RocaJunyent Informs

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Capital Markets

The road to parity: The new Organic Law and its impact on business representation

On 5 December 2023, the Council of Ministers approved the Parity Bill (Organic Law on equal representation and balanced presence of women and men), and its parliamentary processing began.

The Bill, which transposes Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022, was published in the Official Gazette of the Spanish Parliament on 15 December.

The regulation establishes that the boards of directors of companies within its scope of application must have a composition in line with the principle of parity, so that **the number of women may not be less than 40% of the total number of board members**.

The companies that will be affected by the standard once it has been approved are: (i) listed companies and (ii) entities considered to be of public interest in accordance with the Audit Law as from the financial year following the one in which the following requirements are met: (a) the average number of employees employed during the financial year exceeds 250 and (b) the annual net turnover exceeds 50 million euros or the total asset items exceed 43 million euros.

Companies that do not comply with this obligation shall adjust the selection processes in such a way that a non-discriminatory procedure is established to ensure that this objective is achieved.

In the case of listed companies, non-compliance with these provisions is considered a serious infringement, which may lead to the imposition of sanctions, including suspension from listing and public reprimand. Fines can reach the higher of the following amounts:

(a) Three times the gross profit made as a result of the acts or omissions of which the infringement consists,

b) 2 per cent of the institution's own resources,

(c) 2 per cent of the total funds, whether its own or those of third parties, used in the infringement, or

d) 300,000 euros.

The Draft also establishes the principle of **gender equality in senior management positions** for listed companies, with the objective of reaching 40% of the under-represented sex. In case of non-compliance with the obligation, the reasons and measures taken must be explained, in accordance with the "*comply or explain*" principle.

In addition, listed companies must include certain information on the representation of the under-represented sex in the sustainability report and submit this information to the CNMV, publish the information on the website and report annually to the general meeting on the measures required by the regulation and possible sanctions for non-compliance.

The deadlines for fulfilling the above obligations are:

- Ibex 35 companies: until 30 June 2024;
- Listed companies with a market capitalisation of more than EUR 500 million: until 30 June 2025.
- Companies with a market capitalisation of less than EUR 500 million: until 30 June 2026.

For public interest entities other than listed companies, a gradual implementation is established, reaching 33% of women on the board of directors and in senior management by 30 June 2026 and 40% by 30 June 2028.