



**EUROPEAN COMMISSION**  
Impact Assessment Board

Brussels,  
D(2012)

**Opinion**

**Title**                    **DG JUST - Impact Assessment on costs and benefits of improving the gender balance in the boards of companies listed on stock exchanges**  
**(resubmitted draft version of 10 August 2012)\***

**(A) Context**

Promoting equality between women and men is an objective of the EU, as reflected in its Treaties (Article 3(3) TEU, Article 8 TFEU, Article 157 TFEU) as well as in the Charter of Fundamental Rights (Article 23). The EU institutions have undertaken various efforts over several decades to promote gender equality in economic decision-making, notably to enhance female presence in company boards, by Recommendations and by encouraging self-regulation. The Council of the European Union has adopted two Recommendations (in 1984 and 1996) encouraging the private sector to increase the presence of women at all levels of decision-making. The Commission reaffirmed its support for an increased participation of women in positions of responsibility, both in its Women's Charter and its Strategy for Equality between Women and Men 2010-2015. The European Parliament called upon the Member States to increase female representation of women in decision-making bodies and called upon the Commission to propose legislative quotas to increase female representation in corporate boards to 30% by 2015 and 40% by 2020.

**(B) Overall assessment**

**While the report has been improved to some extent along the lines of the recommendations issued by the Board, the evidence base to demonstrate the need for, and proportionality of, binding EU action remains very weak. In particular, the report needs to demonstrate why the objectives of the proposed action cannot be sufficiently achieved by Member States themselves given their proven ability to act in this area. The report should discuss the reasons for the relatively strong gender balance performance of the public sector without the need for EU legislative action. It should consider a broader set of options and develop more proportionate variations of the options for binding quotas, such as longer compliance periods and/or lower targets for quotas as already applied in some Member States. The report should still include more precise information on the content of the options and on the nature and impact of the flexibility clause in different Member States. Finally the report should provide more information throughout on the results of the public consultation, in particular concerning the different views of Member States and of industry stakeholders on the options and on their impacts.**

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

### **(C) Main recommendations for improvements**

**(1) Further strengthen the case for both action at EU level and the use of a binding instrument.** The report needs to much better explain the case for EU level action given the fact that a number of Member States have taken measures which appear to have achieved significant progress. In particular, the report should better explain whether there are any legal or other obstacles that concretely prevent Member States from taking adequate action in this area, and which would therefore better justify EU level action. It should also discuss the reasons why, given the financial and economic benefits of greater gender balance on company boards, Member States would not be motivated to take action. The proportionality of binding measures needs to be better assessed given that there are considerable differences among Member States and sectors with respect to the current level of female participation and that stakeholders have highly divergent views on the type of EU action needed. Furthermore, the available evidence seems to be inconclusive on the most appropriate approaches (i.e. objectives appear to be equally achievable by (national) legislative action (e.g. France), voluntary initiatives (e.g. Finland) or even no action (e.g. Latvia)). In particular, in light of the evidence presented and the significant differences in Member States/industry sectors, the report should explain why a pan-European binding measure is preferable to more tailored approaches by the Member States themselves.

**(2) Strengthen the problem definition.** The report should still further strengthen the explanation as to how this action fits with gender equality policies generally. While the presentation of the underlying drivers is more balanced and is now more transparent on the fact that a causal link between female presence on boards and better performance has not been empirically proven, the report should develop further the analysis of the demand-side factors by including more detail on the divergent stakeholders' views on this aspect. The report should include a deeper discussion of why the problems of under-representation of women appear to be more pronounced in the case of public listed companies than in other sectors such as the public sector. In particular, the report should discuss the reasons for the relatively strong performance of the public sector without the need for EU legislative action.

**(3) Better explain the content and choice of the options.** While the report has made an effort to better justify why some options have been discarded it should still better explain why an option for increased transparency in board appointments is considered to be disproportionate on a stand-alone basis, while at the same time increased transparency is included as an effective feature of the options involving quotas. It should consider in greater depth more feasible and proportionate variations of the options for binding quotas, such as longer compliance periods and/or lower targets for quotas (e.g. 30% as required in some Member States). The report should still include more precise information on the content of the options, particularly the concrete obligations they contain on business (e.g. transparency and recruitment process requirements) and on the nature of the flexibility clause. Stakeholders' divergent views on the range of options should be more fully integrated.

**(4) Better assess and compare impacts.** While the report has provided a more detailed assessment the impact of the options in different Member States and in different industrial sectors, it should strengthen this aspect further, particularly taking into account the effects of the flexibility clause in different Member States and sectors which would allow for non-compliance where the pool of potential female board members may be low and unlikely to evolve. Given the methodological uncertainties with the chosen approach for quantifying impacts on company performance (e.g. no established causal link, static analysis, uncertain assumptions regarding critical mass) the robustness of the income estimates presented should be further reviewed and qualified and presented with the necessary degree of caution. The presentation of the economic impacts should be summarised in a table.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report*

**(D) Procedure and presentation**

While the inclusion of stakeholders' views has improved, the report should provide more information throughout on the results of the public consultation, in particular concerning the different views of Member States and of industry stakeholders and concretely affected business on the nature of the problems, the options and their impacts.

Iceland and Norway should not be included in tables presenting the positions in EU Member States.

**(E) IAB scrutiny process**

Reference number	2012/JUST/022
External expertise used	No
Date of IAB meeting	Written procedure The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 20 July 2012