



The Commission Proposal on Women on Boards

Improving gender balance in economic decision making
background information

DG Justice/D1
Equal Treatment Legislation

General approach

- Accelerating progress: with intelligent, not rigid, quota
- 40% target combined with binding rules on a transparent selection process
- Selection based on merit: a preference rule in case of equal qualification, with further safeguards
- High degree of flexibility for Member States and companies
- Gender equality measure – based on Article 157(3) TFEU – with economic and business reasons and implications

Scope

- EU companies **listed** on EU stock exchanges - Art. 2(1),
- **Except:** small and medium-sized companies (**SMEs**) – Art. 3, definition in Art. 2(8),
- Estimated **5000 companies**,
- Privately or publicly owned (public undertakings as defined in Art. 2(9)).

Non-executive Directors Objective (Article 4)

An obligatory quantitative objective of 40% for non-executive directors (supervisory boards), tied to **procedural requirements on appointments** - Art. 4(1)-(3);

33% (1/3rd) if applied to all directors - Art. 4(7);

Deadlines: by **1 January 2020** (or **2018** for public undertakings).

Non-executive Directors Procedural requirements

- Kick in only if 40% not achieved
- Preference rule → *qualifications remain decisive*
- Appointment procedure
 - **Criteria: pre-established, clear, neutrally formulated and unambiguous – Art. 4(1)**
 - **Comparative analysis of qualifications – Art. 4(1)**
 - **Preference rule in case of equal qualification - Art. 4(3)**
 - **Disclosure of assessment and burden of proof - Art. 4(4)-(5)**

Procedural requirements: application

Only to non-executives (in both unitary and dual board systems)

Relevant moment in the appointment procedure: determined by the Member States and/or companies (pre-selection, list composition, selection, etc.)

Executive directors – Article 5(1)

Companies have to set **individual targets** for executive directors/ management board members.

Same **deadlines** and **reporting obligations**, but not the procedural obligations related to appointments

Sanctions – Article 6

- defined by the Member States (content and addressees)
- effective, proportionate and dissuasive
- examples

→ kick in in case of failing to implement obligations under directive:

- re nonexecutives: non-compliance with procedural obligations (not for not reaching 40%)
- re executives: non-compliance with obligation to set individual objectives
- re all: non-compliance with reporting/ monitoring obligations

Flexibility & subsidiarity

Possibility of reaching the objective if 33% of all board members are of under-represented sex – Art. 4(7)

Possible exemption for companies where the under-represented sex makes up less than 10% of the workforce – Art. 4(6)

Temporary nature of the Directive – sunset clause – Art. 10(2)

Subsidiarity: persistent lack of progress – in a key field covered by EU competence – difficulty or unwillingness to take measures – national parliamentary check passed

Temporary suspension of the procedural obligations – Article 8(3) and 9(2)

- For MS which have taken action before entry into force of the Directive
- If national measures equally effective in reaching 40% (or 33% of all directors)
- Procedural obligation on appointments suspended
- The flexi-quota obligation: suspended if equivalent measures cover executives and non-executives
- Prognostic assessment by MS
- No Commission authorisation needed – plausibility check and assessment of success *post factum* in individual report
- Temporarily – till 2020/2018

Reporting and monitoring

Reporting by companies:

- yearly and published on the company's website - Art. 5(2)
 - both on executives and non-executives
 - explanation of the reasons and measures planned – Art. 5(3)
- **administrative burden minimal**

Monitoring and reporting by Member States:

- already in 2017 and every two years thereafter – Art. 9(1)
- precise content requirements

Monitoring and reporting by the Commission:

- 1st report by 31 December 2021 – Art. 9(3)
- specific reports on equivalent measures and temporary suspension – Art. 9(2)

Timeline

- **End 2013:** target for the adoption of the Directive.
- **By 2015,** Member States should implement it into national law.
- **By 1.1.2017,** Member States should report on the progress
- **In 2017:** a specific Commission report will focus on alternative measures.
- **In 2021:** full implementation report, assessing whether the objectives have been achieved.
- **The end of 2028:** expiry of the Directive (*sunset clause*)