

EWLA

General Assembly Second Resolution on the Balanced Participation of Women and Men on the Boards of Listed Companies

July 5, 2008

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The General Assembly of the European Women Lawyers Associations (EWLA), held on 5 July 2008 in London, adopted unanimously the following

Second Resolution on Balanced Participation of Women and Men on the boards of listed companies

The European Women Lawyers Association takes note of the following:

1. Article 2 of the Treaty of the European Community (TEC) defines equality between women and men as a task of the Community. Article 3§2 TEC provides that the Community shall aim to eliminate inequalities, and to promote equality, between men and women. This positive obligation to "*actively promote gender equality*" is imposed on the EC/EU institutions and organs when they exercise their respective powers¹, including the power to propose and enact legislation in any field, irrespective of the particular legal basis of this legislation (see Art. 7 TEC), as well as Member States.
2. Article 13 taken in conjunction with Articles 2, 3§2 and 141 (3) confirms that *the TEC requires a proactive, substantive gender equality approach and not merely an anti-discrimination approach*.
3. Equality between men and women is no less a social and political requirement than an economic condition to accelerate progress towards the Lisbon goals.
4. Gender equality is a core value of the EU and a common constitutional tradition and hence *imposes positive obligations on the EC/EU and the Member States* to eliminate inequalities in securing fundamental rights.
5. By its Recommendation 96/694/EC, the Council called on both Member States and EC institutions to achieve a balanced participation of women and men in the decision-making process in all fields and at all levels². This has not yet been achieved in the membership composition of both the European Corporate Governance Forum and the European Advisory Group on Corporate Governance.
6. The European Commission is active in Corporate Governance issues of listed companies, especially concerning board membership. This is evident in inter alia the Commission's recommendations on remuneration and independence of directors of listed companies³.
7. The European Commission has not included balanced participation of women and men in its recommendations on directors despite the fact that women are a small minority in the boards of listed companies in all member states. In Europe's top 300 companies, women occupy 9.7 % of corporate boardroom seats. Among these companies the figures for France, Germany and the United Kingdom are 7.6 %, 7.8 % and 11.5 % respectively. The figures for Italy, Belgium, Spain and Portugal are 2.1 %, 7 %, 6.6 % and 0.8 % respectively. The figures are considerably higher in countries with proactive strategies and policies: Norway 44.2 %, Sweden 26.9 %, Finland 25.7 % and Denmark 18.1 %.⁴
8. The national corporate governance codes of three member states include the proportion of both sexes in the recommendations, and one member state has introduced legislation on board membership quotas for listed companies⁵.

¹ AG *Christine Stix-Hackl* in Case C-186/01 Dory [2003] ECJ I-2479, paras. 102-105.

² Official journal NO. L 319 , 10/12/1996 P. 0011 – 0015.

³ 2004/913/EC and 2005/162/EC

⁴ EPWN European BoardWomen Monitor 2008

⁵ The Finnish Corporate Governance Recommendation for Listed Companies (December 2003) states that The age mix and the proportion of both sexes can also be taken into account in the composition of the board (Recommendation 15). Proposal for a new Finnish Corporate Governance codes includes a stronger wording (recommendation 9 of Code Proposal of 6 May 2008). The Swedish Code of Corporate Governance (2008) states that The company is to strive for equal gender distribution on the board (4.1). Additionally, The Spanish Corporate Governance Code of 2006 addresses the issue. Spain has introduced legislation on quotas for boards of listed companies in 2007. According to the Norwegian law, companies are required to have at least 33% to 50% of each gender depending on the size of the board.

Based on the above mentioned facts and binding EC/EU principles, EWLA

Urges the Commission to promote a balanced participation of women and men on the boards of listed companies by issuing a specific Recommendation on this matter including:

- a. Encouraging member states to adopt proactive policies to increase the number of women on the boards of listed companies, even introducing legislation.
- b. Member States to make a decision for state majority-owned companies to reach balanced participation of women and men on company boards.⁶
- c. A duty for listed companies to state the gender distribution in management in the annual report of listed companies. This should include board members, managing director and other members of a company's management. This positive measure would contribute to a better distribution of women and men in leading positions without noteworthy costs to companies.⁷
- d. A duty for listed companies to show distinctively using a graphic format the ratio of men and women on the board in addition to numerical information in their annual reports in order to highlight the ratio of women and men participating in the work of the board.
- e. To set a target of balanced participation of women and men in the European Corporate Governance Forum and the European Advisory Group on Corporate Governance.

EWLA expects the Commission to evaluate the effectiveness of its Recommendation after a period of no more than five years with a view to recommending further measures such as national legislation on rules of representation on boards if it finds that the Recommendation has not been implemented.

⁶ This target has been set and reached in Denmark, Finland, Norway and Sweden. Measures taken include legislation and government policies.

⁷ This duty entered into force in Sweden in 2004 through the amendment of Annual Accounts Act (Årsredovisningslagen Kap. 5 § 18b).