

*“If the road to hell is paved with good intentions, than the highway to community harmonisation is littered with the debris of intergovernmental agreements”.*<sup>1</sup>

A response to the ‘Call for Evidence’ on the question of ‘gender balance in the boardroom’, submitted by Michael Klein, scientific consultant and adviser.

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### **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?**

(1) Before answering these questions in some detail, I want to stress the highly suggestive wording and the premises the questions are based upon.

1. The EU is indeed pressing hard to increase the share of women on boards of publicly listed companies. The very notion of doing so is based on a division of society along gender lines, and the assumption that variation within established male and female groups is identical. However, it is quite easy to challenge this assumption from a scientific point of view, e.g. by pointing out that women (in contrast to men) have a choice between job and family. While it is accepted that women stop working and care for children, it would be met with raised eyebrows were large numbers of men to adopt the title of “houseman”. So it is not possible to treat the group of men equal to the group of women. This is quite obvious when it comes to hard labour which – unscathed by any attempt to seek gender equality – remains a domain of men. This leaves only the conclusion that it is not gender equality which is being sought, because gender equality is – amongst others due to biological reasons – not a viable target, but the award of privileges to a particular group of women.
2. This conclusion leads to the next premise hidden in the question. It is not “representation of women” that is aimed at, but representation of women in particular circumstances, women who will not be found in the working classes, but mainly the middle classes. Accordingly, it is not women for whom a quota will be favourable, but a particular group of women, and it is not women who will be represented in boards by introducing quotas, but a particular group of women. This suggests that it is not women at all who shall enjoy legally granted “representation”, but the middle classes.
3. So it appears that the entire discussion about a quota for women in boardrooms is a discussion about awarding privileges to some women, while refusing the same privileges to other women. No quota for particularly disadvantaged women from poor

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<sup>1</sup> Blake, N. (2001). The Dublin Convention and Rights of Asylum Seekers in the European Union. Guild, Elspeth & Harlow, Carol (eds.). Implementing Amsterdam. Immigration and Asylum Right in EC Law. Oxford: Hart, p.95

backgrounds has been discussed so far, as far as I am aware. Hence, the label “women” is used as a fig-leaf for a rather ordinary rent seeking attempt.

(2)The following statements have to be read with the conclusion drawn above in mind, and the question has to be reformulated to: Is the granting of privileges to a particular set or class of women an issue in which the EU has to play a role?

(3)Again, before answering this question, it is necessary to look at the basics: Is there an issue at all? One would differentiate mere lobbying from beneficial lobbying by assuming that mere lobbying serves the interests of the lobbying group only, while beneficial lobbying serves the interest of the lobbying group and at least some parts of society. I suspect that people lobbying for more women on boards of publicly listed companies would claim to do so for the sake of the public. In any case the collective stance taken by proponents of a women’s quota suggests this interpretation. Accordingly, one has to ask about the benefits of an introduction of a legal obligation to meet a certain target for the share of women in the boardroom. One has to ask this because to make a share of, say, 40% of women in the boardroom legally binding, poses a restriction to the freedom of enterprise and, as such, it needs justification. With respect to societal welfare it is only possible to legitimise a restriction to the freedom of enterprise when the benefit that results from it exceeds the costs of restriction. Hence, the question again has to be reformulated. It is now a question of whether the granting of privileges to a particular set or class of women is an issue for the EU to concern itself with, and whether it is beneficial for society as a whole if the EU is concerned with that issue.

(4)I would like to answer this question in two steps: Step one looks at the evidence that granting privileges to a particular group of women is at all beneficial to society, step two will address the question of societal benefit with respect to the EU.

1. The first benefit expected to result from more women in boardrooms is diversity. This quite obviously is not an argument, because if “diversity” improved board performance there would be no need to implement a quota specifically for women, because quotas for blue-eyed people (given a dominance of green-eyed people), for people over six feet tall (given a dominance of shorter people) or a quota for children (given a dominance of adults) would do the trick as well. Consequently, there has to be more to it than diversity, and proponents of a quota for women tell us what it is: it is only a women’s quota that will benefit firms and society as a whole.
2. However, until now, nobody has identified the trait(s), characteristic(s) or personality factor(s) that is/are shared by women, which make them distinct to men and has a positive impact on board and firm performance. Not a single scientific theory has been put forward in this respect. Furthermore, there is no existing scientific theory apart from sociological theories that stress socialisation and gender role models that could provide any clue as to why women should behave systematically different to men and why behavioural differences between women should be smaller than behavioural differences between men and women. Unfortunately, to base the claim that a larger share of women in boardrooms would improve board performance on

sociological theories of socialisation and gender role models would backfire as to the very nature of these models: They explain behavioural differences between men and women as a result of cultural expectations and socialisation. These, however, are the very processes that lead to differences in career choice and persistence to pursue a career, hence they rather explain why patterns of men and women entering particular professions will persist, rather than offering any clue of the effect of destroying these patterns. Thus, the claim that women in boardrooms will act differently to men is theoretically unfounded.

3. The claim that more women in boardrooms will benefit firm and society is unfounded as well. Usually this claim is backed by two studies, one by McKinsey<sup>2</sup>, the other conducted by the Finish think tank, EVA. While the study published by EVA and titled “Female Leadership and Firm Profitability”<sup>3</sup> ends up with the assumption that benefits of an increased share of women in boardrooms originate from women being different to men,<sup>4</sup> the study conducted by McKinsey suffers from confusing (a weak) correlation with causation. Neither study provides evidence for gender quotas being advantageous for firms or society as a whole.<sup>5</sup>
4. By contrast, an elaborate study conducted by Kenneth R. Ahern and Amy K. Dittmar<sup>6</sup> shows a number of negative effects attributable to an enforced share of women in the boardroom. Ahern and Dittmar use the naturalistic experiment provided by the Norwegian Government when it made a share of 40% of women on boards obligatory for publicly listed companies in Norway. Accordingly, Ahern and Dittmar were able to observe changes in e.g. financial performance measures before and after the quota had been introduced, and they were able to control for external factors like the financial crisis and other shocks to the market that would have or had an effect on firms. After controlling external factors, changes to be seen after the introduction of women quotas must be attributed to these quotas. Ahern and Dittmar saw quite a number of changes, all of them negative:
  - Book to market value declined, indicating a decline in the quality of decisions taken by the board.
  - Poorer decision quality after the introduction of a women’s quota was shown in poor performing acquisitions and a sharp increase in liabilities.
  - Financial measures showing profitability or return on equity declined.

The authors summed-up their results as follows: “The quota led to younger and less experienced boards, increases in leverage and acquisitions, and deterioration in operating performance, consistent with less capable boards” (Ahern & Dittmar, 2011, p.1). The study shows that including more women does not result in improved board and firm performance. By contrast, it shows a deteriorating performance. This result

<sup>2</sup> [http://www.mckinsey.de/downloads/publikation/women\\_matter/Women\\_Matter\\_1\\_brochure.pdf](http://www.mckinsey.de/downloads/publikation/women_matter/Women_Matter_1_brochure.pdf)

<sup>3</sup> [http://www.eva.fi/wp-content/uploads/files/2133\\_Analyysi\\_no\\_003\\_eng\\_FemaleLeadership.pdf](http://www.eva.fi/wp-content/uploads/files/2133_Analyysi_no_003_eng_FemaleLeadership.pdf)

<sup>4</sup> In other words, the study reverts to a crude biological argument that can neither be proven nor disproven and hence, is without any value in a scientific sense.

<sup>5</sup> A thorough critique of the EVA study can be found here:

<http://sciencefiles.org/2011/09/23/von-natur-aus-besser-der-biologismus-hinter-der-frauenquote-in-aufsichtsraten/> (in German).

<sup>6</sup> <http://webuser.bus.umich.edu/adittmar/NBD.SSRN.2011.05.20.pdf>

cannot be aligned with what I will call the “trait-assumption”, which stipulates a benefit of women’s quotas resulting from the mere inclusion of more women in boards. Apparently, increasing women’s share on a board doesn’t result in better performance, by contrast. This rocks the foundation of the assumption that women have more in common amongst themselves than they have in common with men. As pointed out in the study by Ahern and Dittmar, it is not gender that matters as far as the quality of board decisions is concerned, but experience. And experience is a quality that crosses gender lines and aligns some men with some women while it makes some women distinct from many other women. Thus the assumption of gender constituting two monolithic blocs does not hold. This result finds further backing in a study published under the auspices of the Deutsche Bundesbank.<sup>7</sup> In brief, this study shows that boards with a higher share of women were more prone to risky decisions and had one commonality: less experience. Again, it is not the share of men and women that benefits a firm, but the amount of experience.

5. Another benefit, if not for firms, for the relationship between men and women that should result of a quota for women, is increased gender equality. Equality is a value that is rather innocent when it is meant to safeguard equal treatment, e.g. equal treatment before the law, equal access to education and the like. The main feature of equality is its assignment **to all** members of society. Equality by its very nature is not a means to grant privileges. However, this is exactly the way gender equality with respect to boardrooms is used. It grants privileges to a group of women at the expense of another group of women and at the expense of men. This is a cross violation of justice, procedural and distributional justice as well. It violates procedural justice because it favours lesser able women over men and over more able women and it violates distributional justice, equity that is, because it destroys the rule of merit. Suppose two women and two men apply for two vacancies in a board. The board members are obliged to meet a quota for women and decide to consider only the two female applicants. Undoubtedly, between the two women there will be a difference in ability, as there will be between the two women and the two men. Let’s assume that, with respect to ability one woman and one man would have been chosen. In this case, the quota results in the able woman not being able to reap the merit her greater ability provides her with, and neither does the male applicant who is more able than the second female applicant. In the end, obligations to quotas dictate the personnel selection. It reaps havoc with equity principles, telling male applicants that merit doesn’t pay, and assigning the stigma of being solely chosen by virtue of a women’s quota to the abler of the two female applicants.

(5) In summary, the reformulated question has to be answered in the negative. The granting of privileges to a particular group of women cannot be justified by any kind of benefits. Hence, a violation of the freedom of enterprise is not to be justified. The question whether the implementation of policies which award privileges to a certain group of women is to be

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<http://www2.unine.ch/repository/default/content/sites/irene/files/shared/documents-/s%C3%A9minaires/Montoriol.pdf>

conducted by the European Union also has to be answered in the negative. By granting special privileges to a particular group of women, the EU would inevitably increase social differences and increase the rift between the well-off and the poor, and such a policy is hardly to be reconciled with either the harmonisation efforts of the EU or article 21 of the EU Charter of Fundamental Rights which prevents discrimination against particular social groups. Henceforth, the issue under consideration is not an issue for harmonisation attempts, because by increasing the share of a certain group of (middle-class) women in boardrooms, inequality within societies – as, for example, measured in the Gini-index – will inevitably increase.

**2 Can a “voluntary approach”, or self-regulation, achieve a fair representation of women on boards? How can change through voluntary measures be sustained?**

Given my argument that experience and ability, merit that is, are the sole traits which effect board performance, it is obvious that a company which aims to increase its performance, measured in turnover or market share, will strive to have the best people on its board. Since “ability” is independent of gender one would expect that sooner or later firm boards represent the availability of able people to the particular firm. Therefore, no voluntary approach is needed. As such a fair representation would be the natural result. Let me, however, again stress that to include a particular group of women on boards of firms doesn’t provide a fair “representation of women” – far from it. It may provide a “representation” for a particular social stratum, though, and elevate social inequality to a new level.

**3. How should progress be monitored and audited? Should monitoring be coordinated at the European level?**

I have found no reason which justifies violation of freedom of enterprise and therefore no basis upon which a forced women’s quota can be based. Accordingly, there is no need to monitor or audit anything.

**4. Should progress be incentivised, or a lack of progress punished? If so, how could this be achieved?**

Please refer to the answer given to question 3. Since there is no need for legal action, the question whether lack of progress should be punished is not a viable question.

**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?**

Please refer to answers to questions 3 and 4.

**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?**

Harmonisation is not an end in itself. The reason for harmonisation is the expectation that doing business will be easier with a harmonised market and that harmonisation will better the circumstances of Europeans, will increase their welfare. As has been pointed out a quota for women in boards of publicly listed companies has detrimental effects on societal welfare. Accordingly, it is not a subject for harmonisation.

**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?**

Please refer to the answer given to question 6.

**8. What are the positive and negative effects of legislative quotas?**

There is no justification for a violation of the freedom of enterprise. However, if a violation of freedom of enterprise were to take place it would not only harm motivation of market actors, employees in particular, but also reduce the amount of capable men and women entering a certain business. We would end up with what DiMaggio and Powell<sup>8</sup> with reference to Max Weber called the “iron cage”, a situation of complete isomorphism between once different actors, a situation that would not allow for taking risks and being different from the pack, a situation that kills entrepreneurial spirit.

**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?**

There is no need to arbitrarily choose a trait and demand equal representation. As argued above there is not a single valid argument which gives any kind of reason as to why a particular group of women should be privileged.

**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?**

Again, it is not “women”, but a particular group of women who are to be granted privileges. While it is a well known fact in social psychology that satisfaction of one desire evokes another, there is no obvious reason as to why the granting of one privilege should lead to the granting of another. If including more women on boards harms the performance of firms forced to do so, imposing further financial strains on firms, e.g. by directing them to provide Kindergarten and other child care facilities, would further increase financial deterioration, and, as a matter of fact, it will lead to a reduction of professionalism, because it is not possible to devote oneself to a job and child care or family life at the same time.

**11. What does success look like? What should be the ultimate goal with respect to women on boards across the EU?**

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<sup>8</sup> DiMaggio, Paul J. & Powell, Walter W. (1983). The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields. *American Sociological Review* 48(2): 147-160.

The only avenue open to law makers is to resist tampering with the freedom of enterprise. One cannot stress the importance of global markets and the increasing competition among nations on the one hand, while on the other hand making every effort to make life harder for business and, hence, giving companies every reason to use international markets to relocate headquarters somewhere East.