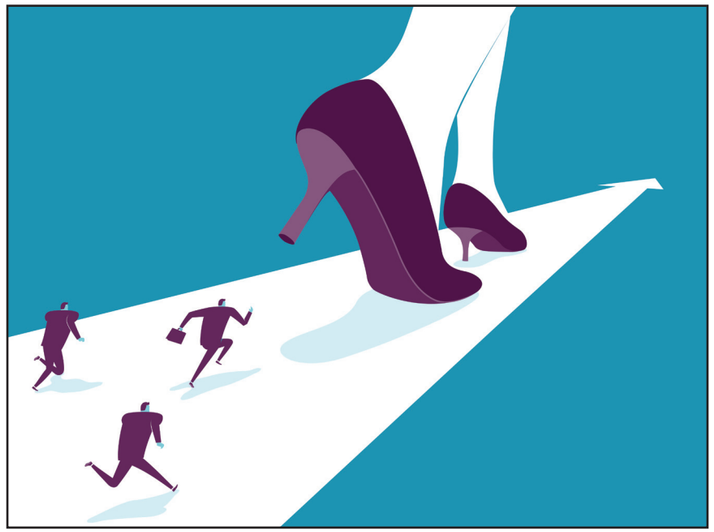
Bridging the Gap:

German Law on Quotas for Women on Boards



The recent announcement that Germany's largest companies must ensure that 30 per cent of supervisory board positions are held by women from 2016 has reignited interest in the debate as to whether mandatory quotas are to be feted or feared. To tell us all about it, we hear from Melanie Wadsworth, corporate partner in the international law firm Faegre Baker Daniels LLP.

The response in Germany has been mixed, with opposition coming from many in the business community, including luxury car maker BMW which has already filled 25 per cent of its advisory board with women. Whilst making it clear that BMW strives for "diversity in [its] workforce in terms of gender, ethnicity and age", the company was not alone in expressing reservations about the effectiveness of compulsory diversity criteria.

At board level, diversity is important because better decisions should be made by a board that offers a balanced and broad set of skills and perspectives. Although it is technically possible for a board comprised solely of men - or women - to be an effective group, it is reasonable to expect that a wider gene pool will bring to bear a greater depth of experience and insight. But, as in most things, achieving the correct balance is not always easy.

It can be misleading to think that any one group has the monopoly on certain characteristics. Putting too much emphasis on the gender or ethnicity of one candidate, without considering properly and objectively their other merits against those of less diverse alternative candidates, may mean that the wrong person gets the job.

Another risk associated with mandatory gender targets is that the resulting initiatives can quickly become formulaic and forget what they are trying to achieve, beyond just a quota. To build an effective board, it is important to approach each candidate as an individual and see their "diverse" criteria as the icing on the cake, not all they have to offer.

A good first step is for each organisation to develop a recruitment and promotion programme that is inclusive and does not just target diverse groups. Being alert to ways in which diverse groups may, consciously or unconsciously, be excluded is important, but an effective programme will be careful not to give the impression that minority groups are incapable of making progress without the rules being bent or standards being lowered.

Most people would agree that women have not always been given equal opportunities in business and this history has contributed to what Lord Davies, in his 2011 report on Women on Boards identified as the "executive pipeline challenge". This is the difficult but unsurprising truth that the pool of female talent may not yet be available to support substantial mandatory quotas for board membership.

To ensure that a strong seam of qualified, confident and able candidates is available when the opportunity for promotion arises, it is therefore essential that companies provide training and mentoring support for women early in their careers.

To the extent that the highest positions of authority are still typically held by white men, it can be difficult for other groups to imagine themselves in – and therefore aspire to – the most senior roles. The onus should therefore be on every organisation to communicate clearly that they see women and other minority groups as potential leaders, with just as much to offer as other candidates.

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In this spirit, the 30% Club, a group of business leaders committed to achieving better gender balance by developing female talent at all levels in organisations, believes strongly that business-led change is the right way forward to achieve its goal of 30 per cent female boards by 2015.

Set up by Helena Morrissey who, as CEO of Newton Investment Management and mother of nine, has an almost dauntingly impressive CV, the 30% Club recently launched a new partnership with Speakers for Schools aiming to encourage girls to see themselves as potential leaders of the future. The club and its initiatives have the vocal support of a significant number of high-profile men in the UK, including the chairmen of many listed companies.

Those who support mandatory quotas point to the experience of Norway which introduced board gender quotas in 2003 requiring public companies to have a 40 per cent female board or be shut down. That 40 per cent target has been achieved and maintained for a period of over five years. However, the increase in the number of women in senior executive positions in Norway has been less impressive; just over 5 per cent of public company CEOs in the country are women, which is similar to the figure for the FTSE 100 in the UK, where there will be 5 female CEOs when the appointment of Veronique Laury as head of Kingfisher takes effect in January 2015.

This suggests that a focus on non-executive targets, which is where the mandatory quotas currently threatened by the EU would apply, too often casts women in a subsidiary, albeit important, risk management role and underestimates their potential contribution.

Some ask, if mandatory quotas are not imposed why would organisations bother to address this issue at all? Just the threat of such quotas has already had an impact: in the year ended February 2011, women accounted for 7.8 per cent of FTSE 250 board directors; by March 2014 that figure had doubled to 15.6 per cent. But compliance by force can lead to a very cynical approach to diversity, where the important positive impact of diversity policies is clouded.

Anecdotal evidence suggests that organisations which actively chose to implement diversity measures (even where they did so for externally driven reasons - e.g. because key customers monitor diversity statistics), rather than having them imposed upon them, may be more likely to perceive the benefits, including enhanced levels of retention and a more engaged workforce.

Clearly, it is in the interests of all stakeholders that any business is able to attract, retain and develop the best available talent. But it is important that the narrow issue of gender balance on boards is not considered in isolation from the wider corporate governance debate about board effectiveness. In the context of board composition, diversity is important not as an end in itself, but to help create value for shareholders.

There is no doubt that many women have qualities and perspectives that would enhance any board, but that does not mean there won't be many occasions where the best man for the job is a man. Rather than focusing only on mandatory quotas, let's focus on mentoring and preparing women at all levels of business to push for the most senior roles. It is only through systemic change and a genuine belief that greater female representation is a good thing, as well as the right thing, that women will achieve the success they deserve and organisations will reap the benefit. **LM**

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