

*Courtesy translation*

I would like to inform that the Senate, at the 25<sup>th</sup> session held on 9 January 2013, examined the 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 and decided that the proposal did not comply with the subsidiarity principle, referred to in Article 5 para. 3 of the Treaty on European Union.

Pursuant to the procedure provided for in Protocol No. 2 of the Treaty on European Union and the Treaty on the Functioning of the European Union as regards the application of the principles of subsidiarity and proportionality, I hereby submit the Senate's justified opinion stating that the above proposal does not comply with the principle of subsidiarity.

Bogdan Borusewicz

**OPINION**  
OF THE SENATE OF THE REPUBLIC OF POLAND  
of 9<sup>th</sup> January 2013

**on declaring the 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 to be incompatible with  
the principle of subsidiarity  
COM(2012)614**

Having considered the 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), the Senate declares that this proposal is incompatible with the principle of subsidiarity, as referred to in Article 5(3) of the Treaty on European Union.

1. The purpose of the proposed directive is to increase the presence of women holding managerial and other highest positions in companies. However, the European Commission failed to prove that the Member States would not be able to fulfil this objective on their own. The Commission only presented information that this objective has not been met in these Member States which decided not to adopt legally binding measures promoting women employment.
2. On the other hand, the Commission did demonstrate that Member States may independently meet the objective of the proposed directive by adopting legally binding measures. The proposed directive shall not contribute to harmonising the recruitment procedures or management principles since it allows Member States to keep in force separate national regulatory measures, provided that they prove that the objective set by the proposal will be met.
3. Therefore, rather than pursuing a better and more effective achievement of the objective at the EU level, the proposal is in effect aimed at substituting for legislation of those Member States, which do not decide to adopt positive legal measures to promote the under-represented sex .
4. The proposed directive regulates the recruitment process only in a fragmentary way, so it shall not contribute to removing the barriers to implementing internal market freedoms.

Therefore, it should be stated that the proposal is in breach of the principle of subsidiarity.