

Exchange of good practices on gender equality

Women in economic decision making

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Comments paper - Belgium

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Women in economic decision making in Belgium

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Introduction

Belgium has in recent decades and years taken significant steps forward in the field of gender equality. In 2002, the Belgian government introduced quota-laws which dictate that only half plus one of the candidates on political election lists can be of the same sex and that the first two candidates cannot be of the same sex. Within the educational system, girls outperform boys. When it comes to employment in general, the gender employment gap for highly-educated women at 7% is below the OECD average. There is and remains however a significant pay gap, partially due to the large difference in hourly pay between full-time and part-time jobs and the fact that substantially more women choose to work part-time than men.

When it comes to corporate boards however, the situation is not as rosy. Research has indicated that in 2006 not one of the 20 largest companies on the Belgian stock exchange had a female CEO, and that the companies on the Belgian stock exchange counted only six female CEO's, as opposed to 139 male CEO's. For large privately held companies it was found that on a total of 99 CEO's, only 3 CEO's were female.

The Norwegian quota policy of 2003 has been an inspiration to the Belgian legislator, who on 28 July 2011 promulgated a law providing a minimum representation of one third in public companies and government-held companies. It is at present too early to evaluate the impact this legislation may have on private companies.

Policy in Belgium

The Belgian law of 28 July 2011

The Belgian law of 28 July 2011 on the reform of certain government-held companies, the Belgian Company Code and the National Lottery, aims to guarantee a representation of women in the boards of autonomous government-held companies, publicly listed companies, and the National Lottery.

Government-held companies

The law of 28 July 2011 provides that at least one third of the board members in government-held companies must be of a different sex than the other board members. In the event the number of board members of a different sex is below this statutory minimum, the first board member to be appointed shall be of the different sex. If not, the appointment shall be null and void. The same shall apply if an appointment would create a situation in which the number of board members of a different sex falls below the statutory minimum.

Publicly listed companies

For publicly listed companies, the Belgian law of 28 July 2011 provides that at least one third of the board members must be of a different sex than the other board members. In the event the number of board members of a different sex is below this minimum, the first general meeting of shareholders (which is competent for the appointment/termination of members of the board of directors in a listed company) following such event shall appoint a board of directors in accordance with the requirements of the Belgian law of 28 July 2011. In the event this provision is not complied with, all financial and other benefits which board members would receive in relation to the performance of their mandate, shall be suspended until such time as the composition of the board meets the criteria of the law of 28 July 2011. Companies which are newly admitted to a public exchange have until the first day of the sixth fiscal year following their admission to comply. Finally, in the event the number of board members of a different sex is below this statutory minimum, the first board member to be appointed shall be of the different sex. If not, the appointment shall be null and void. The same shall apply if an appointment would create a situation in which the number of board members of a different sex falls below the statutory minimum.

Publicly listed companies moreover have to file an annual report on the efforts they have undertaken to ensure that at least one third of the members of the board of directors is of a different sex than the other members of the board of directors.

The National Lottery

Finally, a new article is introduced in the Belgian law with respect to the National Lottery, providing that one third of the board members appointed by the Belgian State or by a company controlled by the Belgian State shall be of a different sex than the other members.

Evaluation and entry into force

The Belgian federal legislators undertake to carry out in the course of the twelfth year following its publication in the Belgian State Gazette, a first evaluation of the law of 28 July 2011 in the course of the twelfth year following its publication in the Belgian State Gazette and of its impact on the representation of women in decision-making corporate bodies.

Without prejudice to certain exceptions, publicly listed companies have a six year period to comply with all provisions of the law of 28 July 2011, except for the obligation to justify the efforts undertaken to ensure that at least one third of the members of the board of directors is of a different sex than the other members of the board of directors. This latter obligation enters into force immediately.

Transferability issues

- What are the main arguments for the introduction – or non-introduction – of mandatory gender quotas on corporate boards?

There is in Belgium virtually no opposition (or at least no publicly voiced opposition) against the idea that striving towards gender equality in a corporate environment and minimum representation in corporate bodies are good things. There has however been a relatively strong opposition against the Belgian law of 28 July 2011 and it is therefore likely that similar or more fiercely voiced opposition would arise against new regulation and initiatives which seek to have the Belgian state impose mandatory quotas. The main arguments are these:

- Some but not all liberal (i.e. 'small government') politicians feel that the government should not infringe upon the individual shareholders' liberties to appoint whomsoever they wish in their own – not government-held – companies;
- Some politicians indicate that certain Norwegian companies have left public stock exchanges and returned to private ownership to avoid compliance with the new legislation, and that stock prices have plunged following the new legislation;
- Female politicians fear that all female board members shall following such legislation be considered as having been appointed because of their sex only, not because of their capabilities.

- What are the main alternatives and/or supplements to mandatory quotas to progress gender balance in corporate boards?
 - The obvious alternative would be to promote and advance autoregulation non-binding codes established within industries, as well as other types of soft law;
 - A solution which seeks the middle way between mandatory quotas and non-binding soft law would be to subsidize or otherwise provide advantages to compliant companies (i.e. access to public tenders; whether this is compatible with the Belgian Constitution, European law, or national non-discrimination principles and law, remains to be ascertained);
 - Finally, business networking events aimed specifically at women could be promoted, and woman-to-woman mentoring activities may be helpful in view of empowerment.
- How to promote diffusion of gender balance from corporate boards to top management?

The Belgian institute for the equality of women and men has in its 2012 report on the pay gap between men and women identified not less than 12 policy recommendations. Although these primarily relate to the salary gap, this for obvious reasons is relevant with respect to achieving gender balance in private corporate boards and at top and middle management level. It may be interesting to include these:

- All job classifications in relevant industries and companies should be screened for gender neutrality, and, if appropriate, be modified;
- Stereotypical vocational choices should be discouraged, for example by stimulating, in educational settings, a consciousness of gender equality;
- The employment services should at all times be mindful that their measures affect men as well as women and that all positions are always open to men and women;
- Obstacles which hinder easy access to the employment market should be removed;
- In this respect, so-called 'unemployment traps', in particular for partners of persons who receive benefits in lieu of a salary, should be dealt with;
- The regulation with respect to paternity/maternity leave should be reviewed;
- Access to child daycare for a reasonable price should be a right;
- Further measures are required to break through the glass ceiling, such as extending the quotas to non-listed privately held companies;
- Investments in employee education should be balanced;

- More transparency with respect to individual salary negotiations is required;
- More attention to vulnerable groups and persons on the employment market is required;
- Different statistical instruments should be developed and refined to allow an easier follow-up on the salary gap.