EUROPEAN PARLIAMENT

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Committee on Employment and Social Affairs

2012/0299(COD)

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OPINION

of the Committee on Employment and Social Affairs

for the Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality

on the proposal for a directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures
(COM(2012)0614 – C7-0382/2012 – 2012/0299(COD))

Rapporteur: Marije Cornelissen

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SHORT JUSTIFICATION

In October 2012, the Commission presented a legislative proposal to promote gender balance among non-executive Directors of companies listed on stock exchanges. In the year before that, listed companies in the EU were given a last chance to self-regulate for more women in board positions, when Commission Vice-President Reding called on them to sign the 'Women on board pledge for Europe' in March 2011. Only 24 companies throughout Europe signed. Considering the persistently low number of women on company boards and the obvious failure of self-regulation to significantly improve the situation in the past decades, the time has come to take legislative action.

Scope: executive - non executive Directors

Your rapporteur suggests that the entire Directive be applied to executive as well as non-executive Directors. The provisions of this Directive do not unduly interfere with day-to-day management, since companies maintain the freedom to select candidates on the basis of quality or other relevant considerations. The proportion of female executive Directors is particularly low (10% in 2013 compared to 17% among non-executives). Therefore the key articles of the Directive related to adjustment of the selection procedure should apply to all Directors.

Diversity of procedures

In the Commission proposal, the emphasis is on the specific manner in which candidates are selected for board positions. This should be transparent, neutral and based on individual qualifications. However, the way in which board members are selected or appointed does not always resemble a recruitment procedure for regular employees. In some Member States, for instance, board members are appointed or elected by workers or union members, as in the German system of 'Mitbestimmung'. Furthermore, individual qualities are not always the sole relevant criterion. A balance among different skills, expertise, nationality or considerations of representation can be important or even decisive factors in the final choice of Directors. Unions and businesses have asked for more flexibility in the manner of appointment or selection.

Therefore, your rapporteur proposes in Article 4.1 to leave Member States and companies free as to how they adjust their selection or appointment procedure, while focusing on the outcome. Adjustments can take different forms and could apply to the appointment, recruitment and selection process, as long as they aim for the result of at least 40% women on the boards of listed companies.

Focus on the whole process of recruitment

The Commission proposal focuses solely on the individual selection of candidates for board positions. However, the recruitment of a board member does not start at the selection stage; it starts at the stage of building a pool of candidates to be selected. If this pool does not include enough able and suitable women, it is still unlikely that a woman will be chosen even if the selection criteria are fully gender neutral.

Your rapporteur therefore proposes to include the selection pool in the reporting obligations for companies that have not selected women while women are still under-represented, by requiring information on the number of women in the selection pool as well as on the criteria

used to select a candidate, and the measures they will take to ensure sufficient qualified and suitable candidates of the under-represented sex in the next procedures.

Reporting and explaining obligations
The Directive should be aimed at those companies who do not make a sufficient effort or obtain sufficient results in promoting gender equality in their boards. Therefore, your rapporteur wants to distinguish between companies that do well and companies that do poorly. All companies will be required to annually provide data on the gender representation on their boards in their annual reports and to the competent national authorities. If companies have appointed someone of the over-represented sex, their disclosure, reporting and explaining obligations increase. They will have to disclose the gender composition of the selection pool and the reasons and criteria leading to the choice for the candidate of the over-represented sex, as well as present measures to ensure more gender balance in the selection pool and to increase the chances of appointing a director from the under-represented sex in future appointments.

Suspension clause
The Commission proposal aims to avoid interfering with existing national measures taken to increase gender diversity on boards. Your rapporteur suggests maintaining the possibility for Member States to suspend certain key articles of the Directive. If a Member State feels that voluntary or other measures will also lead to the fulfilment of the aims of the Directive, it should have the freedom to see if this is the case. However, she proposes to strengthen the safeguards that national policy is equally effective in reaching the 40% objective of the Directive. To this end, the suspension should be made conditional upon approval by the Commission. If, furthermore, by 2017 an intermediate goal of 30% women on boards has not been reached, the Directive will automatically come into force for that Member State.

Sanctions and incentives
Your rapporteur agrees with the Commission's approach to give Member States the key responsibility to put in place effective, proportionate and dissuasive sanctions. However, additional incentives can be put in place. Member States should be able to reward companies by using the achievement of the 40%-objective as an award criteria in public procurement. Additionally, the EU institutions should set the example by granting tenders to companies that have reached the 40% objective only. Compliance with the Directive (not to be confused with the ultimate objective) should be a condition for the reception of EU funds.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs and the Committee on Women’s Rights and Gender Equality, as the committees responsible, to incorporate the following amendments in their report:

Amendment 1
Proposal for a directive
Title 1

Text proposed by the Commission	*Amendment*
Proposal for a	Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on improving the gender balance among ***non-executive*** directors of companies listed on stock exchanges and related measures	on improving the gender balance among directors of companies listed on stock exchanges ***and large public undertakings*** and related measures
(Text with EEA relevance)	(Text with EEA relevance)

Amendment 2
Proposal for a directive
Citation 1

Text proposed by the Commission	*Amendment*
Having regard to the Treaty on the Functioning of the European Union, and in particular Articles ***157(3)*** thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Articles ***8, 157(3) and (4)*** thereof,

Amendment 3
Proposal for a directive
Citation 1 a (new)

Text proposed by the Commission	*Amendment*
	Having regard to Articles 2 and 3(3) of the Treaty on European Union,

Amendment 4
Proposal for a directive
Citation 1 b (new)

Text proposed by the Commission	*Amendment*
	Having regard to Article 23 of the Charter of Fundamental Rights of the European

Union,

Amendment 5
Proposal for a directive
Citation 1 c (new)

Text proposed by the Commission	*Amendment*
	Having regard to Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),

Amendment 6

Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission	*Amendment*
	(2a) In order to achieve gender equality in the workplace there must be a gender balanced model of decision making at all levels within the company while also ensuring the elimination of the gender pay gap which contributes significantly to the feminisation of poverty.

Amendment 7

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission	*Amendment*
	(6a) In their internal staffing policies all EU institutions and agencies should comply with the principle of gender equality, in particular by ensuring gender balanced decision making at all levels within the bodies concerned.

Amendment 8
Proposal for a directive
Recital 7

Text proposed by the Commission	*Amendment*
(7) The efficient use of human capital is the most important determinant of an economy's competitiveness ***and is key to addressing the EU's demographic challenges***, to competing successfully in a globalised economy ***and to ensuring a comparative advantage vis-à-vis third countries. The*** pool of highly trained and qualified women ***is constantly growing*** as evidenced by the fact that 60 per cent of university graduates are female. A continued failure to draw on this pool in appointments to economic decision-making positions would amount to a failure to fully exploit skilled human capital.	(7) The efficient use of human capital is the most important determinant of an economy's competitiveness, to competing successfully in a globalised economy**.** ***There is a*** pool of highly trained and qualified women as evidenced ***among others*** by the fact that 60 per cent of university graduates are female. A continued failure to draw on this pool in appointments to economic decision-making positions would amount to a failure to fully exploit skilled human capital.

Amendment 9

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission	*Amendment*
	(7a) In order to ensure the promotion of gender equality, Member States should put in place provisions whereby men and women can combine work and family life, in particular, flexible arrangements and supports for those with care responsibilities.

Amendment 10

Proposal for a directive
Recital 8

Text proposed by the Commission	*Amendment*
(8) At company level, it is widely acknowledged that the presence of women on boards improves corporate governance, because team performance and the quality of ***decision-making are enhanced*** due to ***a more diverse and collective mind-set incorporating a wider range of perspectives and therefore reaching*** more balanced ***decisions***. Numerous studies have also shown that there is a positive relationship between gender diversity at top management level and a company's financial performance and profitability. Enhancing female representation on the boards of publicly listed companies in the Union ***can*** therefore have a positive impact on the performance of companies concerned.	(8) At company level, it is widely acknowledged that the presence of women on boards improves corporate governance, because team performance ***is enhanced*** and the quality of ***decision making is improved*** due to ***the fact that it incorporates a*** more balanced ***perspective***. Numerous studies have also shown that there is a positive relationship between gender diversity at top management level and a company's financial performance and profitability. Enhancing female representation on the boards of publicly listed companies in the Union ***should*** therefore have a positive impact on the performance of companies concerned.

Amendment 11

Proposal for a directive
Recital 9

Text proposed by the Commission	*Amendment*
(9) Existing evidence also shows that labour market equality can improve economic growth substantially. Enhancing female presence in the boardrooms of listed companies in the Union not only affects the women appointed to boards, but also contributes to attracting female talent to the company and ensuring a greater presence of women at all levels of management and in the workforce. Therefore, a higher share of women on company boards ***has*** a positive impact on closing both the gender employment gap and the gender pay gap. Making full use of the existing female talent pool would constitute a marked improvement in terms of return on education for both individuals	(9) Existing evidence also shows that labour market equality can improve economic growth substantially. Enhancing female presence in the boardrooms of listed companies in the Union not only affects the women appointed to boards, but also contributes to attracting female talent to the company and ensuring a greater presence of women at all levels of management and in the workforce. Therefore, a higher share of women on company boards ***should have*** a positive impact on closing both the gender employment gap and the gender pay gap. Making full use of the existing female talent pool would constitute a marked improvement in terms of return on

and the public sector. Female under-representation in the board rooms of publicly listed companies in the EU is a missed opportunity in terms of achieving long-term sustainable growth for Member States' economies at large.	education for both individuals and the public sector. Female under-representation in the board rooms of publicly listed companies in the EU is a missed opportunity in terms of achieving long-term sustainable growth for Member States' economies at large.

Amendment 12

Proposal for a directive
Recital 11

Text proposed by the Commission	*Amendment*
(11) The proportion of women on company boards is progressing very slowly, with an average annual increase of just 0.6 percentage points during the past years. The rate of improvement has differed in individual Member States and has led to highly divergent results. Much more significant progress was noted in the Member States where binding measures have been introduced. Growing discrepancies between Member States are likely to increase given the very different approaches pursued by individual Member States to increase the representation of females on boards that are being pursued by individual Member States.	(11) The proportion of women on company boards is progressing very slowly, with an average annual increase of just 0.6 percentage points during the past years. The rate of improvement has differed in individual Member States and has led to highly divergent results. Much more significant progress was noted in the Member States where binding measures have been introduced. Growing discrepancies between Member States are likely to increase given the very different approaches pursued by individual Member States to increase the representation of females on boards that are being pursued by individual Member States. ***Member States should therefore exchange information and good practices designed to achieve better results through the adoption of measures to promote gender equality.***

Amendment 13

Proposal for a directive
Recital 13

Text proposed by the Commission	*Amendment*
(13) The current lack of transparency of the selection procedures and qualification criteria for board positions in most Member States represents a significant barrier to more gender diversity among board members and negatively affects both the board candidates' careers and freedom of movement, as well as investor decisions. Such lack of transparency prevents potential candidates for board positions from applying to boards where their qualifications would be most required and from challenging gender-biased appointment decisions, thus restricting their freedom of movement within the internal market. On the other hand, investors have different investment strategies that require information linked also to the expertise and competence of the board members. More transparency in the qualification criteria and the selection procedure for board members enables investors to better assess the company's business strategy and to take informed decisions.	(13) The current lack of transparency of the selection procedures and qualification criteria for board positions in most Member States represents a significant barrier to more gender diversity among board members and negatively affects both the board candidates' careers and freedom of movement, as well as investor decisions. Such lack of transparency prevents potential candidates for board positions from applying to boards where their qualifications would be most required and from challenging gender-biased appointment decisions, thus restricting their freedom of movement within the internal market. On the other hand, investors have different investment strategies that require information linked also to the expertise and competence of the board members. More transparency in the qualification criteria and the selection procedure for board members enables investors to better assess the company's business strategy and to take informed decisions. ***It is therefore important for board appointment procedures to be clear and transparent and for applicants to be assessed objectively on their individual merits, irrespective of gender.***

Amendment 14

Proposal for a directive
Recital 14

Text proposed by the Commission	*Amendment*
(14) ***While*** this Directive does not aim to harmonise national laws on the selection procedures and qualification criteria for board positions in detail, the introduction of certain minimum standards as regards the requirement for listed companies	(14) This Directive does not aim to harmonise national laws on the ***recruitment,*** selection ***and appointment*** procedures and qualification criteria for board positions in detail, ***but requires*** the listed companies ***and large public***

without balanced gender representation to ***take appointment decisions for non-executive directors on the basis of an objective comparative assessment of the qualifications of candidates in terms of suitability, competence and professional performance is necessary*** in order to attain gender balance among ***non-executives*** directors. ***Only*** an EU-level measure can effectively ***help to*** ensure a competitive level-playing field throughout the Union and avoid practical complications in business life.

undertakings without balanced gender representation to ***adjust their vacancy announcement, recruitment, selection and appointment procedures which has been shown to be necessary*** in order to attain gender balance among directors. An EU-level measure ***is the main tool to*** effectively ensure a competitive level-playing field throughout the Union and avoid practical complications in business life.

Amendment 15

Proposal for a directive
Recital 15

Text proposed by the Commission	*Amendment*
(15) The Europe 2020 Strategy for Smart, Sustainable and Inclusive Growth ascertained that increased female labour force participation is a precondition for boosting growth and for tackling demographic challenges in Europe. The Strategy set a headline target of reaching an employment rate of 75 per cent for women and men aged 20-64 by 2020, which can only be reached if there is a clear commitment to gender equality and a reinforced effort to tackle all barriers to women's participation in the labour market. The current economic crisis has magnified Europe's ever-growing need to rely on knowledge, competence and innovation and to make full use of the pool of available talent. Enhancing female participation in economic decision-making, on company boards ***in particular***, is expected to have a positive spill-over effect on female employment in the companies concerned and throughout the whole economy.	(15) The Europe 2020 Strategy for Smart, Sustainable and Inclusive Growth ascertained that increased female labour force participation is a precondition for boosting growth and for tackling demographic challenges in Europe. The Strategy set a headline target of reaching an employment rate of 75 per cent for women and men aged 20-64 by 2020, which can only be reached if there is a clear commitment to gender equality and a reinforced effort to tackle all barriers to women's participation in the labour market. The current economic crisis has magnified Europe's ever-growing need to rely on knowledge, competence and innovation and to make full use of the pool of available talent. Enhancing female participation in economic decision-making, on company boards ***and at all management levels throughout the company***, is expected to have a positive spill-over effect on female employment in the companies concerned and throughout

the whole economy.

Amendment 16

Proposal for a directive
Recital 16

Text proposed by the Commission	*Amendment*
(16) The Union should therefore aim to increase the presence of women on company boards, in order ***both*** to boost economic growth and the competitiveness of European companies and to achieve effective gender equality on the labour market. This aim should be pursued through minimum requirements on positive action in the form of binding measures aiming at attaining a quantitative objective for the gender composition of boards of listed companies, in the view of the fact that Member States and other countries which have chosen this or a similar method have achieved the best results in reducing the under-representation of women in economic decision-making positions.	The Union should therefore aim to increase the presence of women on company boards ***in all Member States***, in order to boost economic growth***, encourage labour market mobility*** and ***strengthen*** the competitiveness of European companies and to achieve effective gender equality on the labour market. This aim should be pursued through minimum requirements on positive action in the form of binding measures aiming at attaining a quantitative objective for the gender composition of boards of listed companies ***and large public undertakings***, in the view of the fact that Member States and other countries which have chosen this or a similar method have achieved the best results in reducing the under-representation of women in economic decision-making positions.

Amendment 17

Proposal for a directive
Recital 18

Text proposed by the Commission	*Amendment*
(18) This Directive should not apply to micro, small and medium-sized enterprises (SMEs), as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, even if they are listed companies**.**	(18) This Directive should not apply to micro, small and medium-sized enterprises (SMEs), as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, even if they are listed companies***, however Member states should put in place policies***

	to support and incentivise SMEs to significantly improve the gender balance at all levels of management and on company boards.

Amendment 18

Proposal for a directive
Recital 20

Text proposed by the Commission	*Amendment*
(20) All board systems distinguish between executive directors, who are involved in the daily management of the company, and non-executive directors who are not involved in the daily management, but do perform a supervisory function. The quantitative objectives provided for in this Directive should apply ***only to the non-executive*** directors ***in order to strike the right balance between the need to increase the gender diversity of boards and the need to minimise interference with the day-to-day management of a company. As the non-executive directors perform supervisory tasks, it is also easier to recruit qualified candidates from outside the company and to a large extent also from outside the specific sector in which a company operates – a consideration which is of importance for areas of the economy where members of a particular sex are especially under-represented in the workforce***.	(20) All board systems distinguish between executive directors, who are involved in the daily management of the company, and non-executive directors who are not involved in the daily management, but do perform a supervisory function. The quantitative objectives provided for in this Directive should apply ***to all*** directors.

Amendment 19

Proposal for a directive
Recital 21

Text proposed by the Commission	*Amendment*
(21) In several Member States, a certain	(21) In several Member States, a certain

proportion of the non-executive directors can or must be appointed or elected by the company's workforce and/or organisations of workers pursuant to national law or practice. The quantitative objectives provided for in this Directive should apply to all non-executive directors including employee representatives. However, the practical procedures for ensuring that those objectives are attained, taking into account the fact that some non-executive Directors are employee representatives, should be defined by the Member States concerned.

proportion of the non-executive directors can or must be appointed or elected by the company's workforce and/or organisations of workers pursuant to national law or practice. The quantitative objectives provided for in this Directive should apply to all non-executive directors including employee representatives. However, the practical procedures for ensuring that those objectives are attained, taking into account the fact that some non-executive Directors are employee representatives, should be defined by the Member States concerned ***on the basis of careful and extensive consultations with social partners at the national level***.

Amendment 20

Proposal for a directive
Recital 22

Text proposed by the Commission	*Amendment*
(22) Listed companies in the Union should be imposed obligations of means providing for appropriate procedures with a view of meeting specific objectives regarding the gender composition of their boards. Those listed companies in whose boards members of the under-represented sex hold less than 40 per cent of ***non-executive*** director positions should ***make the appointments to those positions on the basis of a comparative analysis of the qualifications of each candidate, by applying pre-established, clear, neutrally formulated and unambiguous criteria,*** in order to attain the said percentage at the latest by 1 January 2020. Therefore, the Directive establishes the objective of at least 40 per cent of ***non-executive*** directors of the under-represented sex by that date. This objective in principle only concerns the overall gender diversity among the ***non-executive*** directors and does not interfere	(22) Listed companies in the Union should be imposed obligations of means providing for appropriate procedures with a view of meeting specific objectives regarding the gender composition of their boards. Those listed companies ***and large public undertakings*** in whose boards members of the under-represented sex hold less than 40 per cent of director positions should ***adjust their recruitment, vacancy announcement, selection and appointment procedures*** in order to attain the said percentage at the latest by 1 January 2020. Therefore, the Directive establishes the objective of at least 40 per cent of directors of the under-represented sex by that date. This objective in principle only concerns the overall gender diversity among directors and does not interfere with the concrete choice of individual directors from a wide pool of male and female candidates in each individual case. In

with the concrete choice of individual directors from a wide pool of male and female candidates in each individual case. In particular, it does not exclude any particular candidates for director positions, nor does it impose any individual directors on companies or shareholders. The decision on the appropriate board members thus remains with the companies and shareholders.

	particular, it does not exclude any particular candidates for director positions, nor does it impose any individual directors on companies or shareholders. The decision on the appropriate board members thus remains with the companies and shareholders.

Amendment 21
Proposal for a directive
Recital 23

Text proposed by the Commission	*Amendment*
(23) Member States exercise a dominant influence over ***listed companies which are*** public undertakings within the meaning of Article 2(b) of Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings, as well as on financial transparency within certain undertakings.[32] Due to that dominant influence, they have the instruments at their disposal to bring about the necessary change more rapidly. Therefore, in such companies the objective of least 40 per cent of ***non-executive*** directors of the under-represented sex should be set at an earlier date.	(23) Member States exercise a dominant influence over ***large*** public undertakings within the meaning of Article 2(b) of Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings, as well as on financial transparency within certain undertakings.[32] Due to that dominant influence, they have the instruments at their disposal to bring about the necessary change more rapidly. Therefore, in such companies the objective of least 40 per cent of directors of the under-represented sex should be set at an earlier date.

Amendment 22
Proposal for a directive
Recital 24

Text proposed by the Commission	*Amendment*
(24) Determining the number of ***non-executive*** director positions necessary to meet the objective requires further	(24) Determining the number of director positions necessary to meet the objective requires further specification since for most

specification since for most board sizes it is mathematically possible only to go beyond or remain below the exact share of 40 per cent. Therefore, the number of board positions necessary to meet the objective should be the number closest to 40 per cent. At the same time, in order to avoid discrimination of the initially over-represented sex, listed companies should not be obliged to appoint members of the under-represented sex to ***half or more*** of the ***non-executive*** board positions. Thus, for example, members of the under-represented sex should hold at least one position on boards with three ***or four non-executive*** directors, at least two positions on boards with five or six ***non-executive*** directors, and at least three positions on boards with seven or eight ***non-executive*** directors.

board sizes it is mathematically possible only to go beyond or remain below the exact share of 40 per cent. Therefore, the number of board positions necessary to meet the objective should be the number closest to 40 per cent. At the same time, in order to avoid discrimination of the initially over-represented sex, listed companies ***and large public undertakings*** should not be obliged to appoint members of the under-represented sex to ***more than half*** of the board positions. Thus, for example, members of the under-represented sex should hold at least one position on boards with three directors, at least two positions on boards with ***four,*** five or six directors, and at least three positions on boards with seven or eight directors.

Amendment 23

Proposal for a directive
Recital 26

Text proposed by the Commission	*Amendment*
(26) In line with ***that case-law, Member States should ensure that the selection*** of the ***best qualified candidates for non-executive directors is based on a comparative analysis of the qualifications of each candidate on the basis of pre-established, clear, neutrally formulated and unambiguous criteria***. Examples of types of selection criteria that companies could apply include professional experience in managerial and/or supervisory tasks, knowledge in specific relevant areas such as finance, controlling or human resources management, leadership and communication skills and networking abilities. Priority should be given to the candidate of the under-represented sex if that candidate is equally	(26) In line with ***Article 23 of the Charter of Fundamental Rights*** of the ***European Union and where applicable related case-law, Member States should ensure transparency in their recruitment, vacancy announcement, selection and appointment procedures while respecting private life with regard to the processing of personal data, recognised by the Articles 7 and 8 of the Charter***. Examples of types of selection criteria that companies could apply include professional experience in managerial and/or supervisory tasks, knowledge in specific relevant areas such as finance, controlling or human resources management, leadership and communication skills and networking abilities. Priority should be

qualified as the candidate of the other ***sex in terms of suitability, competence and professional performance, and if an objective assessment taking account of all criteria specific to the individual candidates does not tilt the balance in favour of a candidate of the other sex***.

given to the candidate of the under-represented sex if that candidate is ***at least*** equally qualified as the candidate of the other***. Member States should ensure that companies that do not progress towards the Directive's key objective disclose additional information on their recruitment, selection and appointment policies, and in particular deliver concrete plans to improve gender balance on their boards***.

Amendment 24

Proposal for a directive
Recital 27

Text proposed by the Commission	*Amendment*
(27) The methods of recruiting and appointing directors differ from one Member State to another and from one company to another. They may involve the pre-selection of candidates to be presented to the shareholders' assembly, for example by a nomination committee, the direct appointment of directors by individual shareholders or a vote in the shareholders' assembly on individual candidates or lists of candidates. The requirements concerning the selection of candidates should be met at the appropriate stage of the selection process in accordance with national law and the articles of association of the listed companies concerned. In this respect, this Directive ***only establishes a minimum harmonisation*** of selection ***procedures, making it possible to apply the conditions provided for by the case-law of the Court of Justice*** with a view to attaining the objective of a more balanced gender representation in the boards of listed companies.	(27) The methods of recruiting and appointing directors differ from one Member State to another and from one company to another. They may involve the pre-selection of candidates to be presented to the shareholders' assembly, for example by a nomination committee, the direct appointment of directors by individual shareholders or a vote in the shareholders' assembly on individual candidates or lists of candidates. ***This legislative instrument therefore respects the diversity of selection procedures while insisting that adjustments to these procedures are made in order to attain the aim of increasing women's participation on boards is attained.*** The requirements concerning the selection of candidates should be met at the appropriate stage of the selection process in accordance with national law and the articles of association of the listed companies concerned. In this respect, this Directive ***allows for a diversity*** of selection ***procedure*** with a view to attaining the objective of a more balanced gender representation in the boards of listed

companies.

Amendment 25

Proposal for a directive
Recital 27 a (new)

Text proposed by the Commission	*Amendment*
	(27a) Where preselection of candidates is based on election or voting procedures, for example by workers or their representatives, the procedures throughout the whole process should be adjusted in order to contribute to the attainment of the objective of more gender balance on the board of directors as a whole, while ensuring that the sex of the director elected in this procedure is not in any way predetermined.

Amendment 26

Proposal for a directive
Recital 28

Text proposed by the Commission	*Amendment*
(28) This Directive aims to improve the gender balance among directors of companies listed on stock exchanges and thus to contribute to the realisation of the principle of equal treatment between men and women, recognised as a fundamental right of the Union. Listed companies should therefore be required to disclose, upon the request of an unsuccessful candidate, not only the qualification criteria upon which the selection was based, but also the objective comparative assessment of those criteria and, where relevant, the considerations tilting the balance in favour of a candidate who is not of the under-represented sex . These	(28) This Directive aims to improve the gender balance among directors of companies listed on stock exchanges and ***large public undertakings and*** thus to contribute to the realisation of the principle of equal treatment between men and women, recognised as a fundamental right of the Union. Listed companies ***and large public undertakings*** should therefore be required to disclose, upon the request of an unsuccessful candidate, not only the qualification criteria upon which the ***recruitment,*** selection ***or appointment*** was based, but also the objective comparative assessment of those criteria and, where relevant, the considerations tilting the

limitations to the right to respect for private life with regard to the processing of personal data, recognised by the Articles 7 and 8 of the Charter, and the obligation for listed companies to supply that information, upon request, to the unsuccessful candidate, are necessary and, in conformity with the principle of proportionality, genuinely meet recognised objectives of general interest. They are therefore in line with the requirements for such limitations laid down in Article 52(1) of the Charter and with the relevant case-law of the Court of Justice.

balance in favour of a candidate who is not of the under-represented sex. These limitations to the right to respect for private life with regard to the processing of personal data, recognised by the Articles 7 and 8 of the Charter, and the obligation for listed companies ***and large public undertakings*** to supply that information, upon request, to the unsuccessful candidate, are necessary and, in conformity with the principle of proportionality, genuinely meet recognised objectives of general interest. They are therefore in line with the requirements for such limitations laid down in Article 52(1) of the Charter and with the relevant case-law of the Court of Justice.

Amendment 27

Proposal for a directive
Recital 29

Text proposed by the Commission	*Amendment*
(29) Where an unsuccessful candidate of the under-represented sex establishes the presumption they were equally qualified as the appointed candidate of the other sex, the ***listed company*** should be required to demonstrate the correctness of the choice.	(29) Where an unsuccessful candidate of the under-represented sex establishes the presumption they were equally qualified as the appointed candidate of the other sex, the ***company or undertaking in question*** should be required to demonstrate the correctness of the choice.

Amendment 28

Proposal for a directive
Recital 30

Text proposed by the Commission	*Amendment*
(30) Member States should provide for effective, proportionate and dissuasive sanctions for breaches of this Directive, which could include, inter alia,	(30) Member States should provide for effective, proportionate and dissuasive sanctions for breaches of this Directive, which could include, inter alia,

administrative fines and nullity or annulment declared by a judicial body of the appointment or of the election of ***non-executive*** directors made contrary to the national provisions adopted pursuant to Article 4(1).	administrative fines and nullity or annulment declared by a judicial body of the appointment or of the election of directors made contrary to the national provisions adopted pursuant to Article 4(1) ***as well as forced dissolution, ordered by a competent judicial body in full respect of proper procedural safeguards, in cases of serious and repeated infringements***.

Amendment 29
Proposal for a directive
Recital 31

Text proposed by the Commission	*Amendment*
(31) Since the gender composition of the workforce has a direct impact on the availability of candidates of the under-represented sex, Member States may provide that where the members of the under-represented sex make up less than 10 per cent of the workforce the company concerned should not be required to meet the objective laid down in this Directive.	***deleted***

Amendment 30
Proposal for a directive
Recital 32

Text proposed by the Commission	*Amendment*
(32) Since ***listed companies*** should ***aim*** to increase the ***proportion of the under-represented sex in all decision-making positions,*** Member States may provide that the objective laid down in this Directive should be considered to be met where listed companies can show that ***members*** of the ***under-represented*** sex hold at least one third of all director positions***,*** ***irrespective of whether they are*** executive ***or non-executive***.	(32) Since ***the percentage of women among executive directors is even lower, an additional incentive*** should ***be created*** to increase the ***number of female executive directors.*** Member States may provide that the objective laid down in this Directive should be considered to be met where listed companies can show that ***directors*** of the ***underrepresented*** sex hold at least one third of all director positions ***under the condition that at least one of the*** executive ***directors is of the under-represented sex***.

Amendment 31
Proposal for a directive
Recital 33

Text proposed by the Commission	*Amendment*
(33) In addition to the ***measures*** relating to ***non-executive*** directors, and with a view ***also*** to improving the gender balance among directors involved in daily management tasks, listed companies should be required to make individual commitments regarding ***the*** representation of both sexes among executive directors, to be achieved at the latest by 1 January 2020. These commitments should aim to achieve tangible progress from the individual company's current position towards better gender balance.	(33) In addition to the ***incentives*** relating to ***executive*** directors, and with a view also to ***further*** improving the gender balance among directors involved in daily management tasks, listed companies should be required to make individual commitments regarding ***a more balanced*** representation of both sexes among executive directors, to be achieved at the latest by 1 January 2020***, and by 1 January 2018 in case of large public undertakings***. These commitments should aim to achieve tangible progress from the individual company's current position towards better gender balance.

Amendment 32

Proposal for a directive
Recital 34

Text proposed by the Commission	*Amendment*
(34) Member States should require listed companies to provide information on the gender composition of their boards as well as information on how they managed to meet the objectives laid down in this Directive, on a yearly basis to the competent national authorities in order to enable them to assess the progress of each listed company towards gender balance among directors. Such information should be published and, where the company in question has not met the objective, it should include a description of the measures that it has taken so far and intends to take in the future in order to	(34) Member States should require listed companies ***and large public undertakings*** to provide information on the gender composition of their boards as well as information on how they managed to meet the objectives laid down in this Directive, on a yearly basis to the competent national authorities in order to enable them to assess the progress of each listed company ***and large public undertaking*** towards gender balance among directors. Such information should be published ***in an appropriate and easily accessible manner in the annual report and on the website*** and, where the company in question has not met the

meet the objective.	objective, it should include a ***comprehensive*** description of the measures that it has taken so far and intends to take in the future in order to meet the objective.

Amendment 33

Proposal for a directive
Recital 35

Text proposed by the Commission	*Amendment*
(35) Member States may have already taken measures providing for means to ensure a more balanced representation of women and men in company boards before the entry into force of this Directive. Such Member States should have an opportunity to apply those measures in place of the procedural requirements relating to appointments where they can demonstrate that the measures taken are of equivalent efficacy in order to attain the objective of a presence of the under-represented sex of at least 40 per cent among ***non-executive*** directors of listed companies at the latest by 1 January 2020 or at the latest by 1 January 2018 in case of ***listed companies which are*** public undertakings.	(35) Member States may have already taken measures providing for means to ensure a more balanced representation of women and men in company boards before the entry into force of this Directive. Such Member States should have an opportunity to apply those measures in place of the procedural requirements relating to appointments where they can demonstrate that the measures taken are of equivalent efficacy in order to attain the objective of a presence of the under-represented sex of at least 40 per cent among directors of listed companies ***or the one third objective referred to in Article 4(1)* of this Directive*** at the latest by 1 January 2020 or at the latest by 1 January 2018 in case of ***large*** public undertakings. ***The Commission should evaluate whether enough progress has been made towards the objectives of this Directive. If progress is insufficient in a certain Member State, the provisions of this Directive will automatically come into force for that Member State;***

Amendment 34

Proposal for a directive
Recital 37

Text proposed by the Commission	*Amendment*
(37) While some Member States have taken regulatory action or encouraged self-regulation with mixed results, the majority of Member States have not taken action or indicated their willingness to act in a way that would bring about sufficient improvement. Projections based on a comprehensive analysis of all available information on past and current trends as well as intentions show that a balanced gender representation among ***non-executive*** board members across the Union in line with the objectives set out in this Directive will not be achieved by Member States acting individually at any point in the foreseeable future. In the light of those circumstances and given the growing discrepancies between Member States in terms of the representation of women and men on company boards, the gender balance on corporate boards across the Union can only be improved through a common approach, and the potential for gender equality, competitiveness and growth can be better achieved through coordinated action at Union level rather than through national initiatives of varying scope, ambition and effectiveness. Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effect of action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.	(37) While some Member States have taken regulatory action or encouraged self-regulation with mixed results, the majority of Member States have not taken action or indicated their willingness to act in a way that would bring about sufficient improvement. Projections based on a comprehensive analysis of all available information on past and current trends as well as intentions show that a balanced gender representation among board members across the Union in line with the objectives set out in this Directive will not be achieved by Member States acting individually at any point in the foreseeable future. In the light of those circumstances and given the growing discrepancies between Member States in terms of the representation of women and men on company boards, the gender balance on corporate boards across the Union can only be improved through a common approach, and the potential for gender equality, competitiveness and growth can be better achieved through coordinated action at Union level rather than through national initiatives of varying scope, ambition and effectiveness. Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effect of action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

Amendment 35

Proposal for a directive
Recital 38

Text proposed by the Commission	*Amendment*
(38) In accordance with the principle of proportionality, as set out in that same Article, this Directive is limited to setting common objectives and principles and does not go beyond what is necessary in order to achieve those objectives. Member States are given sufficient freedom to determine how the objectives laid down in this Directive should best be achieved taking national circumstances into account, in particular rules and practices concerning recruitment for board positions. This Directive does not interfere with the possibility for companies to appoint the most qualified board members, and it grants a sufficiently long period of adaptation for all listed companies.	(38) In accordance with the principle of proportionality, as set out in that same Article, this Directive is limited to setting common objectives and principles and does not go beyond what is necessary in order to achieve those objectives. Member States are given sufficient freedom to determine how the objectives laid down in this Directive should best be achieved taking national circumstances into account, in particular rules and practices concerning recruitment for board positions. This Directive does not interfere with the possibility for companies to appoint the most qualified board members, and it grants a sufficiently long period of adaptation for all listed companies ***and large public undertakings***.

Amendment 36

Proposal for a directive
Article 1

Text proposed by the Commission	*Amendment*
This Directive lays down measures to ensure a more balanced representation of men and women among the ***non-executive*** directors of listed companies by establishing measures aimed at accelerated progress towards gender balance while allowing companies sufficient time to make the necessary arrangements.	This Directive lays down measures to ensure a more balanced representation of men and women among the directors of listed companies ***and large public undertakings*** by establishing measures aimed at accelerated progress towards gender balance while allowing companies sufficient time to make the necessary arrangements.

Amendment 37

Proposal for a directive
Article 2 – point 1

Text proposed by the Commission	*Amendment*
(1) 'listed company' means a company ***incorporated*** in a Member State whose securities are admitted to trading on a regulated market within the meaning of Article 4(1) (14) of Directive 2004/39/EC, in one or more Member States;	(1) 'listed company' means a company ***situated*** in a Member State whose securities are admitted to trading on a regulated market within the meaning of Article 4(1) (14) of Directive 2004/39/EC, in one or more Member States;

Amendment 38

Proposal for a directive
Article 3

Text proposed by the Commission	*Amendment*
This Directive shall not apply to small and medium-sized enterprises ('SMEs').	This Directive shall not apply to small and medium-sized ***and micro*** enterprises ('SMEs')***, however Member states should put in place policies to support and incentivise SMEs to significantly improve the gender balance at all levels of management and on company boards.***

Amendment 39
Proposal for a directive
Article 4 – title

Text proposed by the Commission	*Amendment*
Objectives with regard to ***non-executive*** directors	Objectives with regard to directors

Amendment 40

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall ensure that listed companies in whose boards members of	1. Member States shall ensure that listed companies ***and large public undertakings***

the under-represented sex hold less than 40 per cent of the ***non-executive*** director positions ***make the appointments to those positions on the basis of a comparative analysis of the qualifications of each candidate, by applying pre-established, clear, neutrally formulated and unambiguous criteria, in order to attain*** the said percentage at the latest by 1 January 2020 or at the latest by 1 January 2018 in case of listed companies which are public undertakings.	in whose boards members of the under-represented sex hold less than 40 per cent of the director positions ***adjust their recruitment, including vacancy announcements, pre-selection, selection, or appointment procedures for all director positions, with the objective of attaining*** the said percentage at the latest by 1 January 2020 or at the latest by 1 January 2018 in case of listed companies which are public undertakings. ***Member States shall ensure that listed companies make the adjustments at the appropriate stages of the recruitment, pre-selection, selection or appointment process. In particular, Member States shall ensure that companies select candidates for a board position from a gender balanced selection pool.*** ***To the extent that the selection procedure takes place on the basis of a comparative analysis of the qualifications of each candidate, Member States shall ensure that such adjustments include the application of pre-established, clear, neutrally formulated and unambiguous criteria.***

Amendment 41

Proposal for a directive
Article 4 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	1a. Member States may provide that the objective, laid down in this paragraph, is met where listed companies and large public undertakings can show that members of the under-represented sex hold at least one third of all director positions, provided that they are represented among both types of directors – executive and non-executive. The

number necessary for meeting this one third objective shall be the number closest to the proportion of one third.

Amendment 42

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The number of ***non-executive*** director positions necessary to meet the objective laid down in paragraph 1 shall be ***the number closest to the proportion of 40 per cent, but not exceeding 49*** per cent.	2. The number of director positions necessary to meet the objective laid down in paragraph 1 shall be ***at least 40*** per cent.

Amendment 43

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission	*Amendment*
3. In order to attain the objective laid down in paragraph 1, Member States shall ensure that, in the selection of ***non-executive*** directors, priority shall be given to the candidate of the under-represented sex ***if that candidate is equally qualified as a*** candidate of the other sex ***in terms of suitability, competence and professional performance, unless an objective assessment taking account of all criteria specific to the individual candidates tilts the balance in favour of the*** candidate of the other sex.	3. In order to attain the objective laid down in paragraph 1, ***and in accordance with Article 23(2) of the Charter of Fundamental Rights of the European Union,*** Member States shall ensure that, in the ***recruitment,*** selection ***and appointment*** of directors, priority shall be given to the ***competent*** candidate of the under-represented sex***, unless an objective assessment taking account of all criteria tilts the balance in favour of the*** candidate of the other sex***. To this end, the selection criteria must above all be clear, transparent and non-discriminatory.*** ***In the case of a competence-based selection procedure, priority shall be given to the candidate of the under-represented sex in cases where that candidate is at least equally qualified as a***

candidate of the other sex ***in terms of suitability, competence or professional performance***.

Amendment 44
Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission	*Amendment*
4. Member States shall ensure that listed companies are obliged to disclose***, on the request of an unsuccessful candidate***, the qualification criteria upon which the selection was based, the objective comparative assessment of those criteria and, where relevant, the considerations tilting the balance in favour of a candidate of the other sex.	4. Member States shall ensure that listed companies ***and large public undertakings*** are obliged to disclose ***to an unsuccessful candidate, the number and gender of the candidates in the selection pool while respecting their anonymity in accordance with EU law on data protection***, the qualification criteria upon which the ***recruitment,*** selection ***or appointment*** was based, the objective comparative assessment of those criteria and, where relevant, the considerations tilting the balance in favour of a candidate of the other sex.

Amendment 45
Proposal for a directive
Article 4 – paragraph 4 a (new)

Text proposed by the Commission	*Amendment*
	4 a. Member States shall ensure that the requirements concerning the selection of candidates should be met at the appropriate stage of the selection process in accordance with national law and the articles of association of the listed companies concerned.

Amendment 46

Proposal for a directive

Article 4 – paragraph 5

Text proposed by the Commission	*Amendment*
5. Member States shall take the necessary measures, in accordance with their national judicial systems, to ensure that where an unsuccessful candidate of the under-represented sex establishes facts from which it may be presumed that that candidate was equally qualified as the appointed candidate of the other sex, it shall be for the listed company to prove that there has been no breach of the rule laid down in paragraph 3.	5. Member States shall take the necessary measures, in accordance with their national judicial systems, to ensure that ***listed companies and large public undertakings are able to demonstrate that their appointment process has been carried out in compliance with the rule laid down in paragraph 3, particularly in cases*** where an unsuccessful candidate of the under-represented sex establishes facts from which it may be presumed that that candidate was equally qualified as the appointed candidate of the other sex, it shall be for the listed company ***or large public undertaking*** to prove that there has been no breach of the rule laid down in paragraph 3.

Amendment 47
Proposal for a directive
Article 4 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Member States may provide that listed companies where the members of the under-represented sex represent less than 10 per cent of the workforce are not subject to the objective laid down in paragraph 1.	***deleted***

Amendment 48

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall ensure that listed companies undertake individual commitments regarding gender-balanced	1. Member States shall ensure that listed companies undertake ***further*** individual commitments regarding gender-balanced

representation of both sexes among executive directors to be achieved at the latest by 1 January 2020, or, in case of ***listed companies which are*** public undertakings, by 1 January 2018.

representation of both sexes among executive directors, ***in accordance with the procedures described in Article 4***.

The aim of such commitments shall be to make tangible progress towards achieving better gender balance to be achieved at the latest by 1 January 2020, or, in case of ***large*** public undertakings, by 1 January 2018***.***

Amendment 49

Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Member States shall require listed companies to provide information to the competent national authorities***,*** once a year as from [two years after adoption], about the gender representation on their boards, distinguishing between non-executive and executive directors and about the measures taken in view of the objectives laid down in Article 4(1) and in paragraph 1 of this Article, and to publish that information in an appropriate and accessible manner on their website.	2. Member States shall require listed companies ***and large public undertakings*** to provide information to the competent national authorities once a year***, where applicable in their annual reports,*** as from [two years after adoption], about the gender representation on their boards, distinguishing between non-executive and executive directors and about the ***progress made and the*** measures taken in view of the objectives laid down in Article 4(1) and in paragraph 1 of this Article, and ***where applicable, about the gender of all appointed directors during the reference period, and*** to publish that information in an appropriate***, easily*** and accessible manner on their website.

Amendment 50

Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Where a listed company does not meet the objectives laid down in Article 4(1) or its own individual commitments taken pursuant to paragraph 1 of this Article, the information referred to in paragraph 2 of this Article shall include the reasons for not reaching the objectives or commitments and a description of the measures which the company has adopted or intends to adopt in order to meet the objectives or commitments.	3. Where a listed company ***or a large public undertaking*** does not meet the objectives laid down in Article 4(1) or its own individual commitments taken pursuant to paragraph 1 of this Article, the information referred to in paragraph 2 of this Article shall include the reasons for not reaching the objectives or commitments and a ***comprehensive*** description of the measures which the company has adopted or intends to adopt in order to meet the objectives or commitments.

Amendment 51

Proposal for a directive
Article 5 – paragraph 4

Text proposed by the Commission	*Amendment*
4. Member States shall take the necessary measures to ensure that the body or bodies designated in accordance with Article 20 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) are also competent for the promotion, analysis, monitoring and support of gender balance on the boards of listed companies.	***deleted***

Justification

The deletion of this part is not meant as a deletion of the text, but as a restructuring of the directive. This part is placed now as a separate article 8 (a) new. This is done in order to extend the competence of the equality body.

Amendment 52

Proposal for a directive
Article 6 – paragraph 2 – introductory part

Text proposed by the Commission	*Amendment*
2. The sanctions must be effective, proportionate and dissuasive and may include the following measures:	2. The sanctions must be effective, proportionate***, progressive*** and dissuasive and may include the following measures:

Amendment 53

Proposal for a directive
Article 6 – paragraph 2 – point a

Text proposed by the Commission	*Amendment*
(a) administrative fines;	(a) ***early warning followed by progressive*** administrative fines;

Amendment 54

Proposal for a directive
Article 6 – paragraph 2 – point b a (new)

Text proposed by the Commission	*Amendment*
	(ba) forced dissolution, ordered by a competent judicial body in full respect of proper procedural safeguards, in cases of serious and repeated infringements.

Justification

It should be made clear that a wide range of options are open to Member States when it comes to establishing a credible sanctions regime at the national level.

Amendment 55
Proposal for a directive
Article 6 – paragraph 2 c (new)

Text proposed by the Commission	*Amendment*
	2 c. Member States shall report on the sanctions that are in place to comply with the provisions of this Directive.

Amendment 56

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission	*Amendment*
Member States ***may*** introduce or maintain provisions which are more favourable than those laid down in this Directive to ensure a more balanced representation of men and women in respect of companies incorporated in their national territory, provided those provisions ***do not create unjustified discrimination, nor hinder the proper functioning of the internal market***.	Member States ***are encouraged to*** introduce or maintain provisions which are more favourable than those laid down in this Directive ***with a view to achieve the aim of Article 23 of the Charter of Fundamental Rights of the European Union and*** to ensure a more balanced representation of men and women in respect of companies incorporated in their national territory***,*** provided those provisions ***are geared towards the aim of this Directive and do not go beyond what is necessary to achieve this aim or do not create unjustified discrimination.***

Amendment 57

Proposal for a directive
Article 8 – paragraph 3 – subparagraph 1

Text proposed by the Commission	*Amendment*
Without prejudice to Article 4(6) ***and (7)***, Member States which before the entry into force of this Directive have already taken measures to ensure a more balanced representation of women and men among the ***non-executive*** directors of listed companies may suspend the application of the procedural requirements relating to	Without prejudice to Article 4(6), Member States which before the entry into force of this Directive have already taken measures to ensure a more balanced representation of women and men among the non-executive directors of listed companies ***and large public undertakings or Member States where other e.g. self-regulatory measures***

appointments contained in Article 4(1), (3), (4) and (5), provided that ***it can be shown*** that those measures enable members of the under-represented sex to hold at least 40 per cent of the ***non-executive*** director positions of listed companies by at the latest 1 January 2020, or at the latest 1 January 2018 for ***listed companies which are*** public undertakings.	***aiming to ensure a more balanced representation of women and men among the non-executive directors of listed companies and large public undertakings exist*** may suspend the application of the procedural requirements relating to appointments contained in Article 4(1), (3), (4) and (5) ***and the application of Article 5(1)***, provided that ***an assessment by the European Commission indicates*** that those measures enable members of the under-represented sex to hold ***either*** at least 40 per cent of the non-executive director positions of listed companies ***or the one-third objective referred to in Article 4(7)*** by at the latest 1 January 2020, or at the latest 1 January 2018 for public undertakings. ***The Member State in question shall notify this information to the Commission.***

Justification

Also self-regulatory measures (e.g. corporate governance codes) that have proven efficient should justify the suspension of the procedural requirements.

Amendment 58

Proposal for a directive
Article 8 a (new)

Text proposed by the Commission	*Amendment*
	Article 8a
	Equality body
	Member States shall take the necessary measures to ensure that the body or bodies designated in accordance with Article 20 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)[1] are also competent for the

promotion, analysis, monitoring and support of gender balance on the boards of listed companies.

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[1] OJ L 204, 26.7.2006, p. 23.

Amendment 59

Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall communicate to the Commission by 1 January 2017 at the latest and every two years thereafter a report on the implementation of this Directive. These reports shall include, amongst others, comprehensive information about the measures taken with a view to attaining the objectives laid down in Article 4(1), information provided in accordance with Article 5(2) and information about individual commitments taken by listed companies pursuant to Article 5(1).	1. Member States shall communicate to the Commission by 1 January 2017 at the latest and every two years thereafter a report on the implementation of this Directive. These reports shall include, amongst others, comprehensive information about the measures taken with a view to attaining the objectives laid down in Article 4(1), information provided in accordance with Article 5(2) and information about individual commitments taken by listed companies ***and large public undertakings*** pursuant to Article 5(1).

Amendment 60

Proposal for a directive
Article 9 – paragraph 2 – subparagraph 1

Text proposed by the Commission	*Amendment*
Member States having suspended pursuant to Article 8(3) the application of the procedural requirements relating to appointments contained in Article 4(1), (3), (4) and (5) shall include information in the reports mentioned in paragraph 1 demonstrating the concrete results obtained by the national measures referred to in Article 8(3). The Commission shall then	Member States having suspended pursuant to Article 8(3) the application of the procedural requirements relating to appointments contained in Article 4(1), (3), (4) and (5) shall include information in the reports mentioned in paragraph 1 demonstrating the concrete results obtained by the national measures referred to in Article 8(3). The Commission shall then

issue a specific report ascertaining whether those measures effectively enable members of the under-represented sex to hold at least 40 per cent of the non-executive director positions by 1 January 2018 for ***listed companies which are*** public undertakings, and by 1 January 2020 for listed companies ***which are not public undertakings***. The first such report shall be ***issued*** by the Commission by 1 July 2017, and subsequent reports shall be ***issued*** within six months after notification of the respective national reports under paragraph 1.

publish a specific report ascertaining whether those measures effectively enable members of the under-represented sex to hold at least 40 per cent of the non-executive director positions by 1 January 2018 for ***large*** public undertakings, and by 1 January 2020 for listed companies. The first such report shall be ***published*** by the Commission by 1 July 2017, and subsequent reports shall be ***published*** within six months after notification of the respective national reports under paragraph 1.

Amendment 61

Proposal for a directive
Article 9 – paragraph 2 – subparagraph 2

Text proposed by the Commission	*Amendment*
Member States in question shall ensure that listed companies, which by applying the national measures referred to in Article 8(3) have not appointed or elected members of the under-represented sex for at least 40 per cent of the ***non-executive*** director positions of their boards by 1 January 2018, where they are public undertakings, or by 1 January 2020, where they are not public undertakings, apply the procedural requirements relating to appointments contained in Article 4(1), (3), (4) and (5) with effect respectively from those dates.	Member States in question shall ensure that listed companies ***and large public undertakings***, which by applying the national measures referred to in Article 8(3) have not appointed or elected members of the under-represented sex for at least 40 per cent of the director positions of their boards by 1 January 2018, where they are public undertakings, or by 1 January 2020, where they are not public undertakings, apply the procedural requirements relating to ***recruitment, selection and*** appointments contained in Article 4(1), (3), (4) and (5) with effect respectively from those dates.

Amendment 62

Proposal for a directive
Article 9 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The Commission shall review the application of this Directive and report to the European Parliament and the Council by 31 December 2021 at the latest and every two years thereafter. The Commission shall evaluate in particular whether the objectives of this Directive have been achieved.	3. The Commission shall review the application of this Directive and report to the European Parliament and the Council by 31 December 2021 at the latest and every two years thereafter. The Commission***, after consulting the European Parliament, the Council and the European Social Partners,*** shall evaluate in particular whether the objectives of this Directive have been achieved.

Amendment 63

Proposal for a directive
Article 9 – paragraph 4

Text proposed by the Commission	*Amendment*
4. In its report, the Commission shall assess whether, in the light of developments in the representation of men and women in the boards of listed companies and at different levels of decision-making throughout the economy and taking into account whether the progress made is sufficiently sustainable, there is a need to extend the duration of this Directive beyond the date specified in Article 10(2) or to amend it.	***deleted***

PROCEDURE

Title	Gender balance among non-executive directors of companies listed on stock exchanges
References	COM(2012)0614 – C7-0382/2012 – 2012/0299(COD)
Committees responsible Date announced in plenary	JURI FEMM 22.11.2012 22.11.2012
Opinion by Date announced in plenary	EMPL 22.11.2012
Rapporteur Date appointed	Marije Cornelissen 12.12.2012
Rule 51 – joint committee meetings Date announced in plenary	 17.1.2013
Discussed in committee	23.4.2013 19.6.2013 8.7.2013
Date adopted	9.7.2013
Result of final vote	+: 37 –: 5 0: 4
Members present for the final vote	Regina Bastos, Edit Bauer, Heinz K. Becker, Jean-Luc Bennahmias, Phil Bennion, Pervenche Berès, Vilija Blinkevičiūtė, Milan Cabrnoch, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Minodora Cliveti, Marije Cornelissen, Emer Costello, Andrea Cozzolino, Frédéric Daerden, Karima Delli, Sari Essayah, Richard Falbr, Marian Harkin, Nadja Hirsch, Stephen Hughes, Danuta Jazłowiecka, Ádám Kósa, Jean Lambert, Patrick Le Hyaric, Olle Ludvigsson, Thomas Mann, Elisabeth Morin-Chartier, Csaba Őry, Siiri Oviir, Konstantinos Poupakis, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Ruža Tomašić, Traian Ungureanu, Inês Cristina Zuber
Substitute(s) present for the final vote	Roberta Angelilli, Jan Kozłowski, Ria Oomen-Ruijten, Gabriele Zimmer
Substitute(s) under Rule 187(2) present for the final vote	Anneli Jäätteenmäki, Jacek Włosowicz