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Subject: 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  
– Outcome of the European Parliament's first reading  
(Strasbourg, 18 to 21 November 2013)

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**I. INTRODUCTION**

The Joint Rapporteurs, Rodi KRATSA-TSAGAROPOULOU (EPP, GR) on behalf of the Committee on Women's Rights and Gender Equality, and Evelyn REGNER (S&D, AT) on behalf of the Committee on Legal Affairs, presented a report consisting of 66 amendments (amendments 1-66) to the proposal for a Directive.

In addition, the EFD political group tabled 20 amendments (amendment 70-90), and a group of more than 40 MEPs tabled three amendments (amendments 67-69).

## II. DEBATE

The Joint Rapporteurs, Rodi KRATSA-TSAGAROPOULOU (EPP, GR) on behalf of the Committee on Women's Rights and Gender Equality, and Evelyn REGNER (S&D, AT) on behalf of the Committee on Legal Affairs, gave details regarding the report.

In particular, emphasis was put on the consultation of stakeholders, and on the joint nature of the report tabled, which in addition takes into account the views of the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, and of the Committee on the Internal Market and Consumer Protection, in a spirit of perfect cooperation. The Report was described as reflecting a new atmosphere of governance, and aiming at better economic performance.

The Rapporteurs presented the Report as implementing equality and seeking to implement targets, with a realistic and cohesive approach, in order to set the conditions for a change. Insofar as the content is concerned, the Report sets a minimum of 40% of the non-executive director positions of the under-represented sex by 1 January 2020 for listed companies, and by 1 January 2018 in the case of public undertakings. The Rapporteurs stressed that the Report is not about the imposition of quotas, but about opportunities for qualified women, for which binding measures were needed, as in France, and sanctions contemplated. The sanctions proposed, beyond the Commission proposal, include the exclusion from public calls for tenders and the partial exclusion from the award of funding from the Union's Structural Funds. On the scope, the Rapporteurs explained that Small and Medium Sized companies were excluded, but that no real definition of "family run businesses" could be used.

Both called on the Council to enter into negotiations, and considered the Report as an important signal sent to the governments of Member States. On this point, Viliija Blinkevičiūtė (S&D, LT) subsequently explained that the Lithuanian Presidency faced a blocking minority.

Commissioner Viviane Reding, Vice-President of the Commission then took the floor and described the proposal for a Directive as a help to smash the glass ceiling that prevents qualified women from holding top posts in listed companies, which now represent 16.6% of directors compared to 11.8% in October 2010.

According to the Commissioner, studies from many economic organisations or companies show that companies with a higher share of women at top levels deliver stronger organisational and financial performance, and more women in management positions provide a broader insight into economic behaviour, into consumers' choices, leading to market share gains. Diversity among board members boosts creativity and innovation and contributes to better performance because decisions are based on evaluating a wider range of options.

The Commissioner insisted that the Report guarantees that only women who are very qualified will be given priority in selection for appointment and that will lead to better quality for men and women in selection for appointment.

The Commissioner supported the approach taken on SMEs, which would remain exempted from obligations under the Directive, even though Member States would need to put in place policies to support and incentivise SMEs to significantly improve gender balance on their boards and management. The Commissioner also supported detailing further the procedural obligations in order to achieve the 40% objective, as well as reinforcing the reporting obligations.

As regards the strengthening of sanctions, the Commissioner expressed her preference for the Commission's proposal whereby Member States' responses must be effective, dissuasive and proportionate, instead of imposing automatically one or more particular type of sanctions for any non-compliance, which could be disproportionate.

The floor was opened to the speakers on behalf of the Committees.

On behalf of the Committee on Economic and Monetary Affairs, Olle Schmidt (ALDE, FI) supported the Commission's point of view and the need for the EU to adopt legislative measures for giving equal opportunities. Emphasis was put on the need to include EU Institutions in the scope of the Directive, including the European Central Bank. On this latter point, the speaker was subsequently supported by MEP Cecilia Wikström (ALDE, SE).

Speaking on behalf of the Committee on Employment and Social Affairs, Marije Cornelissen (Greens/EFA, NL) stressed that equality between men and women was a basic right in Europe, in the Treaties since 1957, and that it was now part of the coalition agreement in Germany.

Speaking on behalf of the Committee on the Internal Market and Consumer Protection, Antonia Parvanova (ALDE, BG) supported the Commission's proposal. The Directive was seen not only as related to the principle of gender equality and non-discrimination, but also to a positive impact on the organisational and financial performance of companies concerned, as an instrument in achieving financial stability and long-term economic growth, with is a positive relationship between gender diversity at top-management level and a company's financial performance and profitability.

Subsequently, the floor was opened to political groups, which would result in the ECR group and the EFD group calling the house to vote against the proposal.

For the ECR Group, Marina Yannakoudakis (ECR, UK) expressed her confidence in women's ability to get to the boardroom on merit, and based on the experience in Norway, considered quotas as a bad a solution, an insult to women, a danger for businesses, and an obstacle on the way to success for women. It must be noted that, when closing the debate, Evelyn REGNER (S&D, AT), Joint Rapporteur, would question the position of MEP Marina Yannakoudakis, as having been allegedly elected to the European Parliament on the basis of a quota system. As regards Norway, Marc Tarabella (S&D, BE) would subsequently disagree on the interpretation and consider it a success.

For the EFD Group, John Stuart Agnew (EFD, UK) considered that setting a 40% gender-quota target for listed companies went against a free society based on merit. Reference was made to the amendments tabled by the EFD Group (amendments 81-90), and in particular the opting out from the Directive (amendment 90).

The other political groups supported the Report.

Speaking on behalf of the EPP Group, Angelika Niebler (EPP, DE) first expressed some doubts regarding the legal basis of the Commission Proposal (Art. 157 TFEU) as being applicable to labour relations only. Nevertheless, MEP Angelika Niebler supported the Report, and in particular the exemption of SMEs from the obligations provided for in the Directive, as proposed by the Commission proposal. In addition, MEP Angelika Niebler called the house to further exempt family businesses, as provided for in amendments 67-69.

Speaking on behalf of the S&D Group, Britta Thomsen (S&D, DK) supported the Report and considered it a necessity, not a women's issue. This analysis was shared by Eva Lichtenberger (Greens/EFA, AT), on behalf of the Greens/EFA Group, presenting the proposal as an issue of fairness.

Speaking on behalf of the ALDE Group, Silvana Koch-Mehrin (ALDE, DE) considered it a two sides issue: gender equality through quotas, and making EU economies more effective and competitive. The coalition agreement in Germany was also welcomed as an important signal towards Member States, in particular those who have no applicable legislation on this issue.

A rather passionate than technical debate then took place, with strong and cross-party support to the Report amongst the individual speakers belonging to the political groups referred to above.

Interventions by Members of the European Parliament mostly addressed gender equality. In particular, Tadeusz Zwiefka (EPP, PL) and Joanna Katarzyna Skrzydlewska (EPP, PL) insisted that the Directive was about equal treatment of people equally qualified, and not about the promotion of women. The MEPs then addressed the opportunity of setting quotas. MEPs Mojca Kleva Kekuš (S&D, SL), Regina Bastos (EPP, PT), Marc Tarabella (S&D, BE) and Sylvie Guillaume (S&D, FR) spoke in favour. MEPs Laurence J.A.J. Stassen, on behalf of the non-inscribed, (NL, N.I.), Andrea Češková (ECR, CZ) and Ruža Tomašić (ECR, HR) spoke against.

The question of sanctions as provided for in the Report (in particular amendments 39 and 60)<sup>1</sup> was specifically considered during the debate. Teresa Jiménez-Becerril Barrio (EPP, ES) spoke against. Nicole Sinclair (NI, UK) and Ruža Tomašić (ECR, HR) further considered that sanctions would be an additional form of discrimination. Conversely, Mariya Gabriel (EPP, BG) stressed that sanctions were associated to the non respect of the procedures instead of to the 40% target. On this latter point she was joined by Tadeusz Zwiefka (EPP, PL) and Vilija Blinkevičiūtė (S&D, LT).

During the debate, other views were also expressed. In particular, Astrid Lulling (EPP, LU) vigorously criticized the choice of the legal basis and called to vote against the Commission proposal because of the existence of a blocking minority in the Council.

In its closing remarks, Commissioner Viviane Reding, Vice-President of the Commission, indicated being in agreement with the vast majority of the speakers in the House. The Commissioner also stressed that one third of the Commissioners were female, thus leading to the best gender balanced Commission. In addition quotas were imposed in the administration (33 % for middle management and 25 % for top management) and met by 2012.

The Commissioner insisted that the issue is an economic imperative, especially in times of economic difficulty and facing the joint challenges of an ageing population, of falling birth rates, of skills shortages, where it is more important than ever to ensure that we capitalise on the richness of human talent and skills irrespective of gender.

In this sense, the Commissioner concluded by recalling that the heart of the proposal is a transparent selection process aiming to reach a 40 % representation of the under-represented sex by 2020, based on clear criteria and the candidates' skills and qualifications.

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<sup>1</sup> See section III vote.

The Joint Rapporteurs, Rodi KRATSA-TSAGAROPOULOU (EPP, GR), and Evelyn REGNER (S&D, AT), concluded the debate by indicating that the legal basis had given rise to intense discussions, but that the Committee on Legal Affairs had addressed all concerns. Last, the view was expressed that the vote to be taken in Plenary would send a message to the Council in order to have the Directive established under the current European Parliament term.

The President then closed the debate. In addition, MEPs Zuzana Brzobohatá (S&D, CZ), Corina Crețu (S&D, RO), Edite Estrela (S&D, PT), Monika Flašíková Beňová (S&D, SK), Angelika Werthmann (ALDE, AT) submitted a written statement in accordance with rule 149 of the European Parliament's Rules of Procedure.

### **III. VOTE**

When it voted in plenary on 20 November 2013, the European Parliament adopted the report (amendments 1-66). Amendments 39 and 60 were adopted with a significantly lower majority than the rest of the amendments.<sup>1</sup> No other amendments were adopted.

The European Parliament also adopted the proposal as amended and the legislative resolution. This constitutes the Parliament's first-reading position.

The adopted amendments and the European Parliament's legislative resolution are annexed to this note.

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<sup>1</sup> Amendment 39: 441 in favour; Amendment 60: 440 in favour.

## **Gender balance among non-executive directors of companies listed on stock exchanges \*\*\*I**

**European Parliament legislative resolution of 20 November 2013 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))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0614),
- having regard to Article 294(2) and Article 157(3) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0382/2012),
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Czech Chamber of Deputies, the Netherlands Senate, the Netherlands House of Representatives, the Polish Sejm, the Polish Senate, the Swedish Parliament, the United Kingdom House of Commons and the United Kingdom House of Lords, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Economic and Social Committee,
- having regard to the opinion of the Committee of the Regions,
- having regard to Rules 55 and 37 of its Rules of Procedure,



- having regard to the joint deliberations of the Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality under Rule 51 of the Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs and the Committee on the Internal Market and Consumer Protection (A7-0340/2013),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### 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 2

### Proposal for a directive Recital 4

*Text proposed by the Commission*

*Amendment*

(4) In recent years the European Commission has presented several reports taking stock of the situation concerning gender diversity in economic decision-making. The Commission has encouraged publicly listed companies in the European Union to increase the number of **women** on their boards by self-regulatory measures and to make concrete voluntary commitments in that regard. In its Women's Charter of 5 March 2010, the European Commission underlined that women still do not have full access to the sharing of power and decision-making in political and economic life and reaffirmed its commitment to use its powers to promote a fairer representation of women and men in positions of responsibility. Improving the gender balance in decision-making was defined by the Commission's strategy for equality between women and men 2010-2015 as one of its priority tasks.

(4) In recent years the European Commission has presented several reports taking stock of the situation concerning gender diversity in economic decision-making. The Commission has encouraged publicly listed companies in the European Union to increase the number of ***the under-represented sex*** on their boards by self-regulatory measures and to make concrete voluntary commitments in that regard. In its Women's Charter of 5 March 2010, the European Commission underlined that women still do not have full access to the sharing of power and decision-making in political and economic life and reaffirmed its commitment to use its powers to promote a fairer representation of women and men in positions of responsibility. Improving the gender balance in decision-making was defined by the Commission's strategy for equality between women and men 2010-2015 as one of its priority tasks.

## Amendment 3

### Proposal for a directive Recital 5

*Text proposed by the Commission*

(5) In the European Pact for Gender Equality 2011-2020, which was adopted on 7 March 2011, the Council acknowledged that gender equality policies are vital to economic growth, prosperity and competitiveness, reaffirmed its commitment to close the gender gaps with a view to meeting the objectives of the Europe 2020 Strategy, especially in three areas of great relevance to gender equality, namely employment, education and social inclusion, and urged action to promote the equal participation of women and men in decision-making at all levels and in all fields, in order to make full use of all available talent.

*Amendment*

(5) In the European Pact for Gender Equality 2011-2020, which was adopted on 7 March 2011, the Council acknowledged that gender equality policies are vital to economic growth, prosperity and competitiveness, reaffirmed its commitment to close the gender gaps with a view to meeting the objectives of the Europe 2020 Strategy, especially in three areas of great relevance to gender equality, namely employment, education and social inclusion, and urged action to promote the equal participation of women and men in decision-making at all levels and in all fields, in order to make full use of all available talent, ***knowledge and ideas, thus enriching diversity of human resources and improving business prospects.***

**Amendment 4**

**Proposal for a directive**

**Recital 6**

*Text proposed by the Commission*

(6) The European Parliament, in its resolution on women and business leadership of 6 July 2011, urged companies to attain the critical threshold of 30 per cent female membership of management bodies by 2015 and 40 per cent by 2020. It called on the Commission, if the steps taken by companies and the Member States were found to be inadequate, to propose legislation by 2012, including quotas. The European Parliament reiterated that call for legislation in its resolution of 13 March 2012 on equality between women and men in the European Union – 2011.

*Amendment*

(6) The European Parliament, in its resolution on women and business leadership of 6 July 2011, urged companies to attain the critical threshold of 30 per cent female membership of management bodies by 2015 and 40 per cent by 2020. It called on the Commission, if the steps taken by companies and the Member States were found to be inadequate, to propose legislation by 2012, including quotas, ***to be implemented on a temporary basis and to serve as catalysts for change and for rapid reforms designed to eliminate persisting gender inequalities and stereotypes in economic decision-making.*** The European Parliament reiterated that call for legislation in its resolution of 13 March 2012 on equality between women and men in the European Union – 2011.

## Amendment 5

### Proposal for a directive Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) The Union institutions, bodies, offices and agencies and the European Central Bank should lead by example as regards gender equality in decision-making, inter alia by setting objectives for a gender-balanced representation at all levels. Stringent rules on internal and external recruitment to all Union institutions, bodies, offices and agencies should be implemented and monitored without delay. Particular attention needs to be given to policies for the recruitment of senior management. The Union institutions, bodies, offices and agencies should publish an annual report setting out their efforts to that end.***

## Amendment 6

### 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, ***development and growth*** 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 ***companies' management positions and*** decision-making positions would amount to a failure to fully exploit skilled human capital.

## Amendment 7

### Proposal for a directive Recital 7 a (new)

*Text proposed by the Commission*

*Amendment*

***(7a) Companies and businesses should consider the creation of a pipeline of board- and management-ready women that encourages, supports and develops female talent at all levels and throughout their careers.***

## Amendment 8

### Proposal for a directive Recital 7 b (new)

*Text proposed by the Commission*

*Amendment*

***(7b) 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, with, in particular, flexible arrangements and support for those with care responsibilities.***

## Amendment 9

### Proposal for a directive Recital 7 c (new)

*Text proposed by the Commission*

*Amendment*

***(7c) The attainment of gender equality in society as a whole entails the establishment of equal academic and professional rights for men and women, and of shared family, childcare and household responsibilities. The fact 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 stereotyping, inflexible and outdated employment policies and inadequate parental leave provisions. Provisions should be in place for women and men to combine family and work life should they so wish. Member States should be encouraged to ensure the implementation of welfare elements such as fair parental leave allowances for both women and men, extensive provision for childcare and opportunities for shared parental leave.*

## Amendment 10

### Proposal for a directive Recital 8

#### *Text proposed by the Commission*

(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.

#### *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 *as well as a more proactive business model* and therefore reaching more balanced decisions, *with a view to better reflecting societal and consumers' realities*. 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, *given the significant economic and social responsibility of such companies*, can therefore have a positive impact on the *economic* performance of companies concerned. *Measures to encourage career progression for women at all levels of management should therefore be introduced and reinforced.*

## Amendment 11

### Proposal for a directive Recital 8 a (new)

*Text proposed by the Commission*

*Amendment*

*(8a) The appointment of women as board members is being hampered by a number of specific factors which can be overcome not only through sanctions but also through educational initiatives and incentives to promote good practices. First, it is essential to heighten awareness in business schools and universities of the benefits of gender equality in making companies more competitive. It is also necessary to encourage regular turnover of board members and to introduce positive measures to promote and reward efforts by states and companies to adopt a more decisive approach to such changes in top economic decision-making bodies at Union level. Finally, taxation and public procurement both provide suitable channels for the promotion of greater gender balance on company boards.*

## Amendment 12

### 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

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constitute a marked improvement in terms of return on 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.

talent pool would constitute a marked improvement in terms of return on 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 13

### 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.

##### *Amendment*

(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 **under-represented** 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, **while certain Union institutions, bodies, offices and agencies, such as the European Central Bank, also display a deeply problematic gender imbalance**. 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, **which is a clear indication of a democratic deficit and of unfair and discriminatory representation of women, in violation of Union principles of equal opportunities and equal treatment of both sexes in the fields of employment and occupation**.



## Amendment 14

### Proposal for a directive Recital 11

#### *Text proposed by the Commission*

(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.

#### *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 Member States *such as France, which set 2017 as its target for fulfilment of the objectives contained in this Directive, meeting in less than two years the 20 % target set for 2014, or countries such as Norway, which met the 40 % target in three years. In both cases these results were achieved through* binding measures. 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.

## Amendment 15

### Proposal for a directive Recital 11 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

*(11a) Member States should adopt strategies moving towards a socio-cultural shift in their approach to gender balance by using versatile means to encourage women's participation in the management hierarchy and the taking-up of proactive approaches and actions by employers. Such means could include, inter alia, promoting flexible work schedules and encouraging family-friendly workplaces by providing access to day care.*

## Amendment 16

### 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 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.

#### *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 does not only lead to discrepancies in the number of 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. ***Nevertheless, enforcement of the provisions laid down in this Directive should be irrespective of the different ways in which non-executive directors are selected in European companies' boards.***

## Amendment 17

### Proposal for a directive Recital 12 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(12a) 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 be increased.*

## **Amendment 18**

### **Proposal for a directive Recital 12 b (new)**

*Text proposed by the Commission*

*Amendment*

*(12b) One of the main factors for a correct implementation of this Directive is the effective use of criteria for the selection of non-executive directors, to be set in advance and with full transparency, with candidates' competencies being considered on an equal basis, regardless of their gender.*

## **Amendment 19**

### **Proposal for a directive Recital 12 c (new)**

*Text proposed by the Commission*

*Amendment*

*(12c) In the context of an ageing population and skills shortages, a failure to utilise the potential of half of the population of the Union for company board positions might slow down the development opportunities of the Union's economy and the recovery of its financial structures. If half the talent pool is not even considered for leadership positions, the process and quality of appointments itself may be compromised, leading to increased distrust of the business power structures and possibly to a reduction in the efficient realisation of available human capital. Systematically including suitable candidates from both sexes ensures that new board members are selected from the very best candidates, both male and female and that society is faithfully reflected in corporate decision-*

*making.*

## Amendment 20

### 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.

#### *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. ***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 21

### 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 procedures and qualification criteria for board positions in detail, the introduction

#### *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 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.

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 ***a transparent and clearly defined selection procedure and*** 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-*executive* directors. Only an EU-level ***binding*** measure can effectively help to ensure a competitive level-playing field throughout the Union and avoid practical complications in business life.

## Amendment 22

### Proposal for a directive Recital 15

#### *Text proposed by the Commission*

(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.

#### *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, ***elimination of the persisting gender pay gap*** and a reinforced effort to tackle all barriers to women's participation in the labour market, ***including the existing 'glass-ceiling' phenomenon***. 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, ***of both men and women***. 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.

## Amendment 23

### Proposal for a directive Recital 15 a (new)

*Text proposed by the Commission*

*Amendment*

***(15a) Achievement of these objectives is of vital importance in ensuring Europe's economic competitiveness, encouraging innovation and enhancing professional standards on company boards. The Union has accordingly declared labour market equality and progressively greater gender equality on company boards to be European decade of equality objectives and will examine ways of heightening awareness of progress being achieved in this area.***

## Amendment 24

### 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, in 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 25

### Proposal for a directive Recital 16 a (new)

*Text proposed by the Commission*

*Amendment*

***(16a) 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. Each company may select the policies best suited to its activities and should take active measures to increase the proportion of the under-represented gender in the management of the company.***

## Amendment 26

### Proposal for a directive Recital 17

*Text proposed by the Commission*

*Amendment*

(17) Companies listed on stock exchanges enjoy a particular economic importance, visibility and impact on the market as a whole. The measures provided for in this Directive should therefore apply to listed companies, which are defined as companies ***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 of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, in one or more

(17) Companies listed on stock exchanges enjoy a particular economic importance, visibility and impact on the market as a whole. The measures provided for in this Directive should therefore apply to listed companies, which are defined as companies ***whose seat is*** in a Member State ***and*** whose securities are admitted to trading on a regulated market within the meaning of Article 4(1) (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, in one or

Member States. These companies set standards for the economy in its entirety and their practices can be expected to be followed by other types of companies. ***The public nature of listed companies justifies that they be regulated to a greater extent in the public interest.***

more Member States. These companies set standards for the economy in its entirety and their practices can be expected to be followed by other types of companies.

## Amendment 27

### Proposal for a directive Recital 18

#### *Text proposed by the Commission*

(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.

#### *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. ***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 28

### 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***

#### *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 quantitative objectives provided for in this Directive should apply to all non-executive directors including employee representatives. ***This Directive should take account of the diversity and national characteristics of selection procedures in the Member States.***



*concerned.*

## Amendment 29

### 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 ***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. For the purpose of attaining that objective,*** those listed companies in whose boards members of the under-represented sex hold less than 40 per cent of non-executive director positions should ***be obliged to carry out the pre-selection or selection procedure for*** 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.

## Amendment 30

### Proposal for a directive Recital 22 a (new)

*Text proposed by the Commission*

*Amendment*

*(22a) The objective of 40 % 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 31**

**Proposal for a directive**  
**Recital 22 b (new)**

*Text proposed by the Commission*

*Amendment*

*(22b) Listed companies should consider putting in place training programmes and mentoring programmes for the under-represented sex as a tool to achieve gender balance where there is a clear gender gap in the selection pool for recruitment to board positions.*

### **Amendment 32**

**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. Due to that dominant influence, they have the instruments at

(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. 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.

their disposal to bring about the necessary change more rapidly. Therefore, in such companies the objective of **at least** 40 per cent of non-executive directors of the under-represented sex should be set at an earlier date, ***in conformity with adequate mechanisms to be set up by Member States in line with this Directive.***

### **Amendement 33**

#### **Proposal for a directive Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

***(23a) Due to their nature, public undertakings, whether listed or not, should serve as a model for the private sector. Therefore, the Commission should assess the situation in the Member States and evaluate whether public undertakings which would not fall within the definition of SME may be incorporated in the scope of this Directive at some point in the future.***

### **Amendement 34**

#### **Proposal for a directive Recital 23 b (new)**

*Text proposed by the Commission*

*Amendment*

***(23b) The Commission should collect and analyse facts and figures about the gender balance in non-listed large undertakings which are also of great importance for the economy. An impact assessment should subsequently be carried out to gain an overview of the situation in such undertakings in the Member States and to evaluate whether measures at Union level are needed in order to bring such undertakings within the scope of this Directive at some point in the future. At the same time, the Commission should explain the available options to that end, since special schemes may be necessary***

*for such undertakings owing to specific national circumstances.*

## Amendment 35

### Proposal for a directive Recital 24

*Text proposed by the Commission*

***(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.***

*Amendment*

***(24) Where a non-executive board consists of only three members, it is mathematically impossible to go beyond a share of 40 % for both genders. Therefore, in such cases, members of the underrepresented sex should hold at least one position on boards with three non-executive directors.***

## Amendment 36

### Proposal for a directive Recital 26

*Text proposed by the Commission*

(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

*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 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.

apply include professional experience in managerial and/or supervisory tasks, ***international experience, multidisciplinary***, 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.

## Amendment 37

### 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 listed companies.

#### *Amendment*

(27) The methods of recruiting, ***selecting*** 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 Directive respects the diversity of selection procedures, which should be based on transparency and merit, while insisting that the aim of increasing the participation of the under-represented sex on boards be 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 diversity*** of selection procedures, with a view to attaining the objective of a more balanced gender

representation in the boards of listed companies. ***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 qualifications or other objective relevant considerations.***

## Amendment 38

### Proposal for a directive Recital 27 a (new)

*Text proposed by the Commission*

*Amendment*

***(27a) Where pre-selection 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 increased gender balance on the board of directors as a whole, while ensuring that the sex of the director elected in such a procedure is not in any way predetermined.***

## Amendment 39

### 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, 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).

(30) Member States should provide for effective, proportionate and dissuasive sanctions for breaches of ***the requirements for an open and transparent procedure set out in*** this Directive, which could include, inter alia, administrative fines, ***exclusion from public calls for tenders, partial exclusion from the award of funding from the Union's Structural Funds,*** 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). ***It should be possible for Member States to go beyond the non-exhaustive list of sanctions provided for in***

*this Directive and to add, inter alia, the forced dissolution of the company concerned, ordered by a competent judicial body in full respect of proper procedural safeguards, in cases of serious and repeated infringements by that company.*

#### Amendment 40

##### Proposal for a directive Recital 31

*Text proposed by the Commission*

*(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.*

*Amendment*

*deleted*

#### Amendment 41

##### Proposal for a directive Recital 32

*Text proposed by the Commission*

(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.

*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. *Such companies should, however, be required to continue to set out in their annual reports and on their websites the gender balance among executive and non-executive directors, and their policies in this area, in accordance with Article 5 of this*

## **Amendment 42**

### **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 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 ***included in the company's annual report and published in an appropriate and easily accessible manner on its website*** and, where the company in question has not met the objective, should include a ***comprehensive*** description of the ***concrete*** measures that it has taken so far and intends to take in the future in order to meet the objective. ***Furthermore, companies that have failed to attain the objectives or to fulfil the commitments given by them should provide a justification of the reasons for their failure to do so, as well as a description of the concrete measures which they have taken so far, and which they intend to take in the future, in order to meet those objectives and fulfil those commitments.***

## **Amendment 43**

### **Proposal for a directive Recital 37**

#### *Text proposed by the Commission*

(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

#### *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.

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, ***closing the existing gender pay gap and improvement of*** 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 44**

### **Proposal for a directive**

#### **Recital 38**

##### *Text proposed by the Commission*

(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

##### *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.

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 ***flexible framework and a*** sufficiently long period of adaptation for all listed companies.

## Amendment 45

### Proposal for a directive

#### Recital 39

##### *Text proposed by the Commission*

(39) In accordance with the principle of proportionality, the objective to be met by listed companies should be limited in time and remain in force only until sustainable progress has been achieved in the gender composition of boards. For that reason, the Commission should regularly review the application of this Directive and report to the European Parliament and the Council. ***The*** Directive is due to expire on 31 December 2028. The Commission should assess, in its review, ***if*** there is a need to extend the duration of the Directive beyond that period.

##### *Amendment*

(39) In accordance with the principle of proportionality, the objective to be met by listed companies should be limited in time and ***should*** remain in force only until sustainable progress has been achieved in the gender composition of boards. For that reason, the Commission should regularly review the application of this Directive and report to the European Parliament and the Council. ***This*** Directive is due to expire on 31 December 2028. The Commission should assess, in its review, ***whether*** there is a need to extend the duration of the Directive beyond that period. ***Member States should cooperate with social partners and civil society in order to efficiently inform them about the significance, transposition and implementation of this Directive. Information campaigns would significantly contribute to the raising of awareness among non-listed companies and encourage them to achieve gender balance proactively. Member States should be encouraged to exchange experiences and good practices regarding the transposition and implementation of this Directive.***

## Amendment 46

### Proposal for a directive

#### Article 1

*Text proposed by the Commission*

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.

*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 **effective** measures aimed at accelerated progress towards gender balance while allowing companies sufficient time to make the necessary arrangements.

**Amendment 47**

**Proposal for a directive  
Article 2 – point 1**

*Text proposed by the Commission*

(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;

*Amendment*

(1) 'listed company' means a company **which has its seat** in a Member State **and** 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 48**

**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 in whose boards members of the under-represented sex hold less than 40 per cent of the non-executive director positions **adjust their recruitment, including vacancy announcements calling for applications, pre-selection, selection and appointment procedures in such a way that they effectively contribute to the attainment of** the said percentage at the latest by 1 January 2020 or at the latest by 1 January 2018 **in the** case of public undertakings. **In particular, Member States shall ensure that companies 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. In the case of an election procedure, Member States shall ensure that companies guarantee gender diversity in the composition of the shortlist of candidates while ensuring that the sex of the non-executive director elected in this procedure is not in any way predetermined.*

*In order to attain the objective of 40 % and in accordance with Article 23(2) of the Charter of Fundamental Rights of the European Union, Member States shall ensure that, at every stage in the recruitment, selection or appointment procedures for non-executive directors, priority is 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 49

### 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*

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. If the non-executive board consists of only three board members, the proportion one to two shall suffice.***

## Amendment 50

### 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*

***deleted***

## Amendment 51

### 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 ***at least*** disclose ***to an unsuccessful candidate, while respecting candidates' anonymity in accordance with Union law on data protection, the number and gender of the candidates in the selection pool***, the qualification criteria upon which the 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 52

### 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*

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 ***who considers him- or herself wronged because the provisions of paragraph 1 have not been applied to him or her*** establishes, ***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, it shall be for the listed company to prove that there has been no breach of the rule laid down in paragraph 1.

***This paragraph shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.***

**Amendment 53**

**Proposal for a directive  
Article 4 – paragraph 6**

*Text proposed by the Commission*

***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.***

*Amendment*

***deleted***

**Amendment 54**

**Proposal for a directive  
Article 4 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6a. Where the selection referred in paragraph 1 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.*

## Amendment 55

### 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 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 *easily* accessible manner on their website *and in their annual report.*

## Amendment 56

### 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 meet the objectives laid down in Article 4(1) or its own individual commitments taken pursuant to paragraph 1 of this Article, *it shall provide a statement of the reasons for its failure to attain those objectives or to fulfil those commitments and a comprehensive description of the measures which the company has adopted, or which it intends to adopt, in order to meet the objectives or commitments. That statement of reasons shall form part of the information referred to in paragraph 2.*

## Amendment 57

### Proposal for a directive Article 5 – paragraph 4

#### *Text proposed by the Commission*

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.

#### *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. ***To that end, Member States shall efficiently collaborate with social partners and civil society.***

## Amendment 58

### Proposal for a directive Article 6 – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall lay down rules on sanctions applicable to infringements of ***the national provisions adopted pursuant to this Directive*** and shall take all necessary measures to ensure that they are applied.

#### *Amendment*

1. Member States shall lay down rules on sanctions applicable to infringements of ***the requirements for an open and transparent procedure set out in Article 4(1)*** and shall take all necessary measures to ensure that they are applied.

## Amendment 59

### 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. The sanctions must be effective, proportionate and dissuasive and ***shall at least*** include the following measures:



## Amendment 60

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

***(aa) exclusion from public calls for tenders;***

## Amendment 61

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

***(ab) partial exclusion from the award of funding from the Union's Structural Funds;***

## Amendment 62

### Proposal for a directive

#### Article 7

*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 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 ***gender discrimination or any other form of*** discrimination ***or*** hinder the proper functioning of the internal market.

## Amendment 63

### Proposal for a directive

#### Article 8 – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

The Member State in question shall notify this information to the Commission.

The Member State in question shall notify this information to the Commission. ***The Commission shall inform the European***

*Parliament and the Council of such notification. The suspension shall be automatically lifted if insufficient progress is made towards attainment of the aim of this Directive, which shall be deemed to be the case if the percentage of the under-represented sex is lower than 30 % by 2017 or by 2015 in the case of public undertakings.*

#### **Amendment 64**

##### **Proposal for a directive Article 9 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1a. 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) and 5(1) and (2), on the basis of the reports submitted by the Member States pursuant to paragraph 1. In addition, the Commission's report shall include an account of 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.*

#### **Amendment 65**

##### **Proposal for a directive Article 9 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

*1b. The Commission shall present a report to the European Parliament and the Council on the way in which the principles of this Directive are applied by all Union institutions, bodies, offices and agencies and are incorporated into the rules governing their internal staffing procedures. To that end, all Union institutions, bodies, offices and agencies shall report to the Commission at the latest by 31 December 2018, and thereafter annually, on their gender statistics and on the progress made. The*

***Commission shall forthwith make such reports public on its website. Where appropriate, the Commission' report shall be accompanied by a legislative proposal extending the scope of this Directive to cover all Union institutions, bodies, offices and agencies.***

## **Amendment 66**

### **Proposal for a directive Article 9 – paragraph 4**

#### *Text proposed by the Commission*

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.

#### *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. ***It 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.***