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

2012/0299(COD) - 17/10/2022 - Council position

The Council adopted its position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on improving the gender balance among directors of listed companies and related measures.

The proposed directive aims to achieve a **more balanced representation of women and men among the directors of listed companies** by establishing effective measures to accelerate progress towards gender balance, while allowing listed companies sufficient time to make the necessary adjustments to achieve this. It applies to listed companies and does not apply to micro, small and medium-sized enterprises (SMEs).

***Objectives for gender balance on boards***

Member States should ensure that listed companies are subject to either of the following targets, to be achieved by 30 June 2026:

- members of the under-represented sex occupy **at least 40%** of non-executive board positions

- members of the under-represented gender hold **at least 33%** of all directors, both executive and non-executive.

***Means to achieve the targets***

Listed companies that do not meet the targets for gender balance on boards should **adapt the process for selecting candidates** for appointment or election as directors. Clear criteria, formulated in neutral and unambiguous terms, should be applied in a non-discriminatory manner throughout the selection process.

In choosing between candidates who are equally qualified in terms of ability, competence and professional performance, **priority should be given to the candidate of the under-represented sex**, unless, in exceptional cases, there are legally overriding reasons, such as the pursuit of other diversity policies, which tilt the balance in favour of the candidate of the other sex.

***Suspension clause***

The Council's position clarifies that the suspension clause would only be available to Member States that have adopted national measures that are demonstrably '**equally effective**' as those provided for in the Directive. In practice, these Member States could suspend the application of the requirements of the Directive relating to the selection of candidates for appointment or election as directors and, where appropriate, those relating to the setting of individual quantitative objectives, provided that the conditions for suspension set out in the Directive are met.

Furthermore, according to the Council's position, for a Member State to be able to rely on the suspension clause, the conditions must be fulfilled at the latest by the date of entry into force of the Directive. The text includes a closed list of conditions that Member States must fulfil in order to qualify for suspension, as well as a clearer description of the core elements that national legislation should include.

***Publication of information***

Listed companies should provide the competent authorities once a year with information on the gender representation on their boards and the measures taken to attain the gender balance objectives. Based on the information provided, Member States should publish and update, in an easily accessible and centralised manner, a list of listed companies that have met either of the objectives.

Where a listed company has not met any of the objectives, the information should include the **reasons** why the listed company has not met those objectives and a full description of the measures it has already taken or intends to take to meet those targets.

**Penalties**

Member States should lay down the rules on penalties applicable to breaches by listed companies of the national provisions adopted pursuant to the Directive. They should ensure that there are adequate administrative or judicial procedures to enforce the obligations under the Directive. These sanctions should be effective, proportionate and dissuasive. They could include **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 under the Directive.

A general provision on public procurement has also been included, obliging Member States to ensure that, in the performance of public contracts and concessions, listed companies comply with applicable social and labour law obligations, in accordance with relevant EU law.

***Review***

The Council position invites the Commission to review, in its **2030 report**, the effectiveness of the Directive, the possible need to extend the scope of the Directive, at a later stage, to non-listed companies which are not SMEs, as well as one of the conditions of the suspension clause, namely the one based on progress made.

In addition, Member States making use of the suspension clause will also be required to report not only on whether and how they have fulfilled the applicable conditions, but also on whether they are making further progress towards a more balanced representation of both sexes.

Lastly, the Council added a **technical annex** specifying the exact number of director positions deemed necessary to achieve the quantitative objectives that are expressed as percentages in the Directive.