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**Dossier interinstitutionnel:**  
**2012/0299(COD)**

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**NOTE**

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Origine:	Secrétariat général du Conseil
Destinataire:	délégations
N° doc. préc.:	6468/22
N° doc. Cion:	16433/12 - COM(2012) 614 final
Objet:	Proposition de DIRECTIVE DU PARLEMENT EUROPÉEN ET DU CONSEIL relative à un meilleur équilibre hommes-femmes parmi les administrateurs des sociétés cotées en bourse et à des mesures connexes

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Les délégations trouveront ci-joint le tableau à quatre colonnes présentant la proposition initiale de la Commission, le mandat du Parlement européen et le mandat du Conseil.

Ce tableau sera examiné par les membres du groupe des Questions sociales lors d'une vidéoconférence informelle le 6 avril 2022.

**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 (Text with EEA relevance)**

2012/0299(COD)

**DRAFT [Version including Cion proposal, EP mandate and Council mandate]**

23-03-2022 at 09h47

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	<b>Commission Proposal</b>	<b>EP Mandate</b>	<b>Council Mandate</b>	<b>Draft Agreement</b>
<b>Formula</b>				
1	2012/0299 (COD)	2012/0299 (COD)	2012/0299 (COD)	
<b>Proposal Title</b>				
2	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 (Text with EEA relevance)	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 (Text with EEA relevance)	-Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving the gender balance among <del>non-executive</del> directors of companies listed on stock exchanges, and related measures (Text with EEA relevance)	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Formula				
3	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Citation 1				
4	Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 157(3) thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular <del>Articles</del> <a href="#">Article</a> 157(3) thereof,	-Having regard to the Treaty on the Functioning of the European Union, and in particular <del>Articles</del> <b>Article</b> 157(3) thereof,	
Citation 2				
5	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	
Citation 3				
6	After transmission of the draft legislative act to the national Parliaments,	After transmission of the draft legislative act to the national parliaments,	-After transmission of the draft legislative act to the national Parliaments,	
Citation 4				
7	Having regard to the opinion of the European Economic and Social Committee, <sup>1</sup>	Having regard to the opinion of the European Economic and Social Committee, <sup>-1</sup>	-Having regard to the opinion of the European Economic and Social Committee, <sup>1+</sup>	

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	1. OJ C , , p. .	1. — OJ C <a href="#">133, 9.5.2013, p. 68</a> , <del>p.</del>	1. — OJ C , [1] OJ C 133, 9.5.2013, p. 68.	
Citation 5				
8	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure, <sup>1</sup>  <a href="#">1. Position of the European Parliament of 20 November 2013.</a>	-Acting in accordance with the ordinary legislative procedure,	
Formula				
9	Whereas:	Whereas:	Whereas:	
Recital 1				
10	(1) Equality between women and men is one of the Union's founding values and core aims under Article 2 and Article 3(3) of the Treaty on European Union. Under the terms of Article 8 of the Treaty on the Functioning of the European Union (hereinafter referred to as the Treaty), the Union shall aim to eliminate inequalities, and to promote equality, between men and women in all its activities.	(1) Equality between women and men is one of the Union's founding values and core aims under Article 2 and Article 3(3) of the Treaty on European Union ( <a href="#">TUE</a> ). Under the terms of Article 8 of the Treaty on the Functioning of the European Union ( <del>hereinafter referred to as the Treaty</del> <a href="#">TFUE</a> ), the Union shall aim to eliminate inequalities, and to promote equality, between men and women in all its activities.	(1) <del>Equality between women and men is one of the Union's founding values and core aims</del> Under Article 2 and Article 3(3) of the Treaty on European Union. Under the terms of Article 8 (TEU), <b>equality is a founding value</b> of the Treaty on the Functioning of the European Union (hereinafter referred to as the Treaty), the Union shall aim to eliminate inequalities, and to promote <b>Union and it is common</b>	

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	Article 157(3) of the Treaty provides a legal basis for the adoption of Union measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.	Article 157(3) of the Treaty provides a legal basis for the adoption of Union measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.	<b>to the Member States in a society in which equality, including equality between men and women in all its activities women and men, prevails. Under Article 157(3) of the Treaty provides a legal basis for the adoption of 3(3) TEU, the Union measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation and men.</b>	
Recital 1a				
10a			<b>(1a) Article 157(3) of the Treaty on the Functioning of the European Union confers upon the Union legislative powers to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.</b>	
Recital 2				
11	(2) The principle of positive action and its importance for	(2) The principle of positive action and its importance for	<b>(2) With a view to ensuring full equality in practice between</b>	

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	achieving effective equality between women and men in practice are recognised in Article 157(4) of the Treaty and in Article 23 of the Charter of Fundamental Rights of the European Union, which provides that equality between women and men must be ensured in all areas and that the principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.	achieving effective equality between women and men in practice are recognised in Article 157(4) <del>of the Treaty</del> <b>TFUE</b> and in Article 23 of the Charter of Fundamental Rights of the European Union ( <b>'the Charter'</b> ), which provides that equality between women and men must be ensured in all areas and that the principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.	<b>women and men in working life, Article 157(4) TFEU enables Member States to maintain or adopt measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers (positive action).</b> <del>The principle of positive action and its importance for achieving effective equality between women and men in practice are recognised in Article 157(4) of the Treaty and in Article 23 of the Charter of Fundamental Rights of the European Union, which (the 'Charter')</del> provides that equality between women and men <del>must</del> <b>needs to</b> be ensured in all areas and that the principle of equality <del>shall not</del> <b>cannot</b> prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.	
Recital 2a				
11a			<b>(2a) The European Pillar of Social Rights, jointly proclaimed by the European Parliament, the</b>	

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			<b>Council, and the Commission in 2017, incorporates among its principles equality of treatment and opportunities between women and men, including regarding participation in the labour market, terms and conditions of employment and career progression.</b>	
Recital 2a				
11b		<i><u>(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 concerned, whilst measures must also be taken to ensure the elimination of the gender pay gap, which contributes significantly to the feminisation of poverty.</u></i>		
Recital 3				
12	(3) Council Recommendation 84/635/EEC of 13 December 1984 on the promotion of positive action for women <sup>1</sup> recommended that Member States should take steps to ensure that positive action includes, as far as possible, actions	(3) Council Recommendation 84/635/EEC <del>of 13 December 1984</del> <del>on the promotion of positive action for women</del> <sup>1</sup> recommended that Member States should take steps to ensure that positive action includes, as far as possible, actions	(3) -Council Recommendation 84/635/EEC <del>of 13 December 1984</del> <del>on the promotion of positive action for women</del> <sup>+1</sup> recommended that Member States <del>should</del> take steps to ensure that positive action includes, as far as possible, actions	

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	<p>having a bearing on active participation by women in decision-making bodies. Council Recommendation 96/694/EC of 2 December 1996 on the balanced participation of women and men in the decision-making process<sup>2</sup> recommended that Member States should encourage the private sector to increase the presence of women at all levels of decision-making, notably by the adoption of, or within the framework of, equality plans and positive action programmes.</p> <p>1. OJ L 331, 19.12.1984, p. 34. 2. OJ L 319, 10.12.1996, p.11.</p>	<p>having a bearing on active participation by women in decision-making bodies. Council Recommendation 96/694/EC <del>of 2 December 1996 on the balanced participation of women and men in the decision-making process</del><sup>2</sup> recommended that Member States should encourage the private sector to increase the presence of women at all levels of decision-making, notably by the adoption of, or within the framework of, equality plans and positive action programmes.</p> <p>1. — <u>Council Recommendation 84/635/EEC of 13 December 1984 on the promotion of positive action for women</u> (OJ L 331, 19.12.1984, p. 34). 2. — <u>Council Recommendation 96/694/EC of 2 December 1996 on the balanced participation of women and men in the decision-making process</u> (OJ L 319, 10.12.1996, p.11).</p>	<p>having a bearing on active participation by women in decision-making bodies. Council Recommendation 96/694/EC<sup>2</sup> of 2 December 1996 on the balanced participation of women and men in the decision-making process<sup>2</sup> recommended that Member States <del>should</del> encourage the private sector to increase the presence of women at all levels of decision-making, <del>notably</del> <b>in particular</b> by the adoption <del>of</del>, or within the framework, of, equality plans and positive action programmes.</p> <p>1. — [1] <b>Council Recommendation 84/635/EEC of 13 December 1984 on the promotion of positive action for women</b> (OJ L 331, 19.12.1984, p. 34). 2. — [2] <b>Council Recommendation 96/694/EC of 2 December 1996 on the balanced participation of women and men in the decision-making process</b> (OJ L 319, 10.12.1996, p.11).</p>	
Recital 3a				
12a				



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			(3a) This Directive contributes to the objective of ensuring the application of the principle of equal opportunities by fostering a gender-balanced representation among top management positions. It aims to establish a system for the application of minimum requirements concerning the appointment and election of company board members.	
Recital 4				
13	(4) In recent years the European Commission has presented several reports taking stock of the situation concerning gender diversity in economic decision-making. <sup>1</sup> 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. <sup>2</sup> In its Women's Charter <sup>3</sup> 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	(4) In recent years the European Commission has presented several reports taking stock of the situation concerning gender diversity in economic decision-making. <sup>1</sup> The Commission has encouraged publicly listed companies in the European Union to increase the number of <del>women</del> <u>members of the under-represented sex</u> on their boards by self-regulatory measures and to make concrete voluntary commitments in that regard. <sup>2</sup> In its Women's Charter <sup>3</sup> 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	(4) -In recent years the <del>European</del> Commission has presented several reports taking stock of the situation concerning gender diversity in economic decision-making. <sup>1</sup> <del>The Commission</del> It has encouraged publicly listed companies in the <del>European</del> Union to increase the number of women on their boards by self-regulatory measures and to make concrete voluntary commitments in that regard. <sup>2</sup> - <b>In 2010, in its Communication entitled "A Strengthened Commitment to Equality between Women's Charter <sup>3</sup> of 5 March 2010, the European and Men - A Women's Charter", the</b>	

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	<p>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<sup>4</sup> as one of its priority tasks.</p> <p>_____</p> <p>1. Commission report 'More women in senior positions' (2010); Commission Staff Working Paper 'The Gender Balance in Business Leadership' of 1.3.2011 (SEC(2011) 246 final); Progress Report 'Women in economic decision-making in the EU' of 5.3.2012; Commission Staff Working Document 'Progress on equality between women and men in 2011' of 16.4.2012 (SWD(2012) 85 final).</p> <p>2. 'Women on the Board Pledge for Europe', IP/11/242.</p> <p>3. COM(2010) 78 final.</p> <p>4. COM(2010) 491 final.</p>	<p>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<sup>4</sup> as one of its priority tasks.</p> <p>_____</p> <p>1. — Commission report 'More women in senior positions' (2010); Commission Staff Working Paper 'The Gender Balance in Business Leadership' of 1.3.2011 (SEC(2011) 246 final); Progress Report 'Women in economic decision-making in the EU' of 5.3.2012; Commission Staff Working Document 'Progress on equality between women and men in 2011' of 16.4.2012 (SWD(2012) 85 final).</p> <p>2. — 'Women on the Board Pledge for Europe', IP/11/242.</p> <p>3. — <del>COM(2010) 78</del> <a href="#">COM(2010)0078</a> final.</p> <p>4. — <del>COM(2010) 491</del> <a href="#">COM(2010)0491</a> final.</p>	<p>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 <del>defined</del> <b>done of the priority tasks set</b> by the Commission's- <b>in its Communication entitled</b> "Strategy for equality between women and men 2010-2015". <b>Achieving gender balance in decision-making and politics is-<sup>4</sup> as one of its priority tasks, the priorities set out in the Commission's Communication entitled "A Union of Equality: Gender Equality Strategy 2020-2025.-"<sup>1</sup></b></p> <p>_____</p> <p>1. — <del>Commission report 'More women in senior positions' (2010); Commission Staff Working Paper 'The Gender Balance in Business Leadership' of 1.3.2011 (SEC(2011) 246[1] COM(2010) 152 final); Progress Report 'Women in economic decision making in</del></p>	

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			<p>the EU' of 5.3.2012;            Commission Staff Working Document 'Progress on equality between women and men in 2011' of 16.4.2012 (SWD(2012) 85 final).            2. — 'Women on the Board Pledge for Europe', IP/11/242.            3. — COM(2010) 78 final.            4. — COM(2010) 491 final.</p>	
Recital 5				
14	<p>(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.</p>	<p>(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, <u>knowledge</u></p>	<p>(5) <b>In 2011, the Council adopted</b> <del>in</del> the European Pact for Gender Equality (2011-2020), <b>acknowledging</b> <del>2011-2020, which was adopted on 7 March 2011, the Council acknowledged</del> that gender equality policies are vital to economic growth, prosperity and competitiveness. <b>It</b> 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 <b>urged</b> <del>urging</del> action to promote the equal participation of women and men in decision-making at all</p>	

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		<i>and ideas, thus enriching the diversity of human resources and improving business prospects.</i>	levels and in all fields, in order to make full use of all available talent.	
Recital 6				
15	<p>(6) The European Parliament, in its resolution on women and business leadership of 6 July 2011<sup>1</sup>, 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.<sup>2</sup></p> <p>1. 2010/2115(INI). 2. 2011/2244(INI).</p>	<p>(6) The European Parliament, in its resolution on women and business leadership of 6 July 2011<sup>1</sup>, urged companies to attain the critical threshold of 30 <del>per cent</del>% female membership of management bodies by 2015 and 40 <del>per cent</del>% 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, <i>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.</i> 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.<sup>2</sup></p> <p>1. <del>2010/2115(INI).</del> <i>OJ C 33 E, 5.2.2013, p. 134.</i></p>	<p>(6) -The European Parliament, in its resolution <b>of July 2011</b> on women and business leadership <del>of 6 July 2011</del><sup>1</sup>, urged companies to attain the critical threshold of 30 <del>per cent</del>% female membership of management bodies by 2015 and 40 <del>per cent</del>% 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 <del>on equality between women and men in the European Union – 2011</del> <b>and in its resolution of 21 January 2021.</b><sup>2</sup></p> <p>1. <del>2010/2115(INI).</del> 2. <del>2011/2244(INI).</del></p>	

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		2. <del>2011/2244(INI)</del> <u>OJ C 251 E, 31.8.2013, p. 1.</u>		
Recital 6a				
15a		<u>(6a) The Union institutions, bodies, offices and agencies, such as 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 each publish an annual report setting out their efforts to that end.</u>		
Recital 7				
16	(7) The efficient use of human capital is the most important determinant of an economy's	(7) The efficient use of human capital is the most important determinant of an economy's	<i>deleted</i>	

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	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.	competitiveness, <u>development and growth</u> , 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 <del>60 per cent</del> <u>60%</u> of university graduates are female. A continued failure to draw on this pool in appointments to <del>economic companies'</del> <u>management positions and</u> decision-making positions would amount to a failure to fully exploit skilled human capital.	See Recital 10.	
Recital 7a				
16a		<u>(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.</u>		
Recital 7b				
16b		<u>(7b) In order to ensure the</u>		

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		<u><i>promotion of gender equality, Member States should put in place provisions whereby men and women can combine work and family life, incorporating, in particular, flexible arrangements and support for those with care responsibilities.</i></u>		
Recital 7c				
16c		<u><i>(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</i></u>		

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		<u><i>inadequate parental leave provisions. There should be measures in place enabling 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.</i></u>		
Recital 8				
17	(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	(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 <del>and</del> <u><i>as well as a more proactive business model, which</i></u> therefore <del>reaching</del> <u><i>makes it possible to reach</i></u> more balanced decisions, <u><i>with a view to better reflecting societal and consumers' realities.</i></u> Numerous studies have also shown that there is a positive relationship	<i>deleted</i> <u><i>See Recital 10.</i></u>	



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	on the boards of publicly listed companies in the Union can therefore have a positive impact on the performance of companies concerned.	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, <u>given the significant economic and social responsibility of such companies</u> , can therefore have a positive impact on the <u>economic</u> performance of companies concerned. <u>Measures to encourage career progression for women at all levels of management should therefore be introduced and reinforced.</u>		
<i>Recital 8a</i>				
17a		<u>(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 a regular turnover of</u>		

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		<u><i>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.</i></u>		
Recital 9				
18	(9) Existing evidence also shows that labour market equality can improve economic growth substantially. Enhancing female presence in the boardrooms of listed companies in the Union not only affects the women appointed to boards, but also contributes to attracting female talent to the company and ensuring a greater presence of women at all levels of management and in the workforce. Therefore, a higher share of women on company boards has a positive impact on closing both the gender employment gap and the gender pay gap. Making full use of the existing female talent pool would constitute a marked	(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 <del>has</del> <u>should have</u> 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	<i>deleted</i> <u>See Recital 10.</u>	

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	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.	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.		
<i>Recital 10</i>				
19	(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	(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 <del>outnumbered by men</del> <u>under-represented</u> 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, <u>while certain Union institutions, bodies, offices and agencies, such as the European Central Bank, also</u>	(10) <b>Europe has a large pool of highly qualified women. Improving the gender balance on company boards is essential for making more efficient use of existing human capital, which is key to addressing the Union's demographic challenges. Moreover, it is widely acknowledged that the presence of women</b> <del>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</del>	

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	<p>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.</p>	<p><u>display a deeply problematic gender imbalance.</u> 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 <del>13.7 per cent</del> <u>13.7%</u> of board seats in the largest publicly listed companies in Member States. Among non-executive directors only 15 <del>per cent</del> <u>per cent</u> were women, which is <u>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.</u></p>	<p>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. <b>boardroom improves corporate governance and numerous studies have shown a positive correlation between gender diversity at the top management level and a company's financial performance and profitability. Despite evidence of the beneficial impact</b> 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 <b>balance on companies themselves and the economy in general, and despite the existing Union legislation prohibiting sex discrimination and Union-level actions encouraging self-regulation, women occupied on average just 13.7 per cent of board seats continue to be vastly outnumbered by men in the highest decision-making bodies of companies throughout the Union.</b> In the largest publicly listed</p>	

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			<p><del>companies in Member States.</del>  <del>Among non-executive directors</del>  <del>only 15 per cent were</del>  <del>women</del>  <b>private sector and especially in listed companies, this gender imbalance is particularly significant and acute.</b></p>	
Recital 10a				
19a			<p><b>(10a) 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. According to the European Institute for Gender Equality, in 2021, women accounted for an average of 30.6 % of the members of boards of directors in the largest publicly listed companies and only 8.5 % of chairpersons.</b></p>	
Recital 10b				
19b			<p><b>(10b) The Europe 2020 Strategy for Smart, Sustainable and Inclusive Growth recognised that increasing women's labour</b></p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>market 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 % for women and men aged 20 to 64 years by 2020. The Porto Declaration signed by the Heads of State and Government on 8 May 2021<sup>1</sup> welcomed the new EU headline targets on jobs, skills and poverty reduction as well as the revised Social Scoreboard proposed by the Commission in the European Pillar of Social Rights Action Plan<sup>2</sup>. In order to achieve the overall goal of an employment rate of 78 % among the Union's population aged 20 to 64 by 2030 %, it is necessary to strive to at least halve the gender employment gap compared to 2019. Enhancing women's participation in economic decision-making, on company boards in particular, is expected to have a positive spill-over effect on women's employment in the companies concerned and throughout the whole economy. In the aftermath of the COVID-19 crisis, gender equality and</p>	

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			<p><b>inclusive leadership matter more than ever. Research has shown that inclusion and diversity are enablers of recovery and resilience.</b></p> <p>1.  <a href="https://www.consilium.europa.eu/en/press/press-releases/2021/05/08/the-porto-declaration/">https://www.consilium.europa.eu/en/press/press-releases/2021/05/08/the-porto-declaration/</a>            2. [2] COM(2021) 102 final.</p>	
Recital 11				
20	<p>(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</p>	<p>(11) The proportion of women on company boards is progressing very slowly, with an average annual increase of just 0.6 <del>percentage points</del>% 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 <u>Member States such as France, which has set 2017 as its target date for fulfilment of the objectives contained in this Directive, meeting in less than two years the 20 % target set for 2014,</u></p>	<p>(11) -The proportion of women on company boards is <del>progressing</del><b>has increased</b> very slowly, <del>with an average annual increase of just 0.6 percentage points</del> during the past years. The rate of improvement has differed in <del>individual</del> Member States and has led to highly divergent results. Much more significant progress was noted in <del>the</del><b>those</b> Member States where binding measures have been introduced. <del>Growing discrepancies between Member States are</del><b>That divergence is</b> likely to increase given the very different approaches</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Member States to increase the representation of females on boards that are being pursued by individual Member States.	<u>or countries such as Norway, which met the 40 % target in three years. In both cases these results were achieved through binding measures</u> <del>the Member States where binding measures have been introduced.</del> 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.	<del>pursued by individual</del> <b>to ensuring a more balanced representation of women and men on boards. Therefore Member States are encouraged to share information about the effective measures taken and policies adopted at the national level, and to exchange best practice, with a view to supporting progress across the Union towards achieving a more balanced representation of women and men on company boards</b> <del>to increase the representation of females on boards that are being pursued by individual Member States.</del>	
Recital 11a				
20a		<u>(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</u>		



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><a href="#">workplaces by providing access to day care.</a></u>		
Recital 12				
21	(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.	(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. <u><a href="#">Nevertheless, this Directive should be enforced without regard to the different ways in which non-executive directors are selected to serve on</a></u>	<i>deleted</i>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>the boards of Union companies.</i></u>		
Recital 12a				
21a		<u><i>(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 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.</i></u>		
Recital 12b				
21b		<u><i>(12b) One of the main factors enabling this Directive to be correctly implemented is the effective application of criteria, to be set in advance and with full transparency, for the selection of</i></u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>non-executive directors, with candidates' competencies being considered on an equal basis, regardless of their gender.</i></u>		
Recital 12c				
21c		<u><i>(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 positions on the boards of companies might slow down the development opportunities of the Union's economy and the recovery of its financial structures. If one half of the talent pool is not even considered for leadership positions, the very process and quality of appointments may be compromised, leading to increased distrust of business power structures and possibly to a reduction in the efficient utilisation of available human capital. Systematically including suitable candidates from both sexes ensures that new board members are selected from amongst the very best candidates, both male and female, and that the make-up of society is faithfully reflected in corporate decision-</i></u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>making.</u>		
Recital 13				
22	<p>(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</p>	<p>(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</p>	<p>(13) -The current lack of transparency <del>of</del><sup>in</sup> the selection <del>procedures</del><sup>process</sup> 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 <del>procedure</del><sup>process</sup> for board members enables investors to better assess the company's</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	business strategy and to take informed decisions.	business strategy and to take informed decisions. <u>It is therefore important that board appointment procedures be clear and transparent and that applicants be assessed objectively on their individual merits, irrespective of gender.</u>	business strategy and to take informed decisions.	
Recital 14				
23	(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	(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 <u>a transparent and clearly defined selection procedure and</u> 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 <del>non-executives</del> <u>non-executive</u> directors. Only <del>an EU-</del> <u>level a binding</u> measure <u>at EU level</u> can effectively help to ensure a	(14) -While this Directive does not aim to harmonise national laws on the selection <del>procedures</del> <b>process</b> 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 <del>take</del> <b>select candidates for election or appointment decisions for to the posts of</b> non-executive directors on the basis of an objective comparative assessment of <del>the</del> <b>their</b> qualifications of <del>candidates</del> in terms of suitability, competence and professional performance is necessary <del>in order to attain</del> <b>for improving the</b> gender balance among non-executives directors. <del>Only an EU-level measure.</del> <b>Only a measure at Union level</b> can	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	in business life.	competitive level-playing field throughout the Union and avoid practical complications in business life.	effectively help to ensure a competitive level-playing field throughout the Union and avoid practical complications in business life.	
Recital 15				
24	(15) The Europe 2020 Strategy for Smart, Sustainable and Inclusive Growth <sup>1</sup> 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-	(15) The Europe 2020 Strategy for Smart, Sustainable and Inclusive Growth <sup>1</sup> 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 <del>per cent</del> % for women and men aged 20-64 by 2020, which can only be reached if there is a clear commitment to gender equality, <u>elimination of the persisting gender pay gap</u> and a reinforced effort to tackle all barriers to women's participation in the labour market, <u>including the existing 'glass-ceiling' phenomenon</u> . 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, <u>of both men and</u>	<i>deleted</i>	

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	<p>over effect on female employment in the companies concerned and throughout the whole economy.</p> <p>1. COM(2010) 2020 final.</p>	<p><u>women</u>. 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.</p> <p>1. <del>COM(2010) 2020 final.</del></p>		
Recital 15a				
24a		<p><u>(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.</u></p>		
Recital 16				
25	(16) The Union should therefore	(16) The Union should therefore	(16) -The Union should therefore	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>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.</p>	<p>aim to increase the presence of women on company boards <u>in all Member States</u>, in order <del>both</del> to boost economic growth, <u>encourage labour market mobility</u>, <u>strengthen</u> <del>and</del> 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 <del>the</del> 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.</p>	<p>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, <del>in the</del> view of the fact that Member States and other countries which have chosen this or a similar method have achieved the best results in <del>reducing the under-representation</del> <b>ensuring a more balanced representation</b> of women <b>and men</b> in economic decision-making positions.</p>	
	Recital 16a			
25a		<p><u>(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</u></p>		



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		<i><u>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.</u></i>		
Recital 17				
26	(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	(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 <del>incorporated</del> <u>whose seat is</u> in a Member State <u>and</u> whose securities	(17) -Companies listed on stock exchanges <del>enjoy</del> <u>have</u> a particular economic importance, visibility and impact on the market as a whole. <del>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</del>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>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,<sup>1</sup> in one or 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. The public nature of listed companies justifies that they be regulated to a greater extent in the public interest.</p> <p>1. OJ L 145, 30.4.2004, p. 1.</p>	<p>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 <del>of 21 April 2004 on markets in financial instruments,</del><sup>1</sup> in one or 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. <del>The public nature of listed companies justifies that they be regulated to a greater extent in the public interest.</del></p> <p>1. — <u>Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC</u> (OJ L 145, 30.4.2004, p. <del>1</del> <u>1</u>).</p>	<p><del>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,</del><sup>+</sup> in one or more Member States. These companies set standards for the economy in its entirety <b>wider economy</b> and their practices can be expected to be followed by other types of companies. The public nature of <b>the</b> listed companies justifies <del>that they be</del> <b>their being</b> regulated to a greater extent in the public interest.</p> <p>1. — OJ L 145, 30.4.2004, p. 1.</p>	
	Recital 17a			
	26a			

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p><b>(17a) The measures provided for in this Directive should apply to listed companies, which are defined as companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market within the meaning of Directive 2014/65/EU of the European Parliament and of the Council,<sup>1</sup> in one or more Member States. This Directive does not affect the existing legislation on determining the seat of a listed company.</b></p> <p><b>1. [1] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349–496).</b></p>	
Recital 17b				
26b			<p><b>(17b) For the purposes of the implementation of this Directive, the Member State competent to regulate the matters under this</b></p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			Directive should be the Member State in which the listed company in question has its registered office, rather than the Member State on whose regulated market the listed company trades its shares. The applicable law should be the law of the Member State in which the listed company has its registered office.	
Recital 18				
27	<p>(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,<sup>1</sup> even if they are listed companies.</p> <p>1. OJ L 124, 20.5.2003, p. 36.</p>	<p>(18) This Directive should not apply to micro-, small and medium-sized enterprises (SMEs), as defined by Commission Recommendation 2003/361/EC,<sup>1</sup> <u>even if they are listed companies.</u> <u>However, Member States should put in place policies to support and incentivise SMEs to improve significantly the gender balance at all levels of management and on company boards.</u> <del>of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises,<sup>1</sup> even if they are listed companies.</del></p> <p>1. —<u>Commission Recommendation 2003/361/EC</u></p>	<p>(18) -This Directive should not apply to <del>micro</del>, 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,<sup>1</sup> <del>even if they are listed companies</del><sup>1</sup>.</p> <p>1. —[1] OJ L 124, 20.5.2003, p. 36.</p>	

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		<u><a href="#">of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises,</a></u> (OJ L 124, 20.5.2003, p. 36).		
Recital 19				
28	(19) There are various systems of board structures for listed companies in the Member States, the main distinction being between a dual ('two-tier') system with both a management board and a supervisory board and a unitary ('one-tier') system combining the management and supervisory function in a single board. There are also mixed systems, which feature aspects of both systems or give companies an option between different models. The measures provided for in this Directive should apply to all board systems in the Member States.	(19) There are various systems of board structures for listed companies in the Member States, the main distinction being between a dual ('two-tier') system with both a management board and a supervisory board and a unitary ('one-tier') system combining the management and supervisory function in a single board. There are also mixed systems, which feature aspects of both systems or give companies an option between different models. The measures provided for in this Directive should apply to all board systems in the Member States.	(19) -There are various systems of board structures for listed companies in the Member States, the main distinction being between a dual ( <del>'two-tier'</del> )-system with both a management board and a supervisory board (' <b>two-tier system'</b> ) and a unitary ( <del>'one-tier'</del> ) system combining the management and supervisory <del>function</del> <b>functions</b> in a single board (' <b>one-tier system'</b> ). There are also mixed systems, which feature aspects of both systems or give companies an option between different models. <del>The measures provided for in</del> This Directive should apply to all board systems in the Member States.	
Recital 20				
29	(20) All board systems distinguish between executive directors, who are involved in the daily management of the company, and	(20) All board systems distinguish between executive directors, who are involved in the daily management of the company, and	(20) -All board systems distinguish, <b>de jure or de facto</b> , between executive directors, <del>who are</del> involved in the daily	

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	<p>non-executive directors who are not involved in the daily management, but do perform a supervisory function. The quantitative objectives provided for in this Directive should apply only to the non-executive directors in order to strike the right balance between the need to increase the gender diversity of boards and the need to minimise interference with the day-to-day management of a company. As the non-executive directors perform supervisory tasks, it is also easier to recruit qualified candidates from outside the company and to a large extent also from outside the specific sector in which a company operates – a consideration which is of importance for areas of the economy where members of a particular sex are especially under-represented in the workforce.</p>	<p>non-executive directors who are not involved in the daily management, but do perform a supervisory function. The quantitative objectives provided for in this Directive should apply only to the non-executive directors in order to strike the right balance between the need to increase the gender diversity of boards and the need to minimise interference with the day-to-day management of a company. As the non-executive directors perform supervisory tasks, it is also easier to recruit qualified candidates from outside the company and to a large extent also from outside the specific sector in which a company operates – a consideration which is of importance for areas of the economy where members of a particular sex are especially under-represented in the workforce.</p>	<p>management of the company, and non-executive directors who <b>perform a supervisory function and</b> are not involved in the daily management, <del>but do perform a supervisory function. The quantitative objectives provided for in this Directive should apply only to the non-executive.</del> <b>This Directive aims to improve the gender balance among both categories of directors.</b> In order to strike the right balance between the need to increase the gender diversity of boards and the need to minimise interference with the day-to-day management of a company: <del>As the non-executive directors perform supervisory tasks, it is also easier to recruit qualified candidates from outside the company and to a large extent also from outside the specific sector in which a company operates – a consideration which is of importance for areas of the economy where members of a particular sex are especially under-represented in the workforce, this</del> <b>Directive distinguishes between the two categories of director.</b></p>	
Recital 21				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
30	<p>(21) In several Member States, a certain proportion of the non-executive directors can or must be appointed or elected by the company's workforce and/or organisations of workers pursuant to national law or practice. The quantitative objectives provided for in this Directive should apply to all non-executive directors including employee representatives. However, the practical procedures for ensuring that those objectives are attained, taking into account the fact that some non-executive Directors are employee representatives, should be defined by the Member States concerned.</p>	<p>(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.</p> <p><del>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</del> <u>This Directive should take account of the diversity and national characteristics of selection procedures in</u> the Member States. <del>concerned.</del></p>	<p>(21) <b>The quantitative objectives provided for in this Directive should apply to all non-executive directors.</b> In several Member States, a certain proportion of the non-executive directors can or must be appointed or elected by the <del>company's</del> <b>companies'</b> workforce and/or <del>organisations of workers</del> <b>by employee organisations</b> pursuant to national law or practice. The quantitative objectives <del>provided for in this Directive should apply to all</del> <b>should also apply to these directors. However, in view of the fact that some non-executive directors including</b> <del>are</del> <b>employee representatives.</b> <del>However, the practical procedures, the means for ensuring that those objectives are attained</del> <b>should be defined by the Member States concerned, with due regard to the specific rules for the election or designation of employee representatives as laid down in Member States' legislation and respect the freedom of vote in the election of;</b> <del>taking into account the fact that some non-executive Directors are employee representatives.</del> <b>Given the differences in national company law, this</b> <del>should be</del></p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			defined by <del>the</del> <b>include the possibility for</b> Member States concerned <b>to apply the quantitative objectives separately to shareholder representatives and employee representatives.</b>	
Recital 22				
31	(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.	(22) Listed companies in the Union should <del>be imposed obligations of means providing for appropriate procedures with a view of meeting specific objectives regarding the gender composition of their boards.</del> <b><u>aim to attain the objective of having at least 40 % of non-executive directors of the under-represented sex by 1 January 2020. For the purpose of attaining that objective,</u></b> those listed companies in whose boards members of the under-represented sex hold less than 40 <del>per cent</del> <b>%</b> of non-executive director positions should <del>make the</del> <b><u>be obliged to carry out the pre-selection or selection procedure for</u></b> appointments to those positions on the basis of a comparative analysis of the qualifications of each candidate, by applying pre-established, clear, neutrally	(22) -Listed companies in the Union should <del>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</del> <b>aim to attain the objective of having at least 40 % of non-executive directors</b> of the under-represented sex hold <del>less than 40 per cent of non-executive director positions</del> <b>no later than 31 December 2027. Alternatively, since listed companies</b> should <del>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</del> <b>aim to increase the proportion of the</b>	



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>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.</p>	<p>formulated and unambiguous criteria, <del>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.</del></p>	<p><b>under-represented sex in all decision-making positions, Member States may provide that listed companies may aim to</b> attain the said percentage at the latest by 1 January 2020. Therefore, the Directive establishes the objective of <del>objective that</del> <b>members of the under-represented sex hold</b> at least 40 per cent of non-executive directors of the under-represented sex by that date. This objective in principle only concerns <del>33 % of all</del> <b>director positions, irrespective of whether they are executive or non-executive. These objectives concern</b> the overall gender diversity among the non-executive directors and <del>does</del> <b>do</b> not interfere with the concrete choice of individual directors from a wide pool of male and female candidates in each individual case. In particular, <del>this Directive</del> <b>this Directive</b> does not exclude any particular candidates for director positions, nor does it impose any individual directors on companies or shareholders. <b>It respects the shareholders' rights and the freedom of vote at the assembly of shareholders.</b> The decision on the appropriate board members thus remains with the</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			companies and shareholders.	
Recital 22a				
31a			<b>(22a) For listed companies having their registered office in a Member State that has taken equally effective measures to ensure a more balanced representation of women and men on the boards of listed companies or where there is evidence of progress coming close to the above objectives and where that Member State has decided to suspend the application of Article 4a, the objectives set out in Article 4(1) should be deemed to be attained.</b>	
Recital 22a				
31b		<i><u>(22a) The objective of 40 % only concerns, in principle, 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</u></i>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>for director positions; nor does it impose any individual directors on companies or shareholders. The decision on whom to appoint as appropriate board members thus remains with the companies and shareholders.</u>		
Recital 22b				
31c		<u>(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.</u>		
Recital 23				
32	(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	(23) Member States exercise a dominant influence over listed companies which are public undertakings within the meaning of <u>point (b) of Article 2(b)2</u> of Commission Directive 2006/111/EC <del>of 16 November 2006 on the transparency of financial relations between Member States and public undertakings, as well as</del>	<i>deleted</i>	

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	<p>financial transparency within certain undertakings.<sup>1</sup> 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.</p> <p>1. OJ L 318, 17.11.2006, p. 17.</p>	<p><del>on financial transparency within certain undertakings<sup>1</sup>.</del><sup>2</sup> 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 <u>at least 40 per cent%</u> of non-executive directors of the under-represented sex should be set at an earlier date, <u>in conformity with adequate mechanisms to be set up by Member States in line with this Directive.</u></p> <p>1. <u>— 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 (OJ L 318, 17.11.2006, p. 17).</u></p>		
<i>Recital 23a</i>				
32a		<p><u>(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</u></p>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>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.</u>		
Recital 23b				
32b		<u>(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.</u>		
Recital 24				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
33	<p>(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.</p>	<p>(24) <del>Determining the number of</del> <u>Where a</u> non-executive <del>director positions necessary to meet the objective requires further specification since for most board sizes</del> <u>board consists of only three members,</u> it is mathematically <del>possible only</del> <u>impossible</u> to go beyond <del>or remain below the exact</del> <u>a</u> share of 40 <del>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</del> <u>% for both genders. Therefore, in such cases,</u> <del>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.</del> <u>.</u></p>	<p>(24) -Determining the number of <del>non-executive director positions necessary to meet the objective</del> <u>attain the objectives</u> requires further specification since, <del>given the size of most boards, for most board sizes it is mathematically not possible only to go beyond or remain below</del> <u>mathematically to attain</u> the exact share of 40 <del>per cent</del> <u>% or, where applicable, 33 %</u>. Therefore, the number of board positions necessary to meet the objective should be the number closest to 40 <del>per cent</del>. 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 <del>%</del>, <u>or, where applicable,</u></p>	

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			33 %, and in both cases should be less than 50 %.	
Recital 24a				
33a			(24a) Since the gender composition of the workforce may have a direct impact on the availability of candidates of the under-represented sex, Member States may provide that the quantitative objectives concerning the representation of men and women among directors laid down in this Directive do not apply to listed companies where the members of the under-represented sex make up less than 10 % of the employees. Such companies should nevertheless set their own quantitative objectives regarding gender-balanced representation of both sexes among all director positions and aim to attain those objectives by 31 December 2027.	
Recital 25				
34	(25) In its case-law <sup>1</sup> on positive action and the compatibility thereof with the principle of non-	(25) In its case-law <sup>1</sup> on positive action and the compatibility thereof with the principle of non-	(25) -In its case-law <sup>±</sup> -on positive action and the compatibility thereof with the principle of non-	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>discrimination on ground of sex (now also laid down in Article 21 of the Charter of Fundamental Rights of the European Union), the Court of Justice of the European Union accepted that priority may in certain cases be given to the under-represented sex in selection for employment or promotion, provided that the candidate of the under-represented sex is equally qualified as the competitor of the other sex in terms of suitability, competence and professional performance, that the priority is not automatic and unconditional but may be overridden if reasons specific to an individual candidate of the other sex tilt the balance in that candidate's favour, and that the application of each candidate is subject of an objective assessment which takes account of all criteria specific to the individual candidates.</p> <p>1. C-450/93: Kalanke (1995 ECR I-3051), C-409/95: Marschall (1997 ECR I-6363), C-158/97: Badeck (2000 ECRI I-1875), C-407/98: Abrahamsson (2000 ECR I-5539).</p>	<p>discrimination on ground of sex (now also laid down in Article 21 of the Charter of Fundamental Rights of the European Union), the Court of Justice of the European Union accepted that priority may in certain cases be given to the under-represented sex in selection for employment or promotion, provided that the candidate of the under-represented sex is equally qualified as the competitor of the other sex in terms of suitability, competence and professional performance, that the priority is not automatic and unconditional but may be overridden if reasons specific to an individual candidate of the other sex tilt the balance in that candidate's favour, and that the application of each candidate is subject of an objective assessment which takes account of all criteria specific to the individual candidates.</p> <p>1. C-450/93: Kalanke (1995 ECR I-3051), C-409/95: Marschall (1997 ECR I-6363), C-158/97: Badeck (2000 ECRI I-1875), C-407/98: Abrahamsson (2000 ECR I-5539).</p>	<p>discrimination <b>based on ground of sex</b> (<del>now</del> also laid down in Article 21 of the Charter of Fundamental Rights of the European Union), the Court of Justice of the European Union accepted that priority may in certain cases be given to the under-represented sex in selection for employment or promotion, provided that the candidate of the under-represented sex is equally qualified as <b>compared with</b> the competitor of the other sex in terms of suitability, competence and professional performance, that the priority is not automatic and unconditional but may be overridden if reasons specific to an individual candidate of the other sex tilt the balance in that candidate's favour, and that the application of each candidate is <b>the</b> subject of an objective assessment which <del>takes account of all</del> <b>specifically applies all the selection</b> criteria <del>specific</del> to the individual candidates.<sup>1</sup></p> <p>1. —[1] C-450/93: Kalanke (<del>1995</del> ECR I-3051), C-409/95: Marschall (<del>1997</del> ECR I-6363), C-158/97: Badeck (<del>2000</del> ECRI-1875) ECR I-1875, C-</p>	



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			407/98: Abrahamsson (2000 ECR I-5539).	
Recital 26				
35	(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	(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, <u>international experience, multidisciplinary</u> , 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	(26) -In line with that case-law, Member States should ensure that <del>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</del> <b>and those listed companies on whose boards members of the under-represented sex hold less than 40 % of non-executive</b>	

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	tilt the balance in favour of a candidate of the other sex.	criteria specific to the individual candidates does not tilt the balance in favour of a candidate of the other sex.	<p><b>director positions, or less than 33 % of all director positions, respectively, carry out the selection of the best qualified candidates for election or appointment to those positions on the basis of a comparative analysis of the qualifications of candidates by applying clear, neutrally formulated and unambiguous criteria established at the beginning of the selection process, with a view to attaining the relevant percentage no later than 31 December 2027.</b></p> <p><b>Examples of types of selection criteria that listed companies could apply include</b> professional performance, and if an objective assessment taking account of all criteria <b>experience in managerial or supervisory tasks, knowledge in specific to the individual candidates does not tilt the balance in favour of a candidate of the other sex relevant areas such as finance, controlling or human resources management, leadership and communication skills and networking abilities.</b></p>	
	Recital 26a			
35a				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			(26a) In Member States where the requirements relating to the process of selection of candidates are applicable, companies on whose boards members of the under-represented sex hold at least 40 % of non-executive director positions, or at least 33 % of all director positions, respectively, should not be obliged to implement those requirements.	
Recital 27				
36	(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	(27) The methods of recruiting, <u>selecting</u> 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. <u>This Directive respects the diversity of selection procedures, which should be based on transparency and merit, while insisting that the aim of</u>	(27) -The methods of <del>recruiting and appointing</del> <b>selecting candidates for appointment or election to the posts of</b> 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, <del>the direct appointment of directors by individual shareholders or a vote in the shareholders' assembly on individual candidates or lists of candidates</del> <b>or by executive search firms</b> . The requirements concerning the selection of	

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	<p>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.</p>	<p><u>increasing the participation of the under-represented sex on boards be attained.</u> 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 <del>only establishes a minimum harmonisation</del> <u>allows for diversity</u> of selection procedures, <del>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</del> <u>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.</u></p>	<p>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, <b>prior to the election of a candidate by shareholders, for example while preparing a shortlist.</b> In this respect, this Directive only establishes a <del>minimum harmonisation</del> <b>minimum standards for the process</b> of selection <del>procedures</del> <b>of candidates for appointment or election to the posts</b>, 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 <del>in the of</del> <b>women and men on</b> boards of listed companies.– <b>This Directive respects the shareholders’ rights and the freedom of vote at the assembly of shareholders.</b></p>	
	Recital 27a			
	36a			

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		<i><u>(27a) Where pre-selection of candidates is based on election or voting procedures, for example by workers or their representatives, the procedures throughout the entire 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.</u></i>		
Recital 28				
37	(28) This Directive aims to improve the gender balance among directors of companies listed on stock exchanges and thus to contribute to the realisation of the principle of equal treatment between men and women, recognised as a fundamental right of the Union. Listed companies should therefore be required to disclose, upon the request of an unsuccessful candidate, not only the qualification criteria upon which the selection was based, but also the objective comparative assessment of those criteria and,	(28) This Directive aims to improve the gender balance among directors of companies listed on stock exchanges and thus to contribute to the realisation of the principle of equal treatment between men and women, recognised as a fundamental right of the Union. Listed companies should therefore be required to disclose, upon the request of an unsuccessful candidate, not only the qualification criteria upon which the selection was based, but also the objective comparative assessment of those criteria and,	(28) <del>This Directive aims to improve the gender balance among directors of companies listed on stock exchanges and thus to contribute to the realisation of the principle of equal treatment between men and women, recognised as a fundamental right of the Union.</del> <b>In view of the objectives of this Directive,</b> listed companies should therefore be required to disclose, upon the request of an unsuccessful candidate, <b>not only to inform that candidate of the qualification criteria upon which the selection</b>	

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	<p>where relevant, the considerations tilting the balance in favour of a candidate who is not of the under-represented sex . These limitations to the right to respect for private life with regard to the processing of personal data, recognised by the Articles 7 and 8 of the Charter, and the obligation for listed companies to supply that information, upon request, to the unsuccessful candidate, are necessary and, in conformity with the principle of proportionality, genuinely meet recognised objectives of general interest. They are therefore in line with the requirements for such limitations laid down in Article 52(1) of the Charter and with the relevant case-law of the Court of Justice.</p>	<p>where relevant, the considerations tilting the balance in favour of a candidate who is not of the under-represented sex . These limitations to the right to respect for private life with regard to the processing of personal data, recognised by the Articles 7 and 8 of the Charter, and the obligation for listed companies to supply that information, upon request, to the unsuccessful candidate, are necessary and, in conformity with the principle of proportionality, genuinely meet recognised objectives of general interest. They are therefore in line with the requirements for such limitations laid down in Article 52(1) of the Charter and with the relevant case-law of the Court of Justice.</p>	<p>was based, <del>but also</del> the objective comparative assessment of <b>the candidates under</b> those criteria and, where relevant, the considerations tilting the balance in favour of a candidate who is not of the under-represented sex. <b>Such an information requirement might imply a limitation.</b> <del>These limitations to the right to respect for private life with regard to the right to the processing</del> <b>protection of personal data that are recognised, respectively, by,</b> <del>recognised by the Articles 7 and 8 of the Charter, and the obligation for listed companies to supply that information, upon request, to the unsuccessful candidate.</del> <b>However, such limitations</b> are necessary and, in conformity with the principle of proportionality, genuinely meet recognised objectives of general interest. They are therefore in line with the requirements for such limitations laid down in Article 52(1) of the Charter and with the relevant case-law of the Court of Justice. <b>Such limitations should be applied in compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>1</sup>.</b></p>	

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			1. [1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1–88).	
Recital 29				
38	(29) Where an unsuccessful candidate of the under-represented sex establishes the presumption they were equally qualified as the appointed candidate of the other sex, the listed company should be required to demonstrate the correctness of the choice.	(29) Where an unsuccessful candidate of the under-represented sex establishes the presumption they were equally qualified as the appointed candidate of the other sex, the listed company should be required to demonstrate the correctness of the choice.	(29) -Where an unsuccessful candidate of the under-represented sex establishes the presumption <b>that</b> they were equally qualified as <b>compared with the selected</b> <del>the appointed</del> candidate of the other sex, the listed company should be required to demonstrate the correctness of the choice.	
Recital 29a				
38a			(29a) In accordance with the principle of subsidiarity, it is important to recognise the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p><b>legitimacy of different approaches and to acknowledge the effectiveness of certain national measures available in this complex policy area. In some Member States, measures providing for equally effective means to ensure a more balanced representation of women and men on the boards of listed companies have already been taken or may yet be taken, or there may be evidence of progress coming close to achieving the objectives set by this Directive, before the deadline for its implementation. All requirements relating to the process of selection of candidates may be suspended by those Member States. In Member States that have introduced equally effective measures by way of national legislation requiring that the members of the underrepresented sex hold at least 30 % of non-executive director positions or at least 25 % of all director positions in large listed companies, the rounding rules defined in this Directive with regard to the specific number of board members should be applied</b></p>	



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<i>mutatis mutandis</i> for the purpose of assessing those national provisions under this Directive.	
Recital 29b				
38b			(29b) With a view also to improving the gender balance among directors involved in daily management tasks, listed companies should be required to set individual quantitative objectives regarding a more balanced representation of both sexes among executive directors, with the aim of attaining such objectives by the date set out in this Directive. These objectives should help companies to achieve tangible progress as compared with their current situation. This obligation should not apply to listed companies which pursue the objective of 33 % relating to all directors, whether executive or non-executive.	
Recital 29c				
38c			(29d) Member States should require listed companies to provide information on the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>gender composition of their boards as well as information on the measures taken with a view to attaining the objectives laid down in this Directive, on a yearly basis to the competent authorities in order to enable them to assess the progress of each listed company towards a more balanced representation of men and women among directors. Such information should be published by listed companies in an appropriate and accessible manner on their websites. Where a listed company has not met the applicable quantitative objectives, such information should also include a description of the measures that the company intends to take in the future in order to meet the objectives. Where Member States have suspended the application of Article 4a on the basis of Article 4b these obligations should not apply provided that national legislation contains regular reporting obligations.</p>	
Recital 30				
39				

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	<p>(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).</p>	<p>(30) Member States should provide for effective, proportionate and dissuasive sanctions for breaches of <u>the requirements for an open and transparent procedure set out in</u> this Directive, which could include, inter alia, administrative fines, <u>exclusion from public calls for tenders, partial exclusion from the award of funding from the Union's Structural Funds,</u> 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). <u>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.</u></p>	<p>(30) <b>The obligations relating to the process of selection of candidates for appointment or election, the obligation to set a voluntary target in relation to executive directors, and reporting obligations should be enforced by measures which are</b> <del>Member States should provide for</del> effective, proportionate and dissuasive. <b>Without prejudice to national law on the imposition of enforcement measures, as long as listed companies comply with those obligations, they should not be penalised for failing to attain the quantitative objectives concerning the representation of men and women among</b> <del>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.</del> <b>Enforcement measures should not be applied to listed companies themselves if under</b> <del>made contrary to the national provisions adopted pursuant to Article 4(1)</del> <b>law a given action or omission is not attributable to the company, but to other natural or legal persons such as</b></p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			individual shareholders.	
Recital 31				
40	(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.	<i>deleted</i>	<i>deleted</i> <a href="#">See Recital 24a.</a>	
Recital 32				
41	(32) Since listed companies should aim to increase the proportion of the under-represented sex in all decision-making positions, Member States may provide that the objective laid down in this Directive should be considered to be met where listed companies can show that members of the under-represented sex hold at least one third of all director positions, irrespective of whether they are executive or non-executive.	(32) Since listed companies should aim to increase the proportion of the under-represented sex in all decision-making positions, Member States may provide that the objective laid down in this Directive should be considered to be met where listed companies can show that members of the under-represented sex hold at least one third of all director positions, irrespective of whether they are executive or non-executive. <a href="#">Such companies</a>	<i>deleted</i> <a href="#">See Recital 26a.</a>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>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 Directive.</i></u>		
<i>Recital 33</i>				
42	(33) In addition to the measures relating to non-executive directors, and with a view also to improving the gender balance among directors involved in daily management tasks, listed companies should be required to make individual commitments regarding the representation of both sexes among executive directors, to be achieved at the latest by 1 January 2020. These commitments should aim to achieve tangible progress from the individual company's current position towards better gender balance.	(33) In addition to the measures relating to non-executive directors, and with a view also to improving the gender balance among directors involved in daily management tasks, listed companies should be required to make individual commitments regarding the representation of both sexes among executive directors, to be achieved at the latest by 1 January 2020. These commitments should aim to achieve tangible progress from the individual company's current position towards better gender balance.	<i>deleted</i> <i>See Recital 29b.</i>	
<i>Recital 34</i>				
43	(34) Member States should require listed companies to provide	(34) Member States should require listed companies to provide	<i>deleted</i>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>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.</p>	<p>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 <u>included in the company's annual report and published in an appropriate and easily accessible manner on its website</u> and, where the company in question has not met the objective, it should include a <u>comprehensive</u> description of the <u>concrete</u> measures that it has taken so far and intends to take in the future in order to meet the objective. <u>Furthermore, companies that have failed to attain the objective or to fulfil the commitments given by them should provide a statement 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 that objective and fulfil those commitments.</u></p>	<p><u>See Recital 29d.</u></p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
<i>Recital 35</i>				
44	(35) Member States may have already taken measures providing for means to ensure a more balanced representation of women and men in company boards before the entry into force of this Directive. Such Member States should have an opportunity to apply those measures in place of the procedural requirements relating to appointments where they can demonstrate that the measures taken are of equivalent efficacy in order to attain the objective of a presence of the under-represented sex of at least 40 per cent among non-executive directors of listed companies at the latest by 1 January 2020 or at the latest by 1 January 2018 in case of listed companies which are public undertakings.	(35) Member States may have already taken measures providing for means to ensure a more balanced representation of women and men in company boards before the entry into force of this Directive. Such Member States should have an opportunity to apply those measures in place of the procedural requirements relating to appointments where they can demonstrate that the measures taken are of equivalent efficacy in order to attain the objective of a presence of the under-represented sex of at least 40 <del>per cent</del> % among non-executive directors of listed companies at the latest by 1 January 2020 or at the latest by 1 January 2018 in case of listed companies which are public undertakings.	<i>deleted</i> <i>See Recital 29a.</i>	
<i>Recital 35a</i>				
44a			<b>(35b) Member States or listed companies may introduce or maintain more favourable measures to ensure a more balanced representation of men and women.</b>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 36				
45	<p>(36) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it contributes to the fulfilment of the right to equality between women and men (Article 23 of the Charter), the freedom to choose an occupation and the right to engage in work (Article 15 of the Charter). This Directive seeks to ensure full respect for the right to an effective remedy and a fair hearing (Article 47 of the Charter). The limitations on the exercise of the freedom to conduct business (Article 16 of the Charter) and of the right to property (Article 17(1) of the Charter) respect the essence of those rights and freedoms and are necessary and proportionate. They genuinely meet objectives of general interest recognised by the Union and the need to protect the rights and freedoms of others.</p>	<p>(36) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it contributes to the fulfilment of the right to equality between women and men (Article 23 of the Charter), the freedom to choose an occupation and the right to engage in work (Article 15 of the Charter). This Directive seeks to ensure full respect for the right to an effective remedy and a fair hearing (Article 47 of the Charter). The limitations on the exercise of the freedom to conduct business (Article 16 of the Charter) and of the right to property (Article 17(1) of the Charter) respect the essence of those rights and freedoms and are necessary and proportionate. They genuinely meet objectives of general interest recognised by the Union and the need to protect the rights and freedoms of others.</p>	<p>(36) -This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it contributes to the fulfilment of the right to equality between women and men (Article 23 of the Charter), the <b>right to</b> freedom to choose an occupation and the right to engage in work (Article 15 of the Charter). This Directive seeks to ensure full respect for the right to an effective remedy and a fair hearing (Article 47 of the Charter). The limitations on the exercise of the freedom to conduct business (Article 16 of the Charter) and of the right to property (Article 17(1) of the Charter) respect the essence of those rights and freedoms and are necessary and proportionate. They genuinely meet objectives of general interest recognised by the Union and the need to protect the rights and freedoms of others.</p>	
Recital 37				
46				



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>(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</p>	<p>(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, <u><a href="#">closing the existing gender pay gap and improvement of</a></u> competitiveness and growth can be better achieved through</p>	<p>(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 <del>gender</del> representation <del>among non-executive</del> <b>of women and men</b> among board members across the Union in line with the objectives set out in this Directive will not be <del>achieved</del> <b>attained</b> 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</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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.	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.	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.	
Recital 38				
47	(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	(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	(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 <del>achieve</del> <b>attain</b> those objectives. Member States are given sufficient freedom to determine how the objectives laid down in this Directive should best be <del>achieved</del> <b>attained</b> taking national circumstances into account, in particular rules and practices concerning recruitment <del>for</del> <b>to</b> board positions. This	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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.	interfere with the possibility for companies to appoint the most qualified board members, and it grants a <u>flexible framework and grants a</u> sufficiently long period of adaptation for all listed companies.	Directive does not interfere with the possibility for <b>listed</b> companies to appoint the most qualified board members, and it grants a sufficiently long period of adaptation <del>for all listed companies.</del>	
Recital 39				
48	(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.	(39) In accordance with the principle of proportionality, the objective to be met by listed companies should be limited in time and <u>should</u> 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. <del>The</del> <u>This</u> Directive is due to expire on 31 December 2028. The Commission should assess, in its review, <del>if</del> <u>whether</u> there is a need to extend the duration of the Directive beyond that period. <u>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.</u>	(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. <del>The</del> <b>Furthermore, this Directive is due to expire on 31 December 2028 provides for an expiry date.</b> The Commission should assess, in its review, if there is a need to extend the duration of the Directive beyond that period.	

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		<i><u>Information campaigns would significantly contribute to the raising of awareness of the issue 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.</u></i>		
Recital 40				
49	(40) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, <sup>1</sup> Member States have undertaken, in justified cases, to accompany the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.  1. OJ C 369, 17.12.2011, p.	(40) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, <sup>1</sup> Member States have undertaken, in justified cases, to accompany the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.  1. OJ C 369, 17.12.2011, p.	(40) -In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, <sup>-1</sup> Member States have undertaken, in justified cases, to accompany the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.  1. —[1] OJ C 369,	

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	14.	14.	17.12.2011, p. 14.	
Recital 40a				
49a			<b>(40a) The Committee of the Regions delivered an opinion on 30 May 2013,</b>	
Formula				
50	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	
Article 1				
51	Article 1 Subject matter	Article 1 <del>Subject matter</del> <u>Subject-matter</u>	Article 1 Subject matter	
Article 1, first paragraph				
52	This Directive lays down measures to ensure a more balanced representation of men and women among the non-executive directors of listed companies by establishing measures aimed at accelerated progress towards gender balance while allowing companies sufficient time to make the necessary arrangements.	This Directive lays down measures to ensure a more balanced representation of men and women among the non-executive directors of listed companies by establishing <u>effective</u> measures aimed at accelerated progress towards gender balance while allowing companies sufficient time to make the necessary	-This Directive <del>lays down measures to ensure</del> <b>seeks to achieve</b> a more balanced representation of men and women among the <del>non-executive</del> directors of listed companies by establishing measures <del>aimed at accelerated</del> <b>that aim to accelerate</b> progress towards gender balance, while allowing <b>listed</b> companies sufficient time to	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		arrangements.	make the necessary arrangements.	
Article 2				
53	Article 2 Definitions	Article 2 Definitions	Article 2 Definitions	
Article 2, first paragraph, introductory part				
54	For the purposes of this Directive, the following definitions shall apply:	For the purposes of this Directive, <del>the following definitions shall apply:</del>	-For the purposes of this Directive, the following definitions shall apply:	
Article 2, first paragraph, point (1)				
55	(1) 'listed company' means a company incorporated in a Member State whose securities are admitted to trading on a regulated market within the meaning of Article 4(1) (14) of Directive 2004/39/EC, in one or more Member States;	(1) 'listed company' means a company <del>incorporated</del> <u>which has its seat</u> in a Member State <del>whose</del> <u>and the securities of which</u> are admitted to trading on a regulated market within the meaning of Article 4(1) (14) of Directive 2004/39/EC, in one or more Member States;	(1) –'listed company <sup>2</sup> ' means a company <del>incorporated</del> <b>having its registered office</b> in a Member State, <b>and</b> whose <del>securities</del> <b>shares</b> are admitted to trading on a regulated market within the meaning of <del>Article 4(1) (14)</del> <b>point (21) of Article 4(1) of Directive 2004/39/EC 2014/65/EU</b> , in one or more Member States;	
Article 2, first paragraph, point (2)				
56	(2) 'board' means any administrative, managerial or	(2) 'board' means any administrative, managerial or	(2) –'board <sup>2</sup> ' means any administrative, managerial or	

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	supervisory body of a company;	supervisory body of a company;	supervisory body of a <b>listed</b> company;	
Article 2, first paragraph, point (3)				
57	(3) ‘director’ means any member of a board, including an employees’ representative;	(3) ‘director’ means any member of a board, including an employees’ representative;	(3) –‘director <sup>2</sup> ’ means any member of a board, including an employees’ representative;	
Article 2, first paragraph, point (4)				
58	(4) ‘executive director’ means any member of a unitary board who is engaged in the daily management of the company and any member of a managerial board in a dual board system;	(4) ‘executive director’ means any member of a unitary board who is engaged in the daily management of the company and any member of a managerial board in a dual board system;	(4) –‘executive director <sup>2</sup> ’ means any member of a unitary board who is engaged in the daily management of <del>the</del> <b>listed</b> company and any member of a managerial board in a dual board system;	
Article 2, first paragraph, point (5)				
59	(5) ‘non-executive director’ means any member of a unitary board other than an executive director and any member of a supervisory board in a dual board system;	(5) ‘non-executive director’ means any member of a unitary board other than an executive director and any member of a supervisory board in a dual board system;	(5) –‘non-executive director <sup>2</sup> ’ means any member of a unitary board other than an executive director and any member of a supervisory board in a dual board system;	
Article 2, first paragraph, point (6)				
60				

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	(6) ‘unitary board’ means a single board that combines the management and the supervisory functions of a company;	(6) ‘unitary board’ means a single board that combines the management and the supervisory functions of a company;	(6) –‘unitary board <sup>2</sup> ’ means a single board that <del>combines the management</del> <b>carries out both the managerial</b> and the supervisory functions of a <b>listed</b> company;	
Article 2, first paragraph, point (7)				
61	(7) ‘dual board system’ means a system in which the management and supervisory functions of a company are carried out by separate boards;	(7) ‘dual board system’ means a system in which the management and supervisory functions of a company are carried out by separate boards;	(7) –‘dual board system <sup>2</sup> ’ means a system in which the <del>management</del> <b>managerial</b> and supervisory functions of a <b>listed</b> company are carried out by separate boards;	
Article 2, first paragraph, point (8)				
62	(8) ‘small and medium-sized enterprise’ or ‘SME’ means a company which employs less than 250 persons and has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, or, for an SME which is incorporated in a Member State whose currency is not the euro, the equivalent amounts in the currency of that Member State;	(8) ‘small and medium-sized enterprise’ or ‘SME’ means a company which employs less than 250 persons and has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, or, for an SME which is incorporated in a Member State whose currency is not the euro, the equivalent amounts in the currency of that Member State;	(8) –‘small and medium-sized enterprise’ or ‘SME’ <del>or ‘SME’</del> <b>or ‘SME’</b> means a company which employs less than 250 persons and has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, or, for an SME <del>which is incorporated</del> <b>having its registered office</b> in a Member State whose currency is not the euro, the equivalent amounts in the currency of that Member State;.	
Article 2, first paragraph, point (9), introductory part				



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63	(9) 'public undertaking' means an undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership thereof, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:	(9) 'public undertaking' means an undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership thereof, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:	<i>deleted</i>	
<i>Article 2, first paragraph, point (9), first indent</i>				
64	- hold the major part of the undertaking's subscribed capital; or	- hold the major part of the undertaking's subscribed capital; or	<i>deleted</i>	
<i>Article 2, first paragraph, point (9), second indent</i>				
65	- control the majority of the votes attaching to shares issued by the undertakings; or	- control the majority of the votes attaching to shares issued by the undertakings; or	<i>deleted</i>	
<i>Article 2, first paragraph, point (9), third indent</i>				
66	- can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.	- can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.	<i>deleted</i>	

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<i>Article 2a</i>				
66a			<b>Article 2a</b> <i>Applicable law</i>	
Article 2a, first paragraph				
66b			<b>The Member State competent to regulate matters covered in this Directive with respect to a given listed company shall be the Member State in which that company has its registered office and the applicable law shall be the law of that Member State.</b>	
Article 3				
67	Article 3 Exclusion of small and medium-sized enterprises	Article 3 Exclusion of small and medium-sized enterprises	Article 3 Exclusion of small and medium-sized enterprises	
Article 3, first paragraph				
68	This Directive shall not apply to small and medium-sized enterprises ('SMEs').	This Directive shall not apply to small and medium-sized enterprises ('SMEs').	-This Directive shall not apply to small and medium-sized enterprises ('SMEs').	
Article 4				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
69	Article 4 Objectives with regard to non-executive directors	Article 4 Objectives with regard to non-executive directors	Article 4 -Objectives with regard to non-executive directors <b>gender balance on boards</b>	
Article 4(1)				
70	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.	1. Member States shall ensure that listed companies in whose boards members of the under-represented sex hold less than 40 <del>per cent</del> % of the non-executive director positions <u>adjust their recruitment procedures, including those in respect of vacancy notices calling for applications, pre-selection, selection and</u> <del>make the</del> appointments, <u>in such a way that</u> <del>to those positions</del> <u>procedures effectively contribute to the attainment of the said percentage by 1 January 2020 or, the case of public undertakings, by 1 January 2018. In particular, Member States shall ensure that companies select the most qualified candidates for a board position from a gender-balanced selection pool and</u> on the basis of a comparative analysis of the <u>candidates'</u> qualifications <del>of each candidate</del> , by applying pre-	1. -Member States shall ensure that <del>listed companies in whose boards members of the under represented sex hold less than 40 per cent of the non-executive director positions</del> 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. <b>-either:</b>  <u>See Article 4a(1).</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p>established, clear, neutrally formulated, <u>non-discriminatory</u> and unambiguous criteria. <u>In the case of an election procedure, Members 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 such a procedure is not in any way predetermined.</u></p> <p><del>–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</del> <u>objective of 40 %, and in accordance with Article 23(2) of the Charter, Member States shall ensure that, at every stage in the procedure for the recruitment, selection or appointment of 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</u></p>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>balance in favour of the candidate of the other sex.</i></u>		
Article 4(1), point (a)				
70a			<b>(a) that listed companies aim to attain, by 31 December 2027, the objective that members of the under-represented sex hold at least 40 % of non-executive director positions</b>	
Article 4(1), point (b)				
70b			<b>or</b>	
Article 4(1), point (c)				
70c			<b>(b) that listed companies aim to attain, by 31 December 2027, the objective that members of the under-represented sex hold at least 33 % of all director positions, including both executive and non-executive directors.</b>	
Article 4(2)				
71	2. The number of non-executive	2. The number of non-executive	2. -The number of non-executive	

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	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.	director positions necessary to meet the objective laid down in paragraph 1 shall be <del>the number closest to the proportion of 40 per cent, but not exceeding 49 per cent</del> <u>that constituting at least 40 %.</u> <u>If the non-executive board consists of only three board members, the proportion one to two shall suffice.</u>	director positions <b>that shall be deemed</b> necessary to <del>meet</del> <b>attain</b> the objective laid down in paragraph <del>1</del> <b>(a)</b> shall be the number closest to the proportion of 40 per cent, but not exceeding 49 per cent.%, <b>but less than 50 %</b> , <b>while the number of all director positions that shall be deemed necessary to attain the objective laid down in paragraph 1(b), shall be the number closest to the proportion of 33 %, but less than 50 %. Those numbers are set out in the Annex.</b>	
Article 4(3)				
72	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	<i>deleted</i>	<i>deleted</i> <u>See Article 4a(2).</u>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	sex.			
<i>Article 4(4)</i>				
73	4. Member States shall ensure that listed companies are obliged to disclose, on the request of an unsuccessful candidate, the qualification criteria upon which the selection was based, the objective comparative assessment of those criteria and, where relevant, the considerations tilting the balance in favour of a candidate of the other sex.	4. Member States shall ensure that listed companies are obliged to disclose <u>to an unsuccessful candidate, while respecting candidates' anonymity in accordance with the Union rules on data protection, at least the number and gender of the candidates in the selection pool;</u> <del>on the request of an unsuccessful candidate,</del> the qualification criteria upon which the selection <u>or appointment</u> 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.	<i>deleted</i> <i>See Article 4a(3).</i>	
<i>Article 4(5)</i>				
74	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	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 <u>who considers himself or herself</u>	<i>deleted</i> <i>See Article 4a(4).</i>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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.	<u>wronged because the provisions of paragraph 1 have not been applied to him or her</u> establishes, <u>before a court or other competent body</u> , 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 <del>1</del> . <u>This paragraph shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.</u>		
Article 4(6)				
75	6. Member States may provide that listed companies where the members of the under-represented sex represent less than 10 per cent of the workforce are not subject to the objective laid down in paragraph 1.	<i>deleted</i>	6. -Member States may provide that listed companies <del>where the</del> <b>which</b> members of the under-represented sex represent less than 10 <del>per cent</del> % of the <del>workforce</del> <b>employees</b> are not subject to the <del>objective</del> <b>provisions</b> laid down in <del>paragraph 1</del> <b>this Article.</b>	
Article 4(6a)				
75a		<u>6a. Where the selection referred to in paragraph 1 is made through</u>		



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		<u><i>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.</i></u>		
Article 4(7)				
76	7. Member States may provide that the objective laid down in paragraph 1 is met where listed companies can show that members of the under-represented sex hold at least one third of all director positions, irrespective of whether they are executive or non-executive.	7. Member States may provide that the objective laid down in paragraph 1 is met where listed companies can show that members of the under-represented sex hold at least one third of all director positions, irrespective of whether they are executive or non-executive.	<i>deleted</i> <u>See Article 4(1)(b).</u>	
Article 4a				
76a			<b>Article 4a</b> <i>Means to attain the objectives</i>	
Article 4a(1)				
76b			<b>1. Member States shall ensure that, with the aim of attaining one of the objectives laid down in Article 4(1), in listed companies</b>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>which do not meet those objectives the selection of candidates for appointment or election to the positions referred to in Article 4(1) is carried out on the basis of a comparative analysis of the qualifications of each candidate, by applying clear, neutrally formulated and unambiguous criteria established in advance of the selection process.</p>	
Article 4a(2)				
76c			<p>2. In the selection of candidates for appointment or election to the positions referred to in Article 4(1), Member States shall ensure that, when choosing between candidates who are equally qualified in terms of suitability, competence and professional performance, priority is 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.</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 4a(3), introductory part				
76d			<b>3. Member States shall ensure that, in response to a request from a candidate who has been considered in the selection for appointment or election, listed companies are obliged to inform that candidate of the following:</b>	
Article 4a(3), point (a)				
76e			<b>(a) the qualification criteria upon which the selection was based,</b>	
Article 4a(3), point (b)				
76f			<b>(b) the objective comparative assessment of the candidates under those criteria, and,</b>	
Article 4a(3), point (c)				
76g			<b>(c) where relevant, the considerations tilting the balance in favour of a candidate of the other sex.</b>	
Article 4a(4)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
76h			<p><b>4. Member States shall take the necessary measures, in accordance with their national judicial systems, to ensure that where a candidate of the under-represented sex establishes facts from which it may be presumed that he or she was equally qualified as compared with the candidate of the other sex selected for appointment or election, it shall be for the listed company to prove that there has been no breach of Article 4a(2).</b></p>	
Article 4b				
76i			<p><b>Article 4b</b> <i>Suspension of the application of Article 4a</i></p>	
Article 4b(1), introductory part				
76j			<p><b>1. A Member State may decide to suspend the application of Article 4a where, before [OJ to insert the deadline for implementation pursuant to Article 8(1)], equally effective measures to those laid down in Article 4a have already been</b></p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>taken in that Member State with the aim of attaining a more balanced representation of women and men among the directors of listed companies in line with the objectives set out in Article 4(1), or progress coming close to achieving those objectives has been attained. In those cases, the objectives set out in Article 4(1) shall be deemed to be met. Such equally effective measures may include, for example:</p>	
Article 4b(1), point (a)				
76k			<p>(a) national legislation requires that members of the under-represented sex hold at least 30 % of non-executive director positions or at least 25 % of all director positions no later than 31 December 2027 and effective, proportionate and dissuasive enforcement measures apply in the case of non-compliance with these requirements. Where the binding targets provided for in the national legislation do not apply to all the companies falling within the scope of this Directive, the conditions for suspension</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			shall nevertheless be deemed fulfilled if obligations to set individual quantitative objectives apply to all listed companies not covered by the binding targets, including SMEs, with regard to the non-executive and executive board members as well as with regard to at least one management level below the board level.	
Article 4b(1), point (b)				
76l			(b) members of the under-represented sex hold at least 30 % of the total number of all non-executive director positions or at least 25 % of the total number of all director positions.	
Article 4b(1), point (c)				
76m			(c) members of the under-represented sex hold at least 25 % of the total number of all non-executive director positions or 20 % of the total number of all director positions and the level of representation has increased by at least 7.5 percentage points over a recent five-year period	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			ending before the deadline for implementation pursuant to Article 8(1).	
Article 4b(2)				
76n			1b. For the purpose of assessing the fulfilment of the conditions for a suspension on the basis of paragraph 1(a), paragraph 1(b) or paragraph 2, the number of director positions required shall be the number closest to the proportion of 30 % of non-executive directors or 25% of all director positions, but less than 40 %. This shall also be the case where, pursuant to national legislation, the binding quantitative objectives are applied separately to shareholder and employee representatives.	
Article 4b(3), introductory part				
76o			2. A Member State which has suspended the application of Article 4a pursuant to paragraph 1 may continue that suspension beyond 31 December 2029 only if	
Article 4b(3), point (a)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
76p			(a) the national legislation complying with the requirements set out in paragraph 1 remains applicable; or	
Article 4b(3), point (b)				
76q			(b) members of the under-represented sex hold at least 30 % of the total number of all non-executive director positions or 25 % of the total number of all director positions by 31 December 2029.	
Article 4b(4)				
76r			Where the requirements set out in this paragraph are not met, Member States shall resume the application of Article 4a with effect from 30 September 2030.	
Article 4b(5)				
76s			3. Where a Member State suspends the application of Article 4a as provided for in paragraphs 1 and 2 on the basis of national measures or progress	



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			extending to executive directors, that Member State may also suspend the application of Article 4c(1).	
Article 4c				
76t			Article 4c <i>Individual quantitative objectives</i>	
Article 4c(1)				
76u			1. Member States shall ensure that listed companies which are not subject to the objective laid down in Article 4(1)(b) set individual quantitative objectives regarding gender-balanced representation of both sexes among executive directors, which they shall aim to attain no later than 31 December 2027.	
Article 4c(2)				
76v			2. Where Member States provide, pursuant to Article 4(6), that certain listed companies are not subject to the objectives laid down in Article 4, those Member States shall ensure that such	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			companies set individual quantitative objectives regarding gender-balanced representation of both sexes among all director positions and aim to attain those objectives by 31 December 2027.	
Article 5				
77	Article 5 Additional measures by companies and reporting	Article 5 Additional measures by companies and reporting	Article 5 <del>Additional measures by companies and Reporting</del> <b>Reporting</b>	
Article 5(1)				
78	1. Member States shall ensure that listed companies undertake individual commitments regarding gender-balanced representation of both sexes among executive directors to be achieved at the latest by 1 January 2020, or, in case of listed companies which are public undertakings, by 1 January 2018.	1. Member States shall ensure that listed companies undertake individual commitments regarding gender-balanced representation of both sexes among executive directors to be achieved at the latest by 1 January 2020, or, in case of listed companies which are public undertakings, by 1 January 2018.	<i>deleted</i> <b>See Article 4c.</b>	
Article 5(2)				
79	2. Member States shall require listed companies to provide information to the competent	2. Member States shall require listed companies to provide information to the competent	2. -Member States shall require listed companies to provide information to the competent	

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	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.	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 <u>easily accessible manner on their website and in their annual report.</u>	<del>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</del> <b>about regarding the measures taken in view of the with a view to attaining the applicable objectives laid down in Article Articles 4(1) and in paragraph 1 of this Article, and 4c.</b> <b>Member States shall require listed companies</b> to publish that information in an appropriate and accessible manner on their <del>website</del> <b>websites.</b>	
Article 5(3)				
80	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	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, <del>the information referred to in paragraph 2 of this Article shall include</del> <u>it shall provide a statement of the reasons for not reaching the its failure to attain those objectives or to fulfil those commitments and a comprehensive description of the measures which</u>	3. -Where a listed company does not <del>meet</del> <b>attain either of the</b> objectives laid down in Article 4(1) or <del>its own</del> <b>the</b> individual commitments taken pursuant to paragraph 1 of this Article <b>quantitative objectives referred to in Article 4c</b> , the information referred to in paragraph 2 of this Article shall include the reasons for not <del>reaching</del> <b>attaining</b> the objectives or <del>commitments</del> and a description of	

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	commitments.	the company has adopted, <u>or which it <del>or</del></u> intends to adopt, in order to meet the objectives or commitments. <u>That statement of reasons shall form part of the information referred to in paragraph 2.</u>	the measures which the company has <del>adopted or</del> <b>already taken and/or</b> intends to <del>adopt</del> <b>take</b> in order to <del>meet the objectives or commitments</del> <b>attain them.</b>	
Article 5(3a)				
80a			<b>3a. The obligations set out in paragraphs 2 and 3 shall not apply to listed companies having their registered offices in a Member State that has suspended the application of Article 4a on the basis of Article 4b and where national law includes regular reporting obligations.</b>	
Article 5(4)				
81	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	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 <del>of 5 July 2006 on the implementation of the principle of equal opportunities and equal</del>	<i>deleted</i> <u>See Article 7a.</u>	

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	<p>treatment of men and women in matters of employment and occupation (recast)<sup>1</sup> are also competent for the promotion, analysis, monitoring and support of gender balance on the boards of listed companies.</p> <p>1. OJ L 204, 26.7.2006, p. 23.</p>	<p><del>treatment of men and women in matters of employment and occupation (recast)<sup>1</sup></del> are also competent for the promotion, analysis, monitoring and support of gender balance on the boards of listed companies. <u>To that end, Member States shall collaborate efficiently with social partners and civil society.</u></p> <p>1. —<u>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</u> (OJ L 204, 26.7.2006, p. 23).</p>		
<b>Article 6</b>				
82	Article 6 Sanctions	Article 6 Sanctions	Article 6 <b>Enforcement measures</b> -Sanctions	
<b>Article 6(1)</b>				
83	1. Member States shall lay down rules on sanctions applicable to infringements of the national	1. Member States shall lay down rules on sanctions applicable to infringements of the <del>national</del>	1. -Member States shall lay down rules on <del>sanctions</del> <b>enforcement measures</b> applicable to	

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	provisions adopted pursuant to this Directive and shall take all necessary measures to ensure that they are applied.	<del>provisions adopted pursuant to this Directive</del> <u>requirements for an open and transparent procedure as set out in Article 4(1)</u> and shall take all necessary measures to ensure that they are applied.	infringements of the national provisions adopted pursuant to <b>Articles 4a, 4b(2)(a), 4c, and 5</b> of this Directive <b>as applicable</b> and shall take all necessary measures to ensure that they are applied.	
Article 6(2), introductory part				
84	2. The sanctions must be effective, proportionate and dissuasive and may include the following measures:	2. The sanctions must be effective, proportionate and dissuasive and <del>may</del> <u>shall</u> include <u>at least</u> the following measures:	2. <b>The enforcement measures</b> <del>The sanctions must be effective, proportionate and dissuasive and may include the following measures:—.</del>	
Article 6(2), point (a)				
85	(a) administrative fines;	(a) administrative fines;	<i>deleted</i>	
Article 6(2), point (aa)				
85a		<u>(aa) exclusion from public calls for tenders;</u>		
Article 6(2), point (ab)				
85b		<u>(ab) partial exclusion from the award of funding from the Union's Structural Funds;</u>		

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Article 6(2), point (b)				
86	(b) nullity or annulment declared by a judicial body of the appointment or of the election of non-executive directors made contrary to the national provisions adopted pursuant to Article 4(1).	(b) <del>nullity or annulment declared</del> <u>declaration</u> by a judicial body of <u>nullity or annulment of</u> the appointment or of the election of non-executive directors made <del>contrary to</del> <u>in contravention of</u> the national provisions adopted pursuant to Article 4(1).	<i>deleted</i>	
Article 6(2a)				
86a			<b>2a. Listed companies may be held liable only for acts or omissions which can be attributed to them in accordance with national law.</b>	
Article 7				
87	Article 7 Minimum requirements	Article 7 Minimum requirements	Article 7 Minimum requirements	
Article 7, first paragraph				
88	Member States may introduce or maintain provisions which are more favourable than those laid	Member States may introduce or maintain provisions which are more favourable than those laid	-Member States may introduce or maintain provisions which are more favourable than those laid	

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	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.	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 <u>gender</u> discrimination, <del>nor</del> <u>or any other form of discrimination or</u> hinder the proper functioning of the internal market.	down in this Directive to ensure a more balanced representation of men and women in respect of <b>listed</b> companies <del>incorporated in their national territory</del> , provided those provisions do not create unjustified discrimination, <del>nor</del> <b>or</b> hinder the proper functioning of the internal market.	
Article 7a				
88a			<p style="text-align: center;"><b>Article 7a</b> <i>Bodies for the promotion of gender balance in listed companies</i></p>	
Article 7a, first paragraph				
88b			<p><b>Member States shall designate one or more bodies for the promotion, analysis, monitoring and support of gender balance on the boards of listed companies; these bodies can be, for example, the ones designated in accordance with Article 20 of Directive 2006/54/EC of the European Parliament and of the Council<sup>1</sup>.</b></p> <p>_____</p>	



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			1. [1] <b>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 (OJ L 204, 26.7.2006, p. 23).</b>	
Article 8				
89	Article 8 Implementation	Article 8 Implementation	Article 8 Implementation	
Article 8(1)				
90	1. Member States shall adopt and publish, by [two years after adoption] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall adopt and publish, by [two years after adoption] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	1. -Member States shall adopt and publish, by [ <del>two</del> <b>three</b> years after adoption] at the latest [ <del>two</del> <b>three</b> years after adoption] <del>at the latest</del> , the laws, regulations and administrative provisions necessary to comply with this Directive. They shall <del>forthwith</del> <b>immediately</b> communicate to the Commission the text of those provisions <del>thereof</del> .	
Article 8(2)				

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91	2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	2. <del>When Member States adopt those</del> <b>The laws, regulations and administrative provisions, they referred to in paragraph 1</b> shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	
Article 8(2a)				
91a			<b>2a. Member States that suspend, pursuant to Article 4b, the application of the requirements relating to the process of selection of candidates for appointment or election referred to in Article 4a shall immediately communicate to the Commission the information demonstrating that the conditions laid down in Article 4b are fulfilled.</b>	
Article 8(3), first subparagraph				
92	3. Without prejudice to Article 4(6) and (7), Member States which before the entry into force of this Directive have already taken	3. Without prejudice to Article 4(6) and (7), Member States which before the entry into force of this Directive have already taken	<i>deleted</i> <b>See Article 4b.</b>	

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	measures to ensure a more balanced representation of women and men among the non-executive directors of listed companies may suspend the application of the procedural requirements relating to appointments contained in Article 4(1), (3), (4) and (5), provided that it can be shown that those measures enable members of the under-represented sex to hold at least 40 per cent of the non-executive director positions of listed companies by at the latest 1 January 2020, or at the latest 1 January 2018 for listed companies which are public undertakings.	measures to ensure a more balanced representation of women and men among the non-executive directors of listed companies may suspend the application of the procedural requirements relating to appointments contained in Article 4(1), (3), (4) and (5), provided that it can be shown that those measures enable members of the under-represented sex to hold at least 40 per cent of the non-executive director positions of listed companies by at the latest 1 January 2020, or at the latest 1 January 2018 for listed companies which are public undertakings.		
<i>Article 8(3), second subparagraph</i>				
93	The Member State in question shall notify this information to the Commission.	The Member State in question shall notify this information to the Commission. <u>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 objective of this Directive, which shall be deemed to be the case if the percentage of the under-represented sex is lower than 30 %</u>	<i>deleted</i> <u>See Article 8(2a).</u>	

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		<u>by 2017 or, in the case of public undertakings, by 2015.</u>		
Article 8(4)				
94	4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	4. -Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	
Article 9				
95	Article 9 Review	Article 9 Review	Article 9 Review	
Article 9(1)				
96	1. Member States shall communicate to the Commission by 1 January 2017 at the latest and every two years thereafter a report on the implementation of this Directive. These reports shall include, amongst others, comprehensive information about the measures taken with a view to attaining the objectives laid down in Article 4(1), information provided in accordance with Article 5(2) and information about	1. Member States shall communicate to the Commission by 1 January 2017 at the latest and every two years thereafter a report on the implementation of this Directive. These reports shall include, amongst others, comprehensive information about the measures taken with a view to attaining the objectives laid down in Article 4(1), information provided in accordance with Article 5(2) and information about	1. -Member States shall communicate to the Commission by <del>1 January 2017 at the latest</del> <b>[one year after the date provided for in Article 8(1)]</b> and every two years thereafter, a report on the implementation of this Directive. These reports shall include, <del>amongst others</del> <b>inter alia</b> , comprehensive information about the measures taken with a view to attaining the objectives laid down in Article 4(1) <b>or about the</b>	

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	individual commitments taken by listed companies pursuant to Article 5(1).	individual commitments taken by listed companies pursuant to Article 5(1).	<b>fulfilment of the conditions referred to in Article 4b as applicable</b> , information provided in accordance with Article 5(2) <del>and 5</del> <b>and, where applicable, representative</b> information about individual commitments <del>taken</del> <b>quantitative objectives set</b> by listed companies pursuant to Article 5(1) <del>4c</del> .	
Article 9(1a)				
96a		<i><u>1a. The Commission shall submit by 1 July 2017 an evaluation report 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 in respect of non-listed companies that are above the SME threshold as defined in Article 2.</u></i>		
Article 9(1b)				
96b				

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		<p><u><i>1b. The Commission shall submit 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 incorporated into the rules governing their internal staffing procedures. To that end, all Union institutions, bodies, offices and agencies shall report to the Commission 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's report shall be accompanied by a legislative proposal extending the scope of this Directive to cover all Union institutions, bodies, offices and agencies.</i></u></p>		
Article 9(2), first subparagraph				
97	<p>2. Member States having suspended pursuant to Article 8(3) the application of the procedural requirements relating to appointments contained in Article 4(1), (3), (4) and (5) shall include</p>	<p>2. Member States having suspended pursuant to Article 8(3) the application of the procedural requirements relating to appointments contained in Article 4(1), (3), (4) and (5) shall include</p>	<p>2. -Member States <del>having suspended</del><b>that suspend</b>, pursuant to Article 8(3)<b>4b</b>, the application of <del>the procedural requirements relating to appointments contained in Article 4(1), (3), (4) and (5)</del><b>4a</b></p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>information in the reports mentioned in paragraph 1 demonstrating the concrete results obtained by the national measures referred to in Article 8(3). The Commission shall then issue a specific report ascertaining whether those measures effectively enable members of the under-represented sex to hold at least 40 per cent of the non-executive director positions by 1 January 2018 for listed companies which are public undertakings, and by 1 January 2020 for listed companies which are not public undertakings. The first such report shall be issued by the Commission by 1 July 2017, and subsequent reports shall be issued within six months after notification of the respective national reports under paragraph 1.</p>	<p>information in the reports mentioned in paragraph 1 demonstrating the concrete results obtained by the national measures referred to in Article 8(3). The Commission shall then issue a specific report ascertaining whether those measures effectively enable members of the under-represented sex to hold at least 40 <del>per cent</del>% of the non-executive director positions by 1 January 2018 for listed companies which are public undertakings, and by 1 January 2020 for listed companies which are not public undertakings. The first such report shall be issued by the Commission by 1 July 2017, and subsequent reports shall be issued within six months after notification of the respective national reports under paragraph 1.</p>	<p>shall include <del>information</del> in the reports mentioned in paragraph 1 <del>demonstrating the concrete results obtained by the national measures referred to</del> <b>information showing whether the conditions laid down in Article 8(3)4b are fulfilled.</b> The Commission shall <del>then</del> issue a specific report ascertaining whether those measures effectively enable members of the under-represented sex to hold at least 40 per cent of the non-executive director positions by 1 January 2018 for listed companies which are public undertakings, and by 1 January 2020 for listed companies which are not public undertakings. The first such report shall be issued by the Commission by 1 July 2017, and subsequent reports shall be issued within six months after notification of the respective national reports under paragraph 1 <del>by [two years after the date provided for in Article 8(1)]</del> <b>ascertaining, <i>inter alia</i>, whether the conditions in Article 4b are fulfilled.</b></p>	
Article 9(2), second subparagraph				
98	Member States in question shall	Member States in question shall		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	ensure that listed companies, which by applying the national measures referred to in Article 8(3) have not appointed or elected members of the under-represented sex for at least 40 per cent of the non-executive director positions of their boards by 1 January 2018, where they are public undertakings, or by 1 January 2020, where they are not public undertakings, apply the procedural requirements relating to appointments contained in Article 4(1), (3), (4) and (5) with effect respectively from those dates.	ensure that listed companies, which by applying the national measures referred to in Article 8(3) have not appointed or elected members of the under-represented sex for at least 40 <del>per cent</del> % of the non-executive director positions of their boards by 1 January 2018, where they are public undertakings, or by 1 January 2020, where they are not public undertakings, apply the procedural requirements relating to appointments contained in Article 4(1), (3), (4) and (5) with effect respectively from those dates.	<i>deleted</i> <i>See Article 4b(2).</i>	
<i>Article 9(3)</i>				
99	3. The Commission shall review the application of this Directive and report to the European Parliament and the Council by 31 December 2021 at the latest and every two years thereafter. The Commission shall evaluate in particular whether the objectives of this Directive have been achieved.	3. The Commission shall review the application of this Directive and report to the European Parliament and the Council by 31 December 2021 at the latest and every two years thereafter. The Commission shall evaluate in particular whether the objectives of this Directive have been achieved.	3. -The Commission shall review the application of this Directive and report to the European Parliament and the Council by 31 December <del>2021 at the latest</del> <b>2031</b> and every two years thereafter. The Commission shall evaluate in particular whether the objectives of this Directive have been achieved.	
<i>Article 9(4)</i>				
100	4. In its report, the Commission shall assess whether, in the light of	4. In its report, the Commission shall assess whether, in the light of	4. -In its <del>report</del> <b>reports</b> , the Commission shall assess whether,	



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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.	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. <i>– 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.</i>	in the light of developments in the representation of men and women <del>in the on boards of listed companies</del> 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 <b>otherwise</b> amend it.	
Article 10				
101	Article 10 Entry into force and expiry	Article 10 Entry into force and expiry	Article 10 Entry into force and expiry	
Article 10(1)				
102	1. This Directive shall enter into force on the [twentieth] day following that of its publication in the Official Journal of the European Union.	1. This Directive shall enter into force on the [twentieth] day following that of its publication in the Official Journal of the European Union.	1. This Directive shall enter into force on the [twentieth] day following that of its publication in the Official Journal of the European Union.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 10(2)				
103	2. It shall expire on 31 December 2028.	2. It shall expire on 31 December 2028.	2. -It shall expire on 31 December <del>2028</del> <b>2038</b> .	
Article 11				
104	Article 11 Addressees	Article 11 Addressees	Article 11 Addressees	
Article 11, first paragraph				
105	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	
Formula				
106	Done at Brussels,	Done at Brussels,	Done at Brussels,	
Formula				
107	For the European Parliament	For the European Parliament	For the European Parliament	
Formula				
108	The President	The President	The President	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Formula				
109	For the Council	For the Council	For the Council	
Formula				
110	The President	The President	The President	

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