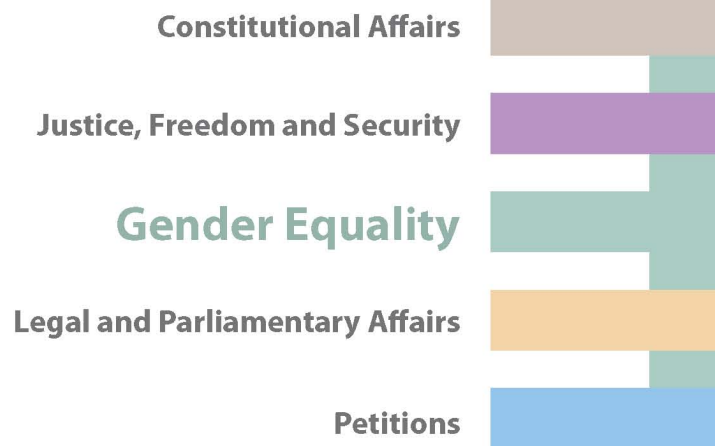


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



The recruitment practices in
top management and
non-executive directors'
positions in Europe

NOTE



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

GENDER EQUALITY

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directors' positions in Europe**

NOTE

Abstract

This note examines the barriers to recruitment of women in top management and non-executive directors' positions in Europe from the perspective of an Executive Search Agency. It also analyses the proposed Directive and makes relevant recommendations for development of such a system. It concludes that, as a minimum, the barriers to recruitment should be the main focus of any action in this area.

This document was requested by the European Parliament's Committee on Women's Rights and Gender Equality.

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EXECUTIVE SUMMARY

Background

European corporate organisations hire their executive staff and non executive directors using a variety of recruitment methods. The means of recruitment chosen will depend on a number of factors including company policy, specific legal requirements, the secretive nature of the role, the capability of the decision making team, cost, timescale and the required skill set of the candidates they are looking for. Normally, executive hiring processes are reactive (where a candidate can apply for a post) including advertising, recruitment agencies, word of mouth, social media and the 'old boys network' (which should not be underestimated as it is still widely used and advocated). Alternatively, executive hiring can be undertaken through a process of proactive searching, such as Executive Headhunting, which relies on industry experts to make direct approaches to competitor organisations in order to source people in similar positions. This particular form of hiring can be extremely effective in cases where speed or a specific person with specialist experience is required. It is also useful in confidential situations, such as where an incumbent needs replacing or where it is necessary to keep the recruitment a secret from the rest of the company or from the market at large.

The recruitment of individuals for top management (such as senior Director) and non-executive positions can be undertaken either through these reactive or proactive methods. Often Executive Headhunting is preferable to advertising a vacancy as addressing a wide international audience is relatively costly and slow to complete due to a large volume of aspiring applications from individuals with irrelevant skillsets or from disgruntled applicants who are unhappy in their existing employment as a result of underachievement, problems with management, the company or their role. However, headhunted candidates are exact matches for the clients job vacancy profile, have no need (and often no time) to change careers because they are happy in their existing roles and are achieving their personal targets and corporate goals. The only way in which these successful people can be informed of a confidential or interesting new role is via a headhunter who will make a direct approach.

From the personal experience of the author in the headhunting industry, the general approach to headhunting operates as follows:

- Client provides a brief of their ideal candidate
- Headhunting company and client work together to create a source list of companies
- Research conducted and suitable candidates identified
- Direct approaches made to candidates – headhunting
- Creation of the shortlist
- Client to meet shortlist and select preferred candidate
- Successful hire

Headhunting provides a very useful insight into the psyche of executives because it gives a rare insight into two domains: the management team of businesses and also the aspiring candidates. Firstly, headhunters deal with management teams seeking specific candidates and learn a lot about the management structure and composition, the business and the holistic needs of the organisation. Having signed non-disclosure agreements, management teams feel confident in divulging confidential information and are, as a result, often brutally honest about their needs. Secondly, headhunters deal with a large number of aspiring and ambitious individual candidates who trust their careers and futures in their hands. Headhunters work very closely with these people getting to know about all aspects of their academic backgrounds, career histories, issues in their current roles and personal and family circumstances.

Therefore, headhunters have a unique window into the mind of executives through working with corporate clients who are hiring and also executive candidates that they are approaching. Headhunters are, as a result, very well placed through their experiences to give some general views on senior level hiring and recruitment practices within the European market.

This document aims to offer an analysis of how corporate organisations hire executives and why most hires are male. Also it will consider if it is possible to address this gender imbalance and what the most appropriate method of achieving this balance actually is.

Aim

The aim of the present note is to provide an overview of the main barriers to the recruitment of women in top management and non-executive positions in Europe from the perspective of an Executive Search Agency and to suggest recommendations which would address these concerns in the European context. In this regard, it is intended to divide the note into two discrete sections:

- The main barriers to the recruitment of women in management and non-executive positions in Europe from the perspective of an Executive Search Agency: "The Barriers"
- The main recommendations which may be useful in addressing these barriers: "The Recommendations"

In developing this report, the authors drew on personal experience (Ms. Z. Hawcroft is a Director of an Executive Search Agency), as well as the relevant literature in the area, to identify the main barriers to the recruitment of women to non-executive positions. In developing recommendations, the authors relied on existing literature in relation to best practice, personal experience as a Director of an Executive Search Agency and on the Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures. The recommendations aspect of this report, therefore, has a two-fold objective. Firstly, it aims to set out recommendations for the improvement of the gender balance in non-executive positions and secondly, it aims to highlight the positive or negative aspects of the proposed Directive and make appropriate recommendations for reform of the existing proposal.

1. GENERAL INFORMATION

KEY FINDINGS

- There are a **number of significant barriers** to the achievement of gender balance in top management and non-executive positions.
- The impact of **gender discrimination and stereotyping** should not be underestimated. There are, unfortunately, general pervasive perceptions that either women are not suitable for such positions, would be intimidated by the male dominance in the boardroom or that there are not enough women in the top management and non-executive pipelines to fill the available roles and these perceptions have a distinct impact on the ability of women to get promoted to such positions. This is particularly the case outside of the scientific arena.
- The recruitment process and, in particular, **the interview process often focus on issues which are more difficult for women to show competencies in**, such as, past experience in top management or other non-executive positions or social capital **or which women cannot control**, such as their fit with the culture of the organisation (which is often male dominated).
- The organisational culture is also pivotal in acting as a barrier to the promotion of women. Promotion of women is inhibited by a **lack of transparency in advertising roles, limited information sharing, poor interpersonal relationships, a male-dominated senior management structure and the lack of suitable female role models**.
- The lack of suitable support for women in achieving a balance between work and family life, including the **lack of policies to assist males in sharing the family workload** such as parental and carers leave and the **high cost of childcare**, is a central barrier to women in achieving top management or non-executive board positions.

One of the main barriers to the recruitment of women is the impact of both direct and indirect gender discrimination. This has a number of significant effects including the damaging impact of **stereotyping**. A report conducted in Germany has described one the main impacts of gender stereotyping as ensuing that males retain the prominent position of the "Guardians of the Glass Ceiling" through conservative exclusionary¹, fundamentally emancipated² and radically individualistic attitudes³. This latter attitude also feeds into the

¹ C. Wippermann, *Women in Executive Positions: Barriers and Bridges*, (Heidelberg: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 2010) at section 4.1. The author of the report suggests that some male board members involved in recruitment are inherently conservative and harbour conservative views of women which impacts on their ability to recruit women for board positions. Ms. Hawcroft's own experiences in the headhunting industry reflect this reality.

² C. Wippermann, *Women in Executive Positions: Barriers and Bridges*, (Heidelberg: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 2010) at section 4.1. The author of the report also suggested that some male board members view women as powerless against male power rituals.

³ C. Wippermann, *Women in Executive Positions: Barriers and Bridges*, (Heidelberg: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 2010) at section 4.1. The author of the report suggested that some male board members believe (contrary to the statistical evidence available) that there are a lack of authentic, skilled and flexible women in the labour market.

perception that there are not enough women in the top management and non-executive pipelines who are suitably qualified to fill the rolls that are available. In Ms. Z. Hawcroft's experience, this is most particularly the case for women outside of the scientific arena. The Davies Report has indicated that these perceptions have led to "insufficient numbers emerging at the top of the management structure and the under representation of women in senior management more generally"⁴. In Ms. Z. Hawcroft's experience, on a typical search that would be conducted for a C-level or Director role, only about 5% of potential candidates are female.

Another barrier relates to **the process of recruitment** itself and, in particular, the interview process. It has been reported that interviews for such positions tend to focus on past experience in top management or in non-executive or executive positions as an essential criterion to successfully secure a particular post.⁵ This reliance on past experience indirectly prevents women, who have never been in such positions, from progressing to higher positions within an organisation. Excessive importance is placed on issues such as social capital and the ability of the candidate to fit in with the existing culture (which is often male dominated).⁶ There is often little diversity in the interview panels and nominating committees which creates a negative environment for female candidates.⁷ From Ms. Z. Hawcroft's experience, most hiring managers are male and seem to feel more comfortable working with other men or have had negative experiences of hiring females into a male dominated environment. Another problem, which arises in the context of recruitment, is the fact that many top management and non-executive positions are not openly advertised and the selection criteria are not readily apparent which excludes many women from the recruitment process in the first instance.⁸

The **culture in an organisation** is also pivotal in encouraging or discouraging the recruitment of women in such positions. Where there is limited information sharing or poor interpersonal dynamics⁹ (such as the "old boys club" attitude¹⁰, an argumentative atmosphere or a long-hours culture¹¹), women will not feel encouraged or comfortable with working in, or applying to work in, such an environment and will often avoid investing themselves in applying for such roles or will readily drop out of such roles. The number of women serving on an existing Board will also have an impact on the application and

⁴ Lord Davies, *Women on Boards* (London: UK Government, 2011) at p. 15.

⁵ E. Doldor, S. Vinnicombe, M. Gaughan, and R. Sealy, *Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms* (Cranfield University: Equality and Human Rights Commission Research Report 85, 2012) at pp. vi and 36.

⁶ E. Doldor, S. Vinnicombe, M. Gaughan, and R. Sealy, *Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms* (Cranfield University: Equality and Human Rights Commission Research Report 85, 2012) at pp. vi and 36.

⁷ E. Doldor, S. Vinnicombe, M. Gaughan, and R. Sealy, *Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms* (Cranfield University: Equality and Human Rights Commission Research Report 85, 2012) at pp. vi and 36.

⁸ R. Sealy, E. Doldor, and S. Vinnicombe, *Increasing Diversity on Public and Private Sector Boards - Part 1 - How Diverse are Boards and Why?* (London: Government Equalities Office, 2009). See also E. Doldor, S. Vinnicombe, M. Gaughan, and R. Sealy, *Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms* (Cranfield University: Equality and Human Rights Commission Research Report 85, 2012) at p. 11 and Lord Davies, *Women on Boards* (London: UK Government, 2011) at p. 16.

⁹ E. Doldor, S. Vinnicombe, M. Gaughan, and R. Sealy, *Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms* (Cranfield University: Equality and Human Rights Commission Research Report 85, 2012) at p. 11.

¹⁰ See for example the work of L. Van den Berghe and A. Levräu, 'Evaluating Boards of Directors: what constitutes a good corporate board?', (2004) 12(4) *Corporate Governance: An International Review* 461-78; R.M. Kanter, *Men and Women of the Corporation*. (New York: Basic Books, 1977) and J. Roberts, T. McNulty and P. Stiles, 'Beyond Agency Conceptions of the Work of the Non-Executive Director: Creating Accountability in the Boardroom', (2005) 16(1) *British Journal of Management* (Supplement) 5-26.

¹¹ E. Doldor, S. Vinnicombe, M. Gaughan, and R. Sealy, *Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms* (Cranfield University: Equality and Human Rights Commission Research Report 85, 2012) at p. 11.

retention rates of women. Terjesen and Singh have reported that a higher proportion of females on boards have been empirically proven to lead to more females in management positions and smaller pay gaps.¹² The lack of suitable female role models or mentors in senior management to support women in reaching board level also negatively impacts on the number of women striving to achieve such goals.

Other issues affecting the recruitment of women in such positions lie outside the corporate context and include problems such as the **work and family conflict**.¹³ Lineham and Walsh have argued that existing recruitment and employment structures are grounded on a “male career model with ignores the influence of marriage, pregnancy and children and household duties”¹⁴. The lack of policies to assist males in sharing the family workload, such as paternity and carers leave, also impacts on the ability of women to reach top management positions. Equally, the high cost of childcare is often a significant factor in women’s reluctance to take on top management or non-executive director roles. The experience of Ms. Z. Hawcroft has been that many women in executive roles are either childless or older than their male counterparts. Ms. Z. Hawcroft’s experience also reveals that when females are approached, they are reluctant to embrace career change. This may be because they are concerned that they may not be able to balance work and family life effectively, that such a change would be disloyal to their employer or that do not feel confident or respected enough to take part in the male dominated teams where they will be expected to work.

¹²E. Doldor, S. Vinnicombe, M. Gaughan, and R. Sealy, *Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms* (Cranfield University: Equality and Human Rights Commission Research Report 85, 2012) at pp. 11 and 12. See also S. Terjesen and V. Singh, 'Female Presence on Corporate Boards: A Multi-Country Study of Environmental Context', (2008) 83(1) *Journal of Business Ethics* 55-63.

¹³ C. Li and B. Wearing, 'Between Glass Ceilings: Female Non-Executive Directors in UK Quoted Companies' (2004) 1 *International Journal of Disclosure and Governance* 355-371 at p. 362. See also G. Pascall, S. Parker and J. Evetts, 'Women in Banking Careers – A Science of Muddling Through?' (2003) 9(1) *Journal of Gender Studies*, 63-74; L. Wirth, 'Women in Management: 'Closer to Breaking Through the Glass Ceiling?' (1998) 137(1) *International Labour Review* 93-102 and P. Nicolson, *Gender, Power and Organisation: A Psychological Perspective* (London: Routledge, 1996).

¹⁴ M. Linehan, and J. Walsh, 'Work-Family Conflict and the Senior Female International Manager', (2000) 11 *British Journal of Management* 49-58 at p. 57.

2. THE RECOMMENDATIONS

KEY FINDINGS

- There are a number of recommendations arising out of this analysis.
- The development of **awareness raising measures**, including **training opportunities and mentoring programmes** should be embedded in the proposal for a Directive.
- The **prohibition on gender discrimination** should also be restated in the proposed Directive and the obligation on listed companies to **report annually** on the gender composition of their non-executive boards should be retained and protected by the use of **adequate penalties** for non-compliance.
- Listed companies should be under an **obligation to report annually on the gender composition of their boards** and to explain reasons for any shortfall in this regard and **to make individual commitments** to achieve gender balance within their organisation. **Adequate penalties** should be developed to ensure compliance with these provisions
- It is recommended that a **voluntary code of practice on recruitment to board positions** should be developed at a national level to **encourage publication of board positions**, where appropriate, to **increase focus on actual skills** during the interview process, as opposed to other issues such as corporate fit or previous corporate board experience which it has been shown reduce the success rates of women in such interviews, to **encourage the development of succession plans** with cognisance of the listed company's responsibilities in relation to gender composition, and to **provide candidates with adequate support** throughout the recruitment process.
- The authors are in **disagreement in relation to the quota**. Both authors agree that there should be more **positive action to tackle the barriers faced by women** in reaching top management or board positions. However, Dr. E. Dewhurst feels that the implementation of a quota which specific safeguards (namely, for a limited period of time and with the assurance that only the most qualified candidate should be promoted to such positions) would also help alleviate some of the challenges faced by women.

The main recommendations arising out of this analysis will be analysed in the following manner: firstly, the main recommendations and the reasoning for such recommendations will be listed and secondly, the impact on the proposed Directive will be examined.

2.1. Awareness Raising and Training

In order to encourage women to take on top management and non-executive director roles, it is recommended that a proposal be included in any proposed Directive that

Member States should, as a matter of priority, undertake **awareness raising measures** to bring this issue to the attention of those involved in the recruitment of women such as listed companies and executive search agencies.¹⁵ Awareness of the benefits that women may play in a business should be emphasised as part of such measures.

The development of awareness raising measures could also include the development of **training opportunities for women** to prepare them for top management and non-executive directorship roles, particularly where they have no prior experience in such roles. This would have the advantage of making available more “board-ready” women across the labour market. A useful example of this is the Harvey Nash and the University of Hong Kong ‘certificated, cross-industry, international board preparedness programme for women’¹⁶. The programme aims to address current and contemporary issues enabling women to be more effective at managing boards, and increasing the supply of “board ready” women executives across industry.

Linked to such development should be the development of **mentoring programmes for women** in corporate enterprises¹⁷. Such advances would contribute to the development of a new corporate culture in which the participation of women in top management and non-executive positions becomes normalised.¹⁸

The authors note that there is currently no provision existing under the proposed Directive for the development of awareness-raising measures, training measures or the development of mentoring programmes for women. With this in mind the authors recommend the insertion of a provision to the effect that Member States should develop a programme for awareness raising and training on the issue of gender balance in top management and non-executive director positions.

2.2. Obligations of Listed Companies

It is recommended that in order to ensure that the affected listed companies comply with the provisions on the Directive, listed companies should produce a **mandatory annual report on gender equality** in executive and non-executive director positions.¹⁹ The authors note that Article 5(2) of the proposed Directive currently imposes an obligation on listed companies to provide and publish information to the national competent authorities and on their website on the gender composition of their boards on compliance with Article 4(1) and Article 5(1) on a yearly basis and to **make individual commitments** regarding the gender-balanced representation of both sexes among executive directors (Article 5(1)). The obligation to give reasons as to why there has been non-compliance with Article 4(1) or Article 5(1) and the manner in which this is intended to address this imbalance is also important to ensuring transparency and more effective future planning. The authors accept and commend these developments.²⁰ However, in order for this reporting mechanism to be effective, the **penalties for non-compliance** must also be adequate.

¹⁵ C. Wippermann, *Women in Executive Positions: Barriers and Bridges*, (Heidelberg: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 2010) at p. 24

¹⁶ For details of this training programme see : http://www.harveynash.com/group/mediacentre/2013/01/business_leaders_tackle_gender_imbalance_on_boards/

¹⁷ C. Wippermann, *Women in Executive Positions: Barriers and Bridges*, (Heidelberg: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 2010) at p. 24

¹⁸ C. Wippermann, *Women in Executive Positions: Barriers and Bridges*, (Heidelberg: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 2010) at p. 24

¹⁹ C. Wippermann, *Women in Executive Positions: Barriers and Bridges*, (Heidelberg: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 2010) at p. 25.

²⁰ See also the recommendations made in report of Lord Davies, *Women on Boards* (London: UK Government, 2011).

2.3. Development of Recruitment Principles

Given the difficulties facing women in the recruitment process, as outlined above, it is recommended that certain principles should be developed to assist listed companies and executive search agencies in carrying out their roles. In this regard, **the development of a voluntary code of practice** at national levels to assist listed companies and executive search agencies in their task should be encouraged.²¹ This voluntary code of practice could include provisions which ensure objectivity and transparency in recruitment including provisions to the effect that **available non-confidential board positions are advertised on the website of the listed company** to increase transparency.²² Ms. Z. Hawcroft submits that it is important that only non-confidential board positions are advertised publically as otherwise this may have the potential to undermine business decisions and operations. Recruiters should be encouraged to ensure that, in interviewing or screening potential candidates, an **increased focus should be placed on relevant skills and intrinsic personal qualities** as well as the usual qualities of proven career experience and fit of the individual with the organisation. This would not only assist in reducing the impact of male dominated board culture²³ but it would also extend the pool of candidates beyond those with existing board roles or conventional corporate careers. Executive search firms should support chairmen and their nomination committees in **developing medium-term succession plans** that identify the balance of experience and skills that they will need to recruit to maximise board effectiveness. Part of the role of the executive search firm in this context may also be to give **guidance to listed companies on the overall board composition** in light of the board's obligations in relation to gender composition. During the selection process, executive search firms could also provide **appropriate support, in particular to first-time candidates, to prepare them for interviews** and guide them through the process.

2.4. Development of a Quota

The views of the authors of this report diverge at this point. Ms. Z. Hawcroft is firmly in opposition to the introduction of a quota, while Dr. E. Dewhurst is in favour of the introduction of such a system so long as adequate safeguards are in place. This section of the report is, therefore, divided into two sections: the recommendations of Ms. Z. Hawcroft and the recommendations of Dr. E. Dewhurst.

The Recommendations of Ms. Z. Hawcroft

Ms. Z. Hawcroft does not recommend the introduction of a quota system for two reasons: the negative effect on (1) women and (2) industry.

Firstly, it is argued that gender quotas would have a negative effect on women and do more harm than good by creating the perception that women have been chosen for such roles, not because of their qualifications or merits but because of their gender. This could have a number of negative implications including (1) reducing the self-confidence of the

²¹ An example of such a code of practice is the Voluntary Search Code in the UK available at <http://www.mwmconsulting.com/downloadables/HeadhuntersCode-200711.pdf> and the UK Corporate Governance Code overseen by the Financial Reporting Council available at <http://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Guidance-on-Board-Effectiveness.aspx>

²² E. Doldor, S. Vinnicombe, M. Gaughan, and R. Sealy, *Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms* (Cranfield University: Equality and Human Rights Commission Research Report 85, 2012) at p. vi.

²³ R. Sealy, E. Doldor, and S. Vinnicombe, *Increasing Diversity on Public and Private Sector Boards - Part 1 - How Diverse are Boards and Why?* (London: Government Equalities Office, 2009). See also E. Doldor, S. Vinnicombe, M. Gaughan, and R. Sealy, *Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms* (Cranfield University: Equality and Human Rights Commission Research Report 85, 2012) at p. 11.

woman in that position who may not feel that she has been chosen for the position as a result of her skills or qualifications and thus making her more susceptible to male dominant behaviour and (2) reducing the respect of other board members for this particular candidate who will always view this individual, not as the most qualified person for the position, but as the person who was chosen merely on the grounds of their gender. Effectively, Ms. Z. Hawcroft is concerned with the negative effects of the perception of tokenism which such a quota might engender.

Secondly, the recruitment of a board member is a significant decision for a company. That member will be an integral part of the organisational team of the company, must be highly trusted and respected by the senior management team and, more importantly, must have the confidence of the senior management team. Were companies to be obliged, by way of a quota, to make such decisions on the basis of factors such as gender, there would be a danger that the individual candidate would not have the trust, respect and confidence of the senior management team. There is also a risk, that as there would not be sufficient women in the talent pool for such positions, that industry would be forced to take on women who are under-qualified for such positions, further undermining the competencies of women in the long term. This would have negative implications for industry as well as for women.

In light of these concerns, **Ms. Z. Hawcroft recommends the development of measures to tackle the barriers to entry for women** such as those outlined in the first part of this report. In this regard, tackling the issue of work-life balance such as the introduction of parental and carers leave and greater child care support, as well as creating awareness among senior executives of the benefits of having women on executive and non-executive boards would, in her opinion, be much more effective in the long term, than a quota system. Ms. Z. Hawcroft also supports the development of training for women to make them more “board ready”, the establishment of mentor programmes for such women, the development of recruitment principles and the creation of an obligation on listed companies to report on the gender composition of their boards. In short, Ms. Z. Hawcroft is of the opinion that the natural evolution of senior executive women should be allowed to progress freely without the interference of a quota and that the removal of some of the barriers facing women would be more effective in this regard.

The Recommendations of Dr. E. Dewhurst

Dr. E. Dewhurst is in favour of the development of a quota system, so long as there are adequate safeguards in place, for two main reasons: existing regimes are (1) too slow and (2) undermine the benefits of women in industry.

Firstly, Dr. E. Dewhurst is of the opinion that the ‘natural evolution’ of women to senior executive and non-executive positions, while occurring, is progressing at a frustratingly slow rate and the lack of women in senior executive positions means that progress will remain slow. On the other hand, countries which have adopted a quota regime can be described as the “motor of change”.²⁴ Self-regulation in the UK which encourages, by way of a Corporate Governance Code, the search for board candidates in listed companies to be conducted with due regard for the benefit of gender diversity and which sets a recommended target in for listed companies in FTSE 100 of 25% by 2015, has had some success²⁵. However, the rate of change has been very slow in comparison with other jurisdictions where a quota has been imposed by law.

²⁴ European Commission, *Women on Boards- Factsheet 2* at p. 1. Available at http://ec.europa.eu/justice/gender-equality/files/womenonboards/factsheet-general-2_en.pdf.

²⁵ Increase of 4 percentage points between October 2003 and October 2012. See European Commission, *Women on Boards- Factsheet 2* at section 2.2. Available at http://ec.europa.eu/justice/gender-equality/files/womenonboards/factsheet-general-2_en.pdf.

Secondly, by failing to tackle the issue in this direct way, the slow rate of progress will have a knock-on effect on the number of women in senior management who can mentor and encourage female candidates for top management and board roles. It also means that talented women are currently being frustrated in their attempts to achieve promotion, reducing the impact of such women in business and failing to display adequately the important benefits which women can bring to industry²⁶.

In this regard, Dr. E. Dewhurst recommends that the use of a quota with certain safeguards (discussed below), which should alleviate the concerns of those opposed to a quota regime, **as well as the development of concerted action on the barriers identified in this report.**

The author agrees with the proposed imposition of an obligation on listed companies (who do not have a presence of at least 40% of the underrepresented sex as non-executive directors) to make appointments to those positions on the basis of a comparative analysis of the qualifications of each candidate by applying pre-established, clear, neutrally formulated and unambiguous criteria, in order to attain the said 40% by January 2020 or January 2018 if the listed company is a public undertaking within the meaning of Article 2(b) of Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings²⁷. The author believes that the concerns surrounding quotas can be alleviated by the safeguards inherent in the proposed Directive.

In relation to the issue of tokenism and damage to industry, it is argued that any potential effect of tokenism will be eliminated by the provisions of the proposed Directive itself. The proposed Directive provides that priority shall be given to the candidate of the underrepresented sex only if that candidate is equally qualified as a candidate of the other sex in terms of suitability, competence and professional performance, unless an objective assessment taking account of all criteria specific to the individual candidates tilts the balance in favour of the candidate of the other sex.²⁸ This will have the effect of preventing any perception of tokenism or damage to industry as a result of hiring a woman who is not the most qualified candidate for the role. Any concerns that the possibility of a company utilising the objective assessment exception as an excuse not to hire women or as a way of merely meeting the quota, is alleviated by Article 4(4) which provides that companies will be obliged to disclose, on the request of the unsuccessful candidate, the qualification criteria upon which the selection was based, the objective comparative assessment of those criteria and, where relevant, the considerations tilting the balance in favour of the candidate of the other sex.²⁹ In Norway, where quotas have been in force for some time, there is no evidence that the imposition of quotas has led to feelings of tokenism among female board members. In fact, the evidence suggests that “women on boards have felt strongly that they have been able to contribute meaningfully to boards, have had access to important information, and have not felt the need to self-censor”³⁰. Sweigert argues that while tokenism is a legitimate concern, it seems to be “more of a perceived threat than an actual problem. Thus, the fear of tokenism operates more as a barrier to the passage of

²⁶ Peters, ‘Women on Board: The EU Commission’s Proposal for a Directive on Improving the Gender Balance among Non-Executive Directors of Companies Listed on Stock Exchanges and Related Measures’ available at <http://www.ejiltalk.org/women-on-board-the-eu-commissions-proposal-for-a-directive-on-improving-the-gender-balance-among-non-executive-directors-of-companies-listed-on-stock-exchanges-and-related-measures/>

²⁷ Article 4(1).

²⁸ Article 4(3).

²⁹ Article 4(5).

³⁰ A. Sweigert, ‘Women on Board for Change: The Norway Model of Board room quotas as a tool for progress in the US and Canada’ (2012) (32)(4) *Northwestern Journal of International Law and Business* 81 at p. 95.

divisive legislation mandating higher boardroom participation of women rather than an obstacle to the effectiveness of women once they are situated on boards”³¹.

Concerns relating to the damage to industry or the potential negative impact on companies who feel obliged to implement this quota, where there are not enough qualified women to fill the positions available, are also alleviated by three specific aspects of the proposed Directive. Firstly, the company is under no obligation to hire an under qualified candidate (as discussed above). Secondly, the number of companies to which these provisions will be applicable are limited by the definition of ‘listed company’ in the proposed Directive³², by the exclusion of small to medium sized enterprises from the scope of the proposed Directive³³ and by the exclusion of listed companies where less than 10% of their workforce are members of the underrepresented sex³⁴. Thirdly, the temporary nature of the proposals also eliminates any cause for concern in relation to interference with business interests. The proposed Directive shall expire on the 31 December 2028³⁵ and a proposal for extension will only be possible after consideration by the Commission on the sustainability of the existing progress.³⁶ It is hoped that by 2028, the presence of women in top management and on boards, in either executive or non-executive capacity, will have eliminated a number of the existing barriers facing women at present.

In relation to the role of the Executive Search Agency under a temporary quota regime, it is recommended that such agencies would have the important role of assisting listed companies with succession planning and hiring equally qualified male and female candidates.

³¹ A. Sweigert, ‘Women on Board for Change: The Norway Model of Board room quotas as a tool for progress in the US and Canada’ (2012) (32)(4) *Northwestern Journal of International Law and Business* 81 at p. 96.

³² A ‘listed company’ is defined in Article 2(1) as means a company incorporated in a Member State whose securities are admitted to trading on a regulated market within the meaning of Article 4(1) (14) of Directive 2004/39/EC, in one or more Member States.

³³ Article 3.

³⁴ Article 4(6).

³⁵ Article 10(2).

³⁶ Article 9(4).

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