

HOUSE OF LORDS

European Union Committee

5th Report of Session 2012–13

Women on Boards

Report

Ordered to be printed 6 November 2012 and published 9 November 2012

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£price

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

The European Union Committee

The Committee considers EU documents in advance of decisions being taken on them in Brussels, in order to influence the Government's position and to hold them to account.

The Government are required to deposit EU documents in Parliament, and to produce within two weeks an Explanatory Memorandum setting out the implications for the UK. The Committee examines these documents, and 'holds under scrutiny' any about which it has concerns, entering into correspondence with the relevant Minister until satisfied. Letters must be answered within two weeks. Under the 'scrutiny reserve resolution', the Government may not agree in the EU Council of Ministers to any proposal still held under scrutiny; reasons must be given for any breach.

The Committee also conducts inquiries and makes reports. The Government are required to respond in writing to a report's recommendations within two months of publication. If the report is for debate, then there is a debate in the House of Lords, which a Minister attends and responds to.

The Committee has six Sub-Committees, which are:
 Economic and Financial Affairs (Sub-Committee A)
 Internal Market, Infrastructure and Employment (Sub-Committee B)
 External Affairs (Sub-Committee C)
 Agriculture, Fisheries, Environment and Energy (Sub-Committee D)
 Justice, Institutions and Consumer Protection (Sub-Committee E)
 Home Affairs, Health and Education (Sub-Committee F)

Our Membership

The Members of the European Union Committee are:

Lord Boswell of Aynho (Chairman)	Lord Hannay of Chiswick	The Earl of Sandwich
Lord Bowness	Lord Harrison	Baroness Scott of Needham Market
Lord Cameron of Dillington	Lord MacLennan of Rogart	Lord Teverson
Lord Carter of Coles	Lord Marlesford	Lord Tomlinson
Lord Dear	Baroness O'Cathain	Lord Trimble
Baroness Eccles of Moulton	Lord Richard	Baroness Young of Hornsey
Lord Foulkes of Cumnock		

The Members of the Sub-Committee on the Internal Market, Infrastructure and Employment, which conducted this inquiry, are:

Baroness O'Cathain (Chairman)	Lord Fearn	Lord Plumb (to 22 October 2012)
Lord Brooke of Alverthorpe	Lord Haskel	Baroness Scott of Needham Market
Baroness Buscombe	Lord Kakkar	Baroness Valentine
Lord Clinton-Davis	Earl of Liverpool	Lord Wilson of Tillyorn
Lord Elton (from 23 October 2012)		

Information about the Committee

For information freely available on the web, our homepage is <http://www.parliament.uk/hleu>. There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

General Information

General information about the House of Lords and its Sub-Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at

<http://www.parliament.uk/business/lords/>

Sub-Committee Staff

The staff of the Sub-Committee is Nicole Mason (Clerk) (from October 2012); Paul Dowling (Policy Analyst) and Elaine Morgan (Committee Assistant). Mark Davies (Clerk) (to September 2012)

Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. General enquiries 020 7219 5791. The Committee's email address is euclords@parliament.uk

CONTENTS

	<i>Paragraph</i>	<i>Page</i>
Summary		4
Chapter 1: Introduction	1	7
Box 1: European policy approaches to gender diversity		8
Chapter 2: The case for action	12	11
The case for EU action	23	14
Box 2: The legal case for action on boardroom gender diversity		15
Box 3: The subsidiarity principle		17
The ultimate target	35	17
Chapter 3: Quotas	44	20
Table 1: Legislative quotas adopted in European countries		21
Chapter 4: Maintaining pressure: monitoring progress	74	29
Company scrutiny	74	29
Member State policy monitoring	84	31
Chapter 5: Changing corporate culture	88	32
Corporate governance rules	89	32
Shareholder engagement	102	35
Fair recruitment: executive search firms	111	37
Chapter 6: Developing the pipeline	125	41
Chapter 7: Summary of Conclusions and Recommendations	147	47
Appendix 1: Sub-Committee on the Internal Market, Infrastructure and Employment		52
Appendix 2: List of Witnesses		54
Appendix 3: Call for Evidence		57
Appendix 4: Glossary of Terms and Abbreviations		59

SUMMARY

The EU has long committed itself to promoting gender equality in the labour market at all levels, including the boardroom. Since 2010, this objective has been pursued vigorously by the European Commission's Vice-President, Viviane Reding, and by a number of business leaders, led in the United Kingdom by Lord Davies of Abersoch. Their efforts have seen some positive change: in this country FTSE 100 companies are on target to have a quarter of board positions occupied by women by 2015; and across the EU as a whole the proportion of women on boards has risen by 16 per cent since 2010, to just under 14 per cent of overall board positions.

Though we welcome these positive changes, the absolute levels of female board membership remain far too low, and progress in some quarters is not nearly fast enough. The situation is particularly bad for executive positions. The EU has pledged to come forward with proposals to redress this persistent imbalance. In this report we evaluate what action they could and should take, with a particular focus on the vexed question of legislative quotas for women on boards.

The report begins by stressing the benefits that come from a gender-balanced board. A more balanced board will be able to tap into the wealth of available talent in the labour market, provide a broader spectrum of ideas, better reflect a company's customer base and improve corporate governance. We did not, however, find proven the argument that there is a causal link between more gender diversity on boards and stronger financial performance.

We therefore support a leadership role for the EU in furthering this agenda, in partnership with national governments. We urge the Commission to bring forward an EU-wide system to monitor the numbers of women in senior positions, and to use this data to evaluate how well Member States are engaging with gender diversity in the corporate world. We also support efforts to expand across the EU proposed reforms to corporate governance. Measures which could be supported include demanding more detailed explanations from companies as to their diversity policies, as well as the idea of a voluntary executive search code seen in the United Kingdom. Taking these ideas forward would represent sensible, practical and welcome examples of how Vice-President Reding can maintain the goodwill her leadership has engendered thus far.

We do not consider that the Commission has made its case for stronger action in the form of a quota for women on boards. We consider that quotas should not be resorted to until all other options have been exhausted. They generate negative perceptions amongst women and business leaders and do not address the root causes of inequality.

Quotas should be used only where business has shown itself unwilling to change its ways. The high political priority for gender diversity on boards across the EU, the positive strides made in a number of Member States, and the lack of evidence as to the effectiveness of quotas elsewhere make it untenable for the Commission to argue that no other options remain. In the United Kingdom in particular, the business community has embraced the opportunity to take action and started to deliver longer-lasting change. Quotas from the EU at this stage would risk jeopardising this widespread engagement and goodwill, undermining the excellent

work led by Vice-President Reding and Lord Davies of Abersoch. We urge the Commission to take a step back and work in partnership with business and its social partners to deliver change, with the understanding that legislation on quotas could be brought back should progress stall.

In the meantime, we call on the Government, the EU institutions and the business world to work together to ensure that change is sustainable, and in the process develop a consistent supply of talented women to take up senior positions. This means supporting business-led projects that build up aspiration, foster talent and provide guidance to women wanting to progress in the corporate world. It also means thinking in the round about the broader culture surrounding working practices. In doing so, we hope that the United Kingdom can be at the forefront of a movement towards a better jobs market, where opportunities are shared equitably and where talent is nurtured and used to the full.

Women on Boards

CHAPTER 1: INTRODUCTION

1. Gender equality is one of the core objectives of the European Union. The Treaty on the Functioning of the European Union states that “in all its activities, the Union shall seek to eliminate inequalities, and to promote equality, between men and women”.¹ A European legislative framework is in place to support this agenda. This includes the 2004 Directive on equal treatment of women and men in the access to and supply of goods and services (also known as the “Gender Directive”),² and the 2006 Directive on equal opportunities for men and women in the workplace.³
2. Equality in the labour market and in access to board-level positions forms a key part of this work. The issue of gender equality in the boardroom has been discussed at the European Union level for some time, but it is only in recent years that the prospect of specific European measures or legislation to raise the proportion of women appointed to board-level positions has come to the fore.
3. The Vice-President of the Commission and Commissioner for Justice, Fundamental Rights and Citizenship, Viviane Reding, has made this issue a priority during her term of office. In March 2010, the Commission published a “Women’s Charter”, which included a pledge to “pursue the fairer representation of women in positions of power in public life and the economy”⁴ This was followed in September 2010 by the “Strategy for Equality between Women and Men, 2010–2015” which advocated “targeted initiatives to improve the gender balance in decision making”.⁵ Then, in March 2011, the Commission invited European companies to sign the “Women on the Board Pledge for Europe”.⁶ By signing this pledge, companies would commit to raising female representation on their boards to 30 per cent by 2015 and 40 per cent by 2020.
4. Despite these efforts, progress remains slower than we would wish. By March 2012, only 24 companies had signed the pledge, whilst the average proportion of women on boards across the EU was less than 14 per cent.⁷ This represented an improvement from 2010, when the overall average was around 12 per cent; but at that rate of progression, the Commission noted

¹ Article 8, Treaty on the Functioning of the European Union. This requirement is also reflected in Articles 2 and 3(3) of the Treaty on European Union and Article 23 of the Charter of Fundamental Rights.

² Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

³ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of women and men in matters of employment and occupation

⁴ Communication from the Commission, *A strengthened commitment to equality between women and men: a women’s charter*:

http://ec.europa.eu/commission_2010-2014/president/news/documents/pdf/20100305_1_en.pdf

⁵ European Commission, *Strategy for equality between women and men*, 2010

⁶ European Commission, *Women on the Board Pledge for Europe*, 2011:

http://ec.europa.eu/commission_2010-2014/reding/pdf/p_en.pdf

⁷ European Commission, *Women in economic decision-making in the EU: progress report*:

http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

that it would take 40 years for women to make up 40 per cent of board positions.⁸ It therefore launched a public consultation to identify measures to address the “persistent lack of gender diversity in boardrooms of listed companies across Europe”,⁹ including possible legislative measures.

5. A legislative proposal was expected to follow on from this process on 23 October 2012. However, a day of dramatic developments saw the announcement postponed until at least 14 November amid media reports of a failure to agree upon a course of action within the Commission.¹⁰ The intervening period has been characterised as one of uncertainty ahead of the presentation of a new proposal.¹¹ Attention has focused in particular on whether legislation should be introduced seeking to institute an EU-wide quota requiring a specified proportion of board positions to be taken up by women. Such a step would represent a significant shift; until now, Member States have taken the primary responsibility for improving gender diversity and have done so in different ways. These varied approaches are outlined in Box 1.

BOX 1

European policy approaches to gender diversity

Legislative measures

Following the example of Norway, which is outside the EU¹² and which introduced a legally binding quota of 40 per cent in 2003, a number of EU Member States have introduced legislative targets or quotas for gender representation on company boards. France, Italy and Belgium have done so for company boards, including sanctions for those companies which do not comply with the quotas. In addition to this Denmark, Greece, Austria, Slovenia and Finland have introduced gender requirements in legislation for the composition of the boards of state-owned companies. Many of these countries have accompanied quotas with efforts to effect cultural change in business.

Voluntary or self-regulatory initiatives

A number of other countries have adopted a self-regulatory approach to achieve the same ends. The Netherlands and Spain, for example, have introduced targets which are neither binding nor accompanied by sanctions; the former has also introduced a voluntary charter to encourage companies to increase female representation. The other significant strand of action has been to use corporate governance codes to drive changes in behaviour—this has been the preferred course in Sweden, Germany, Poland, Luxembourg and the United Kingdom.

⁸ *ibid.*

⁹ European Commission, *Consultation on Gender imbalance in the EU*, May 2012: http://ec.europa.eu/justice/newsroom/gender-equality/opinion/120528_en.htm

¹⁰ See, for example, Euractiv, *Commission puts gender quota plans on hold*, 23 October 2012: <http://www.euractiv.com/justice/commission-puts-gender-quota-pla-news-515625>

¹¹ See Sky News, *Female Boardroom quotas: EU delays decision*, 23 October 2012: <http://news.sky.com/story/1001576/female-boardroom-quotas-eu-delays-decision>; and Reuters, *EU delays vote on quotas for women in boardroom*, 23 October 2012: <http://uk.reuters.com/article/2012/10/23/uk-eu-gender-idUKBRE89M0NC20121023>

¹² Norway is, however, part of the European Economic Area in which EU gender equality legislation applies

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

Source: European Commission, *Women in economic decision-making in the EU: progress report, 2012*¹³

6. The Government have supported strongly the case for a voluntary approach to solving the problem in the United Kingdom. In *The Coalition: our programme for Government*, produced shortly after the 2010 election, they committed to “[promoting] gender equality on the boards of listed companies”.¹⁴ The Government subsequently appointed Lord Davies of Abersoch to lead a review into how obstacles to the participation of women on boards could be removed. In his March 2011 report Lord Davies advocated a voluntary approach and set out a number of recommendations, including that companies should set targets for the number of women on their boards in 2013 and 2015, with the aim of a minimum of 25 per cent female board representation by 2015.¹⁵ He also recommended measures to change corporate culture in recruitment and reporting.
7. In March 2012, Lord Davies produced a follow-up review.¹⁶ This was accompanied by an independent *Female FTSE board report 2012*, produced by the Cranfield School of Management.¹⁷ The findings showed that 27 per cent of all board appointments had been filled by women during the preceding 12 months and that only 11 all-male boards remained in the FTSE 100. Jo Swinson MP, Minister for Employment Relations and Consumer Affairs in the Department for Business, Innovation and Skills, and Minister for Women and Equalities in the Department for Culture, Media and Sport, also reported on progress. As of October 2012, 17.3 per cent of board positions in the FTSE 100 were held by women, with only eight boards still all-male.¹⁸ Furthermore, she highlighted that, in the year up to October 2012, more than a third of candidates appointed to boards were female.¹⁹ FTSE 250 companies, though starting from a much lower level, also made progress. The percentage of women on their boards increased by 44 per cent in the period following the initial Davies review, from 7.8 per cent in 2010 to 11.3 per cent in 2012; and the proportion of all-male boards fell from half of companies in 2010 to around a third in 2012.²⁰
8. The Government have opposed the introduction of quotas at an EU level. They contend that self-regulation needs to be allowed to demonstrate its potential before legislation is considered.²¹ However, they have maintained that they do not rule out quotas if the voluntary approach does not bear fruit. The Minister made clear that “if we cannot achieve the success that we want, it is not as if the Government have forever ruled out countenancing quotas.

¹³ See http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf

¹⁴ HM Government, *The Coalition: our programme for government*, 2010: http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf

¹⁵ Lord Davies of Abersoch, *Women on boards*, February 2011: <http://www.bis.gov.uk/assets/biscore/business-law/docs/w/11-745-women-on-boards.pdf>

¹⁶ Lord Davies of Abersoch, *Women on boards*, March 2012: <http://www.bis.gov.uk/assets/biscore/business-law/docs/w/12-p135-women-on-boards-2012.pdf>

¹⁷ Cranfield University School of Management International Centre for Women Leaders, *The Female FTSE Board Report 2012: Milestone or Millstone*, 2012: <http://www.som.cranfield.ac.uk/som/dinamic-content/research/documents/2012femalfitse.pdf>

¹⁸ Q294

¹⁹ Q295

²⁰ Professional Boards Forum, *BoardWatch, The rate of new appointments to FTSE 100 and 250 companies*, 4 September 2012: <http://www.boardsforum.co.uk/boardwatch.html>

²¹ Q288 (Jo Swinson MP)

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

But very much the preference is that we do this through a business-led voluntary approach.”²²

9. Our report has been produced, following the developments in October 2012, in the context of significant uncertainty in terms of the likely timing, strength and composition of any legislative proposals from the Commission. At such a crucial moment, this issue requires detailed and considered thinking about the potential next steps. In the following chapters, we consider a number of the principled and pragmatic questions that arise from possible legislation. We begin with an exploration of the case for action at both national and European levels, before moving on to consider the range of possible policy measures, including quotas, which could be pursued.
10. Our aim is to consider this issue not just in the context of the Commission’s forthcoming announcement, but also in the context of the need to achieve long-term, sustainable change across the EU. We seek to contribute to the debate on possible legislation, and to ensure that negotiations at a European level do not undercut efforts at a national level to improve the diversity of corporate boards. In our work we have been helped greatly by the wealth of written evidence that we received and by those who provided oral evidence to the Committee. We are grateful to all those who contributed.
11. We make this report to the House for debate.

CHAPTER 2: THE CASE FOR ACTION

12. In order to consider what form any measures to improve gender diversity on boards should take, it is necessary to examine the reasons that are advanced for taking action. In the evidence we considered, two key reasons were put forward.
13. The first is the need for fairness and equality of opportunity. Women make up 45 per cent of the labour force in the United Kingdom,²³ and nearly 60 per cent of graduates;²⁴ yet only 17 per cent of board positions in the United Kingdom, and around 14 per cent in the EU as a whole, are occupied by women. This does not reflect a lack of available talent, a point stressed repeatedly in our evidence.²⁵ The Cranfield *Female FTSE Board Report*, for example, highlighted more than 2,500 women ready and capable to take on board-level positions.²⁶ The figures strongly indicate that opportunities for progression are not shared equitably between men and women, and it is absolutely vital that this issue is addressed.
14. A more proportionate body of female board members would better tap into the wealth of available talent in the labour market.²⁷ It would also reflect the public interest. Arni Hole, Director General of the Norwegian Ministry of Children, Equality and Social Inclusion, noted that the case for action in Norway was based partly on the premise that greater diversity reflected a better return on public investment in higher education.²⁸ This was echoed by the European Commission.²⁹ For Professor Sylvia Walby OBE, UNESCO Chair in Gender Research at Lancaster University, the legal privileges granted to companies also gave the Government a legitimate interest in greater female representation.³⁰ These arguments add an interesting nuance to what is a clear starting point: we have a duty to make use of all available talent and to strive to ensure that opportunities for progression are available and accessible fairly, regardless of gender.
15. The second strand of argument is predicated upon the business benefits of a more diverse boardroom. This question links intrinsically with the core functions and responsibilities of a board. Broadly defined, the responsibility of a board is to oversee an organisation's business and affairs. In most companies, and particularly in the United Kingdom, the board holds ultimate responsibility for the direction of the company and has a supervisory

²³ CBI

²⁴ Q41 (Helene Reardon-Bond, GEO)

²⁵ Professional Boards Forum, Brook Graham, ILM, NAWO, EWL, Q42 (Helene Reardon-Bond, GEO), Q52 and 77 (Lord Davies of Abersoch), Q90 (Dr Karen Jochelson, EHRC), Q105 (Scarlet Harris, TUC), Q170 (Kate Grussing, Sapphire Partners), Q198 (Professor Susan Vinnicombe)

²⁶ Cranfield University School of Management International Centre for Women Leaders, *The Female FTSE Board Report 2012: Milestone or Millstone*, *op. cit.*

²⁷ ABI, ELA, Fawcett Society, CBI, NEST, European Commission, Q41 (Helene Reardon-Bond, GEO), Q199 (Professor Susan Vinnicombe), Q257 (Helena Morrissey), Q275 (Sonja Lokar, EWL)

²⁸ Q228

²⁹ European Commission

³⁰ Professor Sylvia Walby

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

remit over the officials to whom it delegates general company decisions and actions.³¹ The role of a board should inform our evaluation of this argument.

16. This second strand was outlined in a large number of submissions. These submissions focused on four particular benefits:

- A more diverse boardroom offers wider perspectives that better reflect the customer base and workforce of companies;³²
- A more diverse board changes the culture in a boardroom: it offers greater challenge to proposed decisions, a broader spectrum of ideas, reduces the level of “groupthink” and is potentially more “risk aware”, improving corporate governance;³³
- Female board members can be role models to other women within and outside an organisation, and can demonstrate a company’s commitment to gender fairness, helping companies to attract and retain a broader proportion of staff;³⁴
- Some studies point to the fact that greater diversity, particularly of gender, can have a positive effect on corporate performance.³⁵

17. The first three are indeed compelling. A board that draws upon all the talent available to it will be better equipped for the challenges it faces. It will also be better equipped to retain and develop staff in a competitive marketplace. In addition, the Association of British Insurers (ABI), the financial services trade association, said that such diversity was a positive signal to investors in this field.³⁶ This applies to diversity more generally, even though our attention is focused on gender for the purposes of this report. Though PriceWaterhouseCoopers (PWC), the multinational professional services firm, queried the academic evidence base for these claims,³⁷ we are persuaded by the case that has been argued cogently to us. Furthermore, we are confident that the case will only strengthen as the proportion of women on corporate boards increases.

18. The last of the stated business benefits is the most contentious. The idea of a demonstrable financial benefit derives from studies by the consulting house McKinsey and Catalyst, a research and advocacy organisation for promoting

³¹ Donnelly RR, *Fiduciary Duties and Other Responsibilities of Corporate Directors and Officers*, 4th ed., 2008–2011 Morrison & Foerster LLP, US

³² NAPF, IMA, IDDAS, GC100, ABI, ELA, CBI, NEST, QCA, NHO, Q18 (Caroline Normand, BIS), Q114 (Otto Thoresen, ABI)

³³ Fawcett Society, IMA, IDDAS, GC100, Professor Sylvia Walby, ABI, Aberdeen Asset Management, Arlene McCarthy MEP, ELA, Spencer Stuart, Mary Honeyball MEP, NAWO, CBI, NEST, QCA, EHRC, Elin Hurvenes, European Commission, Q18 (Caroline Normand, BIS), Q22 (Jonathan Rees, GEO), Q56 (Lord Davies of Abersoch), Q88 (Professor Sylvia Walby), Q113 (Liz Murrall, IMA; Joanne Segars, NAPF), Q114 (Otto Thoresen, ABI), Q142 (Simon Walker, IoD), Q144 (Sir Michael Rake), Q193 (Will Dawkins), Q199 (Professor Susan Vinnicombe, Dr Ruth Sealy), Q203 (Professor Susan Vinnicombe), Q246 (Helena Morrissey)

³⁴ PWC, Fawcett Society, ILM, Aviva, CBI, NEST, Mary Honeyball MEP, EHRC, European Commission, Q199 (Dr Ruth Sealy). Though see Spencer Stuart, which queried the visibility of appointments in this respect.

³⁵ IMA, Fawcett Society, An Inspirational Journey, Professor Sylvia Walby, Aviva, Arlene McCarthy MEP, Mary Honeyball MEP, NEST, European Commission, Q55 (Lord Davies of Abersoch), Q48 (Jonathan Rees, GEO), Q113 (Joanne Segars, NAPF), Q246 (Helena Morrissey), Q298 (Jo Swinson MP)

³⁶ ABI. See also Q245 (Arni Hole, Norwegian government)

³⁷ PWC

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

- female career development, which suggested a correlation between women's representation at board level and the financial performance of companies worldwide.³⁸ These assertions have been reiterated in subsequent studies³⁹ and were drawn upon in evidence by the Government.⁴⁰ However, Professor Susan Vinnicombe OBE, Director of the International Centre for Women Leaders at the Cranfield University School of Management, noted that Catalyst and Cranfield had now renounced this line of argument owing to the difficulty of inferring causation from the data.⁴¹
19. We do not find the case for a causal improvement in the financial performance of businesses from increased female representation, in terms of improved revenues or returns on investment, compelling in the form advanced at present. There are too many other factors to take into account for diversity to be disaggregated reliably, and the fact that the case has been renounced by some of its most notable former proponents is indicative of its weakness. We agree with Professor Susan Vinnicombe: "you cannot correlate two or three women on a massive corporate board with a return on investment, return on equity, turnover or profits".⁴² Dr Ruth Sealy, Deputy Director of Cranfield's International Centre for Women Leaders, agreed that it was "virtually impossible" to prove a direct link.⁴³ The other limbs of the argument—fairness, equality of opportunity, better retention of talent, and a more reflective and challenging board—are better ways to advance the strong case for improving the representation of women on boards to businesses.
20. It should be stressed that we reject any suggestion that improved diversity would be to the detriment of company performance, as was argued in some submissions we received.⁴⁴ As the Employment Lawyers' Association (ELA) stated, "it is difficult to see what disadvantages companies could suffer by reason of a higher representation of women on boards".⁴⁵ However, as the Minister said, "causality is probably impossible to prove one way or the other ...".⁴⁶ If this express link to financial performance cannot be proven more robustly, then it should be discarded from the argument. To do otherwise would put a case that cannot be proven at the centre of an argument for policy change. We urge the Government to argue forthrightly the case for improved gender diversity based on the "whole range of different advantages" that balance can bring,⁴⁷ rather than on the direct financial impact of increased female board representation.
21. **The case for pursuing a greater representation of women on boards is an overwhelming one. There is a strong public interest in ensuring that opportunities are available to all, regardless of gender, that**

³⁸ McKinsey, *Women Matter*, 2007, 2008 and 2010; Catalyst, *The Bottom Line: Connecting Corporate Performance and Gender Diversity*, 2004

³⁹ Credit Suisse Research Institute, *Gender diversity and corporate performance*, 2012; Deutsche Bank Research, *Towards gender-balanced leadership*, 2010; Ernst & Young, *Mixed leadership*, 2012

⁴⁰ Q292

⁴¹ Q199

⁴² *ibid.*

⁴³ Q199

⁴⁴ Campaign for Merit in Business, Ray Russell, Michael Klein

⁴⁵ ELA. See also Q248 (Helena Morrissey)

⁴⁶ Q292

⁴⁷ *ibid.*

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

women entering the labour market are able to fulfil their potential, and that we make full use of the wealth of talented women in the United Kingdom. Importantly, there is also a clear benefit to businesses from a more diverse boardroom. A diverse board is more reflective of its customers, offers greater challenge to established thinking, and demonstrates to staff that an organisation is committed to developing all of its talent regardless of gender. We support the Government's engagement with this agenda and urge that it continues.

22. **It is important that the case for action is made to businesses in a strong and positive manner. However, this case must also be intellectually defensible. Thus far, though we are convinced of the beneficial behavioural and social impacts of a more diverse board, we are not convinced by the evidence put forward for a direct link between gender diversity and financial indicators of business performance. Unless further research bears out the assertion as to direct financial benefit, such a claim should be discarded and the case for action made on the other compelling grounds identified.**

The case for EU action

23. The strong case for action to improve gender diversity is only a starting point in our consideration. The next question is whether, given the prospect of EU legislation in this area, such efforts should be for national governments alone.
24. In competence terms, the Commission asserts a clear legal base for positive action.⁴⁸ The Minister disagreed as regards quotas for boards: "We do not believe that it is within the competence of the EU. We believe that regulation of boards is a matter for member states, so that is something we would seek to challenge".⁴⁹
25. It is of course imperative that any action is concordant with EU law, and as a result the Commission must tread very carefully in putting together proposals in this area. We also accept that this is a complicated issue upon which we cannot make a definitive judgment, especially as we have not yet seen a specific proposal from the Commission. However, there appears to be a good arguable case that the EU has legal competence to adopt binding measures for positive action⁵⁰ in this area within the limits established by the Court of Justice: namely that any legislation creating quotas that would result in the appointment of substantially less well qualified women, or automatic and unconditional priority being given to equally qualified women, would be impermissible (See Box 2). We therefore consider it appropriate to judge the possible nature and scale of policy responses to boardroom gender inequality, including quotas, on their merits.

⁴⁸ European Commission

⁴⁹ Q291

⁵⁰ Positive action includes all measures to prevent or remedy past discrimination, for example by addressing structural disadvantages. It goes beyond merely prohibiting discrimination and can include the imposition of quotas.

BOX 2**The legal case for action on boardroom gender diversity**

Article 2 of the Treaty on European Union (TEU) sets out that gender equality is one of the core values of the EU and Article 3(3) makes clear that it is to be promoted within the internal market. This is buttressed by Article 8 of the Treaty on the Functioning of the European Union (TFEU), which provides that the Union will promote gender equality in its activities.

The legal base for the EU to adopt legislation aimed at ensuring equal opportunities and equal treatment in matters of employment and occupation is provided by Article 157(3) TFEU. This does not require a cross-border dimension for action. It does not expressly preclude positive action. Article 23 of the Charter of Fundamental Rights of the European Union, which has the same legal status as the Treaties, is consistent with the EU taking positive action.

Article 157(4) expressly enables Member States to adopt or maintain action in favour of women as the under-represented gender. The Court of Justice has laid down limitations; in particular that a woman chosen for a particular post must be of substantially equal qualification as the male candidate, and that the appointment process must take into account the specific personal situations of all candidates.⁵¹ Such limitations are likely to apply to positive action at EU level.

26. Our contributors welcomed the EU's engagement with boardroom gender diversity as a means to raise its profile and to encourage effective action, albeit with varying degrees of enthusiasm.⁵² The Trades Union Congress (TUC) made this positive case most clearly: "Without pressure from the EU, it is quite possible that the momentum that has gathered behind this issue would be lost and incentives to address this problem would dwindle."⁵³
27. For many witnesses, however, it was important for any action to be non-legislative in nature.⁵⁴ The Investment Management Association (IMA), a trade association for the United Kingdom investment management industry, reflected many of these submissions. It cited the need to respect cultural diversity across the EU, particularly in terms of differing board structures and policy approaches in Member States, as the reason to refrain from legislation.⁵⁵ Otto Thoresen, Director General of the ABI, summarised this line of argument: "Given the way that our markets operate, it is better to have the statement of intent and the clarity at European level of what is required and what we are trying to get to but then allow the individual countries, given their background history and structures, to move in the way that they see as most effective".⁵⁶

⁵¹ See, for example, Case C-407/98, *Abrahamsson*

⁵² The Mentoring Foundation, ILM, An Inspirational Journey, IDDAS, PWC, IMA, 30% Club, NAPF

⁵³ TUC

⁵⁴ NAPF, 30% Club, The Mentoring Foundation

⁵⁵ IMA. See also PWC, IDDAS, An Inspirational Journey, ILM, Aviva, ABI, Aberdeen Asset Management, Spencer Stuart, CBI, NEST, EHRC, Marina Yannakoudakis MEP, GC100, NHO, Q149 (Simon Walker, IoD; Sir Michael Rake), Q178 (Michael Reyner, MWM Consulting), Q204 (Dr Ruth Sealy), Q261 (Helena Morrissey, 30% Club)

⁵⁶ Q132

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

28. The Government shared this view. Jonathan Rees, Director General of the Government Equalities Office, said that they “see no need for the EU to legislate in this area ...”,⁵⁷ whilst the Minister saw most value in the EU taking a role in “sharing best practice, shining a spotlight on the issue and making sure that [the issue] is on the agenda ...”.⁵⁸
29. Others wanted a stronger role for the EU, believing that progress was best achieved by action at a European level.⁵⁹ The European Commission asserted that an EU response would better achieve the potential benefits for all citizens.⁶⁰ It argued this partly because Member States feared that national companies would be disadvantaged by governments acting unilaterally on board diversity and so were resisting action, but also because a response would avoid practical problems caused by differing rules of company law. This view was shared by the Austrian Federal Chancellery, which said that EU legislation “could add more certainty and consistency in a single market”;⁶¹ and by Sonja Lokar, Chairperson of the European Women’s Lobby (EWL), who thought that legislation could shift cultural attitudes and “speed up the process” of improving gender diversity.⁶²
30. Some supporters of EU action were more circumspect. The ELA wanted the EU to take a role, but to leave significant scope for national action. Similarly France Henry-Labordère, Counsellor for Labour Affairs at the French Embassy, was keen to see co-ordination at a European level, but believed “that a graduated approach” of “reasonable voluntarism” was the most appropriate first step.⁶³
31. The EU can, using its political influence, demonstrate leadership and put improved gender diversity onto the agenda in Member States. Indeed, Vice-President Reding deserves particular credit for doing exactly that since 2010, as the Minister noted.⁶⁴ There are of course cultural and legal differences in how boards are structured and, reflecting this, Member States have taken different approaches to tackling issues of gender diversity. It is important to respect those differences and the actions taken by Member States, but doing so does not preclude EU action. We were glad to see this acknowledged by opponents to quotas such as the ABI and the 30% Club, a campaign organisation dedicated to engaging business leaders with voluntary change.⁶⁵ Gender equality in the labour market is a matter of common importance in the Treaty; if there are actions that can take this agenda forward more effectively at EU level, they should be taken. The EU should be welcomed as a key partner in the drive to improve gender diversity on boards.
32. The question is thus one of the scale of that response. The EU’s competence to legislate, if established, is tempered by the principles of subsidiarity and proportionality, as laid out in Article 5 of the Treaty on the European Union. Under the principle of subsidiarity, the EU can take legislative action only

⁵⁷ Q2

⁵⁸ Q290

⁵⁹ Arlene McCarthy MEP, Mary Honeyball MEP, NAWO, QCA, EWL, TUC

⁶⁰ European Commission

⁶¹ Austrian Federal Chancellery

⁶² Q275

⁶³ Q242

⁶⁴ Q290

⁶⁵ ABI, 30% Club

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

where action could not be achieved satisfactorily at Member State level, or the objectives could be better achieved at a European level (see Box 3). This is a sensitive question to be judged on a case-by-case basis, as we do in the following chapters.

BOX 3

The subsidiarity principle

The principle of subsidiarity is born of the wish to ensure that decisions are taken as closely as possible to the citizens of the EU. It is defined in Article 5(2) TEU:

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”

The EU institutions must ensure “constant respect” for the principle of subsidiarity as laid down in Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality. This is supervised by national parliaments, as laid down in Articles 5(2) and 12(b) TEU, in accordance with the “reasoned opinion” procedure set out in Protocol (No. 2).

33. **Gender equality in the labour market is a core objective of the European Union and is embedded within its Treaties. It is therefore proper for the EU to play its part in improving the representation of women on boards. The Commission should be bold in showing leadership on the issue and in maintaining the high profile of the issue across Member States.**
34. **The Commission should be prepared to act where it can drive the agenda forward more effectively than Member States acting alone. Although we acknowledge that there are arguments that can be made concerning subsidiarity and the proportionality of EU action, the EU does have competence to take some form of action in this sphere. The better course for those with concerns is to engage pragmatically with any proposals from the Commission rather than simply asserting that the EU has no power to act.**

The ultimate target

35. Any action must have a stated aim. Often this is presented in terms of targets, and two of those are pertinent for the purposes of this inquiry. The first is the United Kingdom target: Lord Davies of Abersoch set a target of 25 per cent of board memberships being held by women by 2015, against which FTSE 100 firms are being monitored. It was suggested elsewhere that this target was set in line with what was felt to be achievable within the timeframe.⁶⁶
36. The second is the Commission’s preferred target, as expressed in its evidence: that women should hold 40 per cent of positions on boards by

⁶⁶ Q249 (Helena Morrissey, 30% Club)

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

2020. This comes from the idea in organisational literature that a board needs to have at least three women members—or, for larger boards, to be at least 30 per cent female—to establish a “critical mass” of female representation. At that point, it is suggested that corporate culture begins to shift and women board members exert substantial influence.⁶⁷ The Commission’s chosen figure would seek to ensure that, even in Member States where boards are traditionally smaller, there would in most cases be at least three women on the board.⁶⁸
37. Witnesses agreed that such targets were useful focusing measures on the way to more sustainable equality, rather than an end in themselves, but disagreed on which was the most appropriate.⁶⁹ Some viewed a 25 per cent target as too modest, and inclined towards the 40 per cent proposed at EU level.⁷⁰ Scarlet Harris, Women’s Equality Officer at the TUC, said that: “There is a strong argument for targets to be achievable, but for them to be meaningful they also have to stretch and challenge.”⁷¹ For Dr Annette Lawson OBE, Chair of the National Association of Women’s Organisations (NAWO), though, even a 25 per cent target could serve as “a perfectly okay target on the way to something better”.⁷²
38. Others urged pragmatism. Helena Morrissey, co-founder of the 30% Club and Chief Executive Officer of Newton Investment Management, insisted that she did “not want to snatch defeat from the jaws of victory by having a discussion about other things that should be done”.⁷³ Although the 30% Club supported the 30 per cent target identified in literature, it was content with a 25 per cent target up to 2015.⁷⁴ This, it said, would be the “stepping stone” which, when reached, “will have prised open the lid on a tightly knit group ...”.⁷⁵
39. From our perspective, full equality of opportunity should be the ultimate target. This is not a specific number, but a point at which data demonstrate that women entering the labour market are not being institutionally disadvantaged in their careers, nor dropping out at more senior levels in disproportionate numbers. In that respect, a specific target could be distracting—PWC called a single figure “meaningless” and warned that it could encourage complacency when reached.⁷⁶ We agree to a certain extent: progress is reflected in the rate of change, and its perceived sustainability, rather than a single figure. This is especially so when Member States and

⁶⁷ First developed in Rosabeth Moss Kanter, *Men and Women of the Corporation*, 1977. See also Joecks, J. et al, *Women on Boards and Firm Performance: What Exactly Constitutes a ‘Critical Mass’?*, 2012; Kramer, V. et al, *Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance*, 2007; Konrad, M. and Kramer, V, *How many women do boards need?*, 2006; Kramer, V. et al, *Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance*, 2007

⁶⁸ European Commission

⁶⁹ EHRC, NAWO, Mary Honeyball MEP, TUC, PWC, NAPF, 30% Club, ILM, Dr Barnali Choudhury, Mentoring Foundation

⁷⁰ TUC, NAWO, Austrian Federal Chancellery

⁷¹ Q108. See also Q108 (Professor Sylvia Walby; Dr Karen Jochelson, EHRC; Dr Annette Lawson, NAWO)

⁷² Q108. See also Q108 (Dr Karen Jochelson, EHRC). Arlene McCarthy MEP also supported “realistic” short term targets on the way to equality.

⁷³ Q249. See also Q168 (Simon Walker, IoD)

⁷⁴ *ibid.* See also Spencer Stuart

⁷⁵ *ibid.* See also IMA, *An Inspirational Journey*

⁷⁶ PWC

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

companies are taking action from different baselines. Nevertheless, targets have a pragmatic political value, incentivising efforts by national policymakers and identifying companies that are not engaged, so we accept the case for them at national and European levels.

40. Any target must be both stretching and achievable. We therefore see the Commission's 40 per cent target for 2020 as too ambitious at a stage when even the best performing nation, Finland, is still well below that point. Conversely, we see the United Kingdom's 25 per cent target as setting sights too low. The best EU-wide target to set at this stage is 30 per cent. Assessments against the target should be contextualised by the rate of change being made. That is an important metric. Not only does it prevent unfair criticism of countries where best efforts are being made, but it informs the central judgment, to be made in the coming chapters, as to whether Member States are moving too slowly such as to justify strong EU action in this sphere.
41. Nationally, we urge the Government to build on achievements thus far and institute a follow-up target of 30 per cent, to be reached by 2017. This is in line with the trajectory estimated by the Cranfield School of Management, on the basis that momentum continues to gather in this area.⁷⁷ The 30% Club was in fact optimistic that the present rate of progress may even see 30 per cent of female board members on FTSE 100 companies a year earlier than that.⁷⁸ The Government should aim to reach 30 per cent as soon as possible as an important statement of their engagement with the agenda.
42. **The ultimate aim is for women to be represented at senior levels in terms broadly proportionate to their levels of participation in the labour market. This would be a clear signal that opportunities are available fairly to both sexes. The best way to assess the achievement of this goal, in terms of board appointments, is to assess the rate of increase in the number of women on boards over time and its sustainability. However, we accept that broader targets for female board memberships can help to ensure engagement with the issue by companies and policymakers and thus we support their use.**
43. **The best target to use is that 30 per cent of board memberships should be held by women, the "critical mass" level identified as a catalyst for cultural change in the boardroom. This would stretch governments and companies to deliver sustainable change, whilst remaining achievable in the present climate. At a national level, the Government should institute a 30 per cent target to be reached by 2017, whilst striving to achieve a 30 per cent level of representation as early as possible. In Europe, the Commission should adjust its 40 per cent target for 2020 downwards to 30 per cent, whether in binding or voluntary proposals in this area. In both cases, judgment against the target set should be informed as much by the rate of change and the context of action as by the raw data of representation levels, with proper account taken of meaningful progress in Member States and companies starting from lower bases.**

⁷⁷ Cranfield University School of Management International Centre for Women Leaders, *The Female FTSE Board Report 2012: Milestone or Millstone*, *op. cit.*

⁷⁸ 30% Club

CHAPTER 3: QUOTAS

44. Having established the clear case for action, we must consider what form that action should take. We start with the issue that has attracted the most attention in this sphere: legislative quotas for gender diversity on boards.
45. Quotas are legal mechanisms that require companies to ensure that a specified proportion of boards are made up of the gender least represented, and are often accompanied by sanctions to punish non-compliance. Legislative quotas of that kind have been established already in a number of European states (both EU Member States and not), as laid out in Table 1.⁷⁹ They are also one of the options that have been considered by the Commission as part of its consultation process.
46. The Government's position was clear. They supported a voluntary, business-led approach, but reserved the option of quotas as a backstop:
- “What we have said is that, for all sorts of reasons, we do not think that quotas are the right way forward. We have also said that clearly, if the voluntary business-led approach does not work, we will need to look at all options, and that includes quotas. But the Government's clear view is it believes that the voluntary approach will work.”⁸⁰
47. The Government's stance was particularly firm with respect to proposals at an EU level. Fundamentally, they disputed the Commission's power to legislate, as discussed above (see paragraph 24). On a pragmatic level, they also considered Member State governance structures too varied for a single approach. Caroline Normand, Deputy Director for Corporate Governance at the Department for Business, Innovation and Skills, noted that “crude one-size-fits-all measures are not really likely to work as effectively as each country deciding what works for them from where they are starting, given the kind of system that they have, and then taking that forward.”⁸¹ Furthermore, the Government did not support fundamental change at a point when a business-led approach was being championed.⁸² These points were echoed by Lord Davies of Abersoch.⁸³ The French government, despite having national quotas in France, agreed that EU action should begin with non-legislative measures.⁸⁴

⁷⁹ The Committee has not taken evidence of the compliance of the quota systems of other States with the limitation laid down by the Court of Justice.

⁸⁰ Q2 (Jonathan Rees, GEO)

⁸¹ Q23

⁸² Q13 (Jonathan Rees, GEO)

⁸³ Q57

⁸⁴ Q242 (France Henry-Labordère)

TABLE 1

Legislative quotas adopted in European countries

Country	Quota	Companies affected	Sanctions	Passage date	Compliance date
France	40 per cent women board directors (if fewer than 8 directors, the difference between genders cannot be greater than 2).	Publicly traded or non-listed companies that have >500 employees or revenue >€50m	Fees will not be paid to directors in companies not in compliance	January 2011	January 2017 (an interim quota of 20 per cent must be reached by January 2014)
Italy	33 per cent of the gender least represented	Publicly traded	4 month period to rectify, before fines are levied (starting at €20,000); then an additional 3 months to comply before elected members lose their office	June 2011	Not specified
Austria	30 per cent women board directors	State-owned enterprises	N/A	March 2011	2018 (an interim quota of 25 per cent must be reached by 2013)
Belgium	33 per cent women board directors	Publicly traded companies and state owned enterprises	If the board comprises fewer of the gender least represented than the quota requires, any newly appointed or re-appointed director of the majority gender is void. If the situation remains after a year, all benefits and compensations for board members are suspended until compliance is achieved.	September 2011	Varies, based on company type and fiscal year start. State owned enterprises: 2011–12; publicly traded companies: 2017–18; small publicly traded companies: 2019–20. ⁸⁵
Norway	40 per cent women board directors	Publicly traded companies and state-owned enterprises	Possible refusal of registration, fine or dissolution	December 2003	2006 (state-owned enterprises); 2008 (publicly traded companies)

⁸⁵ Small publicly traded is defined as a company with fewer than 50 per cent of shares available for trading or meeting at least two of the following criteria: fewer than 250 employees; less than or equal to €43 million in assets; or less than or equal to €50 million in annual net turnover)

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

48. Many of our contributors shared this opposition to quotas. Some opposed them on principle.⁸⁶ The National Association of Pension Funds (NAPF), an umbrella group for institutional pension fund investors, called quotas “blunt, unsophisticated instruments, which address the symptoms of an issue as opposed to solving the root cause”.⁸⁷ It felt that quotas ignored the “underlying problem of women coming through the senior management pipeline”.⁸⁸ The 30% Club pointed to the low number of women in executive positions in Norway as evidence of their lack of effectiveness: despite 44 per cent of board members being female, the same is true of only 8 per cent of Norway’s Chief Executive Officers.⁸⁹ The Confederation for Norwegian Enterprise (NHO), a Norwegian business organisation, noted simply that stronger evidence within the EU was required to take forward legislative action at this stage.⁹⁰
49. To some, quotas were patronising or tokenistic, and risked undermining the perception of women in senior positions.⁹¹ For Lesley Brook, co-founder of Brook Graham, a diversity and inclusion consultancy, quotas “would just create a round of questioning, doubt and noise, which, frankly, we do not need”.⁹² Lord Davies of Abersoch highlighted the fact that 89 per cent of the 2,600 women who responded to the consultation on his review opposed quotas.⁹³ Michael Reyner, a partner at the executive search firm MWM Consulting, feared that quotas could lead to “appointments being made for the wrong reasons and lead to less effective boards.”⁹⁴
50. There were also concerns that quotas would lead to practical problems, with attention drawn again to the experience of quotas in Norway. Some cited research indicating that the quotas there had led to a reduction in shareholder value⁹⁵ and a shorter supply of women for executive positions.⁹⁶ Survey data presented by the NHO and by the European Commission also demonstrated a mixed view of the impact of quotas in Norway.⁹⁷ Moreover, contributors suggested that there were other problems, such as companies delisting and individual female board members sitting on a large number of

⁸⁶ Supporters of Heather Jackson (Natalie Sadler, Karen Husband, Karen Haslam, Alison Brookes, Jo Griffiths, Lorraine Warwick, Jo Humphries), Aviva, NHO

⁸⁷ NAPF

⁸⁸ *ibid.*

⁸⁹ There were disagreements over this figure. The 30% Club insisted that only 2 per cent of CEOs were female. This was contradicted by Arni Hole, who stressed that the figure was 7.8 per cent. The higher figure has been chosen as it is able to present the same argument without entering into a debate on the available statistics.

⁹⁰ NHO

⁹¹ Supporters of Heather Jackson (Helen Mead; Cate Pye; Jo Griffiths), 30% Club, IMA, Brook Graham, PWC, An Inspirational Journey, GC100, The Mentoring Foundation, Aviva, ABI, ELA, Spencer Stuart, CBI, Marina Yannakoudakis MEP, Q125 (Joanne Segars, NAPF), Q153 (Simon Walker, IoD)

⁹² Q174

⁹³ Q64

⁹⁴ Q170

⁹⁵ See 30% Club, NAPF, Campaign for Merit in Business, Aviva. Research cited is Ahern and Dittmar, *The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation*, 2011

⁹⁶ 30% Club, IMA, The Mentoring Foundation, ABI, ELA, CBI, Q170 and 190 (Will Dawkins, Spencer Stuart), Q259 (Helena Morrissey, 30% Club)

⁹⁷ NHO, European Commission. Though see Elin Hurvenes, who noted anecdotally that the business world had taken quotas “in their stride”.

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

- boards.⁹⁸ These claims were queried. The aforementioned survey data identified that fewer than 10 per cent of board members felt delisting was an issue;⁹⁹ and Elin Hurvenes, founder of the Professional Boards Forum, an organisation that seeks to highlight and promote qualified women for board positions, suggested that the proportion of both sexes sitting on a large number of boards was broadly the same.¹⁰⁰ However, different sets of statistics for these questions were presented by both sides, making true assessment of the situation difficult.
51. Dr Barnali Choudhury, Lecturer in Corporate Law at Queen Mary, University of London, stressed that these disputes in Norway arose despite a strong culture of quotas and a relatively limited legislative scope.¹⁰¹ Many felt that applying a “one size fits all” solution across Europe, where such cultural factors varied, would simply exacerbate the possible disadvantages.¹⁰² For MWM Consulting, this rendered the case for quotas, “intellectually flawed at a fairly fundamental level”.¹⁰³
52. The 30% Club insisted that a business-led approach was “ultimately superior”, a view that was shared widely.¹⁰⁴ It said that an EU quota would be “unnecessary, potentially harmful and most importantly, would not achieve sustainable business change”.¹⁰⁵ For these witnesses, the efforts made following the Davies report had begun to embed a longer-term change in corporate culture.
53. Many pointed to recent statistics to support this case. The one-year follow-up to the Davies report showed an increase from 12.5 per cent female board members in 2011 to 15.6 per cent in 2012—the largest-ever reported increase at the FTSE 100 level.¹⁰⁶ On that basis, the Cranfield *Female FTSE Report* projected that female representation could be at 27 per cent by 2015, and at 37 per cent by 2020.¹⁰⁷ Progress has accelerated since: from March through to September 2012, the latest period for which figures are available, 44 per cent of new board appointments were female.¹⁰⁸

⁹⁸ 30% Club, IMA, The Mentoring Foundation, ABI, ELA, CBI, Q170 and Q190 (Will Dawkins, Spencer Stuart), Q259 (Helena Morrissey, 30% Club)

⁹⁹ European Commission

¹⁰⁰ Elin Hurvenes. See also European Commission

¹⁰¹ Dr Barnali Choudhury

¹⁰² IDDAS, ABI, NEST, Aberdeen Asset Management, ELA, Spencer Stuart, Q23 (Caroline Normand, BIS), Q133 (Liz Murrall, IMA), Q204 (Dr Ruth Sealy), Q243 (Arni Hole, Norwegian government), Q260 (Helena Morrissey, 30% Club)

¹⁰³ Q178 (Michael Reyner)

¹⁰⁴ Q260 (Helena Morrissey, 30% Club). See also NAPF, Supporters of Heather Jackson (Mags Easton, Cate Pye, Sara Ensor, Rachel Parkman), IMA, PWC, An Inspirational Journey, ILM, GC100, Aviva, CBI, Marina Yannakoudakis MEP, NHO, Q116 (Liz Murrall, IMA; Joanne Segars, NAPF), Q160 (Simon Walker, IoD), Q254 (Helena Morrissey, 30% Club)

¹⁰⁵ 30% Club

¹⁰⁶ Lord Davies of Abersoch, *Women on boards*, March 2012, *op. cit.* See also IMA PWC, CBI

¹⁰⁷ Cranfield University School of Management International Centre for Women Leaders, *The Female FTSE Board Report 2012: Milestone or Millstone*, *op. cit.*

¹⁰⁸ Professional Boards Forum, BoardWatch, *The rate of new appointments to FTSE 100 and 250 companies*, *op. cit.*

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

54. Those opposed to quotas felt that this progress would be jeopardised by the premature introduction of legislation.¹⁰⁹ NAPF said that it was therefore “sensible” for voluntary-led change to be given a chance to succeed.¹¹⁰ Lord Davies of Abersoch agreed, though he wanted to maintain the backstop of quotas in case progress was insufficient.¹¹¹ The 30% Club thought that a “quantum-leap stage” had already been reached.¹¹²
55. Other witnesses disagreed that there had been sustained voluntary change. Mary Honeyball MEP, Labour spokesperson on the European Parliament’s Women’s Rights and Gender Equality Committee, called United Kingdom and Europe-wide progress “insignificant” compared to that in Norway,¹¹³ where the Fawcett Society noted that female board membership rose from 6 per cent to 44 per cent in six years.¹¹⁴ This demonstrated the significant rate of change that could be achieved by quotas, which was also acknowledged by critics of possible quotas.¹¹⁵
56. For some, quotas represented the only way to achieve significant progress on female board representation.¹¹⁶ This was the key argument for the European Commission in arguing the need to bring forward proposals.¹¹⁷ It was also the basis for the adoption of quotas in both France—where the “disappointing” results of voluntary action prompted quotas¹¹⁸—and Norway.¹¹⁹ Joëlle Simon, Director of Legal Affairs at the French business organisation MEDEF, called them a “necessary evil”.¹²⁰ Indeed, the European Commission drew attention to the fact that almost half of the overall EU increase in female board representation resulted from progress in France since its introduction of quotas.¹²¹ For Professor Sylvia Walby, therefore, “what works is simply an empirical question. It has been quotas which have worked.”¹²² The EWL drew particular attention to the power of EU legislation to change behaviour in recalcitrant Member States.¹²³
57. Some contributors also argued that, rather than being patronising as many opponents claimed, quotas provided the means to overcome structural inequalities in the labour market.¹²⁴ Professor Sylvia Walby argued that

¹⁰⁹ 30% Club, IMA, PWC, An Inspirational Journey, The Mentoring Foundation, Aviva, ABI, Aberdeen Asset Management, ELA, Spencer Stuart, NEST, QCA, Marina Yannakoudakis MEP, Q132 (Liz Murrall, IMA; Joanne Segars, NAPF; Otto Thoresen, ABI), Q150 (Neil Carberry, CBI)

¹¹⁰ NAPF. See also EHRC

¹¹¹ Q52

¹¹² Q252 (Helena Morrissey)

¹¹³ Mary Honeyball MEP

¹¹⁴ Fawcett Society

¹¹⁵ 30% Club, IMA, An Inspirational Journey, ILM, ELA

¹¹⁶ Professor Sylvia Walby, TUC, EWL, Arlene McCarthy MEP, Fawcett Society

¹¹⁷ See also Austrian Federal Chancellery

¹¹⁸ Q228 (France Henry-Labordère, French government)

¹¹⁹ Elin Hurvenes

¹²⁰ Q231

¹²¹ European Commission

¹²² Q88

¹²³ Q275 (Sonja Lokar)

¹²⁴ TUC, EWL, NAWO, Q104 (Dr Annette Lawson), Q105 (Dr Karen Jochelson, EHRC; Scarlet Harris, TUC; Professor Sylvia Walby)

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

- claims about negative female views on quotas were often anecdotal.¹²⁵ Kate Grussing, Managing Director of Sapphire Partners, an executive search firm, agreed.¹²⁶ NAWO said it was not “... in the least patronising to take effective steps to address the current bias in favour of men”.¹²⁷ Elin Hurvenes noted that a “board seat is a valuable company asset”, and that “no chairman or shareholder, in Norway or elsewhere, would deliberately appoint someone without merit and waste a board seat”.¹²⁸
58. Furthermore, it was argued that quotas set in train longer-term change—the “trigger” for action, as the EWL put it¹²⁹—by identifying the positive contribution that women could make to boards and opening the door to further involvement.¹³⁰ The TUC drew comparisons with the cultural shift in the trade union movement following the use of quotas, citing change there as evidence of the capacity of quotas to shift cultural mores.¹³¹ Professor Sylvia Walby also saw them as a driver for changes in recruitment practice: “quotas push people, recruiters, to actively seek people where they could easily have previously filled a position out of people they already know. Quotas address the question of the issue of the network problem”.¹³²
59. The arguments for and against quotas were made forcefully and eloquently during our inquiry. Having considered the case carefully, the Committee considers that, in principle, quotas should be avoided. The speed of the change that they can achieve is counterbalanced by the negative perceptions that they generate in the business world and amongst many women in senior positions, as well as their limited impact on the underlying issues that affect gender diversity. That is not to say that they prevent sustainable progress; but change is delivered more effectively when business is engaged with the agenda and takes action at all levels to address it. As the Minister said, “when you get companies recognising that this will have benefits for them...that is going to be a more powerful driver, so it is a better way of solving the problem”.¹³³
60. However, simply to oppose any proposals for a quota, in any circumstances, would be too simplistic. As was the case in Norway, quotas are ultimately a tool to be employed where less stringent forms of action are thought to have failed. As a result, we consider quotas to be a legitimate tool of last resort, including at EU level, subject to the legal constraints of the Treaties and ECJ case law on positive action (see Box 2).¹³⁴ To use them at this stage, however, would imply that other approaches had failed. We do not consider this to be the case at present.
61. This is particularly evident in the United Kingdom, where we have been impressed by the engagement of both the Government and the business

¹²⁵ Professor Sylvia Walby

¹²⁶ Q170

¹²⁷ Q104 (Dr Annette Lawson)

¹²⁸ Elin Hurvenes

¹²⁹ Q274 (Sonja Lokar)

¹³⁰ Fawcett Society, Elin Hurvenes, ELA, EWL

¹³¹ Q90 (Scarlet Harris)

¹³² Q112

¹³³ Q293

¹³⁴ For Box 2, see page 11. See also IDDAS, Hermes

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

community, and by the results of that work. There have also been concerted efforts elsewhere. We have seen voluntary targets and charters in the Netherlands, underpinned by the threat of a sanction-based approach, and the number of women on boards has risen by a quarter to reach 19 per cent.¹³⁵ In Luxembourg, female board membership rose by 50 per cent to reach 6 per cent by January 2012, albeit from a very low base, after changes to its corporate governance regime.¹³⁶ This trend of encouraging greater disclosure from companies as to their diversity efforts has been mirrored elsewhere (see Chapter 5).

62. There have also been clearer efforts by companies to address issues of gender diversity. In Germany, for example, where by 2012 there were nearly a fifth more female board members than in 2010, DAX 30 listed companies have begun to set targets for female board representation.¹³⁷ Umbrella bodies such as Business Europe and the Association of Executive Search Consultants have also sought to foster best practice.¹³⁸ All of this work is being reflected at a European level: female board membership levels increased by 1.5 percentage points between October 2010 and January 2012, a noticeable rise compared to the long-term annual average of 0.6 per cent.¹³⁹
63. Despite these efforts, we do not consider the number of women on boards acceptable, either in the United Kingdom or the EU as a whole. It is vital that change continues and is sustained beyond the hard work of reformers such as Vice-President Reding and Lord Davies of Abersoch—especially in terms of reversing negative trajectories in some countries. The European Commission has stressed that “sufficient time has already been given to the industry to make credible commitments to change the current situation”.¹⁴⁰ We acknowledge that challenges remain, but the idea that time has run out, whether in the EU as a whole or particularly in the United Kingdom, is not convincing.
64. This does not mean we are complacent; we urge the Government and the Commission to maintain the pressure to hasten the pace of change. Yet at this stage, when many in the business community who are supportive of the overall aim of increasing the proportion of women on boards are vociferously opposed to quotas, the imposition of EU quotas would risk setting back voluntary efforts without achieving broader gains.¹⁴¹ This is particularly so when the effects of quotas in France and Italy, where legislation is less than two years old, have not been studied in detail. Action would therefore lead to a widespread loss of goodwill—the Minister highlighted “significant numbers of countries that are not in favour of this particular approach...”.¹⁴² This would undermine the excellent leadership role played so far by Vice-President Reding.

¹³⁵ European Commission, *Women in economic decision-making in the EU: progress report, op. cit.*

¹³⁶ *ibid.*

¹³⁷ *ibid.*

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ European Commission

¹⁴¹ Brook Graham, 30% Club

¹⁴² Q291

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

65. Furthermore, given the short timeframe in which to evaluate the adequacy of this wave of responses from Member States, we would need to consider carefully whether a proposal to introduce EU-wide quotas respected the principle of subsidiarity, even if ameliorating clauses to embed flexibility were included. We urge the Commission to refrain from proposing legislation that would seek to introduce a quota mechanism.
66. A better approach would be for the Commission to make use of a Recommendation, a non-binding statement of recommended policy action. This should stress the importance of setting a voluntary national target of at least a 30 per cent level of women on boards. This would allow the Commission to demonstrate leadership, whilst reserving its right to take action subsequently should the response from Member States be inadequate.
67. The Commission could then review progress after three and five years, with the possibility of legislation, even at the earlier stage, if there is a clear and continuing failure to engage. To avoid that outcome, the United Kingdom must be well beyond the 30 per cent level amongst the FTSE 100 companies targeted thus far, and the FTSE 250 companies below them, at the latest by the end of that five-year monitoring point. There also has to be positive and accelerated rates of change in other Member States to show that sufficient progress is being made. We note in support that some opponents of quotas acknowledged the need to review the case for stronger action should progress stall.¹⁴³
68. This reflects our view that quotas should remain a serious option of last resort. We have heard of the impact that the threat of quotas has had on Member States thus far.¹⁴⁴ It is important that such a threat is not rendered hollow. Whilst we wish to see sustainable, business-led change, goodwill should have a limit. The Commission should stand ready to take forward positive action, adhering to the limits of established EU law, if the rate of progress does not improve.
69. By taking this course, further action from the Commission would be on a much better evidential footing and its negotiating position would be strengthened significantly. A review period would also offer the opportunity for those in opposition to quotas to demonstrate the effectiveness of voluntary approaches. And pragmatically, if progress was to continue, the impact of any quota would be minimal for those countries and companies who had engaged seriously with the issue in the years before, which we hope would include the United Kingdom.
70. **We oppose the use of quotas to increase the representation of women on boards, except as an option of last resort. Though able to achieve statistical change, quotas do not address the underlying cause of gender inequality: the lack of progression of a consistent stream of women into senior positions. A quota would also be unpopular with many of the women it would seek to help, and would risk fostering the perception—though entirely incorrect—that women on boards were not there by merit. A voluntary, business-led approach is the better vehicle for long-lasting change. However, if the business community**

¹⁴³ Aberdeen Asset Management, Aviva, Spencer Stuart, Q157 (Neil Carberry, CBI)

¹⁴⁴ 30% Club, Brook Graham, The Mentoring Foundation, Aviva, NAWO, CBI, Q25 (Jonathan Rees, GEO), Q206 (Dr Ruth Sealy), Q207 (Professor Susan Vinnicombe), Q255 (Helena Morrissey, 30% Club)

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

is not able to put its own house in order and deliver sustainable change, quotas are a legitimate final option to redress the present gender imbalance on boards, including at European level as far as EU law allows.

71. In the past there has been an endemic failure to address gender inequality on boards. Since 2010, though, following the work of Vice-President Reding in Europe and Lord Davies of Abersoch in the United Kingdom, the issue of gender diversity has been placed high on the political agenda, and businesses have taken significant steps to improve the situation. We commend these developments. We acknowledge that progress has been variable across Europe, with some Member States moving backwards. However, there has been a clear and encouraging improvement in the number of female board members in the EU as a whole and particularly in the United Kingdom. We are therefore not convinced that self-regulatory efforts have been shown to be beyond repair. This is particularly so when too little time has elapsed to assess fully the impact of quotas in Member States, such as France and Italy, which have been instituted in the intervening period.
72. So, whilst Member States are free to pursue quotas nationally, the case has not been made for an EU-wide measure and we urge the Commission to refrain from introducing any proposal that would seek to institute quotas. To take legislation forward would jeopardise self-regulatory efforts in countries, like the United Kingdom, where business communities are strongly opposed to quotas, and would undermine the goodwill accrued as a result of EU leadership on the issue so far. We would also have to consider carefully the adherence of any legislation to the principle of subsidiarity, in the light of the extensive efforts made domestically, and would urge the Government to oppose any such measure strongly.
73. Instead of a Directive, the Commission should issue a non-binding Recommendation to Member States that urges strong action to address gender diversity on boards. The Recommendation should outline a range of recommended policy developments and a voluntary target of 30 per cent of EU board posts being held by women five years after it is issued. The Commission should review progress against this Recommendation after three and then five years. Goodwill towards self-regulation is not, and should not be, unlimited. Should there be a clear failure to address gender inequalities on corporate boards, the Commission should reserve the right to legislate on the issue at either stage. This would put the Commission in a stronger position in future negotiations and would allow Member States to demonstrate the effectiveness of other options.

CHAPTER 4: MAINTAINING PRESSURE: MONITORING PROGRESS

Company scrutiny

74. To encourage the sustainable change that we wish to see, we need to make sure robust data are in place to allow progress to be monitored. Witnesses stressed that transparency of this kind strengthened accountability and facilitated realistic target-setting. The National Employment Savings Trust (NEST), an institutional investor, quoted management guru Peter Drucker when noting that, “what gets measured gets done”.¹⁴⁵ Despite this, the Government said that many companies did not compile statistics on gender diversity in their organisation, despite having the raw data available.¹⁴⁶ The European Women’s Lobby agreed: “... most companies ... do not have the necessary statistics and do not really know exactly what their situation is at every level of corporate governance”.¹⁴⁷ This is not an acceptable state of affairs.
75. The best means of performance monitoring divided witnesses. Some agreed with the drive for European-level mechanisms.¹⁴⁸ For the Austrian Federal Chancellery and the ELA, this meant national-level monitoring with reporting at EU level. Others wanted a more devolved approach. For the 30% Club, progress was best measured voluntarily at local levels, using resources such as BoardWatch¹⁴⁹ and the Cranfield *Female FTSE report*.¹⁵⁰ This was also the stance of the Government: the Minister said that the “very different circumstances” of Member States counted against EU monitoring.¹⁵¹ IDDAS, a leadership development consultancy, and GC100, the association of general counsel and secretaries of FTSE 100 companies, agreed with local monitoring, but wanted reporting to be obligatory.¹⁵²
76. We support strongly the development of a European mechanism for monitoring gender diversity levels across the EU. Without firm information, it is difficult to gauge the extent of problems across and within companies, or to monitor the effectiveness of measures to address them. A co-ordinated data collection framework would allow progress to be compared between Member States, and support investors in scrutinising the progress of individual companies.¹⁵³ As the Commission noted, this need not be a burdensome requirement given the current availability of much of what would be required.¹⁵⁴ Furthermore, varying national circumstances merely indicate the need for careful interpretation of statistics that emerge, rather

¹⁴⁵ See also PWC, EWL, An Inspirational Journey, ILM, Q188 (Michael Reyner, MWM Consulting; Kate Grussing, Sapphire Partners)

¹⁴⁶ Q24 (Jonathan Rees, GEO)

¹⁴⁷ Q278 (Sonja Lokar). See also Q188 (Kate Grussing, Sapphire Partners)

¹⁴⁸ Aviva, ABI, Arlene McCarthy MEP, TUC, NHO, Q97 (Dr Karen Jochelson, EHRC), Q188 (Kate Grussing, Sapphire Partners)

¹⁴⁹ Professional Boards Forum, *BoardWatch*, *The rate of new appointments to FTSE 100 and 250 companies*, *op. cit.*

¹⁵⁰ See also Mentoring Foundation, Aberdeen Asset Management, Marina Yannakoudakis MEP

¹⁵¹ Q290

¹⁵² IDDAS, GC100

¹⁵³ This was acknowledged at Q130 (Otto Thoresen, ABI)

¹⁵⁴ European Commission

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

than entirely ruling out the collection of valuable data. We therefore reject the Government's contention in this respect.

77. We are convinced that a legislative reporting duty is the most appropriate way to establish such a framework. To ask for such data on a voluntary basis could lead to lower compliance rates and an unacceptable time lag before robust data were in place. Legislating to establish a firm evidence base, at a time when the question of the effectiveness of Member State-led efforts is the central issue of the debate, would demonstrate the EU's leadership and commitment to evidence-led policymaking.
78. It is crucial for the data to look beyond the boardroom.¹⁵⁵ PWC considered the proportion of women on the board, in senior executive positions and in the organisation as a whole to be a "baseline level of disclosure".¹⁵⁶ We agree. We note the possibility of definitional issues as the scope is widened, as highlighted by the Institute of Leadership and Management (ILM),¹⁵⁷ but this only demonstrates the importance of setting clear criteria at European level as to the data being sought. Aligning definitions is not an insurmountable task, and should not be considered a barrier to progression. We are glad to see that provisions to this end are being consulted on in the United Kingdom.¹⁵⁸ If the Government oppose legislative intervention from the EU, we urge them to take this idea forward and to demonstrate the effectiveness of these efforts.
79. The responsibility for deciding who should collect the data, whether a public or private sector body, should be left to Member States. Similarly, the approach to non-compliance—for example the issuing of fines, or the adoption of a "comply or explain" approach—should be a national matter. This approach respects national systems, but realises the benefits of looking at the issue Europe-wide. In so doing, it would respect the principle of subsidiarity.
80. The data should not be used simply as a means to berate companies who are not making progress. Encouraging companies to engage with the agenda requires policymakers and the media to celebrate the undoubted good work going on, as well as to highlight those who are under-performing.
81. **Robust EU-wide information is essential to assessing progress made by companies in addressing issues of gender inequality in the labour market; it must be collected more comprehensively and rigorously than it is today. The Commission should, in any legislation it introduces, require companies to report on the proportion of women at every level of their workforce. Data should be collected at a national level by each Member State.**
82. **At a minimum, companies should be required to report on the number of women on the board, in executive positions and in the organisation as a whole. In the United Kingdom, we support the Government's proposals to introduce such reporting standards in October 2013 for large and medium-sized companies, to ensure that as much of this information is available as soon as possible.**

¹⁵⁵ ILM, TUC

¹⁵⁶ PWC. See also GC100, ELA

¹⁵⁷ ILM

¹⁵⁸ Department for Business, Innovation and Skills, *The future of narrative reporting: A new structure for Narrative Reporting in the UK*, October 2012

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

83. **These figures should be monitored on an annual basis by the Commission, to determine whether sustained progress is being made and to inform possible policy responses. The information should be used by policymakers and the media to identify and promote examples of best practice, as well as to draw attention to poor performers.**

Member State policy monitoring

84. We do not wish to restrict the focus of monitoring simply to the actions of companies. The actions taken by Member States to foster their engagement are just as important. The data collection we advocate above provides one way to do this, but we must also be clear how, in policy terms, governments are responding to the challenge.
85. The Confederation of British Industry (CBI) proposed action in a style similar to that of the European Semester, a surveillance programme operated by the EU. In that programme, Member States make submissions on their economic policy progress and the Commission reports on their activities, with the report then scrutinised by national parliaments. Neil Carberry, Director of Employment and Skills at the CBI, posited that Member States could submit their work on gender diversity for similar evaluation.¹⁵⁹
86. We support this as a template for action. We appreciate, though, the level of rigour involved in the European Semester, so would urge the Commission to use as a base for this work its existing progress reports on women's participation in economic decision-making'.¹⁶⁰ By expanding this system to involve more detailed reporting from Member States, and bringing it within the formal parliamentary scrutiny process, national parliaments and the public could hold governments to account more effectively for their policies in this area. Furthermore, as the approach is similar to the progress reports that the Government already commission from the Cranfield School of Management, it would be especially easy for the United Kingdom to participate without undue administrative burden.
87. **Governments should be scrutinised for their actions to improve gender diversity in the labour market, to keep up the pressure for change. Comparing the actions taken in different Member States enhances this scrutiny and offers the possibility of exchanging best practice. The Commission should therefore expand its reporting work on women's involvement in economic decision-making in a style similar to the reporting process in the European Semester economic programme. In short, Member States should provide more detailed policy information and statistics on progress made in improving gender diversity, and the Commission in turn should provide individual national and comparative European analysis on the work being done. Such assessments should then be brought within formal national parliament scrutiny processes and form part of the evidence base when considering the future case for any legislative action in this sphere. This would establish a rigorous and accountable assessment framework at all levels.**

¹⁵⁹ Q155

¹⁶⁰ See European Commission, *Women in economic decision-making in the EU: progress report*, *op. cit.*

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

CHAPTER 5: CHANGING CORPORATE CULTURE

88. The discussion does not end with the case for quotas and the monitoring mechanisms needed to further the argument on both sides. As we made clear at the start, there are a number of possible measures that seek to improve gender diversity on boards. Here, we look at measures to change cultures and practices in the corporate sphere, to gauge whether there are opportunities to build upon existing efforts to deliver change across the EU.

Corporate governance rules

89. Robust corporate governance rules allow effective scrutiny of companies and are therefore an important means of influencing their behaviour. At EU level, reporting requirements are set out in the Fourth and Seventh Company Law Directives, which require companies to produce an annual corporate governance statement.¹⁶¹ Both Directives are in the process of being revised and consolidated.¹⁶²
90. Governance in the United Kingdom is market-based, as set out in the Corporate Governance Code. The Code, instituted in 1992, lays out good governance practices and companies are required either to comply with the provisions of the Code, or to explain in their annual report why they have not done so. We heard that provisions in the Code, such as the recommendation that companies ensure that the posts of Chairman and CEO are not invested in the same person, have proven effective at changing behaviour over time.¹⁶³ NAPF in fact considered the United Kingdom's governance approach to be one of the strongest and most effective in the world.¹⁶⁴
91. Part of what constitutes good governance in the Code concerns gender diversity, an element enhanced following the Davies review. The Code sets out the importance of diversity in the search for board candidates.¹⁶⁵ In October 2012, it was amended to require the work of a nomination committee to include a description of the board's policy on diversity, including gender, as well as any measurable objectives that have been set and progress against them.¹⁶⁶ Additionally, when evaluating the board, an annual report must now consider the balance of the board, including its diversity.¹⁶⁷ Both of these changes go beyond requirements at EU level and were welcomed by witnesses.¹⁶⁸ This approach to improving gender diversity on

¹⁶¹ Fourth Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies; and Seventh Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts. Both amended by Directive 2006/46/EC of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings

¹⁶² Council number 16250/11: Proposal for a Directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings

¹⁶³ Spencer Stuart

¹⁶⁴ NAPF

¹⁶⁵ Corporate Governance Code, provision B.2

¹⁶⁶ *ibid.*

¹⁶⁷ *ibid.*

¹⁶⁸ IMA, Brook Graham, PWC, IDDAS, CBI, EHRC, Q162 (Simon Walker, IoD)

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

boards is by no means unique to the United Kingdom—Denmark, Finland, Germany, Luxembourg, the Netherlands and Sweden all use the “comply or explain” system of corporate governance codes to seek to improve gender diversity on their boards (see Box 2 in Chapter 2).¹⁶⁹

92. This approach to governance is a welcome one, providing a strong mechanism with which shareholders and the media can see how well companies are engaging with gender diversity. As the 30% Club stated, the October 2012 changes will “provide a further impetus” in this sphere.¹⁷⁰ Research by the ABI noted that, even before the formal introduction of the changes, 78 per cent of FTSE 100 companies were providing material statements on diversity.¹⁷¹ Though some witnesses were less positive—the Austrian Federal Chancellery highlighted issues of compliance and effectiveness for similar measures there,¹⁷² and Professor Sylvia Walby noted that the impact of such measures was “widely regarded as very slow”¹⁷³—many witnesses supported the “comply or explain” regime as the best way forward.¹⁷⁴
93. One possible role for the EU, therefore, is to embed these concepts in parts of the Union that have not embraced the agenda. Appetite for this course varied. Some called for any EU involvement to be non-legislative in nature. The 30% Club thought that the EU could publish a standard template for disclosure,¹⁷⁵ whilst the ABI thought that action could be taken via non-binding Recommendations.¹⁷⁶ Others opposed EU involvement altogether.¹⁷⁷ For some, though, it was appropriate for the EU to take firm action to ensure consistent corporate governance across the EU.¹⁷⁸
94. We see this as a positive area for the EU to take legislative action, especially given the opportunity provided by the revision of the Fourth and Seventh Company Law Directives. We accept, as some witnesses made clear, that changes here cannot guarantee progress on their own. Yet we are confident that the “comply or explain” approach to gender diversity policy, already applied widely in the EU, could play an important part in fostering culture change in corporate life. “Comply or explain” offers, as Spencer Stuart, an executive search firm, suggested, a “balance between the stick and the carrot”.¹⁷⁹ It allows for self-regulatory efforts to be properly scrutinised, but does not interfere unnecessarily in the arrangement of governance structures. Member States, of course, would be free to apply more stringent penalties for non-compliance.

¹⁶⁹ As Box 2, found on page 12, also indicates, many countries that have pursued legislative quotas, such as Austria and France, also use the “comply or explain” system as an additional facet of their approach in this area.

¹⁷⁰ Q271 (Helena Morrissey)

¹⁷¹ ABI

¹⁷² Austrian Federal Chancellery

¹⁷³ Professor Sylvia Walby. See also TUC

¹⁷⁴ IMA, Brook Graham, PWC, IDDAS, GC100

¹⁷⁵ 30% Club

¹⁷⁶ ABI. See also Aberdeen Asset Management

¹⁷⁷ IDDAS, The Mentoring Foundation

¹⁷⁸ Aviva, QCA

¹⁷⁹ Spencer Stuart

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

95. Such a regime could include, as Aviva, the insurance group, GC100 and NAPF suggested, provisions for companies to set voluntary targets.¹⁸⁰ PWC cautioned that setting such targets was a complex undertaking, citing the fact that only 38 FTSE 100 companies have done so thus far.¹⁸¹ We consider the current regime of voluntary target-setting to be appropriate. Where such targets are made, however, companies should be required to update on progress against them. This would build upon voluntary work done by the European Roundtable of Industrialists, which publishes an annual declaration of targets and progress by participating companies.¹⁸²
96. Making these changes would put gender diversity at the heart of holding a company to account, effecting change along the way. It would also ensure that the media could report effectively on those performers, both good and bad, who are deserving of the spotlight.¹⁸³ Sapphire Partners compared these steps to those used to stimulate cultural change on carbon emissions.¹⁸⁴ The issue of gender diversity is just as important in value terms to the EU, and the Commission should be bold in taking action.
97. To do so would send a strong signal to companies that opening up to rigorous scrutiny is the minimum obligation expected, as well as minimising compliance costs from Member State regimes which could otherwise diverge significantly over time. By using a Directive, it would also respect subsidiarity by offering Member States freedom as to how to implement its requirements. In both senses, action here would be more appropriate than quotas at this juncture and would avoid the perception of a “dictatorial view from Europe” that the Minister was concerned about.¹⁸⁵
98. Measures should not extend, though, to limiting the number of board memberships that can be held, as the European Women’s Lobby argued.¹⁸⁶ The nature of board membership reflects the conception and commitments of a board role in the Member State concerned. Those conceptions differ widely, so a numerical limit would be too crude. We would prefer the market to make that judgment at a national level, as it does at present.
99. **The Commission should be bold in taking action to promote gender diversity through changes to corporate governance rules. Action would demonstrate leadership, foster EU-wide engagement, and ensure that accountability on improving gender diversity is at the heart of corporate scrutiny across the EU. It would also enable companies to understand better what was expected of them, minimising variation in reporting standards and compliance costs.**
100. **We recommend that the “comply or explain” approach to gender diversity policy, as used in a number of Member States and bolstered in the United Kingdom Corporate Governance Code in October 2012, be seen as a good practice example for reference. The Commission should consider including an analogous system by amendment into**

¹⁸⁰ GC100, Aviva, NAPF

¹⁸¹ PWC

¹⁸² European Roundtable of Industrialists, *Declaration of voluntary targets*: <http://www.ert.eu/women>

¹⁸³ NAPF, The Mentoring Foundation, Q188 (Kate Grussing, Sapphire Partners)

¹⁸⁴ Q188 (Kate Grussing)

¹⁸⁵ Q296

¹⁸⁶ European Women’s Lobby, Q282 (Sonja Lokar, EWL)

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

the draft consolidated Directive on accounting standards currently making its way through the ordinary legislative procedure. If this is not possible, separate legislation should be introduced.

101. **This should require that each listed company disclose, in its annual report, the measures that it has taken on diversity, as well as to report on the balance of its board, taking into account gender diversity in both instances. Furthermore, companies should be encouraged to set non-binding targets for female representation and to report on progress against these objectives where they have been set. This would establish a strong governance regime with the means to allow effective scrutiny by shareholders, the media and policymakers alike, without interfering unnecessarily in national governance structures.**

Shareholder engagement

102. Market change cannot happen without the active engagement of shareholders.¹⁸⁷ In July 2010 the Financial Reporting Council in the United Kingdom recognised this by launching its Stewardship Code, which calls on institutional investors to monitor investee companies, have clear guidelines on their activities, and to report on their stewardship and voting activities. An institutional investor's responsibilities include detailing its policy towards the explanations given by companies under the Corporate Governance Code. The 30% Club has also launched an accompanying set of best practice guidelines. The Code is a clear and sensible guideline for wider cultural change in the industry. It is another welcome development in corporate governance.
103. Witnesses were divided, though, as to how effectively shareholders are engaging with companies. Lord Davies of Abersoch was most critical: "the stakeholder group that has been slow on this—as they were on pay, as they were on the banks—has been the shareholders themselves. They own these companies. Where were they in the last decade?"¹⁸⁸ He wanted to see a far stronger role taken in the future.¹⁸⁹ Sir Michael Rake, Chairman of the BT Group and easyJet, and Vice-Chairman of Barclays Bank, was also circumspect. He said that historically there was "very little" demand from investors for greater diversity but that engagement was increasing and that "it is beginning to come".¹⁹⁰
104. Others felt that shareholders were already working effectively with companies to foster improved gender diversity policies.¹⁹¹ The ABI said that "... the issue of diversity comes up very quickly in any discussion with a chairman of a board of a quoted company", a reflection of "significant" engagement on the issue in the past three to five years.¹⁹² The most obvious example, he noted, was the adoption of voting policies relating to gender diversity for

¹⁸⁷ NAPF, QCA, NEST, CBI, Spencer Stuart, Aberdeen Asset Management, Aviva, GC100, IMA, 30% Club, Q31 (Caroline Normand, BIS), Q90 (Dr Karen Jochelson, EHRC), Q119 (Joanne Segars, NAPF), Q256 (Helena Morrissey, 30% Club)

¹⁸⁸ Q58

¹⁸⁹ Q77

¹⁹⁰ Q147

¹⁹¹ CBI, NAPF, Q119 (Liz Murrall, IMA), Q122 (Otto Thoresen, ABI)

¹⁹² Q122 (Otto Thoresen)

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

- directors and nomination committees.¹⁹³ Similar policies were in place at Co-Op Asset Management and Aviva.¹⁹⁴ Shareholders did not envisage the sanctions envisaged in those policies being used routinely, but rather saw them serving as a backstop to ensure meaningful engagement on the issue.¹⁹⁵ In the same vein, the ABI pointed to its Board Effectiveness Report, which highlighted good and bad practice, as well as its inclusion of board diversity as a metric on its Institutional Voting Information Service.¹⁹⁶
105. Overall, we see welcome signs of a recognition of past failures and an intent to institute better practice amongst shareholders. There is an increasing grasp by shareholders of the importance of their role, and the establishment of voting and engagement policies in line with the Code is to be encouraged. However, whilst we hope that these signs are indicative of a broader cultural shift, we know that it will take time. We urge shareholders to match the efforts of the business community following the Davies report.
106. We would also urge the Commission to examine the case for developing a Stewardship Code across Europe on a voluntary basis. As Liz Murrall, Director of Corporate Governance at the IMA, noted in her evidence, “engagement is not as easy when it is not on your native shores ... “.¹⁹⁷ A Europe-wide code, based on similar underlying principles to the one in operation in the United Kingdom, could facilitate engagement considerably. Those principles of transparency, engagement and accountability are broad and of common applicability, and we do not think that cultural factors would limit its role.
107. Though we foresee the capacity of the Stewardship Code to help in effecting broader cultural change, we suggest that, given its relative novelty, expansion is an option to be explored rather than taken forward at this stage. The Commission’s scheduled Communication on EU company law and corporate governance, due by the end of 2012, offers an ideal opportunity to do so in its Action Plan.¹⁹⁸ We recommend taking any such expansion forward on the same “comply or explain” basis as we have recommended elsewhere in the corporate governance context.
108. More fundamental questions of shareholder engagement have been prompted by the publication of the Kay Review of UK Equity Markets and Long-Term Decision Making.¹⁹⁹ Debate has focused on fostering longer-term shareholdings by investors, with a greater interest in the companies in which they invest. Lord Davies of Abersoch referenced this in his evidence.²⁰⁰ This is an interesting thread of discussion, but one that is beyond our remit given the breadth and complexity of the issues concerned. We would simply encourage

¹⁹³ Q135 (ABI). See also NAPF, Aberdeen Asset Management, 30% Club

¹⁹⁴ NEST, Aviva

¹⁹⁵ Q135 (Joanne Segars, NAPF; Liz Murrall, IMA; Otto Thoresen, ABI)

¹⁹⁶ ABI

¹⁹⁷ Q123

¹⁹⁸ European Commission, *Feedback statement: Summary of responses to the public consultation on the future of European company law*, July 2012:

http://ec.europa.eu/internal_market/consultations/docs/2012/companylaw/feedback_statement_en.pdf

¹⁹⁹ *The Kay Review of UK Equity Markets and Long-Term Decision Making*, reported to the Department for Business, Innovation and Skills:

<http://www.bis.gov.uk/assets/biscore/business-law/docs/k12-917-kay-review-of-equity-markets-final-report.pdf>

²⁰⁰ Q60

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

the Government to consider whether there are elements of that work that can feed across to their efforts to improve gender diversity on boards.

109. **A more accountable corporate governance regime for companies must be allied to a more engaged approach by shareholders than we see at present. In this respect, we welcome the establishment of a Stewardship Code in the United Kingdom. We also welcome the efforts made thus far in the institutional investor community, such as the establishment of clear voting policies based upon gender diversity. The Government should foster these developments alongside their work with the companies themselves.**
110. **Institutional investors often have portfolios that extend well beyond a single country, indicating a possible role for the EU in encouraging best practice. We recommend that the Commission explores, in its forthcoming Communication on company law and corporate governance, how to improve the engagement of shareholders across the EU. Such efforts should be on a voluntary footing, based on the principles of transparency, engagement and accountability that also underpin the Stewardship Code in the United Kingdom. This should be taken forward in conjunction with the Institutional Investor Committee and other European investor associations. We urge the Government to support such efforts.**

Fair recruitment: executive search firms

111. Another important element of changing corporate culture for the better is ensuring that board recruitment policies are fair for both sexes. In the United Kingdom, executive search firms play a prominent role in the appointment of board members. The Davies review thus proposed the establishment of a voluntary code of conduct: the code, drawn up by search firms representing 80 per cent of the sector in the United Kingdom, was launched in July 2011 and, as of the time of the Minister's evidence in October 2012, had 36 signatories.²⁰¹ At its core is the idea that searches should be based on skill sets and knowledge rather than experience alone. It establishes seven key principles, ranging from fostering effective succession planning to developing clear skills criteria for candidates. Most prominently, it sets out that search firms should ensure at least 30 per cent of candidates on longlists for board appointments are women, on a "comply or explain" basis.
112. The introduction of the code was cited by witnesses as one of the key planks of the business world's engagement with boardroom gender diversity.²⁰² Sapphire Partners stressed that take-up had been "strong",²⁰³ and this positive view was shared by MWM Consulting.²⁰⁴ Lord Davies of Abersoch asserted that, in the light of efforts following his review, the recruitment sector "is not a problem any more".²⁰⁵ In doing so, he highlighted the work being done by firms in

²⁰¹ The Code is found at *Voluntary Code of Conduct for Executive Search Firms*, MWM Consulting: <http://www.mwmconsulting.com/downloadables/HeadhuntersCode-200711.pdf>. The Minister's reference to signatories is at Q299 (Jo Swinson MP)

²⁰² Q179 (Kate Grussing, Sapphire Partners; Michael Reyner, MWM Consulting; Will Dawkins, Spencer Stuart). See also IMA, 30% Club, Aviva, ABI, The Mentoring Foundation

²⁰³ Q179 (Kate Grussing)

²⁰⁴ Q179 (Michael Reyner)

²⁰⁵ Q77

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

- terms of training, mentoring and development.²⁰⁶ Dr Karen Jochelson, Director of Employment Policy at the Equality and Human Rights Commission (EHRC), also made reference to these efforts, as well as to the “self-critical” engagement of many firms.²⁰⁷ Professor Susan Vinnicombe felt that there was “evidence of much better practice emerging— for example, much better interviewing and better specifications for directorships”.²⁰⁸
113. Others tempered this enthusiasm. The EHRC pointed to research it commissioned, published in spring 2012, which found that the board appointment process remained opaque and subjective, with a disproportionate focus on the subjective “fit” of a candidate for a board position.²⁰⁹ This view was shared elsewhere.²¹⁰ Mary Honeyball MEP called for “a shift in organisational culture away from the traditional ‘jobs for the boys’ mindset towards a more open and transparent system of appointments”.²¹¹ There were concerns too that searches did not encompass a sufficiently broad base of candidates. Though supportive of their broad engagement with the gender diversity agenda, Lord Davies of Abersoch wanted headhunters to go further; he called for them to be “more creative in their searching”.²¹² He stressed that firms should extend their searches into the not-for-profit, voluntary and public sectors.²¹³ Sir Michael Rake felt that firms did not “fish in a sufficiently deep gene pool”,²¹⁴ which the EHRC felt resulted in search parameters that were “far too narrow”.²¹⁵
114. The establishment of the voluntary search code is nevertheless an undoubtedly positive development. It begins the process of increasing transparency in what is often seen as an opaque world and should be welcomed as a result. Moreover, the spirit of the rules is right: the process of appointment should be transparent, fair and based on intrinsic characteristics. Where companies do not adhere, the best approach at this stage is, as the code sets out, a “comply or explain” basis. This allows a strong voluntary response to a novel framework.
115. Efforts are being made to expand the reach of the code beyond the United Kingdom. The Government highlighted that the Association of Executive Search Consultants, the global body for the industry, was “looking to push [the code] out through its associated organisations in Europe” with their encouragement.²¹⁶ Will Dawkins, head of United Kingdom board practice at Spencer Stuart, made the same point and said that the “answer from the industry would probably be that it is quite a good idea”.²¹⁷ MWM Consulting agreed; and, in light of the fact that some search markets were

²⁰⁶ Q53. See also Q191 (Michael Reyner, MWM Consulting)

²⁰⁷ Q98, Q100

²⁰⁸ Q214

²⁰⁹ Equality and Human Rights Commission, *Gender diversity on boards: the appointment process and the role of executive search firms*: http://www.equalityhumanrights.com/uploaded_files/research/rr85_final.pdf

²¹⁰ Q90 (Scarlet Harris, TUC), Q198 (Dr Ruth Sealy)

²¹¹ Mary Honeyball MEP

²¹² Q74

²¹³ *ibid.* See also Q156 (Simon Walker, IoD)

²¹⁴ Q144. See also Q145 (Neil Carberry, CBI)

²¹⁵ Q98 (Dr Karen Jochelson)

²¹⁶ Q28 (Caroline Normand, BIS)

²¹⁷ Q179

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

newer and less “sophisticated” than those in the United Kingdom, it said that there could be “... even more benefit in enshrining best practices that may be newer in those markets than they are here”.²¹⁸

116. We would welcome this expansion. Both the Government²¹⁹ and Dr Ruth Sealy²²⁰ made the point that some countries used search firms less extensively than the United Kingdom. However, search firms often work internationally, placing people across borders.²²¹ Having clear and co-ordinated criteria for conduct to guide this work can only support efforts to improve gender diversity on boards across Europe, entrenching good practice in emerging markets in the process. The European Commission should place itself at the forefront of efforts to broaden the coverage of a code for search firms, working with the Association of Executive Search Consultants in doing so.
117. In seeking to expand the code’s reach, the opportunity should be taken to strengthen it. A number of the firms interviewed as part of the EHRC’s research into the impact of the code felt it was too lenient and we agree.²²² There is scope for a more robust, more detailed code, even on a voluntary basis. There are two main ways in which to develop it.
118. First, the definition of “intrinsic” characteristics could be improved, as recommended by the EHRC. Spencer Stuart noted that it had its own proprietary system of five “I’s” that are sought in candidates—intellectual curiosity, inclination to engage, integrity, interpersonal skills and independent-mindedness.²²³ In a similar vein, the code should define more clearly what constitute intrinsic characteristics and how they will be taken into account, rather than leaving them as an abstract concept.
119. Secondly, monitoring of the impact of the code should be improved, most importantly in terms of the transition of female candidates from longlists to shortlists.²²⁴ In recommending this, we stop short of calling for female quotas for shortlists. This was an idea proposed by Dr Barnali Choudhury, inspired by work within the National Football League in the United States to improve the representation of black coaches. It was opposed by some in the search community: MWM Consulting said that a shortlist quota would lead to “a woman being added just to put a tick in the box, which effectively would be a waste of everyone’s time and disrespectful to the female candidates”.²²⁵ It felt that longlist provisions were sufficient and were resulting in more female candidates on shortlists.²²⁶
120. Though we are sympathetic to the motivations of those who seek a quota for women on shortlists, we consider its introduction premature. We agree that the code should be updated to ask for more from firms and companies, but share the concern that a shortlist requirement, even on a “comply or explain” basis, could undercut work so far because of its perceived proximity to

²¹⁸ Q183 (Michael Reyner)

²¹⁹ Q27 (Caroline Normand, BIS)

²²⁰ Q214

²²¹ Q262 (Helena Morrissey, 30% Club)

²²² Q98 (Dr Karen Jochelson, EHRC)

²²³ Q192 (Will Dawkins)

²²⁴ Q98 (Dr Karen Jochelson, EHRC)

²²⁵ Q181 (Michael Reyner)

²²⁶ Q182 (Michael Reyner)

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

- legislative quotas. However, an improved reporting regime should be used as the basis for reviewing the case for further action should existing longlist provisions not lead to progress. This is where the Government must keep pressure up in particular, to show that they are serious about this issue.
121. Finally, though this process would be particularly valuable, we must not ignore the fact that search firms are ultimately in the service of those who commission them. Lord Davies of Abersoch and the 30% Club acknowledged, despite being positive overall, that the engagement levels of Chairmen have been variable.²²⁷ The EHRC also commented on conservatism in making board appointments, though it noted that the voluntary code had facilitated dialogue between search firms and clients on the importance of diversity, and had improved engagement.²²⁸ A more robust, more widespread code could accelerate and intensify this progress, led by a more energised search community. We urge firms—encouraged by the Government and the EU institutions—to take on that responsibility in the coming years.
122. **Executive search firms play an important role in the process of board appointments in the United Kingdom, and markets for their services are emerging elsewhere in the EU. We welcome the establishment of a voluntary code of conduct in the United Kingdom. It strives for a greater degree of transparency and rigour in a process that is too often narrow and opaque, and sets out key principles of merit-based, open and fair recruitment. It is right that this is being taken forward on a voluntary basis at present. Search firms, and the boards who hire them, should be given the opportunity to demonstrate their engagement with gender diversity before any formal intervention is considered.**
123. **We consider, though, that there should be a more widespread code. To start, the principles of the United Kingdom code could be implemented on a voluntary basis across the EU. Any code should encompass firms in emerging markets as well as United Kingdom firms placing candidates on boards in other Member States. We support the work of the Association of Executive Search Consultants in rolling out a code across its partners in Europe; the Government and the Commission should support this work as a priority.**
124. **The Government and the Commission should also work with the executive search community to seek to strengthen the provisions of the existing code to ensure that it is a robust guide to best practice. We recommend that the code be amended to include a more detailed statement of what constitutes an intrinsic characteristic, encouraging companies to look beyond the subjective “fit” of a candidate for a board position. It should also include a requirement for firms to report on the numbers and percentages of female candidates making the transition from longlists to shortlists. If the results of such reporting are not satisfactory over the course of the next three years, the Government and the Commission should work with the search community to amend the code to introduce a requirement for there to be a specified percentage of female candidates on shortlists, on a “comply or explain” basis, to ensure that change is sustained.**

²²⁷ Q68 (Lord Davies), Q271 (Helena Morrissey)

²²⁸ Q98 and Q101 (Dr Karen Jochelson)

CHAPTER 6: DEVELOPING THE PIPELINE

125. So far in this report, we have sought to propose mechanisms to set in train changes to attitudes and behaviour in the corporate world. These measures seek to address issues of demand in a workable, achievable way. It is also important to address the supply-side of the equation to ensure long-lasting change.
126. To begin, we stress again that the issue at board level does not result from a lack of qualified female candidates. The Professional Boards Forum said that the “shortage of qualified women is perceived, not real”.²²⁹ Lord Davies of Abersoch agreed: “The supply is there. It is undoubted”.²³⁰ Indeed, as we have noted elsewhere, the *Female FTSE Report* identified 2,500 women ready for board positions.²³¹ The Government noted that this far outstripped the 99 additional women required to meet the Davies target of 25 per cent of board positions being held by women by 2015.²³²
127. Yet despite the wealth of talent, only 20 women—6.6 per cent of the total positions—sit on boards as executive members in the FTSE 100.²³³ This is an increase from when monitoring began 13 years ago, when there were only 13 female executives.²³⁴ The increase is also in the context, as the CBI outlined, of a halving in the number of executive positions on FTSE 100 boards overall since 1999.²³⁵ Nevertheless, progress is lamentable. For the Fawcett Society, the figures represented “the fact that women in the United Kingdom face significant barriers to progressing to the very top of decision making structures”.²³⁶ Professor Susan Vinnicombe described “a leaky pipeline—a pipeline that leaks women at a number of different levels”.²³⁷
128. We have sought elsewhere to tap into this available talent more effectively. We must also look to the future. As Professor Susan Vinnicombe stated: “long term I think that we have to address the sustainability of the number of women on boards”.²³⁸ This is imperative; to do so would move the corporate world towards true meritocracy.²³⁹ We agree with Helene Reardon-Bond, Head of Gender Equality Policy and Inclusion at the Government Equalities

²²⁹ Professional Boards Forum

²³⁰ Q52

²³¹ Cranfield University School of Management International Centre for Women Leaders, *The Female FTSE Board Report 2012: Milestone or Millstone*, *op. cit.* This was cited at Q90 (Dr Karen Jochelson, EHRC), Q170 (Kate Grussing, Sapphire Partners; Lesley Brook, Brook Graham)

²³² Q35 (Jonathan Rees, GEO)

²³³ Cranfield University School of Management International Centre for Women Leaders, *The Female FTSE Board Report 2012: Milestone or Millstone*, *op. cit.*

²³⁴ Q198 (Professor Susan Vinnicombe)

²³⁵ Q145 (Neil Carberry)

²³⁶ Fawcett Society. See also ABI

²³⁷ Q207. See also 30% Club, Q86 (Dr Karen Jochelson, EHRC), Q124 (Otto Thoresen, ABI)

²³⁸ Q198

²³⁹ NAPF, Supporters of Heather Jackson, PWC, Brook Graham, Fawcett Society, IMA, IDDAS, An Inspirational Journey, IDDAS, The Mentoring Foundation, ABI, TUC, ELA, Spencer Stuart, Mary Honeyball MEP, NAWO, CBI, QCA, Professional Boards Forum, EHRC, Q86 (Dr Karen Jochelson, EHRC), Q116 (Liz Murrall, IMA), Q133 (Joanne Segars, NAPF), Q160 (Simon Walker, IoD), Q221 (Professor Susan Vinnicombe), Q267 (Helena Morrissey, 30% Club), Q282 (Sonja Lokar, EWL)

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

Office, that “women on boards, or the lack of them” are “a barometer for what is going on deeper down in business.”²⁴⁰

129. Witnesses insisted that changing this picture meant changing the attitudes and cultures of men at the top of corporate hierarchies.²⁴¹ Importantly, though, it also called for efforts to change the perceptions of women and build confidence. Sapphire Partners asserted that “part of the challenge historically has been that women have not been putting their hands up”.²⁴² It noted that “women are much less likely to put themselves forward unless they have 120 per cent of the qualifications”.²⁴³
130. There have already been positive efforts on both fronts. In the United Kingdom, the business and executive search communities have taken the lead, with initiatives in place to develop female candidates by providing opportunities to gain visibility, exposure and confidence. One aspect of this is mentoring—“a big issue” for Lord Davies of Abersoch.²⁴⁴ The most prominent such scheme is the *FTSE 100 Cross-Company Mentoring Scheme*.²⁴⁵ This matches Chairmen and Chief Executives of FTSE 100 companies, or their equivalents in the public sector, with appropriate candidates for mentoring. There have been 94 participants in the programme since 2003. In the last two years alone, 14 were appointed as non-executive directors, and there are plans to expand its reach more widely.²⁴⁶ Training is linked to this work: Spencer Stuart referenced a “thriving, very effective industry out there, which trains ‘newbie’ board directors”.²⁴⁷
131. We also heard of efforts to develop networks to support talented women. The 30% Club has worked to set up a number of sub-groups and sector-specific infrastructures, such as a Partnership Pipeline Initiative for accountancy, law and consultancy firms.²⁴⁸ Best practice for board appointments is exchanged through schemes such as the Professional Boards Forum.²⁴⁹ Supporting these efforts, the Cranfield School of Management maintains a database of talented women²⁵⁰ and the Government has established the Women’s Business Council to suggest and take forward additional work programmes.²⁵¹ It is worth noting here too the efforts made by individual businesses, such as PWC, Aviva and Accenture, to address issues of gender diversity more effectively.²⁵²

²⁴⁰ Q36

²⁴¹ Brook Graham, IDDAS, Fawcett Society, Elin Hurvenes

²⁴² Q174 (Kate Grussing)

²⁴³ *ibid.* See also Q191 (Lesley Brook, Brook Graham)

²⁴⁴ Q75. See also Q160 (Sir Michael Rake)

²⁴⁵ The Mentoring Foundation

²⁴⁶ *ibid.*

²⁴⁷ Q191 (Will Dawkins). See also Q191 (Michael Reyner, MWM Consulting)

²⁴⁸ 30% Club, IMA

²⁴⁹ Professional Boards Forum

²⁵⁰ Cranfield University School of Management, International Centre for Women Leaders, *Female FTSE Board Report 2012, 100 women to watch*, 2012:

<http://www.som.cranfield.ac.uk/som/dinamic-content/media/Research/Research%20Centres/CICWL/100W2Wsupplement2012.pdf>

²⁵¹ Q36 (Helene Reardon-Bond, GEO)

²⁵² PWC, Aviva, Elin Hurvenes

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

132. There are examples to draw upon from elsewhere in Europe too. In Belgium and Denmark, female candidate databases have been set up to increase visibility on a more formal footing than the Cranfield model.²⁵³ In Sweden, the government has commissioned a national programme focusing on women's entrepreneurship.²⁵⁴ In Austria, the government established an action plan to address gender equality in the labour market.²⁵⁵ As well as these public authority-led schemes, the NHO established a "Female Future" scheme in Norway to recruit and retain talented young people through mentoring and motivational work.²⁵⁶
133. We are entirely supportive of efforts in all of these areas. They will go a long way to developing a more diverse and extensive talent pool, allowing women to progress to more senior roles and changing the perceptions of senior male figures in the process.²⁵⁷ Significantly, they also develop female role models that inspire women to pursue high-level careers.²⁵⁸ Reflecting this fact, Spencer Stuart noted that, though only 16 per cent of directors on Standard and Poor 500 companies were women, the figure increased to 33 per cent at the 20 companies on the index with female CEOs.²⁵⁹
134. The benefits and importance of developing the pipeline are clear, but the question remains as to the role for the Government and EU institutions in this work. Some witnesses supported their intervention. The Fawcett Society wanted to see a Government-commissioned database;²⁶⁰ GC100 also wanted a database, but thought that this could be done at EU level.²⁶¹ The EHRC wanted European Social Fund grants to be directed towards schemes to ready women for board appointments.²⁶² An Inspirational Journey, an organisation that develops initiatives to improve the representation of women in senior corporation positions, wanted to see a nationwide awareness campaign to make the business case for improved female representation.²⁶³
135. In our view, such initiatives are most effective when they are business-led.²⁶⁴ This avoids the risk of duplication, but it also gives businesses a greater sense of ownership in the work being done and allows work to be better tailored to specific sectors.²⁶⁵ ILM identified the coming years as particularly opportune for real shifts in this sphere;²⁶⁶ business should be given the opportunity to seize this initiative.

²⁵³ European Commission, *Women in economic decision-making in the EU: progress report*, *op. cit.* See also Austrian Federal Chancellery, Q280 (Sonja Lokar, EWL)

²⁵⁴ European Commission, *Women in economic decision-making in the EU: progress report*, *op. cit.*

²⁵⁵ Austrian Federal Chancellery

²⁵⁶ NHO, Q235 (Arni Hole)

²⁵⁷ Brook Graham

²⁵⁸ Q54 (Lord Davies), Q144 (Sir Michael Rake), Q172 (Will Dawkins, Spencer Stuart), Q224 (Dr Ruth Sealy)

²⁵⁹ Q172 (Will Dawkins)

²⁶⁰ Fawcett Society

²⁶¹ GC100

²⁶² EHRC

²⁶³ An Inspirational Journey

²⁶⁴ See also 30% Club, IMA

²⁶⁵ See also CBI

²⁶⁶ ILM

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

136. We would resist the use of European Social Fund money to foster the development of talent in the highest echelons of the corporate world. This Committee has called for the European Social Fund to focus on the least skilled and the most in need in the longer-term, and funding for high-level corporate appointments would not accord with that aim.²⁶⁷ Similarly, given the high profile of the issue of gender diversity in the corporate world, a wide-ranging awareness campaign would be a misdirection of resources in the area.
137. Our judgment does not rule out a role for the Government. They must make sure that business leaders remain engaged in this work, and they should also be prepared to step in to support and develop the many excellent schemes that we have identified.²⁶⁸ The Government should also use their influence to expand those schemes across a wider span of the United Kingdom, and to encourage businesses to look beyond the narrow confines of the private sector when identifying prospective talent.
138. One way of doing this would be to work with Cranfield to put the database of female talent onto a stronger footing, in line with schemes in other parts of Europe. An expanded scheme could encompass a wider range of female talent and become a vital resource for businesses. Dr Barnali Choudhury suggested funding this scheme by charging firms a yearly maintenance fee, with free registration for candidates.²⁶⁹ This would be one sensible way to cover the costs of its expansion, but we do not prescribe its format.
139. The EU can play a part as well, but it should respect Member State competences in this sphere—addressing pipeline issues is a legitimate area where governments can point to cultural diversity as a reason for developing tailored national approaches.²⁷⁰ Its most effective role would be in highlighting excellent programmes and efforts in individual Member States, as it does at present in its *Women in Economic Decision-making in the EU* progress report and associated database.²⁷¹ If our recommendation to develop this reporting regime was taken up (see paragraph 87), this role would only be strengthened.
140. The EU should in particular seek to facilitate initiatives that operate across Europe. These include the database of talent compiled by the European Roundtable of Industrialists;²⁷² the European Professional Women’s Network;²⁷³ and the guidelines for action issued by the European Trades Union Congress.²⁷⁴ To this end, we welcome the Commission’s support for the Women on Board initiative, which published a list of 7,000 “board-

²⁶⁷ European Union Committee, 34th Report (2010–12): *The Multiannual Financial Framework 2014–2020* (HL Paper 297). See also European Union Committee, 9th Report (2009–10): *Making it work: the European Social Fund* (HL Paper 92)

²⁶⁸ IDDAS, NAWO, Q98 (Dr Karen Jochelson, EHRC), Q110 (Dr Annette Lawson, NAWO)

²⁶⁹ Dr Barnali Choudhury

²⁷⁰ IDDAS, Aberdeen Asset Management, ELA, Spencer Stuart

²⁷¹ European Commission. See also Marina Yannakoudakis MEP

²⁷² IMA, ABI

²⁷³ Professor Sylvia Walby

²⁷⁴ European Trade Union Confederation, *ETUC Position: Time to overcome gender imbalance in corporate boards in the EU*, June 2012:

http://www.etuc.org/IMG/pdf/EN_-ETUC_-_Position_Gender_equality_in_company_boards-2.pdf

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

ready” women from across the EU.²⁷⁵ This more collaborative form of action would be more appropriate for the EU than quotas. It would allow the EU to set out the political importance of sustained action and to monitor the results over the next five years.

141. The role we foresee for the Government and the EU, then, is one of fostering best practice. In our evidence, we heard calls for more fundamental changes in social policy to address pipeline issues and to take account of the varied obstacles that women face, which can be compounded by discrimination based upon disability or ethnicity. Some witnesses felt that, to develop a truly sustainable pool of talented women, Member States needed to offer more extensive childcare provisions, facilitate more flexible means of working, alter the nature of parental leave and better tailor teaching in schools to give pupils a sound grounding in financial literacy.²⁷⁶ The Minister, for example, drew attention to the need to look at the “culture of the way that we work”.²⁷⁷ The Norwegian government pointed to the family policies in Norway as an important reason for the longstanding engagement with gender diversity there.²⁷⁸
142. There are some policies in development that look to address these concerns. In the Queen’s Speech in May 2012, which set out the Government’s legislative programme for the present Parliamentary Session, the Government committed to introducing a system of shared parental leave.²⁷⁹ The Minister repeated the commitment to bring forward proposals in evidence.²⁸⁰ There are also consultations taking place at EU level on the possible revision of the Working Time Directive.²⁸¹ These are sensitive, complex policies that reflect important cultural judgments; it would be inappropriate to seek to address them as a small part of this inquiry. We nevertheless welcome the focus on this issue and the willingness of the Minister to be “pretty radical” in thinking about these issues.²⁸² We hope in doing so that the Government and the EU consider the implications of any fundamental changes in the round, to ensure that measures do not hold back the progress of women in the labour market unintentionally.
143. **It is imperative to develop a sustainable supply of talented women who are ready and able to take on board positions. Training, mentoring, networking and visible databases of female board candidates all help to boost confidence and ensure that capable women are not ignored. These efforts are central to improving the participation of women in executive board roles and in the highest**

²⁷⁵ European Business Schools, *Women on boards: board ready women list v2.0*, 18 June 2012: <http://www.edhec.com/html/Communication/doc-womenboard/BoardReadyWomen.pdf>

²⁷⁶ Brook Graham, 30% Club, My Family Care, ILM, GC100, Aviva, ABI, TUC, ELA, Mary Honeyball MEP, QCA, NHO, Q66 and Q76 (Lord Davies), (Dr Annette Lawson, NAWO), Q166 (Simon Walker, IoD). See also European Commission

²⁷⁷ Q293

²⁷⁸ Q241 (Arni Hole)

²⁷⁹ Her Majesty’s Most Gracious Speech to both Houses of Parliament on 9 May 2012: <http://www.cabinetoffice.gov.uk/queens-speech-2012>

²⁸⁰ Q294

²⁸¹ European Commission press release, *Working Time: Commission agrees to extend time for social partners’ negotiations on reviewing EU rules*: http://europa.eu/rapid/press-release_IP-12-903_en.htm?locale=en. Accessed on 25 October 2012.

²⁸² Q297

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

levels of management, where there are such stark imbalances at present, and to improving gender diversity in the boardroom on a sustainable basis.

144. **The development of this supply should be led by the business community. This ensures that businesses are engaged and able to see the benefits of the work, furthering their commitment to the agenda. The Government should use their influence to support the expansion of the best initiatives that emerge, such as the *FTSE 100 Cross-Company Mentoring Programme*, filling gaps in funding where appropriate. They should also work with the Cranfield School of Management to expand its database of talented women to encompass a wider span of female managers and sectors. We do not propose a particular form.**
145. **The Commission should respect this voluntary approach and focus on highlighting best practice. The best vehicle for these efforts is through its existing, excellent work on women in economic decision-making. The Commission's role would be enhanced if this work was expanded, as we recommend elsewhere (see paragraph 87). In particular, the Commission should use its influence to develop initiatives that operate on a pan-European basis, such as the European Roundtable of Industrialists' database of female talent.**
146. **Developing a sustainable supply of female talent may also require broader cultural reform of working practices. A detailed consideration of such changes is beyond our remit. Nevertheless, we welcome the broad focus at both national and European level on these important issues, as part of a sustained effort to deliver a more equal and effective world of business.**

CHAPTER 7: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

147. The case for pursuing a greater representation of women on boards is an overwhelming one. There is a strong public interest in ensuring that opportunities are available to all, regardless of gender, that women entering the labour market are able to fulfil their potential, and that we make full use of the wealth of talented women in the United Kingdom. Importantly, there is also a clear benefit to businesses from a more diverse boardroom. A diverse board is more reflective of its customers, offers greater challenge to established thinking, and demonstrates to staff that an organisation is committed to developing all of its talent regardless of gender. We support the Government's engagement with this agenda and urge that it continues. (paragraph 21)
148. It is important that the case for action is made to businesses in a strong and positive manner. However, this case must also be intellectually defensible. Thus far, though we are convinced of the beneficial behavioural and social impacts of a more diverse board, we are not convinced by the evidence put forward for a direct link between gender diversity and financial indicators of business performance. Unless further research bears out the assertion as to financial benefit, such a claim should be discarded and the case for action made on the other compelling grounds identified. (paragraph 22)
149. Gender equality in the labour market is a core objective of the European Union and is embedded within its Treaties. It is therefore proper for the EU to play its part in improving the representation of women on boards. The Commission should be bold in showing leadership on the issue and in maintaining the high profile of the issue across Member States. (paragraph 33)
150. The Commission should be prepared to act where it can drive the agenda forward more effectively than Member States acting alone. Although we acknowledge that there are arguments that can be made concerning subsidiarity and the proportionality of EU action, the EU does have competence to take some form of action in this sphere. The better course for those with concerns is to engage pragmatically with any proposals from the Commission rather than simply asserting that the EU has no power to act. (paragraph 34)
151. The ultimate aim is for women to be represented at senior levels in terms broadly proportionate to their levels of participation in the labour market. This would be a clear signal that opportunities are available fairly to both sexes. The best way to assess the achievement of this goal, in terms of board appointments, is to assess the rate of increase in the number of women on boards over time and its sustainability. However, we accept that broader targets for female board memberships can help to ensure engagement with the issue by companies and policymakers and thus we support their use. (paragraph 42)
152. The best target to use is that 30 per cent of board memberships should be held by women, the "critical mass" level identified as a catalyst for cultural change in the boardroom. This would stretch governments and companies to deliver sustainable change, whilst remaining achievable in the present climate. At a national level, the Government should institute a 30 per cent

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

- target to be reached by 2017, whilst striving to achieve a 30 per cent level of representation as early as possible. In Europe, the Commission should adjust its 40 per cent target for 2020 downwards to 30 per cent, whether in binding or voluntary proposals in this area. In both cases, judgment against the target set should be informed as much by the rate of change and the context of action as by the raw data of representation levels, with proper account taken of meaningful progress in Member States and companies starting from lower bases. (paragraph 43)
153. We oppose the use of quotas to increase the representation of women on boards, except as an option of last resort. Though able to achieve statistical change, quotas do not address the underlying cause of gender inequality: the lack of progression of a consistent stream of women into senior positions. A quota would also be unpopular with many of the women it would seek to help, and would risk fostering the perception—though entirely incorrect—that women on boards were not there by merit. A voluntary, business-led approach is the better vehicle for long-lasting change. However, if the business community is not able to put its own house in order and deliver sustainable change, quotas are a legitimate final option to redress the present gender imbalance on boards, including at European level as far as EU law allows. (paragraph 70)
154. In the past there has been an endemic failure to address gender inequality on boards. Since 2010, though, following the work of Vice-President Reding in Europe and Lord Davies of Abersoch in the United Kingdom, the issue of gender diversity has been placed high on the political agenda, and businesses have taken significant steps to improve the situation. We commend these developments. We acknowledge that progress has been variable across Europe, with some Member States moving backwards. However, there has been a clear and encouraging improvement in the number of female board members in the EU as a whole and particularly in the United Kingdom. We are therefore not convinced that self-regulatory efforts have been shown to be beyond repair. This is particularly so when too little time has elapsed to assess fully the impact of quotas in Member States, such as France and Italy, which have been instituted in the intervening period. (paragraph 71)
155. So, whilst Member States are free to pursue quotas nationally, the case has not been made for an EU-wide measure and we urge the Commission to refrain from introducing any proposal that would seek to institute quotas. To take legislation forward would jeopardise self-regulatory efforts in countries, like the United Kingdom, where business communities are strongly opposed to quotas, and would undermine the goodwill accrued as a result of EU leadership on the issue so far. We would also have to consider carefully the adherence of any legislation to the principle of subsidiarity, in the light of the extensive efforts made domestically, and would urge the Government to oppose any such measure strongly. (paragraph 72)
156. Instead of a quota Directive, the Commission should issue a non-binding Recommendation to Member States that urges strong action to address gender diversity on boards. The Recommendation should outline a range of recommended policy developments and a voluntary target of 30 per cent of EU board posts being held by women five years after it is issued. The Commission should review progress against this Recommendation after three and then five years. Goodwill towards self-regulation is not, and should not be, unlimited. Should there be a clear failure to address gender inequalities

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

- on corporate boards, the Commission should reserve the right to legislate on the issue at either stage. This would put the Commission in a stronger position in future negotiations and would allow Member States to demonstrate the effectiveness of other options. (paragraph 73)
157. Robust EU-wide information is essential to assessing progress made by companies in addressing issues of gender inequality in the labour market; it must be collected more comprehensively and rigorously than it is today. The Commission should, in any legislation it introduces, require companies to report on the proportion of women at every level of their workforce. Data should be collected at a national level by each Member State. (paragraph 81)
158. At a minimum, companies should be required to report on the number of women on the board, in executive positions and in the organisation as a whole. In the United Kingdom, we support the Government's proposals to introduce such reporting standards in October 2013 for large and medium-sized companies, to ensure that as much of this data is available as soon as possible. (paragraph 82)
159. These figures should be monitored on an annual basis by the Commission, to determine whether sustained progress is being made and to inform possible policy responses. The information should be used by policymakers and the media to identify and promote examples of best practice, as well as to draw attention to poor performers. (paragraph 83)
160. Governments should be scrutinised for their actions to improve gender diversity in the labour market, to keep up the pressure for change. Comparing the actions taken in different Member States enhances this scrutiny and offers the possibility of exchanging best practice. The Commission should therefore expand its reporting work on women's involvement in economic decision-making in a style similar to the reporting process in the European Semester economic programme. In short, Member States should provide more detailed policy information and statistics on progress made in improving gender diversity, and the Commission in turn should provide individual national and comparative European analysis on the work being done. Such assessments should then be brought within formal national parliament scrutiny processes and form part of the evidence base when considering the future case for any legislative action in this sphere. This would establish a rigorous and accountable assessment framework at all levels. (paragraph 87)
161. The Commission should also be bold in taking action to promote gender diversity through changes to corporate governance rules. Action would demonstrate leadership, foster EU-wide engagement, and ensure that accountability on improving gender diversity is at the heart of corporate scrutiny across the EU. It would also enable companies to understand better what was expected of them, minimising variation in reporting standards and compliance costs. (paragraph 99)
162. We recommend that the "comply or explain" approach to gender diversity policy, as used in a number of Member States and bolstered in the United Kingdom Corporate Governance Code in October 2012, be seen as a good practice example for reference. The Commission should consider including an analogous system by amendment into the draft consolidated Directive on accounting standards currently making its way through the ordinary

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

- legislative procedure. If this is not possible, separate legislation should be introduced. (paragraph 100)
163. This reporting system should require that each listed company disclose, in its annual report, the measures that it has taken on diversity, as well as to report on the balance of its board, taking into account gender diversity in both instances. Furthermore, companies should be encouraged to set non-binding targets for female representation and to report on progress against these objectives where they have been set. This would establish a strong governance regime with the means to allow effective scrutiny by shareholders, the media and policymakers alike, without interfering unnecessarily in national governance structures. (paragraph 101)
164. A more accountable corporate governance regime for companies must be allied to a more engaged approach by shareholders than we see at present. In this respect, we welcome the establishment of a Stewardship Code in the United Kingdom. We also welcome the efforts made thus far in the institutional investor community, such as the establishment of clear voting policies based upon gender diversity. The Government should foster these developments alongside their work with the companies themselves. (paragraph 109)
165. Those institutional investors often have portfolios that extend well beyond a single country, indicating a possible role for the EU in encouraging best practice. We recommend that the Commission explores, in its forthcoming Communication on company law and corporate governance, how to improve the engagement of shareholders across the EU. Such efforts should be on a voluntary footing, based on the principles of transparency, engagement and accountability that also underpin the Stewardship Code in the United Kingdom. This should be taken forward in conjunction with the Institutional Investor Committee and other European investor associations. We urge the Government to support such efforts. (paragraph 110)
166. Executive search firms play an important role in the process of board appointments in the United Kingdom, and markets for their services are emerging elsewhere in the EU. We welcome the establishment of a voluntary code of conduct in the United Kingdom. It strives for a greater degree of transparency and rigour in a process that is too often narrow and opaque, and sets out key principles of merit-based, open and fair recruitment. It is right that this is being taken forward on a voluntary basis at present. Search firms, and the boards who hire them, should be given the opportunity to demonstrate their engagement with gender diversity before any formal intervention is considered. (paragraph 122)
167. We consider, though, that there should be a more widespread code. To start, the principles of the United Kingdom code could be implemented on a voluntary basis across the EU. Any code should encompass firms in emerging markets as well as United Kingdom firms placing candidates on boards in other Member States. We support the work of the Association of Executive Search Consultants in rolling out a code across its partners in Europe; the Government and the Commission should support this work as a priority. (paragraph 123)
168. The Government and the Commission should also work with the executive search community to seek to strengthen the provisions of the existing code to ensure that it is a robust guide to best practice. We recommend that the code

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

- be amended to include a more detailed statement of what constitutes an intrinsic characteristic, encouraging companies to look beyond the subjective “fit” of a candidate for a board position. It should also include a requirement for firms to report on the numbers and percentages of female candidates making the transition from longlists to shortlists. If the results of such reporting are not satisfactory over the course of the next three years, the Government and the Commission should work with the search community to amend the code to introduce a requirement for there to be a specified percentage of female candidates on shortlists, on a “comply or explain” basis, to ensure that change is sustained. (paragraph 124)
169. It is imperative through all of this work to develop a sustainable supply of talented women who are ready and able to take on board positions. Training, mentoring, networking and visible databases of female board candidates all help to boost confidence and ensure that capable women are not ignored. These efforts are central to improving the participation of women in executive board roles and in the highest levels of management, where there are such stark imbalances at present, and to improving gender diversity in the boardroom on a sustainable basis. (paragraph 143)
170. The development of this supply should be led by the business community. This ensures that businesses are engaged and able to see the benefits of the work, furthering their commitment to the agenda. The Government should use their influence to support the expansion of the best initiatives that emerge, such as the *FTSE 100 Cross-Company Mentoring Programme*, filling gaps in funding where appropriate. They should also work with the Cranfield School of Management to expand its database of talented women to encompass a wider span of female managers and sectors. We do not propose a particular form. (paragraph 144)
171. The Commission should respect this voluntary approach and focus on highlighting best practice. The best vehicle for these efforts is through its existing, excellent work on women in economic decision-making. The Commission’s role would be enhanced if this work was expanded, as we recommend elsewhere (see paragraph 160). In particular, the Commission should use its influence to develop initiatives that operate on a pan-European basis, such as the European Roundtable of Industrialists’ database of female talent. (paragraph 145)
172. Developing a sustainable supply of female talent may also require broader cultural reform of working practices. A detailed consideration of such changes is beyond our remit. Nevertheless, we welcome the broad focus at both national and European level on these important issues, as part of a sustained effort to deliver a more equal and effective world of business. (paragraph 146)

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

APPENDIX 1: SUB-COMMITTEE ON THE INTERNAL MARKET, INFRASTRUCTURE AND EMPLOYMENT

The Members of the Sub-Committee which conducted this inquiry were:

Lord Brooke of Alverthorpe
Baroness Buscombe
Lord Clinton-Davis
Lord Elton (from 23 October 2012)
Lord Fearn
Lord Haskel
Lord Kakkar
Earl of Liverpool
Baroness O’Cathain (Chairman)
Lord Plumb (up to 23 October 2012)
Baroness Scott of Needham Market
Baroness Valentine
Lord Wilson of Tillyorn

Declaration of Interests

Lord Brooke of Alverthorpe
No relevant interests

Baroness Buscombe
Non-Executive Director, Veolia Central Limited; Non-financial – Chairman, Advisory Board for the Samaritans; Non-financial – Institute of Paralegals

Lord Clinton-Davis
No relevant interests

Lord Elton
No relevant interests

Lord Fearn
No relevant interests

Lord Haskel
No relevant interests

Lord Kakkar
No relevant interests

Earl of Liverpool
No relevant interests

Baroness O’Cathain
No relevant interests

Lord Plumb
No relevant interests

Baroness Scott of Needham Market
No relevant interests

Baroness Valentine
No relevant interests

Lord Wilson of Tillyorn
No relevant interests

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Lord Boswell
Lord Cameron of Dillington
Lord Carter of Coles
Lord Dear
Baroness Eccles of Moulton
Lord Foulkes of Cumnock
Lord Harrison
Lord Marlesford
Baroness O’Cathain
Lord Richard
The Earl of Sandwich
Baroness Scott of Needham Market
Baroness Young of Hornsey

A full list of Members’ interests can be found in the Register of Lords Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <http://www.parliament.uk/hleub> and available for inspection at the Parliamentary Archives (020 7219 5314).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with * gave both oral evidence and written evidence. Those marked with ** gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

**	QQ 1–50	Government Equalities Office (GEO)
**		Department for Business, Innovation and Skills (BIS)
**	QQ 51–81	Lord Davies of Abersoch
*	QQ 82–112	Equality and Human Rights Commission (EHRC)
*		National Alliance of Women’s Organisations (NAWO)
*		Trades Union Congress (TUC)
*		Professor Sylvia Walby OBE
*	QQ 113–140	Association of British Insurers (ABI)
*		Investment Management Association (IMA)
*		National Association of Pension Funds Limited (NAPF)
*	QQ 141–168	Confederation of British Industry (CBI)
**		Institute of Directors (IoD)
**		Sir Michael Rake
*	QQ 169–196	Brook Graham
**		Sapphire Partners
*		Spencer Stuart
**		MWM Consulting
**	QQ 197–226	Dr Ruth Sealy
**		Professor Susan Vinnicombe OBE
**	QQ 227–245	French government
**		Norwegian government
**		Mouvement des Entreprises de France (MEDEF)
*	QQ 246–271	30% Club
*	QQ 272–287	European Women’s Lobby (EWL)
**	QQ 288–299	Department for Business (BIS), and Department for Culture, Media and Sport (DCMS) (Jo Swinson MP, Minister)

Alphabetical list of all witnesses

- * 30% Club
 - Aberdeen Asset Management
 - An Inspirational Journey (Heather Jackson)
 - An Inspirational Journey—Written evidence in support of submission by Heather Jackson
- * Association of British Insurers (ABI)
 - Austrian Federal Chancellery
 - Aviva
- * Brook Graham
- ** Department for Business, Innovation and Skills (BIS) (Caroline Normand, Helen Whitehead)
 - Campaign for Merit in Business (CMB)
 - Dr Barnali Choudhury, Lecturer, Queen Mary University of London
- * Confederation of British Industry (CBI)
 - Confederation of Norwegian Enterprise (NHO)
- ** Lord Davies of Abersoch
 - Elin Hurvenes
 - Employment Lawyers Association (ELA)
- * Equality and Human Rights Commission (EHRC)
 - European Commission
- * European Women's Lobby (EWL)
 - Fawcett Society
- ** French government
 - GC 100
- ** Government Equalities Office (GEO)
 - Mary Honeyball MEP
 - Hermes Equity Ownership Services
 - IDDAS
- ** Institute of Directors (IoD)
 - Institute of Leadership & Management (ILM)
- * Investment Management Association (IMA)
 - Michael Klein
 - Arlene McCarthy MEP
 - Mentoring Foundation
- ** Mouvement des Entreprises de France (MEDEF)
- ** MWM Consulting

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

My Family Care

- * National Alliance of Women's Organisations (NAWO)
- * National Association of Pension Funds Limited (NAPF)
- National Employment Savings Trust Corporation (NEST)
- ** Norwegian government
- PricewaterhouseCoopers LLP (PwC LLP)
- Professional Boards Forum
- Quoted Companies Alliance (QCA)
- ** Sir Michael Rake
- Raymond Russell
- ** Sapphire Partners
- ** Dr Ruth Sealy
- * Spencer Stuart
- ** Jo Swinson MP (representing BIS and DCMS)
- * Trades Union Congress (TUC)
- ** Professor Susan Vinnicombe OBE
- * Professor Sylvia Walby OBE
- Marina Yannakoudakis MEP

APPENDIX 3: CALL FOR EVIDENCE

The European Commission has announced that it is considering proposing legislative quotas to improve the representation of women on boards across the EU, and recently held a consultation into the matter.

In March 2011, Lord Davies of Abersoch published a review of women on boards in the UK, examining the business case for gender diversity and the obstacles faced by women in achieving board level appointments. This put forward 10 recommendations to business, including a target of a minimum of 25 per cent female representation on FTSE 100 boards by 2015.

One year on, the Government report that nearly three in 10 board appointments in the FTSE 100 went to women, with the UK on course to achieve a 27 per cent total representation of women on boards in 2015. At the same time, around one in 10 FTSE 100 boards, and almost half of FTSE 250 boards, are composed entirely of men. With this inquiry, the House of Lords European Union Committee intends to examine the case for European intervention in this area.

Contributions are invited from all individuals and organisations with an interest in this issue. Particular questions to which we would like you to respond are below; however, respondents need only reply to those questions which they consider relevant to them.

Instructions regarding the call for evidence are attached at Annex 1 (*not printed*)

Questions

- (1) To what extent does the EU have a role to play in improving the representation of women on boards? Should this be tackled through measures at a European level or is it a matter for national Governments? Do the differences in board structures across the EU affect the pursuit of a common European approach?
- (2) Can a “voluntary approach”, or self-regulation, achieve a fair representation of women on boards? How can change through voluntary measures be sustained?
- (3) How should progress be monitored and audited? Should monitoring be coordinated at the European level?
- (4) Should progress be incentivised, or a lack of progress punished? If so, how could this be achieved?
- (5) What level of progress is acceptable? Is there a point at which it should be determined that self-regulation is not working and that a legislative intervention (whether at national or European level) is needed?
- (6) Has the introduction of quotas in some Member States had any impact on the single market? What are the arguments for and against consistency across the EU on women on boards?
- (7) What impact would a higher level of representation of women on boards across Europe have on the UK? Would it bring any advantages and/or disadvantages?
- (8) What are the positive and negative effects of legislative quotas?

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

- (9) Other than quotas, what measures could be considered at European level to directly improve the representation of women on boards? Are there alternative measures that should be pursued, but which are better suited for action at a national level?
- (10) Is support needed for women when making their choice of careers, and throughout their careers, to ensure that there are sufficient candidates for board appointments? Is this a matter for European-level action, or should it be a matter for national governments?
- (11) What does success look like? What should be the ultimate goal with respect to women on boards across the EU?

APPENDIX 4: GLOSSARY OF TERMS AND ABBREVIATIONS

30% Club	The 30% Club is a group of company Chairmen voluntarily committed to bringing more women onto United Kingdom corporate boards.
ABI	The Association of British Insurers represents over 300 general insurance, investment and long-term savings companies in the United Kingdom.
CBI	The Confederation of British Industry is a lobbying organisation representing United Kingdom businesses nationally and internationally.
EHRC	The Equality and Human Rights Commission is a on-departmental public body responsible for promoting and enforcing equality and non-discrimination laws in the United Kingdom.
ELA	The Employment Lawyers Association represents over 5,900 employment lawyers in the United Kingdom.
ETUC	European Trade Union Confederation.
European Semester	The European Semester is an annual cycle of macro-economic, budgetary and Semester structural policy coordination designed to help all EU Member States achieve the goals outlined in the Europe 2020 strategy.
FTSE	FTSE is a British provider of stock market indices and associated data services. The FTSE 100 is a share index of the stocks of the 100 companies listed on the London Stock Exchange with the highest market capitalisation. The FTSE 250 refers to the companies listed 101–350 with the highest market capitalisation.
GC100	The GC100 group brings together the senior legal officers of more than 85 FTSE 100 companies to discuss policy issues affecting United Kingdom listed companies.
ILM	The Institute of Leadership & Management is an awarding body for leadership and management qualifications in the United Kingdom.
IMA	The Investment Management Association is a trade association of over 200 investment management companies in the United Kingdom.
MEDEF	The <i>Mouvement des Entreprises de France</i> is the largest union of employers in France.
NAPF	The National Association of Pension Funds is a membership organisation for a wide range of over 400 providers of essential advice and services to the pensions sector.

THIS DOCUMENT IS ISSUED IN ADVANCE BY THE HOUSE OF LORDS ON THE STRICT UNDERSTANDING THAT NO PUBLICITY MAY BE GIVEN TO THE TEXT OF THE REPORT BEFORE THE ABOVE TIME AND DATE.

NAWO	The National Alliance of Women's Organisations represents over 100 organisations and individuals in the United Kingdom concerned with making equality between women and men a reality.
NEST	The National Employment Savings Trust is a workplace defined contribution pension scheme that all employers can use for their United Kingdom based workers.
NHO	The Confederation of Norwegian Enterprise (<i>Næringslivets Hovedorganisasjon</i>) is an employers' organisation in Norway with more than 20,000 members.
Stewardship Code	The Stewardship Code is a set of principles or guidelines directed at institutional investors who hold voting rights in United Kingdom companies. Its principal aim is to make institutional investors, who manage other people's money, be active and engage in corporate governance in the interests of their beneficiaries (the shareholders).
Subsidiarity	Under the principle of subsidiarity, the EU can take legislative action only where action could not be achieved satisfactorily at Member State level, or the objectives could be better achieved at a European level.
TEU	The Treaty on European Union
TFEU	The Treaty on the Functioning of the European Union
TUC	The Trades Unions Congress represents the majority of trade unions in the United Kingdom and focuses on equality in the workplace amongst other issues.
UNESCO	The United Nations Educational, Scientific and Cultural Organization has gender equality as one of its priorities.