

Gender imbalance in corporate boards in the EU

Questions posed by the Commission and responses from the Czech National Bank

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

According to the Czech National Bank, the statistics presented by the European Commission (hereinafter only the “Commission”) show that self-regulation may be sufficiently effective and the solution does not lie in the stipulation of binding quotas. Of the five countries that recorded the greatest progress in the representation of women in corporate boards between October 2010 and January 2012, the majority were countries that have not introduced in the monitored period any new regulation for the representation of women in corporate boards (the Czech Republic, Bulgaria, and Slovenia), one country that is considering regulation unless there is an increase in representation through initiatives from companies themselves (Germany), while only one country of the indicated five has implemented quotas (the Netherlands), but without sanctions – on the “*comply or explain*” principle.

A series of countries that have left the solution up to the market, meaning self-regulation without the introduction of binding quotas, e.g. Great Britain (16 %), and the Czech Republic (15 %) post results above the EU-27 average for the representation of women in corporate boards (13.7 %). Countries that have introduced binding quotas do not report much better results, e.g. France (22 %), and the Netherlands (19 %), or report worse results, like Spain (11 %). One can judge that the differences in the representation of women are actually caused by other reasons (cultural and other differences), as the representation of women in corporate boards in Scandinavian countries would be higher than in other countries even without the implementation of quotas. This is also indirectly shown in a comparison of data for countries outside Europe. The representation of women in corporate boards in the USA is significantly higher (16 %) than in other states, e.g. Japan (1 %), without the results being influenced by regulatory measures.

The Czech National Bank does not doubt that corporate boards that are sufficiently diversified, in which various experts are represented, and which are gender-balanced, can be more effective. It is in the shareholders’, respectively the company owners’, own interest that the company they own is managed effectively. Yet effectiveness cannot be enforced through regulation.

The Czech National Bank would also draw attention to the fact that excessive regulation could have impacts on competitiveness and lead to regulatory arbitrage. In the event of unjustified and overly burdensome regulation of the corporate governance of companies, there would be the threat that the companies would transfer their registered offices to more liberal jurisdictions. This could have serious unintended consequences, in particular in terms of taxes.

In addition to the arguments mentioned above the CNB points out that differences in salaries do not prove without further evidence the women’s discrimination. Possible explanations why ‘female’ occupations pay less might be other than discriminatory hiring, firing, and promotion practices, e.g. ‘female’ occupations may offer costly non-wage characteristics (e.g., flexibility of work hours, part-time, longer holidays); women are then more likely to accept lower wages because they prefer such occupational attributes.

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

According to the Czech National Bank, in the EU there is no need to adopt any regulatory measures, or force the market into so-called self-regulatory solutions. The initiative should be left to the companies themselves and their voluntary associations.

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

As regards the economic benefits of the representation of women in corporate boards, the Czech National Bank considers that these have been sufficiently described in part 1 of the *progress report* (more effective management, improved quality of decisions by corporate boards, quality corporate governance, better use of talent and so on).

Nevertheless, the quality of corporate boards does not entirely depend on the representation of women, but mainly on their overall composition and diversity. A quality corporate board should thus be composed mainly of experts with differing education, practice and experience, irrespective of gender.

(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?***

The Czech National Bank is fundamentally against the introduction of binding quotas and a timeframe into EU law. Such decisions must be left to the Member States. In view of the fact that the area of business law, in spite of a certain level of harmonisation, in particular as regards European-type companies and cross-border aspects, falls within the competency of the Member States, and in view of the fact that the European Union does not regulate and does not stipulate what model of corporate governance the Member States should choose, there is no reason for the regulation of the gender composition of corporate boards of private companies at EU level.

Decisions on quotas and timeframes are purely arbitrary. The specific parameters are matters for the companies themselves (or the Member States) taking into account their cultural conditions, the nature and subject of the business, and the market situation. If companies will be forced into complying with quotas, this could lead to situations where available qualified managers are not appointed to corporate boards merely because a quota must be complied with. Hence a more balanced representation of women in the corporate board would be achieved at the expense of effectiveness.

It is important to add that the Commission wants e.g. diversity in terms of age¹ and proposes for some regulated entities the obligation to ensure a “proper” composition of corporate boards (meaning the appropriate gender, age, education, profession and geographic profile of members of corporate boards).² The new rules for the composition of corporate boards, however, could lead to the suppression or negation of the objectives of corporate governance, meaning ensuring the proper and prudent management of companies when, instead of on this, the attention of the regulated entities and supervisory bodies will be focused on ensuring the

¹ Green Paper – Corporate governance in financial institutions and remuneration policies.

² Compare for example the proposals for the regulation of internal governance at investment companies in the proposal for the revision of the MiFID, or the internal governance of credit institutions in the proposal for the revision of the CRD.

“proper” composition of the corporate boards in terms of age and gender etc., and not suitable qualifications and knowledge.

The Czech National Bank prefers self-regulation and solutions at the level of the individual companies (voluntarily set targets), and this without enforcement through threats of the implementation of compulsory quotas.

If some Member States did decide to implement quotas, the model e.g. in the Netherlands would appear more sensible. There they have stipulated 30 % representation, with the proviso that if this quota is not reached, the company must explain this fact in its annual report – the *comply or explain* principle. The Norwegian solution for penalising companies that do not comply with the quota – possible dissolution by court order – could lead to the formal compliance with the requirement, a high level of legal uncertainty, the dissolution of companies by courts and, as a consequence, the undermining of European competitiveness.

It is important to remember the fact that companies can change their legal status, and transfer their registered offices, management and manufacturing outside the EU. European business law should remember these aspects and remain sufficiently flexible and competitive in international terms.

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

For small and medium-sized non-public joint-stock companies it makes no sense to stipulate a regulatory requirement for the composition of corporate boards from the perspective of their gender balance. With these companies, this is on the one hand due to the strong links between management and ownership, while on the other hand they are not usually companies with a significant influence on the public interest.

In view of the reasons given above in the answer to question 4, the Czech National Bank also rejects the stipulation of compulsory quotas for joint-stock companies traded on regulated markets.

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

As a matter of principle the Czech National Bank rejects regulatory interference in the composition of corporate boards and requirements for their members, other than those relating to the basic assumptions for the proper administration of a company (e.g. qualification prerequisites, a requirement for the absence of conflicts of interest and so on). Legal regulations should not in any way interfere in the policy for recruiting members of corporate boards – this is the province of the companies.

Diversity in the composition of corporate boards is useful and worthy of support, but not regulatory interference. The experience of the Czech National Bank with supervised entities is that these subjects are discussed, considered and adopted by the companies themselves (e.g. they are aware of a lack of representation of women, members with experience from another country are valued, and members with the corresponding expert background and practice are appointed to corporate boards). If the initiative does not come from the companies and shareholders (investors) themselves, in practice there will only be a formal compliance with requirements.

In its materials published to date (Green Paper – the EU corporate governance framework of 5 April 2011 and the Green Paper – Corporate governance in financial institutions and remuneration policies of 2 June 2010) the Commission spoke about diversity in corporate boards (Boards of Directors) from the perspective of ability, experience, independence, gender and age of **non-executive** members of corporate boards. The reason for this is the fact that the term corporate board was defined in these documents as the requirement for filling a supervisory function, meaning the requirement for non-executive members of corporate boards in the Anglo-Saxon system and supervisory boards in two-tier system. .

(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 Czech National Bank is against the implementation of sanctions in this area. The imposition of sanctions would without doubt lead to the formal compliance with quotas, but the positive effects of the representation of women in corporate boards would hardly be achieved, as the requirement would be complied with in a purely formal way.

Available studies may show that corporate boards with greater diversity contribute better to the proper management of companies and are more effective. However, this is empirical data relating to corporate boards filled by shareholders according to their own decisions, and not filled on a formal basis under the pressure of regulation and sanctions.