	€ 269	€ 217	€ 269	€ 217
DE			€ 38,279	€ 30,807	€ 38,279	€ 30,807	€ 38,279	€ 30,807
DK			€ 1,853	€ 1,491	€ 1,853	€ 1,491	€ 1,853	€ 1,491

<sup>92</sup> Cost estimates have been derived from UK data on wages, these have then been extrapolated to EU 27. In order to extrapolate economic costs, ratios of GDP per capita in UK, for which data was available, were calculated and applied to the other Member States. For instance, in order to calculate costs starting from UK estimates, we have (1) converted the amount into EUR based on current exchange rates) and (2) calculated the ratio of each Member State GDP per capita, over the UK GDP per capita.

MS	PO2		PO3		PO4		PO5	
	Report	Monitor	R	M	R	M	R	M
EE			€ 507	€ 408	€ 507	€ 408	€ 507	€ 408
EL			€ 8,459	€ 6,808	€ 8,459	€ 6,808	€ 8,459	€ 6,808
ES			€ 0	€ 0	€ 0	€ 0	€ 0	€ 0
FI			€ 2,844	€ 2,289	€ 2,844	€ 2,289	€ 2,844	€ 2,289
FR			€ 0	€ 0	€ 0	€ 0	€ 0	€ 0
HU			€ 885	€ 712	€ 885	€ 712	€ 885	€ 712
IE			€ 2,680	€ 2,157	€ 2,680	€ 2,157	€ 2,680	€ 2,157
IT			€ 0	€ 0	€ 0	€ 0	€ 0	€ 0
LT			€ 353	€ 284	€ 353	€ 284	€ 353	€ 284
LU			€ 5,005	€ 4,028	€ 5,005	€ 4,028	€ 5,005	€ 4,028
LV			€ 298	€ 240	€ 298	€ 240	€ 298	€ 240
MT			€ 496	€ 400	€ 496	€ 400	€ 496	€ 400
NL			€ 0	€ 0	€ 0	€ 0	€ 0	€ 0
PL			€ 11,137	€ 8,963	€ 11,137	€ 8,963	€ 11,137	€ 8,963
PT			€ 407	€ 328	€ 407	€ 328	€ 407	€ 328
RO			€ 2,659	€ 2,140	€ 2,659	€ 2,140	€ 2,659	€ 2,140
SE			€ 8,050	€ 6,478	€ 8,050	€ 6,478	€ 8,050	€ 6,478
SI			€ 616	€ 496	€ 616	€ 496	€ 616	€ 496
SK			€ 424	€ 341	€ 424	€ 341	€ 424	€ 341
UK			€ 32,765	€ 26,369	€ 32,765	€ 26,369	€ 32,765	€ 26,369

## 9. ANNEX 9: BACKGROUND ON THE NORWEGIAN CASE

While several EU Member States and EEA countries have introduced legislation on targets for achieving gender balance on company boards, Norway is the only one where the deadline for implementing gender quotas has already expired and where information and data on the implementation process and its impact are available. Although each country's policies have to be considered in their particular context, Norway's experience can be a useful source of information relevant for the decision on and the design of any EU-level measures in this context. The relevant law was adopted in December 2003 and set out the target of 40 % representation of both genders among the (**supervisory**) board members.<sup>93</sup> Initially the companies were given a chance to meet that target on a voluntary basis, but since the voluntary measures did not result in much progress, the requirements were made obligatory as of 1 January 2006.<sup>94</sup> The rules now apply to boards of **all publicly limited companies**, as well as a range of other companies, including state and municipality owned companies, and cooperative companies. Roughly 350-450 companies were concerned by the law with roughly 2400 seats in the boards. In publicly limited companies (mostly big companies) none of the members are personally liable for the companies' debts. There are also stricter rules applying to capital stock and board composition.

The rules regarding the composition of the board are enforced according to general enforcement rules of company legislation, on equal footing with other requirements such as those for bookkeeping or accounting and through the normal control procedures of the Register of Business Enterprises. A company that does not have a board that fulfils the statutory requirements may be dissolved by a court order.

In December 2003 the Norwegian Parliament passed an amendment to the Public Limited Liability Companies Act, requiring public limited companies (PLC – *Allmennaksjeselskap* / ASA) to achieve gender balance on their boards, i.e. that at least 40% of each sex should be represented. The legislation was voted by a large majority of the Parliament, including both the conservative-centre government coalition and centre-left and socialist opposition parties<sup>95</sup>.

The following rules for the gender composition of boards were laid down<sup>96</sup>:

- In boards with two or three members, both genders must be represented.

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<sup>93</sup> The key provision of the Public Limited Liability Companies Act of 13 June 1997 No. 45 states: '§ 6-11a. Requirement of representation of both men and women on the company board (1) On the board of Public Limited Liability Companies both genders shall be represented in the following manner: 1. On boards consisting of two or three members, both men and women shall be represented. 2. On boards consisting of four or five members, both genders shall be represented with at least two members each. 3. On boards consisting of six to eight members, both genders shall be represented with at least three members each. 4. On boards consisting of nine members, both genders shall be represented by at least four members each, and if the board consists of more than nine members each gender shall be represented by at least 40 % each. 5. The rules as stated in no. 1 – no. 4 equally apply to the election of deputy members.' Paragraph 2 of the same articles sets specific rules concerning the workers' representatives on the boards.

<sup>94</sup> See 'the resolution of enactment' no. 1429 of 9 December 2005.

<sup>95</sup> Aagoth Storvik/Mari Teigen, Women on Board – The Norwegian Experience, June 2010, FES, available at: <http://library.fes.de/pdf-files/id/ipa/07309.pdf>

<sup>96</sup> Public Limited Liability Companies Act of 13 June 1997, No. 45, §§ 6 – 11a (as amended in 2003)

- In boards with four or five members, both genders should be represented with at least two members each.
- In boards with six to eight members, both genders should be represented with at least three members each.
- In boards with nine or more members, each gender should be represented with at least 40 per cent each<sup>97</sup>.

Moreover, there are special requirements for employee representatives: Where two or more board members are elected from among the employees, both sexes must be represented. However, this rule does not apply in companies where one of the sexes represents less than 20% of the total number of employees on the date of election.

Pursuant to an agreement of the government with the private business sector, the rules applying to private companies should not come into effect if the desired gender representation was achieved voluntarily by 1 July 2005. However, on that date only 13% of PLCs fulfilled the required targets and only 16% of their board members were women<sup>98</sup>.

The rules for privately owned PLCs entered into force on 1 January 2006, giving already established companies two years to comply with the rules (i.e. by 1 January 2008), while PLCs registering as from 2006 had to appoint gender-balanced boards immediately.

The rules applying to state-owned companies had already entered into force on 1 January 2004. These have later been extended to include the boards of all municipal and also cooperative companies. Today all forms of publicly owned enterprises, independently of their legal form, are covered by similar rules under quota legislation – including limited liability companies, in which municipalities own two-thirds or more of the shares.

In the private sector, legislation only concerns public limited (liability) companies, which usually have many shareholders and which are governed by strict rules with regard to board composition and share capital. There are approximately 400 to 450 PLCs today in Norway (depending on the sources). Not all of them are listed on the Oslo stock exchange (about 260), but a company applying for listing has to adopt this legal form.

The other possible legal form for privately owned companies is the private limited (liability) company. About 215,000 such companies, most of them SMEs, exist in Norway. They are currently not covered by quota legislation, but the government is considering plans to cover the largest of them.

### *Sanctions*

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<sup>97</sup> These rules also apply to the election of deputy or alternate members.

<sup>98</sup> Norwegian Ministry of Children, Equality and Social Inclusion, Representation of both sexes on company boards, available at: <http://www.regjeringen.no/en/dep/bld/Topics/equality/rules-on-gender-representation-on-compan.html?id=416864>

No new sanction procedures were introduced in Norway to enforce the provisions on quotas. These rules were simply inserted in the company law which contains other requirements regarding board members and specifies rules on monitoring and sanctions. The monitoring and enforcement occurs through routine controls. Norway has a central company registry (Brønnøysund Register Centre), where companies and their boards are registered.

When a company wants to register board members, the registry automatically identifies the board members by their national social security number (which also indicates their sex) and thereby checks if the board composition fulfils the statutory requirements. If that is not the case, the registry will refuse to register the board and send a warning to the company, inviting it to comply with the requirements within a deadline of four weeks.

After a second notice of four weeks is given, the case will be submitted to the court which may order to dissolve the company. However, there is a safety clause applicable to all company law requirements. If 'substantial public interests' are at stake, the Ministry of Trade and Industry may decide that a forced dissolution shall not be executed and impose a fine instead.

### *Board system*

It is important to note that Norwegian PLCs have a single board. However, contrary to the unitary board system in many other countries, this board is not a management board with both executive and non-executive directors, but it has mainly supervisory functions. As of 2010, the CEO as the main executive director may no longer be a member of the board. The members of the board are not involved in the daily management of the company.

According to the Public Limited Liability Companies Act, the board shall govern and supervise the company, whereas the general manager (CEO) is responsible for the management on a daily basis. The board shall set out plans and budgets for the commercial activities, and may also decide on rules and regulations for the company's activities. The board may also take some management decisions or instruct the general manager. This will vary from company to company. In some companies the board or its chairman are very active, whereas in others, the board mainly supervises the management without intervening in the daily activities.

The deadline for (privately owned) PLCs expired in January 2008. By that date 77 out of the roughly 450 companies concerned had failed to comply with the legislation on gender representation. These companies received a letter from the central company registry, giving them four weeks notice to comply with the rules. In February 2008, 12 PLCs received a second notice of four weeks with public announcement. In April 2008 it was clear that none of the PLCs would be dissolved.<sup>99</sup>

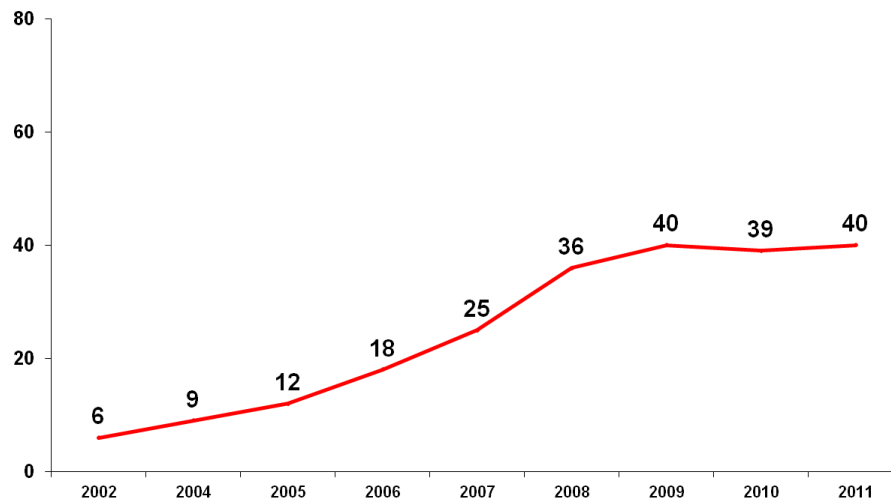
### *Figures on gender balance on company boards*

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<sup>99</sup> Information provided by the Norwegian Ministry of Children, Equality and Social Inclusion: <http://www.regjeringen.no/en/dep/bld/Topics/equality/rules-on-gender-representation-on-compan.html?id=416864>.

As expected, the quota legislation led to major changes in the gender composition of company boards in Norway. According to figures by the Institute of Social Research in Oslo (ISF), the proportion of women on boards of PLCs gradually increased from 6% in 2002 to 18% in 2006, and finally reached 40% as from 2009<sup>100</sup> (see graph 1). According to the Commission database on women and men in decision-making<sup>101</sup>, 42% of board members of the 19 largest Norwegian companies (constituents of the main blue-chip index of the Oslo stock exchange - OBX) were women in January 2012.

Graph 1: Proportion of women on boards of Norwegian PLCs between 2002 and 2011



Source: *Institutt for samfunnsforskning (ISF)*

By contrast, the number of women on boards of private limited companies – not covered by the quota legislation – has largely remained stable, rising only from 15% in 2004 to 17% in 2009 (ISF figures).

However, the quota legislation has not yet led to major changes regarding the hierarchy within the boards. The proportion of women chairing boards of PLCs has only slightly risen from 3% in 2002-2007 to 5% in 2009 (ISF figures). Within the 19 largest Norwegian companies, women represented 2 out of 19 chairpersons in January 2012 – i.e. 10.5% against an EU average of 3.2% (Commission database).

Moreover, the gender quotas for the (non-executive) boards have not had an immediate influence on reducing the male dominance of the executive management of companies. According to a survey at the end of 2008, in the more than 200 companies listed on the Oslo stock exchange, less than 2% of the CEOs and about 13.5% of the top management were women<sup>102</sup>. No more recent figures seem to be available, so that

<sup>100</sup> Mari Teigen/Aagoth Storvik/Vibeke Heidenreich, Institutt for samfunnsforskning (ISF), 2009/2011, presented in several publications and presentations. The figures may be slightly below 40% despite the quota, since in practice the quota is only 33% for boards with three members and the rules for employee representatives are not as ambitious and allow for exceptions.

<sup>101</sup> [http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index_en.htm)

<sup>102</sup> Vibeke Heidenreich, *Kjønn og makt i norsk næringsliv*, 2009, in K. Niskanen and A. Nyberg (eds), *Kön och makt i Norden. Del 1, Landsrapport, Tema Nord*, 569: 219–249. København: Nordisk ministerråd.

it is not possible to observe whether a trickle-down effect on the gender composition of the executive management has occurred since.

### *Characteristics of male and female board members*

In autumn 2009, ISF conducted a representative survey of 900 board members of Norwegian PLCs, to enquire about the characteristics of male and female board members<sup>103</sup>. It found that female board members were on average younger than their male colleagues (72% of women under 51 years, compared with only 35% of men) and had a slightly better educational attainment (77% of women had at least 4 years of university or college education, compared with 69% of men). The type of education was quite similar, as about 50% of members of both genders had studied business management, 30% of men and 24% of women had studied scientific and technological subjects and 8% of men as well as 12% of women were law graduates.

When asked about their main occupation, 55% of women replied that they were also managers (compared to 43% of men), only 21% said they were owners (compared to 39% of men) and only 11% of women (15% of men) stated 'board member' as their main occupation. This is confirmed by the fact that more women (77%) than men (45%) report not having major ownership interests in the company.

Interestingly, companies did not seem to need external help to recruit women to board positions. There were no indications that head hunters or data bases were more commonly used than before the introduction of the quota legislation. The election committees obviously managed to recruit the necessary number of female board members by their own effort.

Similarly there are no indications that companies complied with the quota rule by recruiting family and friends as women board members. Only few women reported having family affiliation to major shareholders or being recruited through a social network of friends or family.

### *Multiple board memberships*

The ISF survey also refuted predictions that the quota legislation would create a phenomenon of 'golden skirts', i.e. a few women holding a large number of seats in Norwegian company boards. In fact, according to the survey, 79% of female board members only hold one board position in public limited and private limited companies in Norway, compared to 62% of male board members, while 38% of men and only 21% of women sit on two boards or more. 2% of men are members of at least 10 boards, while none of the women responding are. Thus multiple board membership is still much more common among men than among women in Norway.

### *Consequences on companies*

The ISF survey of Norwegian board members also examined whether the increased presence of women directors had led to changes in the functioning of the boards.

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<sup>103</sup> Mari Teigen/Vibeke Heidenreich, ISF, 2009, presentation available at: <http://www.boardimpact.com/PDF/MariTeigenogVibekeHeidenreich.pdf>

While a majority of board members believed that nothing had changed (60% of men, 33% of women), a smaller share of board members (12% of men, 20% of women) had noticed improvements. When asked about the improvements, those board members noted new perspectives being brought to their work (57% of men, 66% of women), more discussions during meetings (33% of men, 59% of women) and the addition of new competences to the board that were lacking before (39% of men, 30% of women).

A recent survey of 201 Norwegian firms<sup>104</sup> confirmed these findings. It found the increased ratio of women directors was positively associated with the board's strategic control. The positive effects of women directors on board effectiveness could be explained through increased board development activities and through decreased levels of conflict.

#### *Decrease in the number of public limited companies*

When the quota legislation came into force, it was widely reported that many companies registered under a different legal form (notably as a private limited company) to escape the quota rules. Indeed the number of public limited companies (PLC) dropped from around 600 in 2002 to 505 in 2006 and to 414 in 2008 (ISF figures). However, this strong decrease was only partly due to the quota law, but also due to other legal changes, notably as regards legislation covering trade in securities in 2007.

ISF conducted a survey of CEOs and board leaders of 108 of the 126 companies which had changed their registration during 2007 and the first six months of 2008<sup>105</sup>. When asked about the reasons for re-registering, companies replied the following: it is more convenient / practical to be a private limited company (60%); change in laws on financial companies and requirements to their formal status (36%); restructuring (mergers, acquisitions) (36%); quota legislation (33%); company was taken off the stock exchange or not listed anyway due to a change of plans (32%). Only 7% of the companies reported the quota legislation as being the only reason for the change of legal form.

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<sup>104</sup> Sabina Nielsen/Morten Huse, *The Contribution of Women on Boards of Directors: Going Beyond the Surface*, 2010, in: *Corporate Governance: An International Review*, 18(2): 136-148.

<sup>105</sup> Mari Teigen / Vibeke Heidenreich, ISF, 2009, presentation (see above).