

The 40% Rule: European Commission proposes new law for more women in the boardroom by 2020

BY [SUZANNE HORNE](#) & [TARA K. GIUNTA](#)

Viviane Reding, Vice-President of the European Union and Commissioner for Justice, Citizenship and Fundamental Rights, yesterday announced that the European Commission has agreed a proposed new law setting a target that by 2020 40% of non-executive directors of larger European publicly listed companies should be women. Public undertaking will have until 2018 to comply.

In advance of the formal announcement, Ms Reding tweeted "It's done. The Commission has adopted my proposal for a European law so that women represent 40% of company board members by 2020." Ms Reding had previously sought a new law specifying a quota with sanctions for any failure to comply. Contrary to initial proposals, yesterday's EU wide consensus is not a mandatory quota but is rather a non-binding target. It will not apply to non-listed companies or those companies with less than 250 employees and an annual worldwide turnover of less than 50 million Euros. It is also temporary. The directive is set to expire on 2028.

For those larger publicly listed companies which do not meet the target, they will be required to make appointments to non-executive positions on the basis of non-discriminatory objective criteria. But in line with European law which permits positive action but not positive discrimination, where a company has two equally qualified candidates of different genders, this new law provides that the under-represented candidate should, for the most part, be given the role.

The directive also seeks to go further by containing what is referred to as a "flexi quota" which is a voluntary obligation whereby the larger European publicly listed companies can set their own target for executive directors. If they do so, they will be required to report on progress on an annual basis. This is akin to the Australian model which has produced impressive results in a relatively short period of time.

The new law will take the form of a directive which seeks to establish a minimum level of harmonisation across the EU. The directive will now be scrutinised by the Council of Ministers and the European Parliament so it may be subject to further amendment. Like all directives, the boardroom gender directive will need to be implemented by each of the 27 EU member states into local law. The obligation is on each member state to set sanctions. Therefore, there is scope for interpretation which could still see inconsistent standards and sanctions across the 27 EU member states. At present, Belgium, France, Italy, the Netherlands, Spain, Portugal, Denmark, Finland, Greece, Austria and Slovenia have already introduced measures on gender equality whereas 11 other EU member states have no rules or

regulations. The European Commission has stated that the directive will not affect those member states with “equally efficient” measures already in place and, of course, member states will be free to raise the bar higher.

Yesterday’s announcement is important and signals that the issue of gender diversity on boards will be high up on the agenda for boards of European companies now and for the next decade. Although yesterday’s announcement is aimed at non-executive directors and larger European public companies, it may be expected to impact smaller public companies and potentially private companies whether through a shift in attitudes or through voluntary compliance with corporate governance codes. It also sets a trend for other jurisdictions and confirms the conclusions of the Paul Hastings report, [Breaking the Glass Ceiling: Women in the Boardroom](#), that Europe still leads the way.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

London

[Suzanne Horne](#)

44.20.3023.5129

suzannehorne@paulhastings.com

Washington, D.C.

[Tara K. Giunta](#)

1.202.551.1791

taragiunta@paulhastings.com