Proposal for Gender balance on company boards Directive

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Justice and Consumers

Context

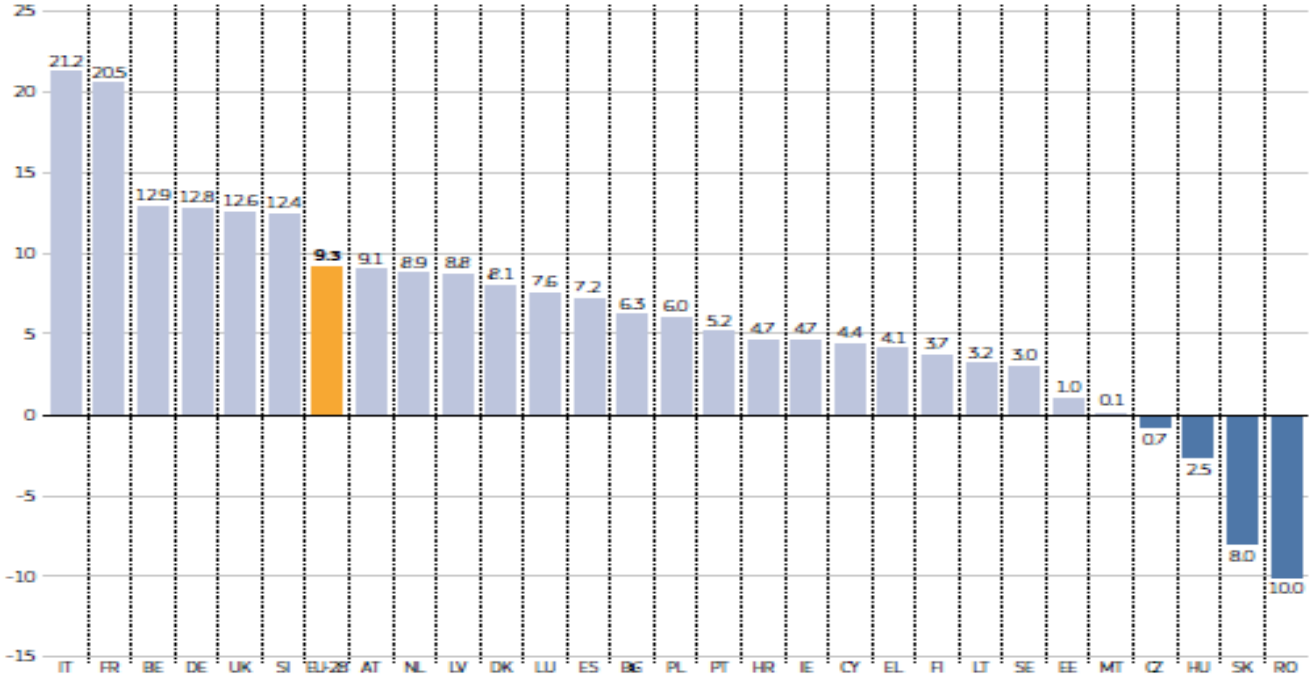
- Attempts to try voluntary approach – Council recommendations in 1984 and 1996

- In 2011 the EC encouraged EU's largest listed companies for credible self-regulation to ensure better gender balance in companies' supervisory boards - "Women on the Board Pledge for Europe"

- Since the progress was not visible, in November 2012 the EC put forward a directive aiming to accelerate the progress

European Commission

Change in the share of women on boards, EU-28, October 2010 – April 2015



Major improvements took place in countries that have taken or considered legislative action or had an intensive public debate on the issue

Measures in European Countries

Binding targets (quotas) laws:

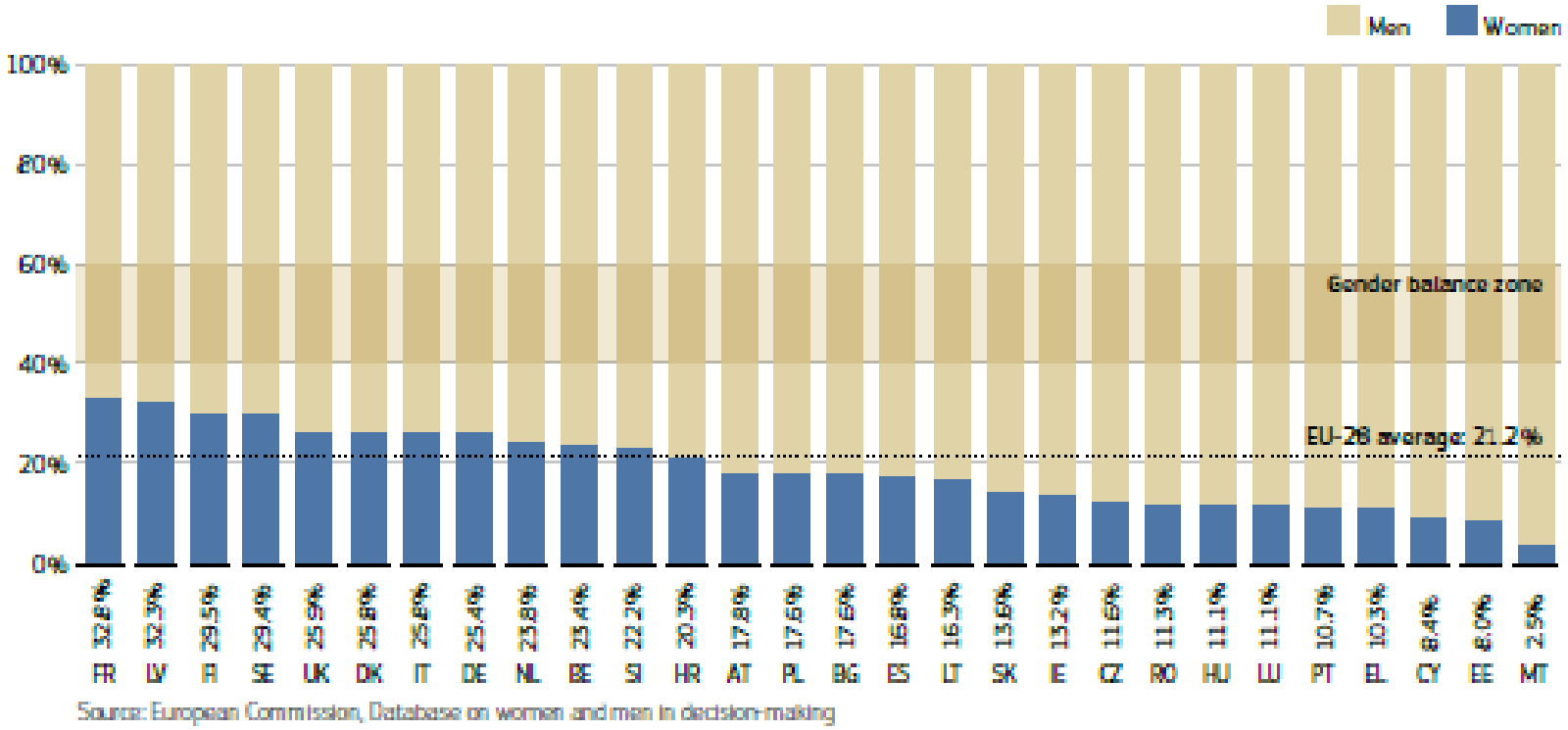
Norway - 40% by 2006
Iceland - 40% by 2013
France - 40% by 2017
Italy - 33,3% by 2015
Belgium - 33,3% by 2019
Germany - 30 % quota for largest companies

***Other measures**:*
UK – Lord Davies' report – non-binding target of 25% for FTSE100 by 2015
NL – non-binding target of 30%
Spain – non-binding target of 40 %
DK – self-fixed targets

Other countries – none or limited measures

European Commission

Representation of women on the boards of large listed companies in the EU, April 2015



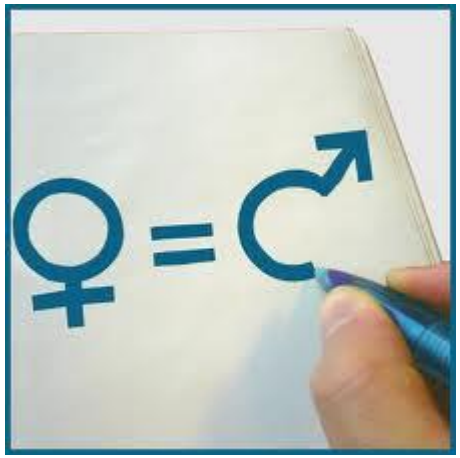
Source: European Commission, Database on women and men in decision-making

Stakeholder consultation (March – May 2012)

Stakeholder views / Key findings:

- Consensus about the need to increase share of women on company boards

- Views varied on the appropriate means to bring about the change.



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Proposed Directive

- *It sets a quantitative target, not binding quota*
- *40% target for non-executive directors combined with binding rules on a transparent selection process. Sanctions do not follow when the target is not achieved*

- *The Directive requires no harmonisation of company law and fully respects the different board structures across Member States.*
- *It does not clash with the shareholders' rights in relation to their freedom to vote or even to propose additional candidates at the general assembly.*
- *Companies have to set individual targets for executive / management board members – except if companies pursue the objective of 33 % (instead of 40% - decides MS) relating to all directors, whether executive or non-executive.*

Procedural obligations

- *To ensure transparent selection of candidates, based on*
  - ***pre-established, clear, neutrally formulated and unambiguous criteria***
  - ***Comparative analysis of qualifications***

- ***Kick in only if 40% (or 33%) is not achieved (at MS level)***
- *This approach ensures that selection of candidates is based on qualifications and merit.*
- *Preference rule only in case of equal qualification of both candidates (unless all criteria specific to the individual candidates tilts the balance in favour of candidate of the other sex)*

Scope

- *companies **listed** on EU stock exchanges*
- *Privately or publicly owned*

*- **Except**: small and medium-sized companies (**SMEs** – less than 250 employees and annual turnover not exceeding EUR 50 million or annual balance sheet not exceeding EUR 43 million)*

*- Estimated ±**5000 companies***

Additional obligations

Reporting obligations:

- *Annually*
- *On gender composition and measures taken*
- *Explanation in case objectives not met*
- *Statistics available an the website*

European Commission

Sanctions

→ kick in in case of failing to implement obligations under directive:

- **non-compliance with procedural obligations (not for not reaching 40 or 33%)**
- **non-compliance with obligation to set individual objectives (if applicable)**
- **non-compliance with reporting obligations**

- defined by the Member States (content and addressees)

- effective, proportionate and dissuasive

Flexibility Clause

- *MS can suspend the procedural requirement obligations in case of national measures which are equally effective*

- *Three possible scenarios to invoke the "flexibility clause" - within 3 years of transposition period:*

  1 option: legally binding targets (at least 30/25%) in place enforced by sanctions; +an additional option if such quota does not cover all the companies falling within the scope of the D.

  2 option: Result (30/25%);

  3 option: Progress (at least 7,5 % within 5 recent years) and result (25/20%)

- *This is an open list meaning that other MS having implemented different efficient measures have an opportunity to disapply the procedural requirements of the directive and continue to apply their own existing effective measures*

Subsidiarity

The principle of subsidiarity (Art. 5, TEU) requires that the EU acts only if and in so far as the objectives of the proposed action **cannot be sufficiently achieved by the Member States** (*necessity test*), but can rather, either by reason of the scale or effects of the proposed action, be **better achieved at Union level** (*test of EU value added*).

- *The proposal fully respects the principle of subsidiarity.*
- *This is not a "one-size-fits-all" approach: it allows for MS to have their own effective national measures.*
- *For MS that do nothing at all, there will be a default measure, which is the fair and transparent selection procedure.*
- *Subsidiarity is not an excuse to do nothing at all.*

Proportionality

- *Exclusion of SMEs*

- *Primary focus on non-executive directors*
- *It does not set criteria for selection of candidate*
- *Voluntary targets – in companies where the members of the under-represented sex represent less than 10 per cent of the workforce*
- *Sunset clause:*

expiry date= 31 December 2031

Thank you for your attention!

For more information please see under the link:

http://ec.europa.eu/justice/gender-equality/gender-decision-making/index_en.htm

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