

RocaJunyent Informs

Labour Law Department

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The Council of Ministers has approved the project of the Organic Law on equal representation of women and men in decision-making bodies.¹ The draft transposes Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures.

It aims to incorporate the "balanced representation principle" in the business sector. This implies that the companies concerned will have to ensure at least 40% of the under-represented gender on their boards of directors and in senior management positions.

¹ The draft bill approved by the Council of Ministers is an initial, non-final text, subject to changes that may occur during its parliamentary processing.

Balanced representation on the board of directors and in the senior management of listed companies

Composition of the board of directors and senior management

- ☐ It requires that the board of directors and senior management positions have at least 40% representation of the under-represented gender.
- ☐ Companies that do not achieve this objective should adjust their selection processes of candidates to the board of directors to ensure that this objective is reached.
- ☐ It is necessary to establish a procedure for benchmarking the competencies and skills of each candidate. This system should be designed with clear criterion, neutral and unambiguous wording, ensuring a non-discriminatory selection process at all stages, including the preparation of vacancy notices, pre-selection, creation of shortlisting and the formation of selection panels.
- ☐ The shareholders' general meeting should be informed about the measures required to achieve gender balance on the board of directors, as well as possible sanctions for non-compliance.

Annual report and list of compliant companies

- ☐ Listed companies are required to prepare and publish annually on their website a report about the representation of the under-represented gender on the board of directors.
- ☐ This report must be remitted to the National Stock Market Commission (Comisión Nacional del Mercado de Valores), which will publish annually an updated list of companies that have achieved the established objectives.
- ☐ In case of non-achievement of gender equality objectives, the report should include the reasons for non-compliance and a description of the measures taken or envisaged to meet these objectives.

Balanced representation on the board of directors and in senior management in public-interest entities

Extension of minimum requirements to public-interest companies

- ☐ Unlisted capital companies that are considered public interest entities under audit legislation must comply with the principle of balanced presence (40% representation) on their boards of directors and in senior management positions.

- ☐ This applies as from the following financial year in which the following requirements are achieved:

- ☞ Average number of employees during the financial year is more than 250.
- ☞ Net amount of the annual turnover higher than EUR 50 million, or total assets higher than EUR 43 million.

Adaptation timetable

A staggered timetable is established according to the size and nature of the entities concerned. Both listed companies and large unlisted companies have specific deadlines for reaching the established targets, allowing for a gradual transition towards achieving balanced representation in these entities.

Compliance date	Entities concerned	% underrepresented gender
30/6/2024	35 companies with the highest stock market capitalisation value	40%
30/6/2025	Companies with a market capitalisation of more than 500 million euros	40%
30/6/2026	Companies with lower market capitalisation	40%
30/6/2026	Large unlisted companies	33%
30/6/2028	Large unlisted companies	40%