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Committee on Economic and Monetary Affairs

2012/0299(COD)

10.4.2013

DRAFT OPINION

of the Committee on Economic and Monetary 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: Olle Schmidt

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SHORT JUSTIFICATION

The objective of the EU gender equality policy – to create equal access for both men and women to positions of power and influence – is a vital challenge for the Union. The Rapporteur agrees that bold legislative action is needed from the EU in order to reach this goal.

The Rapporteur therefore fully supports the Commission's objectives with the Directive on improving gender balance on the corporate boards of listed companies. However, the proposal does not go far enough, both in terms of scope and measures.

Companies in the financial sector have a higher proportion of women on their boards compared to other sectors in the EU. However, a third of the company boards in the sector completely lack female representation.

The Rapporteur supports the choice of focusing on publicly listed companies. However, the possibility of extending the scope to non-listed companies above SME threshold should be reviewed by the Commission two years after the implementation of this Directive.

Extended scope: the EU institutions and the ECB

The Rapporteur believes that the Directive should be extended to cover the EU institutions and agencies, including the European Central Bank (ECB). The complete lack of female representation in the ECB's Executive Board, Governing Council and General Council is deeply problematic and confirms the systematic failure in the appointment procedure for top management positions within the Union. Member States have a responsibility to promote women to these top level positions.

The EU institutions must lead by example in terms of gender balance rather than confirm the stereotype of a lack thereof, both in order to set standards for the private sector, and to improve the legitimacy of the EU. The principles of this Directive should therefore be incorporated in the rules governing the internal staffing procedures of the EU institutions.

The way forward: the "comply or explain" model

The Rapporteur disagrees with the Commission's proposed binding gender target, as it is vital to avoid interfering in shareholders' ownership rights and their freedom to choose representatives on the company board. Furthermore, the Rapporteur strongly doubts the Commission's expected "spill-over effects" from increased female representation among non-executive directors to executive and senior management positions.

The lack of supporting empirical research as well as the Norwegian experience of mandatory quotas among board directors exposes the fallacy of this line of reasoning. Firm quotas do not fundamentally change the gender imbalance situation.

Instead, the Rapporteur would like to underline the importance of directing attention to increasing the number of women at all management levels, in order to achieve a better gender representation at a later stage at executive and board positions, the "bottom-up approach".

The Rapporteur would thus like to propose a form of "comply or explain" model similar to Danish legislation whereby companies are required to set individual targets for their gender balance among both executive and non-executive directors, as well as at all management levels in the company, whilst taking into account branch and company-specific characteristics. Moreover, companies should be obliged to develop a gender policy in order to encourage active measures in favour of improving the gender balance in the company.

Companies should disclose publicly their compliance with the requirements: the gender balance status on boards and at management levels, its relation to the specified gender balance targets, the gender policy, and the measures taken or intended to take in order to reach the targets. This information shall be reported on in the Annual report and on the web-site of the companies covered by the Directive.

Merely adding a few female non-executive directors in the concerned companies is not going far enough. The "comply or explain" model however, ensures that shareholders and executives of the concerned companies reflect on the internal company policy and culture, which will to a greater extent eliminate the obstacles that women face when climbing the corporate ladder.

Companies not complying with the procedures of setting up individual target figures and a gender policy should be subject to sanctions in the form of administrative fines. However, no company should be fined for not reaching the individually set gender targets as this could discourage ambitious targets.

Increased transparency for board recruitment

The Rapporteur welcomes the Commission's initiative to encourage a formalised and more transparent appointment of corporate board directors. However, the reversed burden of proof whereby companies must prove their correct choice when faced with complaints from unsuccessful candidates is not proportionate. The potential complainants should be sufficiently protected by the company's obligation to submit the criteria on which the selection was made and by the applicable anti-discrimination laws.

Finally, the transparency of companies' gender policies vis-à-vis investors, potential job applicants and the general public is increased through the "comply or explain model" due to the gender balance reporting requirements proposed by the Rapporteur.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Women's Rights and Gender Equality, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6 a) The EU institutions and agencies should lead by example by improving gender balance. The principles laid down in this Directive should be incorporated into the rules governing the internal staffing procedures of the European Commission, the European Parliament, and all EU-institutions and agencies, including the European Central Bank. More efficient gender policies must be developed in all EU institutions to impact on recruitment to, training in, and the everyday functioning of the different EU institutions. For that purpose the institutions shall ensure that gender balance is achieved in the recruitment of senior management, including Director-Generals, Directors and Heads of Unit.

Or. en

Amendment 2
Proposal for a directive
Recital 6 b (new)

Text proposed by the Commission

Amendment

(6 b) It is essential that the management of the Commission, the EU's executive body, improves its gender balance to represent better the European citizens. Member States are therefore called upon to nominate both male and female candidates for each position in the college of the Commissioners in order to achieve a gender balance in the Commission college.

Or. en

Amendment 3
Proposal for a directive
Recital 6 c (new)

Text proposed by the Commission

Amendment

(6 c) The European Central bank (ECB), the European System of Financial Supervision (ESFS) – including the European Systemic Risk Board (ESRB) – and the European Supervisory Authorities (ESAs) should comply with all aspects of equality and non-discrimination on the basis of gender. The Boards of Supervisors of the ESAs should also be encouraged to present a gender-balanced list of candidates for the positions of Chairmen and Executive Directors at the relevant hearing in the European Parliament. The final selection of these positions should be gender balanced. It is also important that the Steering Committee and Advisory Committees of the ESRB are gender balanced.

Or. en

Amendment 4
Proposal for a directive
Recital 6 d (new)

Text proposed by the Commission

Amendment

(6 d) The supervisory board of the European Central Bank (ECB), including the roles of Chair and Vice Chair, should be balanced from a gender perspective. Whenever a vacancy arises on ECB Executive Board those Member States that have adopted the euro as a currency should be encouraged to nominate two candidates, a male and a female, for the vacant position. The Member States should also be encouraged to appoint women as governors of the national central banks (NCBs) in order to achieve

a gender balance in the Governing Council and the General Council of the ECB and on the General Board of the ESRB.

Or. en

Amendment 5
Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7 a) The attainment of gender equality in society as a whole entails the establishment of equal academic and professional rights for men and women, as well as of shared family, child-care and household responsibilities. That women are typically responsible for the large majority of family and household chores may hinder their advancement to top professional positions. Active participation and involvement of men in family responsibilities is crucial for the attainment of a work-life balance and for the creation of equal career opportunities for both men and women. Attention should be paid to tackling gender stereotypes, inflexible and out-dated employment policies and inadequate parental-leave provisions. Provisions should be in place for women and men to combine family and work life should they wish. Member States are encouraged to ensure the implementation of welfare elements such as particular modern and fair parental-leave allowances for both women and men, extensive provisions for child- and elderly-care and opportunities for shared parental leave.

Or. en

Amendment 6
Proposal for a directive
Recital 10

Text proposed by the Commission

(10) Despite the existing Union legislation aimed at preventing and combating sex discrimination, the Council recommendations aimed specifically at increasing the presence of women in economic decision-making and Union-level actions encouraging self-regulation, women continue to be strongly outnumbered by men in the highest decision-making bodies of companies throughout the Union. In the private sector **and especially in listed companies** this gender imbalance is particularly significant and acute. The Commission's key indicator of gender representation on corporate boards shows that the proportion of women involved in top-level business decision-making remains very low. In January 2012, women occupied on average just 13.7 per cent of board seats in the largest publicly listed companies in Member States. Among non-executive directors only 15 per cent were women.

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Or. en

Amendment 7
Proposal for a directive
Recital 12

Text proposed by the Commission

(12) The scattered and divergent regulation or the absence of regulation at national level as regards the gender balance on boards of listed companies **does not only lead** to discrepancies in the number of

Amendment

(12) The scattered and divergent regulation or the absence of regulation at national level as regards the gender balance on boards of listed companies **leads to** discrepancies in the number of women

women among non-executive directors and different rates of improvement across Member States, ***but also poses barriers to the internal market by imposing divergent corporate governance requirements on European listed companies.*** Those differences in legal and self-regulatory requirements for the composition of corporate boards can lead to practical complications for listed companies operating across borders, notably when establishing subsidiaries or in mergers and acquisitions, as well as for candidates for board positions.

among non-executive directors and different rates of improvement across Member States. Those differences in legal and self-regulatory requirements for the composition of corporate boards can lead to practical complications for listed companies operating across borders, notably when establishing subsidiaries or in mergers and acquisitions, as well as for candidates for board positions.

Or. en

Amendment 8
Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12 a) Gender imbalances within companies are greater at more senior levels. Furthermore, many of those women who are represented in senior management are to be found in fields such as human resources and communication while men at a senior level are more likely to be employed in general management or "line management" within the company. As the main pool for recruitment to corporate board positions is comprised largely of candidates with senior management experience, it is vital that the number of women advancing to such management positions within companies is increased. Therefore, the scope of this Directive should include all levels of management. This is a fundamental requirement for achieving real change in the opportunities for advancement to top decision-making positions available to women.

Amendment 9
Proposal for a directive
Recital 13

Text proposed by the Commission

(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.

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Amendment 10
Proposal for a directive
Recital 14

Text proposed by the Commission

(14) ***While this Directive does not aim to harmonise national laws on the selection***

Amendment

(14) ***The introduction of requirements for companies to set individual targets and to***

procedures and qualification criteria for board positions in detail, the introduction of certain minimum standards as regards the requirement for listed companies 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.

develop gender policies in order to improve the gender balance among executive and non-executive directors and at all levels of management is necessary to ensure that companies take action on this important matter. The target figures should be ambitious and realistic for the individual company whilst taking into account company-specific and branch-specific characteristics.

Or. en

Amendment 11
Proposal for a directive
Recital 15

Text proposed by the Commission

(15) The Europe 2020 Strategy for Smart, Sustainable and Inclusive Growth²⁹ 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

Amendment

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expected to have a positive spill-over effect on female employment in the companies concerned and throughout the whole economy.

management level in particular, is expected to have a positive spill-over effect on female employment in the companies concerned and throughout the whole economy.

Or. en

Amendment 12
Proposal for a directive
Recital 16

Text proposed by the Commission

(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.***

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 ***a "comply or explain" model whereby companies would be required to set targets for the proportion of the underrepresented gender among their executive and non-executive board directors and at all levels of management. Furthermore, companies should develop a policy for increasing their gender balance and should report in a transparent manner in their annual report on the gender balance of the corporate board and at management levels. If individually-set targets are not reached, the company should be obliged in its annual report to explain the reasons for this failure and to detail the measures planned in order to rectify this.***

Or. en

Amendment 13
Proposal for a directive
Recital 16 a (new)

(16 a) Listed companies should develop a gender policy in order to attain a more balanced gender representation throughout the company. This policy may include a description of the relevant measures implemented in that company: nominating both a female and male candidate for key positions, mentoring schemes and career development guidance for women, human resource strategies to encourage diverse recruitment. Furthermore, it may include offering flexible working conditions, for example flexible provisions for parental leave as well as providing subsidised cleaning help and child care. Each company may select the policies best suited to its activities and should take active measures to increase the proportion of the underrepresented gender in the management of the company.

Or. en

Amendment 14
Proposal for a directive
Recital 20

(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***

(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 ***obligations relating to individual gender balance targets and gender policies*** provided for in this Directive should apply, ***but not be limited,*** 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

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.*

minimise interference with the day-to-day management of a company. *Gender balance among executive directors and in the overall management of the company is both a goal in itself and a means to enlarge the recruitment base for board positions.*

Or. en

Amendment 15
Proposal for a directive
Recital 21

Text proposed by the Commission

(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.*

Amendment

(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 *Union's nomination of employee representatives to boards* should *take due regard to gender balance*. However, the practical procedures for *employee representatives should be defined by the Member States concerned. It is important that employee organisations are involved in the development and implementation of gender policies in the company.* Employee representation on the boards of listed companies is also a positive way of enhancing diversity by including key perspectives and genuine knowledge of the internal workings of the company.

Or. en

Amendment 16
Proposal for a directive
Recital 22

Text proposed by the Commission

(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 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.***

Amendment

(22) Listed companies in the Union should ***implement*** appropriate ***and effective measures that ensure that individually set targets*** regarding the gender composition of their boards ***are met. The long term objective of all listed companies should be to reach gender parity, defined as*** at least 40 per cent of the ***underrepresented*** gender ***in executive and non-executive directors and at all levels of management.***

Or. en

Amendment 17
Proposal for a directive
Recital 22 a (new)

Text proposed by the Commission

Amendment

(22 a) In order to include a broader set of perspectives and experiences in economic decision making, listed companies should be encouraged to take into account diversity as regards competence, age, gender, geographical provenance, ethnicity, and educational and professional background in their recruitment policies.

Or. en

Amendment 18
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.

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Or. en

Amendment 19
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 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.

deleted

Or. en

Amendment 20
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,

(26) In line with that case-law, ***listed companies*** should ***be encouraged to base the*** selection of the best qualified candidates for non-executive directors 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 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.

knowledge in specific relevant areas such as finance, controlling or human resources management, leadership and communication skills and networking abilities. Priority *may* be given to the candidate of the under-represented sex if that candidate is equally 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.

Or. en

Amendment 21
Proposal for a directive
Recital 27

Text proposed by the Commission

(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

Amendment

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listed companies.

Or. en

Amendment 22
Proposal for a directive
Recital 28

Text proposed by the Commission

(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 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.**

Amendment

(28) This Directive aims to improve the gender balance among directors of 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, the qualification criteria upon which the selection was based.

Or. en

Amendment 23
Proposal for a directive
Recital 29

Text proposed by the Commission

(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*.

Amendment

(29) Where an unsuccessful candidate of the under-represented sex establishes the presumption *that his/her failure to be appointed was based solely on his/her gender*, the listed company should be required to demonstrate *that the appointment was made in line with the applicable national anti-discrimination laws*.

Or. en

Amendment 24
Proposal for a directive
Recital 30

Text proposed by the Commission

(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)*.

Amendment

(30) Member States should provide for effective, proportionate and dissuasive *administrative* sanctions for breaches of this Directive. *Sanctions shall be applied in the case of listed companies that do not comply with the procedures for setting targets and developing a gender policy as laid down in Article 4 (1) or with the disclosure requirements as defined in Article 5 of this Directive. However, the case of companies' failure to reach their individually set targets should not qualify as a breach of this Directive and should not trigger a sanctioning regime.*

Or. en

Amendment 25
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

Or. en

Amendment 26
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 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 ***40 per cent*** of all director positions, irrespective of whether they are executive or non-executive.

Or. en

Amendment 27
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

(33) Listed companies should be required to make individual commitments regarding the representation of both sexes among

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.

executive *and non-executive directors as well at other management levels within the company*. These commitments should aim to achieve tangible progress from the individual company's current position towards better gender balance.

Or. en

Amendment 28
Proposal for a directive
Recital 34

Text proposed by the Commission

(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 meet *the objective*.

Amendment

(34) Member States should require listed companies to provide information on the gender composition of their boards as well as *on the measures taken* 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 *in the annual report and on the company's website* and, where the company in question has not met the *individually set targets*, it should include a description of the measures that it has taken so far and intends to take in the future in order to meet *those targets*.

Or. en

Amendment 29
Proposal for a directive
Recital 35

Text proposed by the Commission

(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.***

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 ***long-term*** objective of a ***proportion*** of the ***underrepresented*** sex of at least 40 per cent among non-executive ***and executive*** directors of listed companies.

Or. en

Amendment 30
Proposal for a directive
Recital 38 a (new)

Text proposed by the Commission

Amendment

(38 a) In order to ensure that the gender balance objectives set out in this Directive are fully implemented by the Member States and are integrated into the specific policies of the relevant companies and in order to verify the expected spill-over effects of this Directive, the Commission shall submit to the European Parliament and the Council a report. This report should also evaluate the positive and negative impacts of the potential extension of the scope of the gender balance objectives to non-listed companies and re-evaluate the need for the introduction of legally-binding targets at the EU-level.

Amendment 31
Proposal for a directive
Article 4 – title

Text proposed by the Commission

Objectives with regard to non-executive directors

Amendment

Target figures and gender policies for the underrepresented gender – the comply or explain model

Amendment 32
Proposal for a directive
Article 4 – paragraph 1

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

1. Member States shall ensure that listed companies:

- a) set a target figure for the proportion of the underrepresented gender among both executive and non-executive directors, and***
- b) set a target figure for the proportion of the underrepresented gender at other management levels within the company, and***
- c) develop a gender policy to increase the proportion of the underrepresented***

gender at the management levels of the company.

Or. en

Amendment 33
Proposal for a directive
Article 4 – paragraph 2

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

deleted

Or. en

Amendment 34
Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. In order for listed companies to improve their gender balance, priority may 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.

Or. en

Amendment 35
Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission

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.***

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.

Or. en

Amendment 36
Proposal for a directive
Article 4 – paragraph 5

Text proposed by the Commission

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.

Amendment

deleted

Or. en

Amendment 37
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

Or. en

Amendment 38
Proposal for a directive
Article 4 – paragraph 7

Text proposed by the Commission

Amendment

7. Member States *may provide that the objective laid down in paragraph 1 is 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.*

7. Member States *shall ensure that companies having reached gender parity, defined as a 40 per cent representation of the underrepresented gender among executive and non-executive directors, shall not be obliged to draw up a gender balance policy in accordance with Article 4(1) but shall simply state their key target figures in their annual report and on their website.*

Or. en

Amendment 39
Proposal for a directive
Article 5 – title

Text proposed by the Commission

Amendment

Additional measures by companies and reporting

Disclosure requirements – key target figures and gender policy

Or. en

Amendment 40
Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall *ensure that* listed companies *undertake 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.*

Amendment

1. Member States shall *require* listed companies *to provide information on the following in their annual report:*

- a) the percentage of the underrepresented gender among executive and non-executive directors,*
- b) the percentage of the underrepresented gender at all levels of management,*
- c) the underrepresented gender as a percentage of the total number of employees,*
- d) whether the target figures set the previous year, in accordance with Article 4(1), have been achieved,*
- e) the gender policy drawn up as referred to in Article 4(1),*
- f) the specific measures, adopted in line with the gender policy drawn up in accordance with Article 4(1), aimed at achieving the targets set out for executive and non-executive directors and other management levels within the company,*
- g) the specific measures intended to be adopted for the following year in line with the gender policy drawn up in accordance with Article 4(1) and aimed at achieving the targets set out for executive and non-executive directors and other management levels within the company,*
- h) the status of the company's gender balance and the outlook for the attainment of the long-term goal of gender parity among executive and non-*

executive directors.

Or. en

Amendment 41
Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Member States shall require listed companies to ***report on their gender balance statistics and on measures taken in accordance with Article 5 (1)*** to the competent national authorities, once a year as from [two years after adoption], and to publish that information in an appropriate and accessible manner on their website.

Or. en

Amendment 42
Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

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***.

Amendment

3. Where a listed company does not ***reach*** its own individual ***target figures as set in accordance with Article 4(1)***, the information referred to in paragraph 2 of this Article shall include the reasons for not reaching the ***target figures*** and a description of the measures which the company has adopted or intends to adopt in order to meet the ***target figures***.

Or. en

Amendment 43
Proposal for a directive
Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

2. The sanctions must be effective, proportionate and dissuasive and may include the following *measures*:

Amendment

2. Sanctions shall be imposed on companies for infringing the procedure of setting target figures, of drawing up a gender policy and of disclosing the relevant information in accordance with Articles 4(1) and 5(1) of this Directive.

The sanctions must be effective, proportionate and dissuasive and may include the following:

Or. en

Amendment 44
Proposal for a directive
Article 6 – paragraph 2 – point b

Text proposed by the Commission

(b) 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).

Amendment

deleted

Or. en

Amendment 45
Proposal for a directive
Article 8 – paragraph 3 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

representation of women and men among the non-executive directors of listed companies may suspend the application of the procedural requirements *relating to 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.**

the non-executive directors of listed companies may suspend the application of the procedural requirements contained in Article 4(1), **(4) and Article 5 (1)**, 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. en

Amendment 46
Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission

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).***

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 information about ***individual commitments taken by listed companies pursuant to Article 4(1) and the information disclosed by the listed companies*** in accordance with Article 5(1) and (2).

Or. en

Amendment 47
Proposal for a directive
Article 9 – paragraph 1 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

The Commission shall submit an

evaluation report by 1 July 2017 on the implementation of the requirements for listed companies referred to in Articles 4 (1), 5(1) and (2), on the basis of the reports submitted by the Member States pursuant to paragraph 1. In addition, the Commission report shall include the gender-balance situation at board-level and at management level of non-listed companies that are above the SME threshold as defined in Article 2 and shall re-evaluate the need for introducing legally-binding targets at EU-level, such as extending the scope of this directive to non-listed companies, taking into account all relevant European and international developments.

Where the report demonstrates that the policies of a company have not led to a significant increase in the proportion of the underrepresented gender on the boards or at management level in listed or non-listed companies, the Commission shall consider making an appropriate legislative proposal amending the requirements laid down in this Directive.

Or. en

Amendment 48
Proposal for a directive
Article 9 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

Member States having suspended pursuant to Article 8(3) the application of the procedural requirements contained in Article 4(1) *and* (4) and *Article 5(1)* 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

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.

measures effectively enable members of the under-represented sex to hold at least 40 per cent of the non-executive director positions *of* listed companies by 1 January 2020. 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.

Or. en

Amendment 49
Proposal for a directive
Article 9 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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*.

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 **2020** apply the procedural requirements contained in Article 4(1), (4) and **Article 5(1)** with effect *from that date*.

Or. en