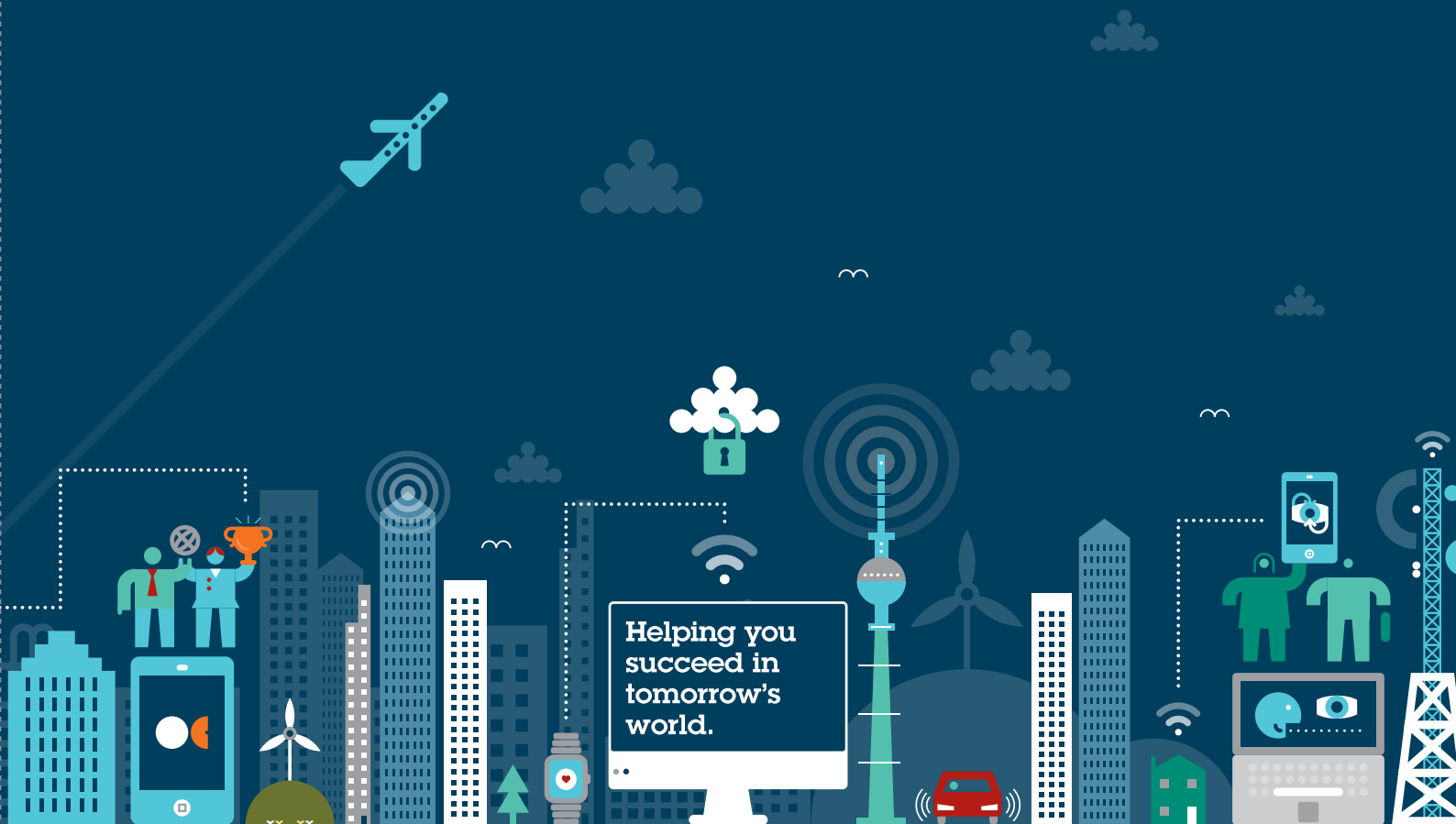


**Encouraging gender diversity in the
energy & utilities sector**
A European overview



Enabling gender diversity at the higher levels of an organisation is a real issue for employers across all sectors. For businesses operating in the energy and utilities sector, recruiting talented and skilled women in “STEM” (science, technology, engineering and mathematics) into the business in the first place can be a real challenge.

With the demand for higher level skills and increasing innovation in the future, employers are under increasing pressure to tackle gender issues by recruiting and supporting skilled and talented women and enabling them to bring their own talents and perspectives to the business world. Whilst there are real positives in harmonising approaches to recruitment across jurisdictions, care must be taken to ensure that any initiatives pinpoint where the real issues lie and adhere to domestic laws.

Legal framework:

The Equal Treatment Directive underpins discrimination protection across EU countries – essentially prohibiting discrimination on grounds of gender i.e. it would be unlawful to appoint a woman candidate in preference to a male candidate simply because she is a woman.

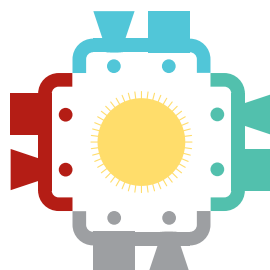
However, some measures taken in the recruitment process, such as targeting women candidates or even appointing a female candidate over a male candidate – which may appear discriminatory – may in fact be legally permitted depending on local laws. In some jurisdictions, such measures may be termed “positive action” or “positive measures”.

Key points to watch out for include:

- Establish where any issues within the organisation exist, sometimes gender issues arise in “pockets” of the business rather than the business as a whole.
- Whether or not positive discrimination or positive action, enabling you to target or give priority to a woman candidate over a man is permitted, will depend on the laws of the particular country in which you are recruiting.
- Positively discriminating in favour of a woman unlawfully could leave an employer vulnerable to a discrimination claim from a male recruit. Compensation may be unlimited.
- Remain alert to other local laws which may impact on any recruitment programmes and require corporate transparency. For example, new regulations in the UK applying from April 2017 will require large UK employers to disclose their “gender pay gap” on a website. Such disclosures have the ability to undermine any recruitment campaigns, although employers have the opportunity to provide an explanatory narrative. A joined up approach must be adopted and any issues addressed.

Key questions to consider include:

- Is there an issue with cultural perceptions – consider how women view the job generally and then how it would also be viewed within your organisation. How can you help challenge those perceptions? Do you have diversity and inclusion programmes linking diversity to significant business goals?
- What can you do to ensure more women have or can access the skills/qualifications required for jobs within your organisation. With this should come increased potential for innovation and in turn an enhanced reputation and ability to recruit more high calibre candidates.
- Do you have a clear identity regarding your professional training and development? In a recent report from Universum, 45% of STEM and business students choosing the energy sector identified this as a top priority.
- Are there internal factors discouraging women from joining your workplace. How attractive is your workplace? What training do you provide? How supportive is it? Are you family friendly, offering flexible working patterns? Are there other more unattractive cultural factors influencing the way women perceive your organisation – a reputation for male banter? Harassment? Jobs for the boys?
- There are no shortage of organisations and initiatives attempting to tackle this issue through Europe. Care must be taken to pinpoint one or two initiatives which may make a real difference to your organisation and keep progress under review.



What's permitted and what's not...

	Can an employer adopt a policy of only recruiting women to address any gender imbalance?	Can an employer appoint a woman in preference to a man?	Can an employer take specific steps to encourage women to apply?
	<p>! It is not possible to adopt a general policy of recruiting women over men to address any gender imbalance but priority may be possible on a case by case basis.</p>	<p>! Statute provides for "positive action" to be taken to appoint a female in preference to an equally qualified man if an employer wishes but subject to very specific requirements. Recruitment agents may be liable for compliance failures.</p>	<p>✓ "Positive action" to encourage women applicants is permitted, subject to certain requirements.</p>
	<p>✗ There is currently no statutory right for an employer to recruit women over men to correct any gender imbalance. Employers of listed/public companies need to bear in mind laws which require at least 1/3 of the board members to be female.</p>	<p>✗ There is no statutory right for an employer to recruit a woman in preference to a man.</p>	<p>! Whilst there is a statutory right to positive action and, for an employer, to promote diversity among its staff, no positive action can be officially taken before an executive order on positive action is voted.</p>
	<p>✓ As a temporary measure where women are not well represented within a "professional category" in the company. Such a measure can be implemented by employers with more than 50 employees who have concluded with unions/employee reps a company agreement dealing with professional equality between men and women. Such a measure has to be identified as a solution to increase equal representation and must be approved by the Labour Inspector.</p>	<p>! A woman with an equal qualification to a man can be favoured during the recruiting process but does not have priority.</p>	<p>✗ In general, no statutory right for an employer to take steps to encourage women to apply.</p>
	<p>! It is not possible to adopt a general policy of recruiting women over men to address any gender imbalance but priority may be possible on a case by case basis.</p>	<p>! Statute provides for "positive measures" to be taken to appoint female staff on a case by case basis but subject to very specific requirements.</p>	<p>✓ Targeted recruiting methods are permitted but they must serve the purpose of eliminating and compensating existing disadvantages and be proportionate.</p>
	<p>✗ There is no right for an employer to recruit women over men to correct any gender imbalance.</p>	<p>! A woman with an equal qualification to a man can be favoured during the recruiting process, only on the basis of objective requirements but she does not have priority.</p>	<p>✗ There is currently no legal right for an employer to take steps to encourage more women to apply.</p>
	<p>✗ It is not possible to rule out male candidates categorically in advance.</p>	<p>! Statute provides for "positive measures" to be taken to appoint female staff on a case by case basis but subject to very specific requirements.</p>	<p>✓ "Positive action" to encourage women applicants is permitted, subject to certain requirements.</p>
	<p>✗ Recruiting practices shall not take gender into consideration. Therefore, it is not possible to adopt a general policy of recruiting women over men.</p>	<p>! No employment decision should be based on gender. However, when candidates meet the requirements for a position equally and objectively, the employer has discretion to decide.</p>	<p>✓ Employers can implement specific measures or policies to attract women to participate in recruitment processes.</p>

Contacts



Julian Hemming (UK)
Partner, Employment
T +44 117 917 3582

julian.hemming@osborneclarke.com



Phillip Chivers (UK)
Legal Director, Employment
T +44 117 917 3570

phillip.chivers@osborneclarke.com



Thierry Vierin (Belgium)
Partner, Employment
T +32 2 515 93 04

thierry.vierin@osborneclarke.com



Vinciane Rysselinx (Belgium)
Senior Counsel, Employment
T +32 2 515 93 08

vinciane.rysselinx@osborneclarke.com



Maxime Pigeon (France)
Partner, Employment

T +33 1 84 82 45 34

maxime.pigeon@osborneclarke.com



Clémentine de Guillebon (France)
Senior Associate, Employment

T +33 1 84 82 45 44

clementine.deguillebon@osborneclarke.com



Dr Anke Freckmann (Germany)
Partner, Employment

T +49 221 5108 4052

anke.freckmann@osborneclarke.com



Katharina Müller (Germany)
Counsel, Employment

T +49 221 5108 4268

katharina.mueller@osborneclarke.com



Marco Lanzani (Italy)
Partner, Employment

T +39 02 5413 1768

marco.lanzani@osborneclarke.com



Simona Carlini (Italy)
Associate, Employment

T +39 02 5413 1729

simona.carlini@osborneclarke.com



Jorgo Tsiris (The Netherlands)
Partner, Employment

T +31 20 702 8618

jorgo.tsiris@osborneclarke.com



Eva Otaegui (Spain)
Partner, Employment

T +34 934 191 818

eva.otaegui@osborneclarke.com



Maryam Karchani (Spain)
Lawyer, Employment

T +34 934 191 818

maryam.karchani@osborneclarke.com

Where we work

Belgium: Brussels

France: Paris

Germany: Berlin, Cologne, Hamburg, Munich

Hong Kong

India: Mumbai*

Italy: Milan, Brescia, Padua, Rome,
Busto Arsizio

Singapore ^

Spain: Barcelona, Madrid, Zaragoza

The Netherlands: Amsterdam

UK: London, Bristol, Thames Valley

USA: Silicon Valley, New York,
San Francisco

Osborne Clarke is the business name for an international legal practice and its associated businesses. Full details here: osborneclarke.com/definitions

*Relationship firm

^ An independently owned and managed Singapore law practice

osborneclarke.com

