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AK Position Paper

# Consultation on the gender imbalance in corporate boards in the EU

## About us

**The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.**

**The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.**

### **Organisation and Tasks of the Austrian Federal Chamber of Labour**

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community- and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Herbert Tumpel  
President

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Director

## Executive Summary

So far, the European Commission has left it to the companies' direct responsibility and self-regulation to improve the gender balance.

The percentage of women in leading management positions in the European economy has remained low for years. Although women study and qualify just as frequently and to the same extent as men, they remain significantly under-represented in the board room. According to the Progress Report "Women in economic decision-making in the EU" prepared by the European Commission (EU Commission), women occupied on average just 13.7 % of board seats of the largest publicly listed companies in January 2012.

In Austrian companies the development of gender imbalance is quiet similar: according to a recent study conducted by the Vienna Chamber of Labour (AK Vienna) dated March 2012, the proportion of women in the management of the top 200 companies measured by turnover is only 5.1%. Women on management boards of the top 200 companies are therefore still very rare. Faced with these numbers, it appears that the dream of women being increasingly appointed to the boards of companies has remained unfulfilled. The proportion of women on supervisory boards in 2012 is negligibly small. Despite numerous business initiatives and the relevant regulations of the Austrian Corporate Governance Code, the proportion of women has increased by less than

one percentage point to 11.2% compared to the previous year (10.3%).

The nearlstatic development in the representation of women over the past few years proves once again that companies fail to put the appropriate measures in place when left to their own devices. A comparison with European countries shows that only the introduction of appropriate legal provisions will lead to an increased representation of women, resulting in more diversity in the dominant male network. Following the example of Norway, France, Italy and Belgium have taken a pioneering role in the EU. These countries have already adopted legislation imposing quotas that include sanctions. These relatively new laws, which were first passed in 2011, are already showing an effect one year later: in France, the proportion of women represented in CAC 40 index companies has increased by 10 percentage points from 12.3% to 22.3% in January 2012.

So far, the European Commission has left it to the companies' direct responsibility and self-regulation to improve the gender balance. With the result that well-intentioned promises and voluntary rules - cast into codes - have remained completely ineffective. Some countries have led the way and have

shown that it can no longer be left to economy to set the rules. There has to be a European policy to introduce the appropriate laws and sanctions. This is confirmed by the results of the Progress Report of the EU: it is the legislative measures with clear guidelines that result in substantial progress, especially if they are accompanied by sanctions.

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Therefore, the AK immediately demands the drafting of an EU Regulation that prescribes a uniform gender quota of 40% for supervisory boards and administrative board functions by 2015 at the latest. To accompany the process, there must be measures in favour of women that are based on recruitment, career development and further education, reconciling work and family as well as corporate governance and culture. The mandatory gender quota of 40% could be implemented gradually: first, it would be implemented in corporations that are predominantly state-owned and listed companies, then in all other large corporations. Non-compliance should be sanctioned with administrative penalties and an entry into international and national registers (e.g. the companies register in Austria, the commercial register in Germany).

# The AK position in detail

## 1. In your opinion, how effective is self-regulation by businesses to address the issue of gender imbalance in corporate boards in the EU?

The AK considers it fundamentally ineffective and pointless to rely on voluntary self-regulation and self-reliance of businesses. What is called for is the further development of European company law for both listed and not listed companies based on clear rules and sanctions. This is demonstrated once more by the existing gender-related soft-law provisions. Due to vague formulations, poorly-defined targets and a lack of sanctions, these measures have so far done very little to increase the representation of women in leading management positions. The systems used in Germany and Austria are an ex-ample of the failure of voluntary measures with respect to reducing the gender imbalance:

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In Germany, the Corporate Governance Code contains only an implicit requirement to improve women's representation in leadership positions: pursuant to section 5.1.2 (1) the Supervisory Board shall "also pay attention to diversity in the composition of the management board." This requirement is too vague because the term diversity is not well-defined and there are no appropriate targets. The

Public Governance Code applies to state-owned companies. This Code is somewhat clearer in its proposals with respect to the election of the supervisory body: "...in this context the company should work towards the equal participation of women."

The latest figures for Germany clearly demonstrate that soft laws do not go far enough as they lack sanctions: in 2011, the boards of directors of the top 200 companies only had 3.0% of women. With respect to supervisory boards, women accounted for 11.9% in 2011, of which more than two-thirds were representatives of the workforce. Very little has changed in the top 200 companies over the past few years. In 2011, the percentage of women in the DAX 30 companies - which are, after all, in the public eye - was 3.7 percent, an increase of 1.5 percentage points over 2010. In the - often significantly smaller - state-owned companies, 8.2% of the seats on management boards and 17.7% of the seats on supervisory boards are held by women, showing that there is still a large gender gap in the top management. Furthermore, the share of all-male supervisory boards has increased by 8.8 percentage points to 23.6 percent, which is a significant increase compared with the previous year.

The equality of women in leading positions in Austria is currently governed by the Austrian Code of Corporate Governance (C-rule 42) and in the same wording in the 2 Stability Act, 2012 (issued on 24 April 2012) and the Austrian Stock Corporation Act (§ 87 (2a)) as follows: “When appointing members of the supervisory board, the annual general meeting shall take into account the personal and professional qualifications of the members as well as the balanced composition of the supervisory board with respect to the structure and field of business of the company. Furthermore, the aspects of diversity within the supervisory board with regards to the representation of both genders, age structure and internationality of the members in the case of listed companies are to be reasonably taken into account. It is also necessary to ensure that no elected board member has been convicted of a criminal act that would put his or her professional integrity into question.”

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In the absence of concrete targets, time limits and sanctions for non-compliance, the law is just as ineffective as the existing recommendation of the Code of Corporate Governance. In addition to this provision, a new requirement was implemented during the course of amendments to the Austrian stock corporation law in 2010 in § 243b 2 (2) of the Austrian Commercial Code, which revises the corporate governance report for listed companies. Accordingly, it should be mandatory to disclose the corporate

governance report measures to promote the participation of women on supervisory boards, management boards and other management positions (L-Rule, Code 2010). According to the Assessment of the Corporate Governance Code carried out in 2011 by the Vienna Chamber of Labour (AK Wien) the first reports fall far short of expectations: almost every second of the leading companies in Austria (41%) does not comply with the law - 13% completely ignore the provision, 28% of the companies have a “no action” policy. “no action” policy. As before, men have a firm grip on the glass ceiling, which cannot be broken with a statutory quota system.

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

The AK calls for an abandonment of the principle of self-regulation in favour of more concrete legislative control, applicable to all Member States. The AK is thus in favour of drafting an EU Regulation that prescribes a binding and uniform gender quota of 40% in the board composition. In countries with two-tier systems, AK requires at least a 40% gender quota for appointment to supervisory boards by 2015 at the very latest. When making appointments to management boards it is important to ensure a balanced gender representation. As an additional measure, the disclosure of a transparent and com-

prehensive diversity strategy is necessary. For example, we recommended that mandatory diversity reports are included in the annual reports. For example, we recommended that mandatory diversity reports are included in the annual reports. Development, progress and targets must meet uniform quality criteria and also quantifiable in order to ensure comparability.

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

Within the context of the gender balance issue, the AK considers the argument of equal opportunities for women to be the strongest.

Within the context of the gender balance issue, the AK considers the argument of equal opportunities for women to be the strongest. Recent studies have shown that there are also economic benefits of having a mixed leadership team: according to a recent survey of the 300 largest listed companies in Europe carried out by the auditing and consulting firm Ernst & Young "Companies are more successful when there are women in the board room". Based on a comparison of the years 2005 and 2010, the report concludes that women in top management are a definite guarantee of success. According to the study, the success measured by revenues and profits is particularly significant. Even if only one woman has moved into this former male domain, a noticeable effect on the earnings of the companies surveyed has been recorded as early as in the first year.

Moreover, female managers have a positive impact on corporate culture and team atmosphere. Women at the top of companies are certainly an indication of an open, future-oriented culture, which not only preaches but also practices diversity. This sends important political signals, both externally and internally, thus enhancing the motivation and performance of employees. These findings are confirmed by the "Women Matter" study published in 2010 by the consulting firm McKinsey. The result: companies with more than three women at the top generate up to 53% more profit. Irrespective of economic benefits, it is important to ensure gender equality in senior management.

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

The AK demands the immediate drafting of an EU Regulation that prescribes a binding and uniform gender quota of 40% for supervisory boards or board members by 2015 at the latest. This requirement must be legally binding, including specific quantitative targets.

It needs to be binding because voluntary recommendations have so far been proven to be ineffective, and



companies have not even started to implement their promises of greater gender equality in top management.

To accompany the process, there must be measures in favour of women that are based on recruitment, career development and further education, reconciling work and family as well as corporate governance and culture.

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

The AK advocates that there must invariably be significant sanctions for a failure to comply with the legislation and the quota.

The quota system provided for by legislation should, in the view of the AK, apply to all corporations. The mandatory gender quota of 40 % could be implemented gradually: first, it could be implemented in corporations that are predominantly state-owned and listed companies, then in all other corporations.

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

In one-tier systems, the legal guidelines should encompass all board members i.e both executive and non-executive directors. In countries with two-tier systems, the AK suggests at least a 40% gender quota for the appointment to supervisory boards by 2015 at the very latest. In addition, a balanced gender representation shall

be taken into account when appointing members of the management boards.

**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?**

The AK advocates that there must invariably be significant sanctions for a failure to comply with the legislation and the quota. Non-compliance should be sanctioned with administrative penalties and an entry into international and national registers (e.g. the companies register in Austria, the commercial register in Germany). There should not be any exemptions if the objectives are not reached.



Should you have any further questions  
please do not hesitate to contact

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