

**Committee of the Regions****ECOS-V-039****101st plenary session, 30 May 2013****OPINION****DIRECTIVE ON IMPROVING THE GENDER BALANCE AMONG
NON-EXECUTIVE DIRECTORS OF COMPANIES LISTED ON STOCK
EXCHANGES AND RELATED MEASURES****THE COMMITTEE OF THE REGIONS**

- is aware that it is important to respect the fundamental right of businesses to operate without interference; however, it is also important that equality between sexes be respected, as a fundamental value of the EU. This directive which provides a minimum standard, seeks to secure equal conditions for both sexes in all Member States and thus improve the economic conditions in the internal market.
- suggests that it would make sense to adopt sanctions which were similar in every Member State, if we wish to achieve the aim of securing a level playing field and a coherent regulatory framework throughout the EU. Otherwise, the disincentives in some countries might end up being significantly weaker than in others, thus leading to a lower level of compliance with the national legislation implementing the directive.
- supports the Commission's decision to pursue the goal of improving gender equality by means of a legislative proposal with binding objectives, rather than by supporting a self-regulatory and/or voluntary approach.
- stresses that the selection of the best qualified candidates for posts of non-executive directors be based on transparent qualification criteria and selection processes, encouraging all talented people to submit an application;
- stresses that, in many jobs, diversity among the staff in terms of knowledge, skills, experience, life situation and gender is vital to achieving the intended results. The Committee therefore feels it is important that priority be given to a candidate of the under-represented sex if that candidate is equally well qualified as a candidate of the other sex in terms of suitability, competence and professional performance, and if an objective assessment taking account of all personal criteria does not tilt the balance in favour of a candidate of the other sex;

Rapporteur:

Ms Andreja Potočnik (SI/ALDE), Deputy Mayor of Tržič

Reference document

Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures
COM(2012) 614 final

Opinion of the Committee of the Regions – Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures

I. POLICY RECOMMENDATIONS

General considerations

1. Equality between men and women is one of the fundamental values and key objectives of the European Union, enshrined in the EU Treaty (Article 3(3)) and the Charter of Fundamental Rights (Article 23). In accordance with Article 8 of the Treaty on the Functioning of the European Union (TFEU), the Union aims to eliminate inequalities and promote equality between women and men in all its activities. TFEU Article 157(3) 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.
2. The European Commission, in its proposal for a directive on improving the gender balance among non-executive directors of companies listed on stock exchanges, is aiming to ensure balanced representation of men and women in this category by 2020, such that neither gender exceeds 60% or falls below 40% of the total number of directors.
3. The Commission warns that progress towards an increase in the percentage of women on company boards has been too slow, with an average annual increase in the past years of just 0.6 percentage points¹. At the current pace it would take several decades to approach gender balance throughout the EU. Rapid and significant progress has been noted in those Member States and other countries where the prevailing social values and attitudes favour this development, and also where recommendations and binding minimum requirements have been introduced for representation of each gender.
4. Ignoring the knowledge/skills of highly qualified women means wasting a range of opportunities, given that economic recovery also requires the active participation of women. New, more effective ways of successfully balancing family and working life have to be conceived. Measures designed to promote the careers and postgraduate studies of women graduates are crucial to their career development.

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5. welcomes the Commission's resolve to improve the gender balance among non-executive directors of companies listed on stock exchanges and agrees that there is an urgent need for measures to be taken in this area.

¹ See Women in economic decision-making in the EU: Progress report, March 2012 (http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf).

6. supports the Commission's decision to pursue the goal of improving gender equality by means of a legislative proposal with binding objectives, rather than by supporting a self-regulatory and/or voluntary approach.
7. is conscious of how important and serious it would be if women were not appointed to decision-making roles in the economy and if their human resources potential were thus to remain untapped. There should be a determined effort to remove obstacles to women's career development.

Detailed explanation

8. In the Commission's view, the current lack of transparency of the selection procedures and requisite qualification criteria for board positions in most Member States represents a significant barrier to better gender balance in board membership and negatively affects not only board candidates' careers, but also their mobility, as well as investment decisions.
9. The proposed directive seeks to promote gender equality in economic decision-making and to fully exploit the existing pool of candidates for more equal gender representation on company boards, thereby contributing to the Europe 2020 objectives.
10. Member States must provide for effective, proportionate and dissuasive sanctions for breaches of this directive, which could include, inter alia, judicial bodies imposing administrative fines or declaring the nullity or annulment of the appointment or election of non-executive directors in breach of national provisions.
11. Member States are to report to the Commission on the implementation of this directive. Such reports are also to include information on measures adopted to achieve these goals.
12. The directive does not cover small and medium-sized enterprises.

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13. stresses that the selection of the best qualified candidates for posts of non-executive directors be based on transparent qualification criteria and selection processes, encouraging all talented people to submit an application;
14. stresses that, in many jobs, diversity among the staff in terms of knowledge, skills, experience, life situation and gender is vital to achieving the intended results. The Committee therefore feels it is important that priority be given to a candidate of the under-represented sex if that candidate is equally well qualified as a candidate of the other sex in terms of suitability, competence and professional performance, and if an objective assessment taking account of all personal criteria does not tilt the balance in favour of a candidate of the other sex;
15. is aware that it is important to respect the fundamental right of businesses to operate without interference; however, it is also important that equality between sexes be respected, as a

fundamental value of the EU. This directive which provides a minimum standard, seeks to secure equal conditions for both sexes in all Member States and thus improve the economic conditions in the internal market;

16. is convinced that the proposal does not entail any breach of the subsidiarity principle since it is based on clear legal bases in the EU Treaties and brings true European added value as it addresses the European Union policy objective of gender equality and ensures legal certainty for companies operating in more than one Member State and whose cross-border operations could be negatively affected by the current disparities in rules applying to gender equality on company boards;
17. underlines that it is necessary to support measures at European level and ensure a uniform pan-European regulatory framework in this domain. The current situation, where every Member State has its own standards and legislation, leads to uncertainty in the operation of the internal market, since many listed companies operate in more than one Member State;
18. suggests that it would make sense to adopt sanctions which were similar in every Member State, if we wish to achieve the aim of securing a level playing field and a coherent regulatory framework throughout the EU. Otherwise, the disincentives in some countries might end up being significantly weaker than in others, thus leading to a lower level of compliance with the national legislation implementing the directive;
19. points out that it would be appropriate to place more stress on improved gender balance between all directors, and not just non-executive ones;
20. warns that, in taking on management positions, women are still hindered by certain factors; one to be highlighted is the lack of measures for making it easier to reconcile family and professional life.

Importance for the regional and local level

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21. believes that local and regional authorities must endeavour to secure greater equality. Equal representation of the sexes is not just a precondition for true democracy and an equitable society, it is an essential condition for achievement of the EU's objectives of smart, sustainable and inclusive growth;
22. feels that the 2018 deadline is appropriate for securing 40% representation of the under-represented sex, in cases where representatives of local and regional authorities are members of (publicly owned) company boards;
23. points out that it is important that public companies provide a good example for private companies as regards the 40% representation of the under-represented sex.

II. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Preamble

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
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 Articles <u>8</u> , <u>157(3)</u> and <u>(4)</u> thereof,

Reason

Consistent with paragraph 1 of the draft opinion. Article 8 of the Treaty on the Functioning of the European Union has to be mentioned among the legal bases of this directive as it defines gender equality as a horizontal objective of the European Union.

Amendment 2

Preamble

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
	<u>Having regard to Articles 2 and 3(3) of the Treaty on European Union,</u>

Reason

Consistent with paragraph 1 of the draft opinion.

Amendment 3

Preamble

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
	<u>Having regard to Article 23 of the Charter of Fundamental Rights of the European Union,</u>

Reason

Consistent with paragraph 1 of the draft opinion.

Amendment 4

Recital 17

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
Companies listed on stock exchanges enjoy a particular economic importance, visibility and impact on the market as a whole. The measures	Companies listed on stock exchanges enjoy a particular economic importance, visibility and impact on the market as a whole. The measures

<p>provided for in this Directive should therefore apply to listed companies, which are defined as companies incorporated in a Member State whose securities are admitted to trading on a regulated market within the meaning of Article 4(1) (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments,[1] 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> <hr/> <p>[1] OJ L 145, 30.4.2004, p. 1.</p>	<p>provided for in this Directive should therefore apply to listed companies, which are defined as companies incorporated <u>having their headquarters</u> in a Member State whose securities <u>shares</u> are admitted to trading on a regulated market within the meaning of Article 4(1) (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments,[1] 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> <hr/> <p>[1] OJ L 145, 30.4.2004, p. 1.</p>
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Reason

The location where a company has its headquarters (rather than the location where it is registered) and the element of shares rather than securities constitute safer criteria for identifying which company falls within the scope of this directive.

Amendment 5

Recital 21

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>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>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, <u>taking into consideration the specific procedures applied to the election/designation of such representatives.</u></p>

Reason

Gender equality considerations must go hand-in-hand with democratic election/designation procedures applied by trade unions in Member States.

Amendment 6

Recital 31

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
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.	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.

Reason

This amendment relates to the legislative amendment 11 of the CoR opinion, referring to Article 4(6), proposed by the rapporteur herself.

Amendment 7

Recital 32

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
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.	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.

Reason

This weakens unnecessarily the text.

Amendment 8
Recital 34

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>Member States should require listed companies to provide information on the gender composition of their boards as well as information on how they managed to meet the objectives laid down in this Directive, on a yearly basis to the competent national authorities in order to enable them to assess the progress of each listed company towards gender balance among directors. Such information should be published and, where the company in question has not met the objective, it should include a description of the measures that it has taken so far and intends to take in the future in order to meet the objective.</p>	<p>Member States should require listed companies to provide information on the gender composition of their boards as well as information on how they managed to meet the objectives laid down in this Directive, on a yearly basis to the competent national authorities in order to enable them to assess the progress of each listed company towards gender balance among directors. Such information should be published and, where the company in question has not met the objective, it should include a description of the measures that it has taken so far and intends to take in the future in order to meet the objective, <u>specifying the timeframe for taking these measures, which in no case may extend beyond the expiry of this directive.</u></p>

Reason

Change of terminology: the aim of the directive is to achieve gender equality, regardless of whether the current situation of inequality between non-executive directors is based on gender issues. By gender we mean the social and cultural characteristics that distinguish men and women and which are learned, change with time and vary considerably within and between cultures. By sex we mean biological characteristics that distinguish men and women. The text is added because it is essential to specify the timeframes for implementing the measure in order to avoid leaving implementation of the objectives up to the company.

Amendment 9
Recital 40

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
	<p><u>In accordance with the proposal for minimum harmonisation of corporate governance requirements relating to appointment decisions based on objective qualifications criteria in order to attain gender balance among non - executive directors , Member States may go beyond the minimum standard , on a voluntary basis.</u></p>

Reason

Member States which have already achieved, or strive to achieve, better results in terms of gender balance amongst non-executive directors are free to do so.

Amendment 10

Article 2.1

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
"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;	"listed company" means a company incorporated <u>having its headquarters</u> in a Member State whose securities <u>shares</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;

Reason

The location where a company has its headquarters (rather than the location where it is registered) and the element of shares rather than securities constitute safer criteria for identifying which company falls within the scope of this directive.

Amendment 11

Article 2.8

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
"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;	"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 <u>has its headquarters</u> in a Member State whose currency is not the euro, the equivalent amounts in the currency of that Member State;

Reason

The location where a company has its headquarters (rather than the location where it is registered) constitutes a safer criterion for identifying which company falls within the scope of this directive.

Proposed amendment 12

Article 4 (6)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
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.	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.

Reason

As non-executive directors perform mainly supervisory tasks, it is also easier to recruit qualified candidates from outside the company or the specific sector – a consideration which is of importance for areas of the economy where members of a particular sex are especially under-represented in the workforce. For this reason, we see no need for the target set out in paragraph 1 not to be implemented where the under-represented sex represents less than 10 per cent of the workforce of listed companies.

Amendment 13

Article 4.7

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
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.	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.

Reason

This weakens unnecessarily the text. It is consistent with the deletion of recital 32.

Amendment 14

Article 5 (3)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
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	Where a listed company does not meet the objectives laid down in Article 4(1) or its own individual commitments taken pursuant to paragraph 1 of this Article, the information referred to in paragraph 2 of this Article shall include the reasons for not reaching the objectives or commitments and a description of the measures which the company has adopted or

intends to adopt in order to meet the objectives or commitments.	intends to adopt in order to meet the objectives or commitments, <u>specifying the timeframe for taking these measures, which in no case may extend beyond the expiry of this directive.</u>
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Reason

The text is added because it is essential to specify the timeframes for implementing the measure in order to avoid leaving implementation of the objectives up to the company.

Amendment 15

Article 7

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
Member States may introduce or maintain provisions which are more favourable than those laid down in this Directive to ensure a more balanced representation of men and women in respect of companies incorporated in their national territory, provided those provisions do not create unjustified discrimination, nor hinder the proper functioning of the internal market.	Member States may introduce or maintain provisions which are more favourable than those laid down in this Directive to ensure a more balanced representation of men and women in respect of companies incorporated <u>having their headquarters</u> in their national territory, provided those provisions do not create unjustified discrimination, nor hinder the proper functioning of the internal market.

Reason

The location where a company has its headquarters (rather than the location where it is registered) constitutes a safer criterion for identifying which company falls within the scope of this directive.

Brussels, 30 May 2013.

The President
of the Committee of the Regions

Ramón Luis Valcárcel Siso

The Secretary-General
of the Committee of the Regions

Gerhard Stahl

III. PROCEDURE

Title	Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures.
Reference(s)	Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures COM(2012) 614 final
Legal basis	Article 307(1) TFEU
Procedural basis	Optional referral
Date of Commission letter	14 November 2012 and 11 January 2013 (Catherine Day letter)
Date of the decision of the President	16 November 2012
Commission responsible	Commission for Economic and Social Policy (ECOS)
Date adopted by commission	23 April 2013
Result of the vote in commission	Majority
Date adopted in plenary	30 May 2013
Previous Committee opinion	<ul style="list-style-type: none"> – Opinion of the Committee of the Regions of 18 June 2009 <i>on non-discrimination, equal opportunities and the implementation of the principle of equal treatment between persons</i> (rapporteur: Ms Claudette Abela Baldacchino (MT/PES), CdR 321/2008)² – Opinion of the Committee of the Regions of 6 December 2006 <i>on a roadmap for equality between women and men 2006-2010</i>, (rapporteur: Ms Claudette Abela Baldacchino (MT/PES), CdR 138/2006)³
Date of subsidiarity monitoring consultation	

² [OJ C 211, 4.9.2009, p. 90.](#)

³ [OJ C 57, 10.3.2007, p. 29.](#)