

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Awaiting Council 1st reading position / budgetary conciliation convocation
Gender balance among non-executive directors of companies listed on stock exchanges  See also <a href="#">2015/2967(RSP)</a>  Subject 3.45 Enterprise policy, inter-company cooperation 3.45.01 Company law 4.10.04 Gender equality 4.15.08 Work, employment, wages and salaries: equal opportunities women and men, and for all	



Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>JURI</b> Legal Affairs	PPE	18/01/2013
		<a href="#">KRATSA-TSAGAROPOULOU Rodi</a>	18/01/2013
		S&D <a href="#">REGNER Evelyn</a>	
		Shadow rapporteur	
		PPE <a href="#">NIEBLER Angelika</a>	
		S&D <a href="#">THOMSEN Britta</a>	
		ALDE <a href="#">KOCH-MEHRIN Silvana</a>	
		ALDE <a href="#">WIKSTRÖM Cecilia</a>	
		Verts/ALE <a href="#">CORNELISSEN Marije</a>	
		ECR <a href="#">KARIM Sajjad</a>	
	ECR <a href="#">YANNAKOUidakis Marina</a>		
	GUE/NGL <a href="#">LIOTARD Kartika Tamara</a>		
	<b>FEMM</b> Women's Rights and Gender Equality	PPE	18/01/2013
		<a href="#">KRATSA-TSAGAROPOULOU Rodi</a>	18/01/2013
		S&D <a href="#">REGNER Evelyn</a>	
		Shadow rapporteur	
		PPE <a href="#">NIEBLER Angelika</a>	
		S&D <a href="#">THOMSEN Britta</a>	
		ALDE <a href="#">KOCH-MEHRIN Silvana</a>	
		ALDE <a href="#">WIKSTRÖM Cecilia</a>	
Verts/ALE <a href="#">CORNELISSEN Marije</a>			
ECR <a href="#">KARIM Sajjad</a>			
ECR <a href="#">YANNAKOUidakis Marina</a>			
GUE/NGL <a href="#">LIOTARD Kartika Tamara</a>			

Council of the European Union  
European Commission

European Economic and  
Social Committee

Committee for opinion	Rapporteur for opinion	Appointed
<b>ECON</b> Economic and Monetary Affairs	ALDE <a href="#">SCHMIDT Ollé</a>	14/01/2013
<b>EMPL</b> Employment and Social Affairs	Verts/ALE <a href="#">CORNELISSEN Marije</a>	12/12/2012
<b>IMCO</b> Internal Market and Consumer Protection	ALDE <a href="#">PARVANOVA Antonya</a>	18/12/2012
Commission DG <a href="#">Justice and Consumers</a>	Commissioner REDING Viviane	

## Key events

14/11/2012	Legislative proposal published	<a href="#">COM(2012)0614</a>	Summary
22/11/2012	Committee referral announced in Parliament, 1st reading/single reading		
17/01/2013	Referral to joint committee announced in Parliament		
20/06/2013	Debate in Council		
14/10/2013	Vote in committee, 1st reading/single reading		
25/10/2013	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A7-0340/2013</a>	Summary
19/11/2013	Debate in Parliament		
20/11/2013	Results of vote in Parliament		
20/11/2013	Decision by Parliament, 1st reading/single reading	<a href="#">T7-0488/2013</a>	Summary
09/12/2013	Debate in Council		
11/12/2014	Debate in Council		Summary
15/06/2017	Debate in Council		

## Technical information

Procedure reference	2012/0299(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	See also <a href="#">2015/2967(RSP)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 157-p3; Rules of Procedure of the European Parliament EP 055
Mandatory consultation of other institutions	<a href="#">European Economic and Social Committee</a>
Stage reached in procedure	Awaiting Council 1st reading position / budgetary conciliation convocation
Committee dossier	CJ02/7/11681

## Documentation gateway

Legislative proposal		<a href="#">COM(2012)0614</a>	14/11/2012	EC	Summary
Document attached to the procedure		<a href="#">SWD(2012)0348</a>	14/11/2012	EC	
Document attached to the procedure		<a href="#">SWD(2012)0349</a>	14/11/2012	EC	
Economic and Social Committee: opinion, report		<a href="#">CES2444/2012</a>	13/02/2013	ESC	
Committee of the Regions: opinion		<a href="#">CDR0242/2013</a>	30/05/2013	CofR	
Committee opinion	IMCO	<a href="#">PE507.984</a>	04/06/2013	EP	
Committee draft report		<a href="#">PE514.670</a>	21/06/2013	EP	
Committee opinion	EMPL	<a href="#">PE508.089</a>	16/07/2013	EP	
Amendments tabled in committee		<a href="#">PE516.871</a>	02/09/2013	EP	
Committee opinion	ECON	<a href="#">PE508.237</a>	27/09/2013	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0340/2013</a>	25/10/2013	EP	Summary
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0488/2013</a>	20/11/2013	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2014)87</a>	30/01/2014		

#### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

## 2012/0299(COD) - 14/11/2012 Legislative proposal

**PURPOSE:** ensuring more balanced representation of men and women among non-executive directors of companies listed on stock exchanges.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**BACKGROUND:** company boards in the EU are characterised by persistent gender imbalances, as evidenced by the fact that only 13.7% of corporate seats in the largest listed companies are currently held by women (15% among non-executive directors). Progress in increasing the presence of women on company boards has been very slow, with an average annual increase in the past years of just 0.6 percentage points.

The divergence or the absence of regulation at national level does not only lead to the discrepancies in the number of women among executive and 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.

- The European Commission reaffirmed its support for an increased participation of women in positions of responsibility, both in its [Women's Charter](#) and its [Strategy for Equality between Women and Men 2010-2015](#).
- In the European Pact for Gender Equality 2011-2020, adopted on 7 March 2011, the Council acknowledged that gender equality policies are vital to economic growth, prosperity and competitiveness and urged action to promote the equal participation of women and men in decision-making at all levels and in all fields.
- The European Parliament, in its resolutions of [6 July 2011](#) and [13 March 2012](#), called upon companies and Member States to increase female representation of women in decision-making bodies and invited the Commission to propose legislative quotas to attain the critical threshold of 30 per cent female membership of management bodies by 2015 and 40 per cent by 2020.
- The European social partners have reaffirmed their commitment to further action in this area in their work programme for 2012-2014.

**IMPACT ASSESSMENT:** the Commission analysed five policy options:

- Option 1: the baseline scenario (i.e. no further action at EU level);
- Option 2: a Commission Recommendation encouraging Member States to achieve the objective of at least 40% of board members of each gender by 2020;
- Option 3: a Directive introducing a binding objective of at least 40% of each gender by 2020 for non-executive directors;
- Option 4: a Directive introducing a binding objective of at least 40% of board members of each gender by 2020 for non-executive directors and a flexible objective for executive directors, which would be set by the companies themselves;
- Option 5: a Directive introducing a binding objective of at least 40% of board members of each gender by 2020 for both executive and non-executive directors.

The outcome of the comparison of the consequences of the different policy options was that (i) binding measures are more effective in meeting the policy objectives than non-binding measures, (ii) measures that target both executive and non-executive board members are more effective than measures only targeting one group and (iii) binding measures will generate more societal and economic benefits than non-binding measures. The proposal is therefore based on Option 4.

LEGAL BASIS: Article 157(3) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the purpose of the proposal is to substantially increase the number of women on corporate boards throughout the EU by setting a minimum objective of a 40% presence of the under-represented sex among the non-executive directors of companies listed on stock exchanges and by requiring companies with a lower share of the under-represented sex among the non-executive directors to introduce pre-established, clear, neutrally formulated and unambiguous criteria in selection procedures for those positions in order to attain that objective by 1 January 2020. A shorter deadline for achieving the objective (1 January 2018) is set for listed companies which are public undertakings.

The proposal:

- specifies the method of calculation of the exact number of non-executive director positions necessary to meet the 40% objective;
- imposes a preference rule with the aim of meeting the objective: in the presence of equally qualified candidates of both sexes, priority shall be given to the candidate of the under-represented sex 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. This procedural requirement is necessary to ensure that the objectives comply with the case-law of the Court of Justice of the European Union concerning positive action;
- imposes a disclosure obligation and a burden of proof rule applicable in cases of challenges to the selection procedure by an unsuccessful candidate;
- provides for a possibility of justifying non-compliance with the objective where the members of the under-represented sex represent less than 10 per cent of the workforce;
- provides that the 40% objective can also be met where the members of the under-represented sex hold at least one third of all director positions, irrespective of whether they are executive or non-executive;
- imposes an obligation for listed companies to undertake individual commitments regarding the representation of both sexes among executive directors;
- imposes an obligation for listed companies to provide and publish information on the gender composition of their boards;
- imposes on listed companies which fail to meet the objectives concerning the non-executive directors or commitments concerning executive directors an additional obligation to explain the reasons and to include the description of measures taken and planned in order to meet the objectives or commitments in the future;
- obliges Member States to lay down rules on sanctions applicable in case of breach of this Directive.

BUDGETARY IMPLICATION: the proposal has no implications for the Union budget.

## 2012/0299(COD) - 25/10/2013 Committee report tabled for plenary, 1st reading/single reading

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The Committee on Legal Affairs and the Committee on Womens Rights and Gender Equality, working jointly, adopted the report by Rodi KRATSA-TSAGAROPOULOU (PPE, EL) and Evelyn REGNER (S&D, AT) 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.

It recommended that the European Parliaments position at first reading under the ordinary legislative should be to amend the Commission proposal as follows:

Gender policy: Members maintained that listed companies should develop a gender policy in order to attain a more balanced gender representation throughout the company concerned. That policy may include a description of the relevant measures implemented in that company, such as nominating both a female and male candidate for key positions, mentoring schemes and career development guidance for women, and human resource strategies to encourage diverse recruitment.

Furthermore, it may include offering flexible working conditions for all employees, for example assistance for parental leave, as well as providing assistance for housework and childcare.

Objectives with regard to non-executive directors: listed companies are obliged to at least disclose to an unsuccessful candidate, the number and gender of the candidates in the selection pool.

An unsuccessful candidate of the under-represented sex who considers him- or herself wronged may establish, before a court or other competent body, facts from which it may be presumed that the candidate was equally qualified as the appointed candidate of the other sex.

Where the selection is made through a vote of shareholders or employees, companies shall ensure that voters are properly informed regarding the measures provided for in this Directive, including sanctions for non-compliance by the company.

Additional measures taken by the companies and reporting requirements: listed companies must publish information about the gender representation on their boards in an appropriate and easily accessible manner on their website and in their annual report.

A listed company shall provide a statement of the reasons for its failure to attain those objectives or to fulfil those commitments.

Sanctions: the Members propose to add to the sanctions applicable to infringements of the national provisions adopted pursuant to this Directive: i) the exclusion from public call for tenders; and ii) partial exclusion from the award of funding from the European structural funds.

Reports: the Commission shall submit an evaluation report by 1 July 2017 on the implementation of the requirements for listed companies on the basis of the reports submitted by the Member States. The Commission shall also present a report on the way in which the principles of this Directive are applied by all Union institutions and agencies and are incorporated into the rules governing their internal staffing procedures.

The Commission's report shall also examine whether the scope of this Directive should be extended to cover non-listed public undertakings which do not fall within the definition of SME, non-listed large undertakings and executive directors of listed companies.

## 2012/0299(COD) - 20/11/2013 Text adopted by Parliament, 1st reading/single reading

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The European Parliament adopted by 459 votes to 148, with 81 abstentions, a legislative resolution 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.

The European Parliaments position at first reading under the ordinary legislative amended the Commission proposal as follows:

Gender policy: Parliament maintained that listed companies should develop a gender-balanced model of decision-making at all levels within the company while also ensuring the elimination of the gender pay gap.

That policy may include:

- a description of the relevant measures implemented in that company, such as nominating both a female and male candidate for key positions, mentoring schemes and career development guidance for women, and human resource strategies to encourage diverse recruitment;
- offering flexible working conditions for all employees, for example assistance for parental leave, as well as providing assistance for housework and childcare.

Objectives with regard to non-executive directors: Listed companies in the Union should aim to attain the objective of having at least 40 % of non-executive directors of the under-represented sex by 1 January 2020 at the latest.

Companies are obliged to:

- select the most qualified candidates for a board position from a gender-balanced selection pool and on the basis of a comparative analysis of the qualifications by applying pre-established, clear, neutrally formulated, non-discriminatory and unambiguous criteria;
- at least disclose to an unsuccessful candidate, the number and gender of the candidates in the selection pool. An unsuccessful candidate of the under-represented sex who considers him- or herself wronged may establish, before a court or other competent body, facts from which it may be presumed that the candidate was equally qualified as the appointed candidate of the other sex.

Where the selection is made through a vote of shareholders or employees, companies shall ensure that voters are properly informed regarding the measures provided for in this Directive, including sanctions for non-compliance by the company.

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The Commission's report shall also examine whether the scope of this Directive should be extended to cover non-listed public undertakings which do not fall within the definition of SME, non-listed large undertakings and executive directors of listed companies.

## 2012/0299(COD) - 11/12/2014 Debate in Council

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The Council was not able to reach a general approach on a directive improving the gender balance on company boards.

To recall, the proposed directive would set a quantitative objective for the proportion of the under-represented sex on the boards of listed companies of 40% by 2020 (by 2018 in the case of public undertakings). The companies would be obliged to work towards that objective by, inter alia, introducing procedural rules on the selection and appointment of nonexecutive board members.

In order to reach a compromise on this proposal, the presidency has introduced:

- a flexibility clause: this clause would allow Member States to pursue the aims of the directive by means of their own choosing and to suspend the procedural requirements, provided that they have already taken equally effective measures or attained progress coming close to the objectives set in the directive. To combine flexibility with maximum legal certainty, scenarios are defined which would be deemed by law to guarantee "equal effectiveness." It also leaves open the possibility that Member States might be entitled to use the flexibility clause in other legitimate cases where equal effectiveness or sufficient progress had been demonstrated;
- revised implementation and reporting calendar: the revised implementation calendar would require the Member States to transpose the directive no later than three years after its adoption. In the current text, the reporting deadlines have also been extended in line with this new implementation date. The revised calendar would give Member States and companies more time to prepare their own measures and to make progress, including any preparations for applying the flexibility clause.

The European Parliament has already adopted its position at first reading.