



European Commission
DG Justice / D1
LX 46 – 1/101
'Consultation gender balance'
B – 1049 BRUSSELS

Submitted to: JUST-GENDERBALANCE-CONSULTATION@ec.europa.eu

24 May 2012

Ref.: CLC/LAN/SL

Dear Sir or Madam,

Re: EC Public Consultation on Gender Imbalance in Corporate Boards in the EU

FEE (the Federation of European Accountants) is pleased to provide you with its comments on the European Commission Public Consultation on Gender Imbalance in Corporate Boards in the EU.

FEE welcomes the initiative by the European Commission to focus on the functioning of European company boards as well as the quality of the decisions taken by them throughout Europe.

Our responses to the individual questions raised in the EC consultation are included in the appendix attached. Some general comments as well as our comments to the questions raised by the European Commission can be summarised as follows:

1. FEE supports diversity in companies as well as in the board of directors and its committees based on the overall principle of "*the best person for the job*". In this approach, due care should be given to the competences, qualifications and the collective responsibilities of the board of directors, whether or not this entails more differences in gender, background, age, ethnicity, etc. Quotas of any kind for the members of the board would not be compatible with this overall principle.
2. Initiatives at European level to encourage increased diversity in company boards could be appropriate. Such initiatives could take the form of a European Commission Recommendation encouraging companies to develop a diversity policy. Non-binding regulatory initiatives in the area would more appropriately ensure the necessary flexibility with regard to a broad collection of skills and experience represented in the boards.
3. Companies should be encouraged to give equal consideration to diversity in senior management positions in order to ensure that a sufficient number of talents aspire as board members.

4. Transparency of these matters, including content of a diversity policy and its effects, could be encouraged.

For further information on this FEE¹ letter, please contact Lotte Andersen at +32 2 285 40 80 or via email at lotte.andersen@fee.be from the FEE Secretariat.

Yours sincerely,



Philip Johnson
FEE President

Encl.

¹ FEE is the Fédération des Experts comptables Européens (Federation of European Accountants). It represents 45 professional institutes of accountants and auditors from 33 European countries, including all of the 27 EU Member States. In representing the European accountancy profession, FEE recognises the public interest. It has a combined membership of more than 700.000 professional accountants, working in different capacities in public practice, small and big firms, government and education, who all contribute to a more efficient, transparent and sustainable European economy.

FEE's objectives are:

- To promote and advance the interests of the European accountancy profession in the broadest sense recognising the public interest in the work of the profession;
- To work towards the enhancement, harmonisation and liberalisation of the practice and regulation of accountancy, statutory audit and financial reporting in Europe in both the public and private sector, taking account of developments at a worldwide level and, where necessary, promoting and defending specific European interests;
- To promote co-operation among the professional accountancy bodies in Europe in relation to issues of common interest in both the public and private sector;
- To identify developments that may have an impact on the practice of accountancy, statutory audit and financial reporting at an early stage, to advise Member Bodies of such developments and, in conjunction with Member Bodies, to seek to influence the outcome;
- To be the sole representative and consultative organisation of the European accountancy profession in relation to the EU institutions;
- To represent the European accountancy profession at the international level.

Appendix – Responses to individual questions

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

FEE supports diversity in companies as well as in the board of directors and its committees based on the overall principle of *“the best person for the job”*. The focus should be broader than merely looking at gender, as due care should be given to the competences, the qualifications and the collective responsibilities of the board, whether or not this entails more differences in gender, background, age, ethnicity, etc.

Self-regulation by companies has resulted in some progress regarding diversity, but potential for improvements is still to be realised.

FEE believes that initiatives at European level to encourage increased diversity in company boards could be appropriate. Such initiatives could take the form of a European Commission Recommendation. Regulatory initiatives in the area of corporate governance, such as a directive or a regulation would be excessive as companies need to have flexibility to ensure that a sufficiently broad collection of skills and experience is represented in the boards. This will result in achieving the objectives of the company and create value for shareholders.

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

The appropriate action, if any, by the European Commission would be through a EC Recommendation, as mentioned in our response to Question 1. The action taken could encourage companies to develop a diversity policy.

It is important to recruit from a sufficiently large and diversified pool of candidates, being substantially wider than an established network of candidates. A diversity policy describing these principles is bound to result in companies having more focus on diversity in general.

Experience shows, as referred to the European Commission Progress Report that improvements in this area can be achieved by means other than binding quotas for diversity in boards, although the pace can be enhanced. The different pace of progress in different countries should be noted as it is due to differences in experiences, tradition and culture. FEE believes that further encouragement would give sufficient incentive for Member States to freely decide on the most appropriate mechanism with which to pursue the aim of increasing the diversity in the composition boards in Europe. Such an approach would give due consideration to the level of diversity already reached in that particular country.

Encouragement regarding diversity should however be backed up by active monitoring. Such monitoring could include evaluation in due course of the effectiveness of initiatives taken. Evaluation could facilitate a more consistent application of the general principles and lead to higher quality in this application. The evaluation of such principles could be done by external parties, such as an auditor, and/or internal parties, such as the audit committee. Boards are already now, in accordance with the EC Recommendation on Independent Directors from 2005 encouraged to carry out a self-assessment of its work and functioning. This self-assessment could include a review of diversity principles as well, leading to a regular review of whether any changes are needed to ensure greater diversity within the board.

Transparency of these matters, including content of a diversity policy and its effects, could be encouraged. This would enable investors to include such ethical criteria in their investment decisions. Disclosures of a diversity policy and its application may also be information of importance to future employees in order to underline the culture of broad diversity within the company.

Although different from the role of an auditor, the supervisory authorities could carry out some monitoring activities. The role of external auditors is related to reporting on individual companies whilst supervisory authorities are geared towards the market as a whole focusing on investor protection as well as to the supervision of individual companies. Supervisory authorities would be best placed to monitor results of the application of for instance a principle of comply-or-explain with a recommendation for a diversity policy by highlighting best practice examples in comparative studies. As already seen in other areas in practice, this will contribute to increased focus on the quality of the explanations given for the benefits of the companies and their stakeholders. A fruitful exchange of information between auditors and regulators, as both parties are involved in the monitoring of the application of the principle, would be beneficial to both and could be further enhanced.

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

Although economic benefits are often easily quantifiable, there may be other benefits of a more qualitative character that are equally important. Diversity in company boards should take note of both quantitative and qualitative benefits and disadvantages of avoiding “group think”, regardless of whether it relates to gender, age, nationality, ethnicity or other criteria. As reported in the European Commission Progress Report, diversity is seen to lead to contributing to higher quality in the decision making regarding corporate governance and ethical issues given the balanced views and the variety of aspects from which issues are approached.

(4) Which objectives (e.g. 20%, 30%, 40%, 60%) should be defined for the share of the underrepresented sex on company boards and for which timeframe? Should these objectives be binding or a recommendation? Why?

In FEE's opinion, quotas of any kind for the members of the board would not be compatible with the overall principle of "*the best person for the job*" as the primary criterion is that the competences of the board of directors collectively should reflect the activities of the company.

The most important element, for the composition of the board and its committees, is ensuring that the board is run effectively, functions properly and works efficiently. This comes down to a much broader aspect than merely the gender of the members, namely their backgrounds, skills, expertise and perspective, similar to what is required for at least one member of the audit committee in line with the Statutory Audit Directive.

Rather than setting a fixed percentage target for the diversity in the boards, Member States could be encouraged to address the issue by setting out the principle that boardroom diversity is part of good and effective governance. Part of that diversity recommendation could include references to gender diversity, but also areas such as age and nationality. This would give flexibility to each Member State to identify what the level to be aspired to should be.

Another point that should be addressed in any future regulatory initiative is the diversity in senior management positions. Companies should be encouraged to give equal consideration to this matter. The issue of reducing diversity imbalance on boards can only be addressed by ensuring the development of a sufficient number of talents that aspire as board members. All aspects of diversity, being background, gender, age, nationality or ethnicity are therefore equally relevant at management level.

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

Regulatory initiatives should only be considered in respect of public interest entities, due to the public interest for external intervention and the coverage of information needs from investors in such companies.

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

There should be no distinction between executive and non-executive directors and supervisory and administrative boards. All appointments should be made with a view to achieving the overall goal of creating an effective collective unit in the board. However,

regulatory intervention, including recommendations on this particular issue does not seem necessary.

(7) Should there be any sanctions applied to companies which do not meet the objectives? Should there be any exception for not reaching the objectives?

Any sanctions should be proportionate to the nature, size and complexity of the entity, its business and to the infringement detected.

The remit of a board is essentially to achieve the company's business objectives and to serve the interest of their shareholders. When doing so, sanctions for not complying with a specific diversity policy should be proportionate and should not prevent the company from carrying out its normal business. Therefore, sanctions would be most appropriate if they relate to transparency of the diversity policy applied (or not applied, respectively).