

**ABSTRACT: DONNE NEI CONSIGLI
D'AMMINISTRAZIONE: L'AGENDA-
SETTING EUROPEO**

RELATORE

Prof.ssa Marzia BASILI

CANDIDATO

Selim BEN HAMIDA

Matr. 066422

ANNO ACCADEMICO 2012/2013

INTRODUCTION

Equality between men and women represents one of the fundamental principles of European Union Law. As a matter of fact the Art.3 par.3 of the Treaty on European Union underlines that “It (EU) shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men [...]”. The EU's competence to legislate in gender equality matters dates back to 1957. Since this date, the EU has been aiming at ensuring equal treatment for men and women, fighting any form of discrimination on the grounds of gender and tried to grant equal opportunities for both sexes. In many places enormous progresses have been made. Nevertheless, there is one place where almost no progresses have been achieved at all: listed company boardrooms. In January 2012 women represented only 13.7% of total board members in European listed companies. In some member States (Malta, Cyprus, Hungary) this share fell even under 5%, while in Norway (which actually is not a Member State) women surprisingly represented more than 40% of boardrooms members. This enormous disparity was the result of different legislative approaches to the issue of under-representation of women in economic decision-making. The European Commission has been trying harmonizing the different legislations to solve the problem at European level. In particular, in 14th November 2012, it has proposed legislation with the aim of attaining a 40% objective of the under-represented sex in non-executive board-member positions in publicly listed companies, with the exception of SMEs. The Commission's proposal will make sure that in the selection procedure for board members priority is given to female candidates if they are under-represented in the boards and equally qualified as their male counterparts. To try to understand how and why the

European Commission decided to take this initiative is the main aim of this analysis. We will underline how the issue of under-representation of women in economic decision-making has become a matter of “efficiency” instead of being a matter of “justice” and how this is a real victory for women. Furthermore we will analyze the importance of the content of the final text of the proposal of directive explaining how the 40% quota for under-represented sex in only a part of it: the obligation is mainly in the procedural side, with the establishment of transparent criteria for the appointment of board members, preference for women if equally qualified etc. Finally we will also focus on the strategy used by the European Commission to find a solution acceptable (more or less) for all the parts which took place to the enormous debate which anticipated the presentation of the proposal of directive. In our opinion, this approach was extremely open to every kind of suggestion coming from the European society and can be exported to every kind of proposal in order to re-establish a positive relationship between citizens and European institutions.

CHAPTER I: EU MEMBER STATES INITIATIVES.

One of the main reasons that brought the European Commission to make a proposal of legislation is the very fragmented EU Member States legislative framework affecting under-representation of women in listed companies boardrooms. This could translate into confusion and higher costs for investors and companies, especially for those who operate across borders. In other words this fragmentation could lead to an obstruction to the proper functioning of the internal market. As a matter of fact some Member States - like France, Italy, Belgium and Spain- established an absolute binding legal gender balance objective with sanctions, following the “Norwegian model”. Other member States –like Finland and Sweden-

have established a "comply or explain" model, where companies not complying with a gender balance objective have to reveal the reasons for not doing so. Other Member States – such as Hungary, Malta and Latvia – did not adopt any measures affecting the issue. In this chapter we will analyze the main legislations affecting the under-representation of women on boardrooms. In particular we will pay attention to some binding legislations: the “Legge Golfo-Mosca” in Italy -with the contribution of an interview to Alessia Maria Mosca (Italian MP, co-author of the Law) - and the Loi n.2011-103 in France. After that we will underline the main aspects of the Corporate Governance Finnish Code, example of comply or explain approach. Finally we will move to those country who did not adopt a legislation in this place. We will see how the countries who have recently adopted legislation are starting to show relevant progresses: this clearly demonstrates that regulatory intervention can make the difference.

II: THE AGENDA SETTING OF THE EU

After having looked to the EU Member States level, we will move to the European Union level itself. In particular we will try to understand how the issue of the under-representation of women in European boardrooms entered in the European Commission’s agenda. We will explain the role in the agenda-setting process of some research organization, which demonstrated the correlation between a higher presence of women on boardrooms and the better performances of the company and of the labor market. After that we will analyze the role of two important women’s rights organizations: the European Women’s Lobby (EWL) and the European Professional Women’s Network (EPWN). Finally we will try to draw a line connecting all the institutional steps of the agenda-setting process. This process, in our opinion starts with the presentation of the

European Commission Strategy “Europe 2020”, in which the participation of women to the European economic governance is seen as a precondition for long-run growth. After that other important steps are represented by the “Women’s Chart”, presented by the Commissioner Viviane Reding and President of the European Commission Barroso. Furthermore a very important fact was the adoption of the “Strategy for equality between Women and Men 2010-2015”. After that we will look after “Women on board pledge for Europe” through whom the European Commission gave to publicly listed companies a last chance to self-regulate the presence of women in their boardrooms, before taking further binding legislative initiatives. But in March 2012 the situation did not change and this gave the European Commission the stimulus to start thinking of a binding approach: as a result it launched a public consultation in order to try to develop the main points of a future legislation. We will also analyze the important role of the European Parliament and of the Council of the European Union during the agenda-setting.

III: THE FORMULATION OF THE PROPOSAL OF EU DIRECTIVE.

Finally, after having analyzed the agenda-setting, we will move to the formulation process of the proposal of directive presented by the European Commission the 14th of November 2012 on improving the gender balance among non-executive directors of companies listed on stock exchanges. We will see how public consultations have been characterized by an intense lobbying action: on the one hand coming from the business-community, on the other hand coming from an advocacy coalition of ONGs, women associations and trade unions. After that we will look at the impact assessment of the Directive, which represents the “core” of the

formulation process. We will look, in particular, how the Directorate General of Justice of the European Commission selected the final policy option between different alternatives. We will explain the main aspect of the final text of the proposal of directive, as it changed considerably from the option chosen in the impact assessment. We will explain, in particular, why the European Commission decided to introduce a quota of 33,3% for both executive and non-executive administrators.