

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

**COM(2012) 614 final, Council code 16433/12
Inter-institutional file 2012/0299/COD**

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Gender balance in business leadership: a contribution to smart, sustainable and inclusive growth

COM(2012) 615 final, Council Code 16428/12

- **Legal basis:**
Article 157 (3) of the Treaty on the Functioning of the European Union [proposal for a directive – COM(2012) 614 final]
Information document [communication – COM(2012) 615 final]
- **Date of submission to the Chamber of Deputies through the Committee for European Affairs (CEA):**
21 Nov. 2012
- **Date of discussion in the CEA:**
29 Nov. 2012 (first round)
- **Procedure**
Co-decision procedure [Proposal for a Directive – COM(2012) 614 final]
The document is not subject to a Council vote [Communication – COM(2012) 615 final]
- **Preliminary position of the Government (pursuant to Sec. 109a (1) of the Procedural Rules of the House of Deputies):**
Dated 30 Nov. and 27 Nov. 2012, delivered to the Committee for European Affairs on 5 Dec. 2012 through the ISAP system.
- **Evaluation in terms of the subsidiarity principle:**
The Proposal for a Directive COM(2012) 614 final is not in compliance with the subsidiarity principle (see below):
- **Rationale and subject:**

1. General

Affirmative (or positive) action, which is sometimes translated into Czech, contrary to its original meaning, with negative connotations, as “positive discrimination” (*pozitivní diskriminace*)¹ includes a broad range of measures through which a government strives to improve the position of factually disadvantaged groups which are not equal to other groups. Hence, affirmative action is connected primarily to material equality; it is applied when means of formal equality do not lead to the desired goal. The means of positive measures are used by the legal systems of many countries, primarily those where groups of inhabitants faced racial or caste discrimination, such as the USA, India, and South Africa.

The preferring of certain groups through positive measures also means the derogation of the mechanism of formal justice in terms of equal treatment, which is why such derogation should be based on serious circumstances. Specialised literature² concerned with discrimination states four reasons that justify positive measures:

- Remedy of past wrongs
- Redistribution of assets
- Greater representation of minority groups of inhabitants
- Greater social cohesion, reducing social tension

The category “greater representation of minority groups of inhabitants” (in the sense of groups of inhabitants with minority representation) includes measures aimed at improving gender balance and enhancing the representation of women in higher and mid-level management positions. The situation in the management and supervisory bodies of companies is especially unbalanced. According to European Commission data, women represent only 13.7% of the members of management and supervisory bodies of companies, 15% of non-executive directors, and a mere 3.2% of chairmen. Given that 60% of university graduates are women, the Commission concluded that a legal instrument must be proposed on the basis of which the share of women in the management of companies would increase.

The European Communities started to pay attention to the issues of the participation of women in the decision-making process in 1984.³ In its 2010 strategy for the equality of women and men, the Commission identified this issue as one of its priorities. In 2011, the Commission launched the initiative “*Women on the Board*

¹ Compare with the wording of the explanatory memorandum of Proposal for a Directive COM(2012) 614. The Czech translation of the proposed directive uses the term “positive discrimination”, contrary to the terms established in specialised literature and the official translations into English, Italian, French, and Spanish. A defining feature of discrimination is disadvantaging, whereas the defining feature of positive measures are advantages provided to groups that have hitherto been disadvantaged. See Bobek M., Boučková P., Kühn Z. *Rovnost a diskriminace*. Prague: C.H. Beck, 2007, p. 22 and ff. On the topic also see: Havelková B. *Rovnost v odměňování žen a mužů*, Prague, Auditorium, 2007.

² Chiefly Bobek M., Boučková P., Kühn Z. *Rovnost a diskriminace*. Prague: C.H. Beck, 2007, p. 28.

³ Council Recommendation 84/635/EEC of 13 December 1984 on the promotion of positive action for women.

Pledge for Europe”, through which it called upon listed companies in Europe to voluntarily undertake to increase the representation of women in their management bodies to 30% by 2015 and to 40% by 2020. The European Parliament called for the achievement of the same goal by the same dates in its *resolution of 6 July 2011 on women and business leadership*⁴. It asked the Commission to propose a legal regulation (including quotas) by 2012 in the event that the steps adopted by enterprises and Member States are deemed insufficient. The European Parliament repeated its appeal for the creation of a legal regulation in its *resolution of 13 March 2012 on equality between women and men in the European Union – 2011*⁵.

Nevertheless, when the Commission evaluated progress in this area in March 2012, it found that the average annual improvement since 2003 only amounts to 0.6%⁶. That would mean that with natural development, gender balance would not be reached for more than 40 years. Consequently, the Commission launched a public consultation concerning the possible steps to overcoming this imbalance and assessed the impacts in terms of the costs and benefits of any potential future regulation of the area. The product of that activity is the *Communication Gender balance in business leadership: a contribution to smart, sustainable and inclusive growth* (COM(2012) 615 final) and the *Proposal for a Directive of the European Parliament and the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures* (COM(2012) 614 final).

Any positive measures, regardless of whether they are adopted on the level of the entire Union or (merely) on the level of Member States must respect the limits set by the Court of Justice of the EU in its relatively rich case-law⁷ concerning the implementation of the Anti-discrimination Directive⁸:

- The measures must concern industries in which women are under-represented;
- The measures may only prefer those women to male candidates who have the same qualifications;
- The measure must not give automatic and unconditional preference to equally qualified candidates, but must include a “protective clause” that allows for exceptions in justified cases, in order to take into account the individual situation, in particular the personal situation of each candidate.

2. Situation in EU Member States and Norway and Iceland

⁴ 2010/2115

⁵ European Parliament Resolution of 6 July 2011 on women and business leadership and European Parliament Resolution No 2011/2244 (INI) of 13 March 2012.

⁶ Women in decision making in the EU – progress report, p. 13. Available at: http://ec.europa.eu/justice/newsroom/gender-equality/opinion/files/120528/women_on_board_progress_report_en.pdf

⁷ See e.g. decision of the Court of Justice in C-450/93 “Kalanke”, C-409-95 “Marschall”, C-407/98 “Abrahamsson”.

⁸ Directive on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (76/207/EEC).

Thus far, a system of legally binding quotas, including sanctions, has been introduced in three European Union Member States (France, Italy, and Belgium), all in 2011. They modelled it on the example of Norway, which is a “pioneer” in terms of quotas for the representation of women, and Iceland. The Netherlands and Spain have also adopted legal regulation containing quotas in favour of the under-represented sex, but non-compliance is not subject to any sanctions. Denmark, Finland, Greece, Austria, and Slovenia apply quotas for the representation of women on management boards only in state-controlled companies.

In other Member States, which have not adopted a legally binding system of quotas, measures were taken to support the representation of women in higher management positions, which are optional (e.g., Denmark, Germany, Luxembourg, Poland, Sweden, the United Kingdom).

a) Norway

The first country to implement a system of legally binding quotas into its legal order was Norway. It enacted a statute in December 2003 according to which 40% of the members of management boards of joint-stock companies and state-owned enterprises should be comprised of women. The deadline for compliance with the statutory requirement was set at 2006 for state-owned companies, and at 2008 for joint-stock companies, under the sanction of the rejection of the registration of a newly formed company, a fine, or even the dissolution of a company.

In relation to the Norwegian experience, the “golden skirt” phenomenon has been observed. This term is used to designate a very narrow group of women who have proven themselves in the corporate field and who hold positions on the bodies of a large number of companies. Their involvement in the management board of a company means that the requirements of the legal regulation have been met, albeit formally. In absolute terms, many women who are not in this exclusive group of golden skirts do not manage to break through the “glass ceiling” of discrimination. And on the contrary, the golden skirts, i.e., women who hold positions on the bodies of many companies, are so busy that they cannot carry out the duties related to those positions properly, which increases the risk of reduced competitiveness for the company concerned.⁹

The introduction of positive action in Norway also meant certain economic costs for Norwegian companies. When the plan for the introduction of positive action was announced in Norway, it caused a noticeable drop in the stock prices of the companies concerned. The companies that were forced to increase the number of women in their bodies noted a reduction in their value by 18 percent in the following years.¹⁰ In spite of these adverse phenomena, the Norwegian legal regulation achieved the goal it set for itself – the positive measures resulted in a 44% representation of women on the management boards of companies.¹¹

⁹ Lansing P., Citara Candra. Quota Systems as a Means to Promote Women into Corporate Boardrooms. *Employee Relations Law Journal*, Vol. 38, N. 3, Winter 2012, p. 5

¹⁰ *Ibid*

¹¹ *Ibid*

b) Iceland

The relatively ambitious target of 50% of female representation on the management boards of public enterprises and companies in which the majority or sole shareholder is a municipality was set in 2006. In 2010, a regulation was enacted requiring at least 40% female representation on the management boards of joint-stock companies with more than 50 employees by 2013.

c) France

France introduced a compulsory minimum representation of women of 40% on the management boards of listed companies, companies with more than 500 employees, and companies whose annual profit exceeds EUR 50 million in January 2011. The target is to be reached by January 2017, and an interim 20% representation is to be achieved by January 2014. If companies do not comply with the statutory requirements, remuneration related to the execution of their positions will not be paid out to the members of their management boards, or the appointment of the management board members will be annulled.

d) Italy

In Italy, according to an act of June 2011, listed companies, public enterprises and enterprises with a state ownership interest must have management boards with a 33% share of women by 2015 (20% by 2012). Otherwise they face a fine of up to EUR 1 million and the dissolution of the management board.

e) Belgium

According to the Belgian regulation of September 2011, women must have at least a one-third representation on the management boards of public enterprises (by 2011/2012), listed companies (by 2017/2018), and small listed companies (2019/2020). If women are under-represented on the management board of a specific company after the set date, the appointment of all newly appointed/reappointed members of the management board will be invalid. If the situation does not improve even after one year, management board members will no longer be entitled to any benefits and compensation.

a. Contents:

a) *Communication Gender balance in business leadership: a contribution to smart, sustainable and inclusive growth (hereinafter referred to as the “Communication”)*

The Communication describes the current situation concerning the under-representation of women in the management of companies, describes the main obstacles hindering women in their career advancement, and explains how structural and permanent changes can be achieved.

In the Communication, the European Commission admits that the gender imbalance in business leadership positions is only the “tip of the iceberg” in a far broader context of

inequalities in the position of men and women that arise from the persisting traditional division of roles between men and women, division of labour, orientation of women and men in choosing their education, and the concentration of women in only several fields of work which are often less valued and worse paid. A major obstacle for women striving for management positions is the lack of measures for harmonising work and family obligations. The Commission is also concerned with the issue of the so-called glass ceiling, i.e., the obstacles placed before women in their career progress, and the lack of transparency in hiring and promotion.

Later in its Communication, the Commission lists the measures taken on the level of Member States that are aimed at ensuring better gender balance in business leadership positions and concludes that, in terms of the concrete progress achieved and as concerns the type of measures taken on the national level, the differences between Member States within the EU continues to increase. Referring to economic studies (particularly, Credit Suisse, Research Institute (August 2012) “Gender diversity and corporate performance” and the research work of Deutsche Bank (2010) “Towards gender-balanced leadership”), it considers it proven that gender diversity in management and supervisory bodies results in innovative ideas, increased competitiveness and performance, and better governance and management of companies. Because individual national initiatives set different requirements as to the governance and management of companies and different sanctions for European enterprises, they can pose an obstacle to the functioning of the internal market and hence, it is, in the European Commission’s opinion, necessary to proceed on the level of the Union as a whole. The Commission focuses on listed companies (with the exception of small and medium-sized companies for which adherence to quotas would pose an undue administrative burden) due to their economic importance, visibility, and impact on the EU market.

For those reasons, the European Commission proposes a legislative measure in the form of a minimum target, a 40% share of the under-represented sex among the non-executive directors of listed companies that is to be achieved by 2020, or by 2018 in the case of listed companies that are public enterprises. The measure should be accompanied with effective, proportionate, and dissuasive sanctions for its breach, and should be time-limited.

According to the Commission, the legislative measure should be accompanied by political and financial measures. The Commission undertakes to urge Member States that they apply the measures proposed for the private sector also in the public sector.

Furthermore, the European Commission shall:

- Support initiatives to combat stereotyped representations of the role of women and men in society, labour market, and leadership positions;
- Contribute to the creation of a social, economic, and business environment supportive of a balanced participation of women and men in leadership positions;
- Promote awareness about the business and economic case for gender equality and balanced representation of women and men in decision making;
- Support and monitor progress towards a balanced participation of women and men in decision-making positions across the EU.

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

The Proposal for a Directive contains rules for ensuring better gender balance among non-executive directors of companies listed on stock exchanges.

Article 4 (1) to (3) imposes the obligation on Member States to ensure that companies listed on a stock-exchange, in whose supervisory/non-executive bodies members of the under-represented sex comprise less than 40%, make the appointments to those positions on the basis of a comparative analysis of each candidate, applying clear and neutrally formulated criteria. The number of such positions should be as close as possible to a proportion of 40%, but not exceed 49%. In choosing candidates for these positions, preference should be given to a candidate of the under-represented sex if that candidate is equally qualified as a candidate of the other 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. This relatively complex normative construction introduces, simply put, a mechanism of preferential selection for positions of members of supervisory boards or non-executive members of executive bodies of companies (hereinafter referred to as “non-executive directors”). In the process of selection of a non-executive director of a listed company, preference should be given to a candidate from the disadvantaged sex, if the selection is being made between two equally qualified candidates. If a candidate from the under-represented sex is less qualified, preference shall not be given.

Article 4 (4) of the Draft Directive also imposes the obligation on Member States to ensure that the unsuccessful candidate is provided with a list of the qualification criteria upon which the selection was based, or the reasons for choosing the candidate of the other sex. Furthermore, in Article 5 (4), the Draft Directive also mandates Member States to introduce the institute of a reverse burden of proof in disputes concerning a failure of companies to comply with the obligations laid down in Article 4 (1) to (3).

Whereas the aforementioned provisions set up binding mechanisms for non-executive senior bodies of companies, Article 5 (1) of the Draft Directive sets the obligation for listed companies to undertake individual commitments regarding gender-balanced representation of both sexes among non-executive directors to be achieved by 1 January 2020 or, in the case of listed companies which are public undertakings, by 1 January 2018. It does so without setting binding criteria for these individual commitments, as is the case in Article 4. According to Article 5 (2), Member States shall ensure that the companies concerned by this directive inform national authorities on a regular basis about the composition of their management and supervisory bodies. If a company fails to meet the targets set in Article 4 and Article 5 (1), it is obliged to provide an explanation with the information referred to above, as to why it has not met the obligations and describe the measures it intends to adopt in order to meet them.

Article 6 of the Draft Directive contains provisions on sanctions. Member States are obliged to adopt effective, proportionate, and dissuasive sanctions. Article 6 (2) provides an informative list of possible sanctions; such sanctions may (but need not necessarily) include, for example, administrative fines or the nullification of the legal acts of appointment or election of non-executive directors if they were made contrary to the requirements of the directive.

b. Situation in the Czech Republic:

As concerns the representation of women in the management bodies¹² of large companies listed on the stock exchange, the Czech Republic is in a comparatively average position – the ratio of women represented on those bodies is 15.4% compared to average of 13.7% for Europe as a whole. No woman is the chair of a management board or CEO of such companies. The imbalance is, however, evident and long-term.

Socio-economic developments and the specific aspects of the legal environment in the Czech Republic have resulted in the number of companies that are based in the Czech Republic and listed on the national Stock Exchange being relatively limited compared to other countries. According to information from the European Commission, the proposed regulation would apply to approximately 10 – 20 companies listed in the Czech Republic. Considering the limited number of non-executive directors of the companies concerned by the legal regulation, one can arrive at the cautious assumption that the proposed regulation would only have a very limited socio-economic impact in the Czech Republic. But it cannot be ruled out that the proposal is a mere prelude to more intensive legislative activity of the EU concerning the equal representation of women and men in all of labour law, with a broad impact on Member States (“open door policy”).

c. Impact:

A general objection of critics of the introduction of positive measures, in particular in the form of quotas in companies, concerns the negation of the meritocratic principle as the basic criterion for the selection of the most appropriate candidates for executive supervisory positions. Private companies that are exposed to the competition of other competitors on the market essentially reduce the criteria for selecting candidates to such intellectual and personal traits that will best help them succeed in market competition. Other criteria then result in the risk of a reduction in professional standards, which can also reduce the competitiveness of the company concerned.¹³

In this connection, it must be noted that recourse may not be had to the experience of Member States that have introduced a system of legally binding quota and sanctions to their legal orders, as there are – given the adoption of these systems in 2011 – practically

¹² I.e., given the dual system of the management of joint-stock companies in the Czech Republic, both on the management board and the supervisory board.

¹³ In more detail e.g., Nicolson D. Affirmative Action in Legal Profession. *Journal of Law and Society*, Vol. 33, N. 1, March 2006, p. 115 and ff.

none. As for the evaluation of the impact of the introduction of quotas for the representation of women in the management of companies in Norway, one of the analyses¹⁴ shows that the regulation had an adverse impact on the value of the companies concerned. But the reason was not the fact that a greater number of women joined the management of companies, but the fact that these were young women with little practical experience.

The adoption of positive measures will also involve increased administrative costs for the companies concerned. Even the European Commission admits that, by having exempted small and medium-sized companies from the regulation due to the very reason of undue administrative burden. But according to the Commission, the increased administrative burden can be justified by “*the benefits in the form of increased performance, innovative ideas, and increased competitiveness of companies*” and for the economy of the Union as a whole.¹⁵

As concerns the introduction of the reverse burden into the national legal order, it can be stated that this has already been introduced in the Czech legal order in connection with the implementation of Directive 97/80/EC on the burden of proof in cases of discrimination based on sex and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. These include the provisions of Sec. 133a of Act No. 99/1963 Coll., the Code of Civil Procedure, as amended.

d. Position of the Government of the Czech Republic:

The Government of the Czech Republic, through the sponsor, the Ministry of Labour and Social Affairs, and co-sponsor, the Ministry of Justice, fundamentally disagrees with the Draft Directive and has many reservations with respect to the Communication, as well. According to the Government of the Czech Republic, the proposed regulation violates the principles of subsidiarity and proportionality. According to the Government of the Czech Republic, the proposed legal basis does not allow for the enactment of the proposed regulation on the Union level. The Czech Republic also has a number of reservations with respect to the contents of the proposed regulation.

e. Position of the Section for European Affairs of the Parliamentary Institute:

Legal Basis of the Draft Directive

In combating discrimination, the European Union may exercise its powers by adopting measures to apply the principles of equal opportunities and equal treatment within the meaning of Article 157 (3) of the Treaty on the Functioning of the European Union (TFEU)¹⁶. Nevertheless, according to Article 157 (4) TFEU¹⁷, the equal treatment

¹⁴ Kenneth R. Ahern, Amy K. Dittmar: *The Changing of the Boards: The Value Effect of a Massive Exogenous Shock*, University of Michigan (May 2010).

¹⁵ Communication COM(2012) 615, page 15.

¹⁶ Article 157 (3) TFEU: *The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt*

principle does not prevent Member States from adopting positive measures to make it easier for the under-represented sex to pursue a professional activity. It is a question of whether the provisions of Article 157 (4) TFEU constitute a special provision with respect to Article 157 (3) TFEU, in the sense that the adoption of positive measures in the sphere of equal treatment is reserved to Member States. If such an interpretation of the provisions concerned were adopted, it could not be ruled out that the proposed regulation could violate the principle of conferral, as the legal basis chosen, i.e., Article 157 (3) TFEU, could be deemed inadmissible for the exercise of the EU's competences. But if we consider the proposed measure as falling under the application of equal opportunities rather than equal treatment, the said argumentation cannot be applied – the competences of Member States set out in Article 157 (4) TFEU are only defined with respect to the adoption of equal treatment measures. From this point of view, the use of Article 157 (3) TFEU as the legal basis of the Draft Directive seems permissible.

In terms of Article 157 (3) TFEU as the legal basis, the adoption of positive measures in the sphere of corporate governance may pose a problem, as Article 157 (3) TFEU pertains to issues of occupation and employment. A restrictive interpretation of the term “occupation” may lead to the conclusion that the EU's competences only pertain to employees and to employment relations, rather than to members of supervisory/executive bodies of companies whose relationship to the company is not governed by employment regulation. The question is whether this restrictive interpretation is appropriate, as “occupation” in the usual sense of the word may include any execution of activity conducted, for example, on the basis of an employment agreement, contract for work, or a mandate agreement, including the performance of the function of a member of a supervisory board/management board of a company. It can therefore be assumed that if, in the founding treaties, Member States only intended to confer on the Union competences in the sphere of employment, they would have restricted the application of the provisions of Article 157 (3) TFEU solely to this area.¹⁸ Such interpretation is confirmed by the established nomenclature of directives pertaining to equal treatment. For example, the sphere of application of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, is intended, according to Article 3 (1) (c), to encompass not only labour-law relations, i.e., employment, but also self-employed activities and occupations.

measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

¹⁷ Article 157 (4) TFEU: *With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting 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.*

¹⁸ Such an interpretation is supported by the extensive interpretation used by the Court of Justice of the EU in the sphere of combating discrimination.

It is also possible to consider using Article 19 (1) TFEU¹⁹ as the legal basis. Article 19 (1) TFEU allows the Union to adopt appropriate measures to combat gender-based discrimination. Although the explanation of the Draft Directive does not explicitly state that the measures contained therein are being adopted as a part of combating discrimination, it is implicitly evident from the nature of the measure. Using argumentation *a maiori ad minus*, we can conclude that if the Union is empowered to combat discrimination, it can also take individual measures directly related to combating discrimination. But if the Commission based the proposal for the directive on this article, its enactment would require a special legislative procedure, i.e., unilateral consent of the Council (as opposed to a qualified majority of the Council for a regular legislative procedure, whereby measures are enacted pursuant to Article 157 (3) TFEU).

Compliance of the Draft Directive with the Subsidiarity Principle

According to the principle of subsidiarity laid down in Article 5 (3) of the Treaty on European Union (TEU), the “*Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.*” According to Article 157 (4), the authority to adopt positive measures for the application of the equal treatment principle is explicitly mentioned in relation to Member States. The provision takes into account the political sensitivity of the area of adopting positive measures and enables Member States to exercise their powers in it with a view to their cultural, historical, and legal development. Hence, it is not irrelevant to ask whether regulation on the Union level can indeed take sufficient account of these phenomena (e.g., differences in the dualistic/monistic model of joint-stock companies, the nature of the legal relationship of a member of an executive/ supervisory body of a joint-stock company, etc.), and whether harmonization in this area would not stray too far from the realistic needs of companies that are based on the differing socio-cultural realities of individual Member States.

The European Commission defends the need of introducing mandatory quotas on the Union level by stating that only a Union-wide regulation can reduce undesirable competition among Member States in the sphere of equal treatment (referred to as the “race to the bottom”), and support those Member States that are still hesitating to adopt national positive measures for fear of putting their companies at a disadvantage.

Compliance of the Draft Directive with the Proportionality Principle

Article 5 (4) of the TEU states that, according to the proportionality principle, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. Legally binding quotas have thus far been introduced by three EU Member States, all in 2011. There is essentially no experience with their practical application –

¹⁹ Article 19 (1) TFEU: *Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*

also due to the long period between the force and effect of the acts (*vacatio legis* period). It seems appropriate in this situation to wait to see what impact the introduction of legally binding quotas has in the three Member States, and to start preparing binding measures for all EU Member States only on the basis of their experience. The introduction of legally binding quotas can be seen as a measure of last resort that should only be used when all other, less forceful measures, have failed. Given that the initiative “*Women on the Board Pledge for Europe*”, through which it called on listed companies in Europe to voluntarily undertake to increase the proportion of women in their managing bodies to 30% by 2015 and 40% by 2020, was only launched by the European Commission in 2011, a solution based on legally binding quotas seems premature, as not all measures, consisting for example of other, less invasive measures, such as coordination mechanisms (open coordination method) and other instruments set out in Article 153 (2) (a) TFEU, such as increasing awareness, exchange of information and best practices, support for innovative approaches, etc., have not yet been exhausted.

f. Expected time-schedule of discussion in EU bodies:

Not yet known.

g. Conclusion:

The Committee for European Affairs

1. **Takes note** of the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Gender balance in business leadership: a contribution to smart, sustainable and inclusive growth;
2. **Takes note** of the Proposal for a Directive of the European Parliament and the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures;
3. **Takes the view** that the laying down of legally binding quotas represents an exceptional measure of last resort that can only be adopted following a thorough discussion by national parliaments and which can only be used if all other, voluntary measures fail;
4. **Therefore calls upon the Government** to register its disagreement with the Proposal for the Directive at an EU Council meeting;
5. In line with Protocol 6 on the application of the principles of subsidiarity and proportionality, **adopts a reasoned opinion** concerning the Proposal for a Directive of the European Parliament and the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures. In agreement with the Government of the Czech Republic, the Committee for European Affairs **holds** that the Proposal for a Directive is contrary to the principle of subsidiarity, as according to Article 157 (4) TFEU, positive measures should be adopted at a level as close to citizens as possible, in this case at the Member State level;
6. **Considers unfortunate** the date of the publication of a proposal of this importance, with a view to the fact that a part of the eight-week period for the

- adoption of a reasoned opinion falls in the period of Christmas holidays, which in effect reduced the time-frame for discussion by national parliaments;
7. **Authorises its chairman** to forward, in line with the Rules of Procedure of the House of Deputies, through the Chair of the House of Deputies, the Committee's resolution to the Government, the Speaker of the Senate, the President of the European Parliament, the President of the Council, and the President of the European Commission;
 8. **Requests that the Government** would keep it informed of any measures taken and of the further course of negotiations.

Josef Šenfeld	Soňa Marková	Jan Bauer
Committee Verifier	Viktor Paggio	Committee Chairman
	Rapporteurs of the Committee	