

**European Directive on improving the gender balance among directors of companies listed on stock exchanges, and related measures**

*Scope*:

* The measures provided for in this Directive should apply to **listed companies** only (micro and small and medium-sized enterprises are excluded from the scope);
* If various systems of board structures coexist in Europe (two-tier / one-tier system), the Directive applies **to all board systems** in the Member States;
* Quantitative objectives set by the Directive should apply to non-executive directors appointed by the companies’ workforce and/or employee organisations;
* Member States will have the possibility to apply the quantitative objectives separately to shareholders representatives and employee representatives.

*Provisions:*

*Overall targets:*

* Listed companies in the EU should be subject to the objective of having at least **40 % of non-­executive directors** of the under-­represented sex no later than **30 June 2026**. Alternatively Member States may provide that listed companies should be subject to the objective of having at least **33% of all directors positions** of the under-­represented sex,irrespective of whether they are executive or non-­executive;
* **Suspension** of the application of the targets: possible if:

1. members of the under­represented sex hold at least 30 % of the total number of all non­executive director positions or at least 25 % of the total number of all director positions in listed companies;
2. national legislation requires that:
3. members of the under­represented sex hold at least 30 % of non­executive director positions or at least 25 % of all director positions in listed companies;
4. effective, proportionate and dissuasive enforcement measures apply in the case of non­compliance with these requirements;
5. all listed companies not covered by such national legislation set individual quantitative objectives for all director positions.

*Selection/ Appointment/ Election of directors:*

* The Directive only establishes **minimum standards** for the process of selection of candidates for appointment or election to the posts. Companies maintain the freedom to select candidates on the basis of qualifications or other objective relevant considerations;
* Listed companies which do not meet the targets/objectives referred, should adjust the process for the selection of candidates for appointment or election to the director positions. **Non-discriminatory, clear, neutrally formulated and unambiguous criteria** should be established in advance of that process;
* In the selection of candidates, 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 under­represented sex, unless in exceptional cases;
* 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:

1. the qualification criteria upon which the selection was based,
2. the objective comparative assessment of the candidates under those criteria,
3. where relevant, the specific considerations exceptionally tilting the balance in favour of a candidate of the other sex.

* **Such an information requirement might imply a limitation to the right to respect for private life and to the right to the protection of personal data;**
* Where a candidate of the under­represented sex establishes the presumption that they were equally qualified as compared with the selected candidate of the other sex, **the listed company should be required to demonstrate the correctness of the choice**;
* Where the selection is made through a vote of shareholders or employees, companies shall ensure that voters are **properly informed** regarding the measures provided for in this Directive, including penalties for non­compliance by the company.

*Penalties*:

* The obligations relating to the **process of selection** of candidates for appointment or election, the obligation to set a **quantitative objective** in relation to executive directors and **reporting obligations** should be enforced by **penalties** (examples of penalties include as fines, the nullity or annulment declared by a judicial body of the selection of directors...);

*Expiry*:

* The Directive shall expire on **31 December 2038**.

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***Concerns for ecoDa on how these procedural rules would affect candidate selection :***

* It is likely to be administratively impossible to meaningfully feedback assessments from shareholders as to ‘why’ they voted for Candidate A over Candidate B. The appointment of directors is a matter for the AGM  to vote upon, and cannot be confused with a more usual ‘employment’ offer made by a company to an individual;
* It definitely cannot become public information who has been a candidate (a distinction has to be made between candidates proposing themselves and those invited). Procedures should not become difficult or even cause harm to candidates with publicity.

***Call for action:***

ecoDa would encourage its members to approach **their respective governments** to discuss how the Directive will be transposed at their national level and to alert them on the points of concerns raised by ecoDa.