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*Committee on Legal Affairs
Committee on Women's Rights and Gender Equality*

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WORKING DOCUMENT

on the proposal on a Directive of the EP and of the Council on improving gender balance among non-executive directors of companies listed on stock exchanges and related measures

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

Rapporteurs: Evelyn Regner, Rodi Kratsa-Tsagaropoulou (Joint Committee meetings - Rule 51 of the Rules of Procedure)

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United in diversity

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A. The problem

- In 2012, only 13, 7 % of directors in corporate boards were female in the EU-average.
- In Member States where no binding measures have been taken, companies are still far from reaching acceptable gender balance (UK is a specific case)
- The different examples in different Member States such as France, Italy or Belgium seem to prove that the only way to properly increase the percentage of women on boards is via binding and enforceable measures.

B. The Commission's proposal

I. Main points

The co-rapporteurs welcome the proposal for a Directive as a follow-up to Parliament's resolution "Women and Business Leadership" adopted in 2011 and as a response to the persisting inequalities in companies top-positions.

The co-rapporteurs take note of the proposed Directive as it establishes a clear common strategy for all Member States in order to reach a common target: 40% of the under-represented sex in non-executive board-member positions in publicly listed large companies. It conveys a clear message obliging Member States to take adequate procedures in order to promote gender-balance on boards of all listed companies.

If the objective of 40% is not reached by 2018 for companies fully or partly owned by the State and by 2020 for private listed companies, Member States are required to ensure that companies pursue their efforts beyond that date, in order to efficiently guarantee that the objective of enhanced gender-balance is met. It is worth noting that the Directive offers a flexible framework as it allows Member States to take national specificities into consideration while transposing it.

Furthermore, since differing regulation at national level might create problems in the functioning of the internal market, the co-rapporteurs underline the added value of adopting a Directive in order to remove all possible barriers, as companies operating across borders should not be confronted with divergent corporate governance requirements on gender balance among non-executive directors of listed companies.

Consequently, such a proposal will contribute to enhanced social justice, transparency and meritocracy in the labour market, as well as to economic growth by fully utilising all available resources, skills and strengths so that EU human potential is effectively taken advantage of.

Legal basis: The co-rapporteurs believe that Article 157(3) TFEU is the legal basis for binding measures aimed at ensuring the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

II. Specific issues

1. Scope of the directive (Article 1, Article 2(8), Article 3 and Article 4(6))

- Exclusion of executive boards

- Exclusion of SMEs
- Exclusion of single gender dominated sectors

2. Binding nature of the directive (Articles 4 and 5)

- Binding on the procedure vs. binding on the result
- Clarification of the provisions on the obligations of the listed companies

3. Effective Sanctions mechanism (Article 6)

- Clear, deterring list of sanctions
- Discretion of the Member States

C. Questions for discussion and possible amendments

The co-rapporteurs have identified a number of questions for discussion and have equally suggested possible amendments aimed at resolving these issues.

Question 1: How could the effectiveness of the proposal be enhanced by adapting its scope?

The co-rapporteurs reflect on several possibilities to enlarge the scope of the directive in order to increase its effectiveness and impact, such as inclusion of SMEs:

Amendment 1

Article 2 – point 8

supported by Rodi Kratsa-Tsagaropoulou and Evelyn Regner

Text proposed by the Commission

Amendment

8. ‘small and medium-sized enterprise’ or ‘SME’ means a company which employs less than 250 persons and has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, or, for an SME which is incorporated in a Member State whose currency is not the euro, the equivalent amounts in the currency of that Member State; *delete*

Amendment 2

Article 3

supported by by Rodi Kratsa-Tsagaropoulou and Evelyn Regner

Text proposed by the Commission

Amendment

This Directive shall not apply to small and medium-sized enterprises ('SMEs'). *delete*

Justification

The co-rapporteurs recognize the importance of small and medium-sized enterprises as the innovative backbone of the industry in Europe. Therefore, they should be in a vanguard position in the effort for gender equality and should thus be included in the directive. All listed companies should comply with the objective set by the Directive, given their economic importance and economic and social responsibilities.

Question 2: How could Article 4 on the binding aspects of the directive be clarified and reinforced?

a) Article 4(1)

As it stands, Article 4 aims to strengthen the procedure to reach the given thresholds, but does not impose them. For the time being, the co-rapporteurs have different approaches on whether or not this should suffice. Possibilities to amend the Directive in this respect (Article 4 or recital 33) might be the following:

Amendment 3

Article 4 – paragraph 1 supported by Evelyn Regner

Text proposed by the Commission

1. Member States shall ensure that listed companies in whose boards members of 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.***

Amendment 4

Recital 33 supported by Rodi Kratsa-Tsagaropoulou

Text proposed by the Commission

(33) In addition to the measures relating to

Amendment

1. Member States shall ensure that listed companies in whose boards members of the under-represented sex hold less than 40 per cent of the non-executive director positions ***adjust their recruitment, selection and appointment procedures and achieve at least 40 per cent at the latest by 1 January 2020 or at the latest by 1 January 2018 in case of listed companies which are public undertakings. The procedure shall be based on*** a comparative analysis of the qualifications of each candidate, by applying pre-established, clear, neutrally formulated and unambiguous criteria.

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.

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 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. ***The Member States are required to ensure that companies pursue their efforts until the objective of 40% is met. To this end, the Directives provides for guarantees in order to efficiently meet the objective of enhanced gender-balance.***

2. Article 4(2)

The co-rapporteurs believe that Article 4(2) should be reinforced. A provision, which would accept representation quota below 40%, would undermine the achievement of the aim of gender equality. Possibilities to reword Article 4 (2) might be the following:

Amendment 5

Article 4 – paragraph 2 supported by Evelyn Regner

Text proposed by the Commission

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.***

Amendment 6

Article 4 – paragraph 2 supported by Rodi Kratsa-Tsagaropoulou

Text proposed by the Commission

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.

Amendment

2. The number of non-executive director positions necessary to meet the objective laid down in paragraph 1 shall be ***at least 40*** per cent.

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 **50** per cent.

3. Article 4(3)

The last sub-sentence is redundant as the preceding wording already includes an objective qualification of the qualification of the candidates.

Amendment 7

Article 4 – paragraph 3

supported by Rodi Kratsa-Tsagaropoulou and Evelyn Regner

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, 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.

4. Article 4(6)

Exempting branches just because they are dominated by one gender would consolidate such one-sided gender domination.

Amendment 8

Article 4 – paragraph 6

by Rodi Kratsa-Tsagaropoulou and Evelyn Regner

Text proposed by the Commission

Amendment

6. Member States may provide that listed companies where the members of the underrepresented sex represent less than 10 per cent of the workforce are not subject to the objective laid down in paragraph 1. ***deleted***

Justification

All companies must comply with the obligation of enhancing gender-balance and therefore, no exemption should be foreseen. Particularly, the Directive offers to all companies flexibility in adopting adequate procedures, fitting the needs of their sector. Finally, non-executive directors usually perform supervisory tasks and give input on general management tasks which are not directly linked to sectoral issues.

Question 3: How could the sanctions provisions be improved?

The co-rapporteurs invite discussion as to whether there should be a closed list or open list of sanctions and what discretion should Member States have concerning the enforcement on the basis of the following proposals for amendments.

Amendment 9

Article 6 – paragraph 2

supported by Rodi Kratsa-Tsagaropoulou and Evelyn Regner

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 and dissuasive and ***shall at least*** include the following measures:

Amendment 10

Article 6 – paragraph 2 – point b a (new)

supported by Rodi Kratsa-Tsagaropoulou and Evelyn Regner

Text proposed by the Commission

Amendment

b a. the exclusion of the listed company from public tender procedures.

Justification

Given the economic and social responsibility of Member States, regional and local authorities, enhanced transparency of public undertakings is essential. Therefore, listed companies that do not comply with the obligations laid down by the Directive shall be excluded from tenders in public procurement serving general economic interests.