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Gender diversity in company boards: the Women on Boards Directive

EU Gender Equality Law – Seminar for legal practitioners

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Agenda

- Why did/do we need a Women on Boards Directive?
- Legal basis for positive actions
- Procedural quota with escape clause
 - Kalanke
 - Marschall
 - Abrahamsson
- Women on Boards Directive
- National quota legislations
- Next steps for an employer/company



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Why did/do we need a Women on Boards Directive?

- The Women on Boards Directive is a crucial part of the 2020-2025 EU Gender Equality Strategy:

*“Achieving gender equality in the workplace requires a comprehensive approach, which also includes fostering **gender-balanced decision-making** within companies at all levels, as well as closing the gender pay gap. It is a key prerequisite for reducing poverty among women.”*
(Recital 5)



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Viviane Reding, Speaker at DLD All Stars 2021,
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Legal basis

- *“Article 157(3) of the Treaty on the Functioning of the European Union (TFEU) confers upon the European Parliament and the Council the power to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.” (Recital 2)*
- This has been criticized.
- Until now no legal measures have been adopted in order to favor the under-represented sex. Such specific measures or „positive actions“ so far have only been taken by individual Member States.
- The Court of Justice of the European Union (CJEU) in various judgments has formulated to what extent these measures are allowed under European law. The European Commission's proposal adheres to this framework.
- The Directive does not specify an automatic priority of female candidates possessing the same qualifications as men in case fewer women than men are present in the relevant positions. It rather sets a **procedural quota with an „escape clause“**, without allowing for automatic and unconditional priority of female candidates. Moreover, the introduction of transparent procedures shall guarantee that candidates are subject to an objective assessment which takes into account the personal situation.



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Legal basis

- Critics argued Art. 157 (3) TFEU does not authorize the European Commission to set „positive actions“ or measures to „reverse discrimination“ because Art. 157 (4) TFEU expressly and exclusively authorizes the Member States. According to the observations of the European Commission, the EU's right to act in the area of gender equality in employment is based on Art. 157(3) TFEU, as only an **EU-level measure can effectively ensure equal opportunities and equal treatment of men and women** in matters of employment and occupation.
- Even if Art. 157(3) TFEU as amended by the Treaty of Lisbon has the same wording as Art. 141(3) Treaty establishing the European Community (EC Treaty), it has to be interpreted in the light of the new framework of the Lisbon Treaty. While the 28th Declaration to the Final Act of the Amsterdam Treaty, with regard to Art. 119 (4) of the Treaty (predecessor to Art. 157 (4) TFEU), states that „actions of the Member States [...] should **primarily** improve the situation of women in the labor market“, the (overall) promotion of equality between women and men enshrined in Art. 2 and Art. 3 (3), sub (2) Treaty on the European Union (TEU) has now become an integral part of **primary law**.



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Legal basis

- The EU therefore now fosters equality between women and men **in all its policies**, not only by eliminating direct and indirect discrimination.
- With the Lisbon Treaty entering into force, the European integration moved to a new level and EU's values were carved out.
- The EU is described as a **community of values** and, among other things, **characterized by equality of women and men**. Already the preamble to the TEU makes this very clear. This principle is reinforced and concretized by Art. 2 TEU referring to EU values. This orientation towards values is further specified in Art. 3 (2) with regard to gender equality, as the EU shall promote equality between women and men. In fact, Art. 8 TFEU obliges the EU to promote equality between women and men in all its activities. Furthermore, Art. 10 TFEU concretizes the task of the EU to combat discrimination when defining and implementing its policies and activities.



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„Positive actions”

- *“In its case-law on positive action and the compatibility thereof with the principle of non-discrimination based on sex, which also is laid down in Article 21 of the Charter, the Court of Justice of the European Union (the ‘Court of Justice’) accepted that priority can in certain cases be given to the **underrepresented sex** in selection for employment or promotion, provided that the candidate of the underrepresented sex is equally qualified as compared with the competitor of the other sex in terms of suitability, competence and professional performance, that the priority is not automatic and unconditional but can be overridden if reasons specific to an individual candidate of the other sex tilt the balance in that candidate’s favour, and that the application of each candidate is the subject of an objective assessment which specifically applies all the selection criteria to the individual candidates.” (Recital 38)*



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„Procedural quota with escape clause“

The „**procedural quota with escape clause**“ has three characteristics:

- a) It is mandatory as it sets a fixed target via the legal form of a European directive: 40 percent of non-executive directors or 33 percent of all directors until 30 June 2026. „Penalties and additional measures“ can be enforced only if the requirements for a transparent appointment procedure laid down in advance with clear and public criteria have not been observed. The European Commission has chosen the path of minimum harmonization by demanding more transparency in appointment decisions and by pre-defined, clear and transparent criteria. Only in this way the principle requiring that „qualification succeeds“ can be ensured.
- b) Quality counts. The CJEU has adopted the principle of selecting the best. According to its specifications, qualification is more important than sex. The proposal is „**gender neutral**“ because it applies to the „**under-represented sex**“.
- c) It is up to each Member State to choose the most appropriate means to achieve the target, depending on its legal and factual circumstances.



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KALANKE

- On 17 October 1995, the EU Court of Justice confirmed in the Kalanke case (C-450/93) what the Council had recommended: "*The existing legal rules on equal treatment, which aim to grant rights to individuals, are insufficient to eliminate all forms of de facto inequality if, in parallel, no action is taken, by governments and the social partners and other competent bodies, to offset the harmful effects resulting, for women in employment, from attitudes, behaviour and structures of society.*"
- With the above in mind, the Court ruled that "*national legislation which guarantees absolute and unconditional preference for women in an appointment or promotion goes beyond a measure promoting equal treatment and exceeds the limits of the derogation laid down in (...) the Directive*".
- As a consequence, the City of Bremen had to change its quota rules.



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MARSCHALL

- Two years later, on 11 November 1997, the Advocate General and the European judges approved the quota in North Rhine-Westphalia (C-409/95, Marschall). It was worded as follows:
- *"Where, in the sector of the competent body in which promotion is to take place, there are fewer women than men at the level of the relevant career post, preference in promotion shall be given to women, on the basis of equal aptitude, competence and professional performance, unless there are reasons in the person of a candidate which tip the balance in his favour; (...)"*.
- The Court again stated that *"there is a tendency to promote male candidates to the detriment of female candidates, particularly because of certain prejudices, ideas and stereotypes about the role and abilities of women in working life, and the fear, for example, that women interrupt their careers more frequently because of household and family duties and organise their working hours less flexibly or that they are absent more often because of pregnancy, childbirth and breastfeeding"*.
- But in this case Marschall went on to state that *"in contrast to the Kalanke legislation, a national legislation which (...) contains an opening clause does not contain an opening clause which is not in the same way as in the Kalanke case.) contains an openness clause does not exceed those limits if, in each individual case, it ensures that male candidates with the same qualifications as female candidates are subject to an objective assessment which takes account of all the criteria relating to the person of candidates of both sexes and disregards the preference given to female candidates where one or more of those criteria tip the balance in favour of the male candidate. However, it should be recalled in this connection that such criteria may not be discriminatory to the detriment of female candidates"*.



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ABRAHAMSSON

- Although there are still fears among many people that a quota exclusively favours any woman and additionally regardless of her qualifications, EU case law proves them wrong. Because the Advocate General and the European judges care exclusively about the qualification of the chosen candidates and this is what they advocate in the Abrahamsson judgement (C-407/98) of 6. July 2000. In the Swedish case, the **quota gave preference exclusively to female candidates**.
- In the Abrahamsson case, the Court emphasised: *"It should be noted at the outset that, unlike the national rules on positive discrimination examined by the Court of Justice in the Kalanke and Marschall judgments (...) the national rules at issue in the main proceedings allow preference to be given to a candidate of the under-represented sex who, although sufficiently qualified, is not equally qualified as candidates of the opposite sex."* This meant that the female candidate did not need to have a higher qualification than the male candidate.
- The European judges continue: *"It is legitimate to take into account certain positive and negative criteria which, although formulated in gender-neutral terms, and which may therefore also benefit men, generally favour women. Thus, it may be decided that seniority, age and date of last promotion may only be taken into consideration if they are relevant to the aptitude, qualifications and professional qualifications of male and female candidates. It may also be decided that neither the family situation nor the income of the spouse will be taken into account, and that part-time work, leave or postponement of the completion of studies due to the care of children or family members in need of care will not have any negative effect. In this respect, it is important to note that the scope of this requirement is not precisely determined, so that the selection of a candidate, from among those with sufficient qualifications, is ultimately based on the mere fact that he or she belongs to the under-represented sex, even if the merits of the candidate thus selected are inferior to those of a candidate of the opposite sex. Moreover, there is no objective examination of the applications which takes into account the particular personal situations of all the candidates. It follows that such a method of selection cannot be legitimised by Article 2(4) of the Directive"*.
- In short, in this case Sweden had exceeded the limits of positive discrimination, creating an imbalance in favour of female candidates.
- In this context, let's mention Thomas Sattelberger, former head of human resources at Deutsche Telekom, who in January 2013 told the German Parliament that people who are against quotas echo the political legend that the best are always appointed, when it is true that, on the contrary, we are dealing with clear cases of nepotism.



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SCOPE

- The Directive applies to listed companies. This Directive does not apply to micro, small and medium-sized enterprises (SMEs).
- However, Art 13 (4) leaves this open: “On the basis of that assessment, the Commission shall consider (...) whether there is a need to amend it, for instance by extending its scope to non-listed companies which do not fall within the definition of SMEs”.
- It’s applicable to all companies with a registered office in the EU and listed on EU stock exchanges (regardless of the board structure: **dual (“two-tier”) system** in which there are separate management and supervisory boards, a **unitary (“one-tier”) system** combining the management and supervisory functions in one single board, or a mixed system. The applicable law shall be the law of that Member State in which that company has its registered office.
- Micro, small and medium-sized enterprises with up to 249 employees and an annual turnover not exceeding EUR 50 million (or equivalent) or an annual balance sheet total not exceeding EUR 43 million (or equivalent), will be excluded; Member States are of course able to extend the scope of their domestic legislation.
- Review by 31 December 2030 and every two years thereafter with possible assessment. Expiration on 31 December 2038.



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Objectives with regard to gender balance on boards

1. Member States shall ensure that listed companies are subject to **either of the following objectives**, to be reached by 30 June 2026:

(a) members of the underrepresented sex hold at least 40 % of non-executive director positions;

(b) members of the underrepresented sex hold at least 33 % of **all director positions**, including both executive and non- executive directors.

- For these purposes the definition of “director” includes **employee representatives** in Member States where a certain proportion of the non-executive directors can or must be appointed or elected by the company's workforce and/or organisations of workers.
- There is no statement whether the 40% or 33% targets are on the basis of either **biological sex** or **gender identity** (i.e. individuals self-identifying as a particular sex). We will see if Member States will address this question directly or simply give companies the flexibility to report against targets based on sex or gender identity.



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Objectives with regard to gender balance on boards

2. Member States shall ensure that **listed companies which are not subject to the objective laid down in paragraph 1, point (b), set individual quantitative objectives with a view to improving the gender balance among executive directors. Member States shall ensure that such listed companies aim to achieve such individual quantitative objectives by 30 June 2026.**

3. The **number of non-executive director positions deemed necessary to achieve the objective laid down in paragraph 1, point (a), shall be the number closest to the proportion of 40 %, but not exceeding 49 %. The number of all director positions deemed necessary to achieve the objective laid down in paragraph 1, point (b), shall be the number closest to the proportion of 33 %, but not exceeding 49 %. Those numbers are set out in the Annex.**



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Annex

ANNEX
TARGET NUMBERS OF DIRECTORS OF THE UNDERREPRESENTED SEX

Number of positions on the board	Minimum number of non-executive directors of the underrepresented sex necessary to meet the objective of 40 % (Article 5(1), point (a))	Minimum number of directors of the underrepresented sex necessary to meet the objective of 33 % (Article 5(1), point (b))
1	-	-
2	-	-
3	1 (33,3 %)	1 (33,3 %)
4	1 (25 %)	1 (25 %)
5	2 (40 %)	2 (40 %)
6	2 (33,3 %)	2 (33,3 %)
7	3 (42,9 %)	2 (28,6 %)
8	3 (37,5 %)	3 (37,5 %)
9	4 (44,4 %)	3 (33,3 %)
10	4 (40 %)	3 (30 %)
11	4 (36,4 %)	4 (36,4 %)
12	5 (41,7 %)	4 (33,3 %)
13	5 (38,4 %)	4 (30,8 %)
14	6 (42,9 %)	5 (35,7 %)
15	6 (40 %)	5 (33,3 %)
16	6 (37,5 %)	5 (31,3 %)
17	7 (41,2 %)	6 (35,3 %)
18	7 (38,9 %)	6 (33,3 %)
19	8 (42,1 %)	6 (31,6 %)
20	8 (40 %)	7 (35 %)
21	8 (38,1 %)	7 (33,3 %)
22	9 (40,1 %)	7 (31,8 %)
23	9 (39,1 %)	8 (34,8 %)
24	10 (41,7 %)	8 (33,3 %)
25	10 (40 %)	8 (32 %)
26	10 (38,5 %)	9 (34,6 %)
27	11 (40,7 %)	9 (33,3 %)
28	11 (39,3 %)	9 (32,1 %)
29	12 (41,4 %)	10 (34,5 %)
30	12 (40 %)	10 (33,3 %)



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Means to achieve the objectives

1. Member States shall ensure that listed companies which do not achieve the objectives referred to in Article 5(1), point (a) or (b), as applicable, **adjust the process for selecting candidates for appointment or election to director positions**. Those candidates shall be selected on the basis of a **comparative assessment of the qualifications of each candidate**.

For that purpose, **clear, neutrally formulated and unambiguous criteria** shall be applied in a **non-discriminatory manner throughout the entire selection process**, including during the **preparation of vacancy notices, the pre-selection phase, the shortlisting phase and the establishment of selection pools of candidates**. Such criteria shall be established in advance of the selection process.

- Introduction or promotion of transparent appointment funnel for board members.
- As employer you should review any existing board diversity policies (and, if one is not in place, consider developing one).
- Challenge in the future: Hiring tools based on AI technologies.



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Means to achieve the objectives

2. As regards the selection of candidates for appointment or election to director positions, 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**, reasons of greater legal weight, such as the pursuit of other diversity policies, invoked within the context of an objective assessment which takes into account the specific situation of a candidate of the other sex and which is based on non-discriminatory criteria, tilt the balance in favour of the candidate of the other sex.

- Such an overriding of preference could take place, for instance, where broader diversity policies apply at national or company level for the selection of directors. The overriding of the application of positive action should nevertheless remain exceptional, be based on a case-by-case assessment and be duly justified by objective criteria which should not, in any event, discriminate against the underrepresented sex. (Recital 40)



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Means to achieve the objectives

3. Member States shall ensure that, at the request of a candidate who was considered during selection of candidates for appointment or election to a director position, listed companies are obliged to inform that candidate of the following:

(a) the qualification criteria upon which the selection was based;

(b) the objective comparative assessment of the candidates under those criteria; and

(c) where relevant, the specific considerations exceptionally tilting the balance in favour of a candidate who is not of the underrepresented sex.



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Means to achieve the objectives

4. Member States shall take the necessary measures, in accordance with their national judicial systems, to ensure that where an unsuccessful candidate of the underrepresented sex establishes facts, before a court or other competent authority, from which it may be presumed that that candidate was as equally qualified as the candidate of the other sex who was selected for appointment or election to a director position, it is for the listed company to **prove that there has been no breach of Article 6(2)**.

This paragraph shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

5. Where the process for selecting candidates for appointment or election to director position is made through a vote of shareholders or employees, Member States shall require listed companies to ensure that voters are properly informed regarding the measures provided for in this Directive, including **penalties for non-compliance by the listed company**.



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Means to achieve the objectives

- In the recitals, the Directive gives examples of types of selection criteria that companies could apply: professional experience in managerial and/or supervisory tasks, international experience, multi-disciplinarity and knowledge in specific relevant areas such as finance, financial oversight, or human resources management, leadership and communication skills or networking abilities.
- Both formal qualifications and or broader qualifications in terms of practical experience can be taken into account when assessing the qualifications of candidates. However, there will be debate about **the weighting to be allocated to respective attributes**.



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Means to achieve the objectives

- Reality check:
 - It will be highly unlikely that two candidates will be equally matched in terms of qualifications and/or experience which could lead to possible claims of direct discrimination by the unsuccessful candidate. How can the company prove that chosen candidate “as qualified”.
 - Will an unsuccessful candidate litigate?
 - If the unsuccessful candidate decides to litigate and requests the disclosure, the listed company is required to disclose,
 - not only the qualification criteria upon which the selection was based,
 - but also the objective comparative assessment of those criteria and, where relevant,
 - the considerations tilting the balance in favour of a candidate who is not of the under-represented sex.



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Reporting

- Listed companies will be required to provide information to the competent authorities once a year about the gender representation on their boards (distinguishing between non-executive and executive directors) and about the measures taken to achieve gender balance.
- If the objectives have not been met, the company must set out how it plans to attain them. This information is to be published on the company's website in an easily accessible manner and included in the annual report.
- The Directive is quite un-prescriptive about the level of **detailed** information that must be provided by companies. Member States could bring in clarification by way of formal legislative requirement or indicative good practice guidance.



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Reporting

“Compliant” companies are invited to include additional information on an appropriate platform, for example, in their annual financial reports to provide further context, for example:

- a **brief summary** of any key policies, procedures, and processes;
- any **wider context**, that the company considers contribute to improving the diversity of its board and executive management (i.e., internal promotion mechanism, work-life-balance, culture of compliance or speak up culture, etc.);
- any **mitigating factors or circumstances** which make achieving diversity on the company's board more challenging (i.e., the size of the board or the jurisdiction where the company's main operations are located); and
- any **risks** the company foresees in meeting (or continuing to meet) the board diversity targets in the next reporting period, or any plans to improve the diversity of the company's board.



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Penalties

- Member States have to ensure that “**effective, dissuasive, and proportionate penalties**” are put in place to ensure compliance with their domestic regime that implements the Directive.
- Examples of specific penalty measures include **fines** and companies having their **selection of board directors annulled** by a judicial body.
- The European Parliament had suggested in 2013 (amendments 61 and 62) a list of possible sanctions the exclusion from public calls for tender and partial exclusion from the award of funding via the Union's Structural Funds. This is not included in the Directive.



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Penalties

- Penalties in France: The law provides for two types of sanctions:
 - „jetons de présence“, i.e., the attendance fee granted to all Supervisory Board members, will not be paid unless quotas are met;
 - the election of new members not respecting the quota obligation is simply void.
- Member States will, however be free to determine what penalties are considered appropriate. This means it will not be mandatory to legislate for judicial annulment of a board appointment.
- Where provision for judicial annulment is mandated, the form that this will take remains to be seen. This could be provoked upon an application by a disgruntled shareholder, unsuccessful candidate, equality body or in some other manner, for example formal registration of an appointment being rejected automatically if board composition does not meet the specified criteria, etc.



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MINIMUM REQUIREMENTS

Member States may introduce or maintain provisions which are more favourable than those laid down in this Directive to ensure a more balanced representation of women and men in respect of listed companies incorporated in their national territory.



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BODIES FOR THE PROMOTION OF GENDER BALANCE IN LISTED COMPANIES

Member States shall designate one or more bodies for the promotion, analysis, monitoring and support of gender balance on boards. For that purpose, Member States may designate, for example, the equality bodies they have designated pursuant to Article 20 of Directive 2006/54/EC of the European Parliament and of the Council



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SUSPENSION OF THE APPLICATION OF ARTICLE 6

1. A Member State may suspend the application of Article 6 and, where relevant, Article 5(2), where, by 27 December 2022, the following conditions have been fulfilled in that Member State:

(a) members of the underrepresented sex hold at least 30 % of the non-executive director positions or at least 25 % of all director positions in listed companies; or

(b) that Member State's national law:

(i) requires that members of the underrepresented sex hold at least 30 % of non-executive director positions or at least 25 % of all director positions in listed companies;

(ii) includes effective, proportionate and dissuasive enforcement measures in the event of non-compliance with the requirements referred to in point (i); and

(iii) requires that all listed companies not covered by that national law set individual quantitative objectives for all director positions.

Where a Member State has suspended the application of Article 6 and, where relevant, Article 5(2) on the basis of either of the conditions set out in the first subparagraph of this paragraph, the objectives laid down in Article 5(1) shall be deemed to have been achieved in that Member State.




SUSPENSION OF THE APPLICATION OF ARTICLE 6

2. For the purpose of assessing the fulfilment of the conditions for a suspension on the basis of paragraph 1, first subparagraph, point (a) or (b), the number of director positions required shall be the number closest to the proportion of 30 % of non-executive directors or 25 % of all director positions, but not exceed 39 %. That shall also be the case where, pursuant to national law, the quantitative objectives laid down in Article 5 are applied separately to shareholder representatives and employee representatives.


3. Where, in a Member State which has suspended the application of Article 6 and, where relevant, Article 5(2) pursuant to paragraph 1 of this Article, the conditions set out in paragraph 1 of this Article are no longer fulfilled, Article 6 and, where relevant, Article 5(2) shall apply at the latest six months after such conditions ceased to be fulfilled.





Almost 1 in 5 corporate boards in the EU have no women members

Despite ever-increasing evidence showing the benefits of having more women in decision-making positions, they are still underrepresented in corporate boardrooms.



713
largest listed companies

37.6% - share of women among the board members in the largest listed companies from the EU countries that adopted national gender quotas.
24.3% - the share of women among the board members in the largest listed companies from the EU countries that have taken only soft measures or no action at all.

THESE ARE THE EU MEMBER STATES WHICH ADOPTED NATIONAL GENDER QUOTAS FOR CORPORATE BOARDS:

Country	Quota adopted	Year	Current Status
Belgium	33%	2011	Not yet achieved
Germany	30%	2015	Not yet achieved
Greece	25%	2020	Not yet achieved
France	40%	2011	Not yet achieved
Italy	33%	2011	Not yet achieved
Austria	30%	2017	Not yet achieved
Portugal	33%	2017	Not yet achieved

National Gender Quota

- BE (33%)
- DE (30%)
- EL (25%)
- FR (40%)
- IT (33%)
- AT (30%)
- PT (33%)

- In first semester 2022, the share of women on EU company boards in the largest listed companies reached 31.6%. This is an all-time high and an increase of more than 0.8 pp in 2 years.
- In France, more than 45% of company board members are women. Belgium, Italy and Sweden all have around 38% women, while women account for at least one third of board members in Denmark, Germany, the Netherlands and Finland.
- However, less than a quarter (23%) of the EU's largest companies have gender-balanced boards. In Bulgaria, Estonia and Hungary, more than half of companies do not have any women on their boards.


Source: EIGE

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MEMBER STATES

% OF WOMEN ON BOARDS IN THE EUROPEAN UNION

Member State	Quota Type	% of Women on Boards
France	Binding quota	45.0
Italy	Binding quota	38.0
The Netherlands	Binding quota	38.0
Sweden	Binding quota	38.0
Belgium	Binding quota	38.0
Denmark	Binding quota	33.0
Austria	Binding quota	33.0
Germany	Binding quota	33.0
Finland	Binding quota	33.0
Spain	Soft quota	32.0
Portugal	Soft quota	30.0
Ireland	Soft quota	28.0
Slovakia	Soft quota	25.0
Poland	Soft quota	25.0
Croatia	Soft quota	23.0
Czechia	Soft quota	23.0
Luxembourg	Soft quota	23.0
Lithuania	No quota or very loose measures	22.0
Latvia	No quota or very loose measures	22.0
Bulgaria	No quota or very loose measures	20.0
Greece	No quota or very loose measures	20.0
Slovenia	No quota or very loose measures	20.0
Romania	No quota or very loose measures	18.0
Malta	No quota or very loose measures	10.0
Hungary	No quota or very loose measures	10.0
Estonia	No quota or very loose measures	10.0
Cyprus	No quota or very loose measures	10.0



Source: EWOB 2022



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MEMBER STATES

- Since 2011, France has a quota legislation in place: the "Copé-Zimmermann" law.
- This introduced a requirement in relation to the gender composition of the board of directors and supervisory boards of listed companies (and unlisted companies with net sales or a balance sheet total of at least 50 million euros and an average number of at least 250 permanent employees) that there should be non-executives of each gender of at least 40% when the board is composed of more than 8 members. In addition, when the board is composed of 8 members maximum, the difference between the number of each gender cannot be more than two.
- Subsequently, in 2021 the "Rixain" law expanded the obligation of large corporations, with more than 1,000 employees, in terms of gender equality, by introducing an obligation to publish annually details of any gaps in the representation of women and men at senior manager level and in relation to membership of management bodies.
- In addition, it provides that by 1 March 2026, the proportion of people of each gender in senior management and on management bodies must not be less than 30%. This quota will increase to 40% with effect from 1 March 2029.



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MEMBER STATES

- Since 2015 and 2021, Germany has binding rules on fair gender representation for supervisory boards - FöPoG I - as well as for certain executive boards - FöPoG II - of listed and co-determined companies as well as for certain state-owned companies
- The Federal Ministry of Justice seems to consider that the German rules are sufficient, and that Germany would accordingly fall under the Directive's implementation exception.



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MEMBER STATES

- Since 1 January 2022, Dutch listed legal entities in the Netherlands are subject to a statutory diversity quota requirement for **non-executives**.
- This requires at least one-third of the non-executives to be of the under-represented sex.
- It's supposed that this should come within the Directive's implementation exception.



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MEMBER STATES

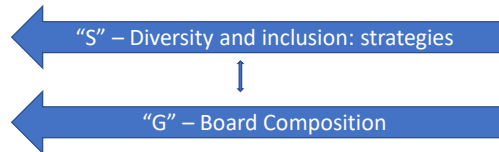
- Since 2007 the Organic Law 3/2007 promoted fair gender representation on the boards of both private and public companies.
- The Code of Good Corporate Governance from 2020 requires director election policies to promote gender diversity and set a target of at least 40% female representation on the board of directors in public companies.
- At the moment, 34.7 % of female directors.
- The effect of the soft law (Code of Good Corporate Governance) and quota without sanctions (soft quota) adopted in Spain has increased the presence of women, as well as the pressure by civil society (such as European Women Shareholders Demand Gender Equality or Parity in Action).
- It remains to be seen whether the Spanish Government will implement the Directive or take the view that the existing arrangements are sufficient.



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Directive targets: Stakeholder Model and ESG

Class	Category	Example Subcategories	Employee	Community	Suppliers	Customers	Shareholders
Environment	Carbon and Climate	<ul style="list-style-type: none"> Energy and fuel efficiency GHG emissions Technology and opportunity (investments) 		✓	✓		✓
	Natural Resources	<ul style="list-style-type: none"> Water (use and pollution) Land, forests, biodiversity (use and pollution) Sustainable sourcing 		✓	✓		✓
	Waste and Toxicity	<ul style="list-style-type: none"> Hazardous and non-hazardous waste Emissions and spills Electronic waste Packaging material 	✓	✓	✓	✓	✓
	Management of Environmental Risk	<ul style="list-style-type: none"> Disaster planning, response and resiliency LEED design and certification 	✓	✓	✓	✓	✓
Social	Human Rights	<ul style="list-style-type: none"> Ethical sourcing Supply chain standards 	✓	✓	✓	✓	✓
	Labor, Health, and Safety	<ul style="list-style-type: none"> Fair wages, benefits, training and development Labor standards, job stability, and mobility Employee engagement 	✓	✓	✓		✓
	Diversity and Inclusion	<ul style="list-style-type: none"> Equal opportunity and participation 	✓	✓	✓		✓
	Product Safety, Quality, and Brand	<ul style="list-style-type: none"> Customer satisfaction Affordability and accessibility 	✓	✓		✓	✓
Governance	Community Engagement/ Partnerships	<ul style="list-style-type: none"> Volunteer hours Wardrobe-community demographic parity Alliances with key organizations, councils, and institutions Corporate philanthropy 	✓	✓			✓
	Board Composition	<ul style="list-style-type: none"> Minority representation Gender equality 	✓	✓			✓
	Ethics and Compliance	<ul style="list-style-type: none"> Anti-corruption Cybersecurity and data privacy Oversight and accountability Management policies, systems, and disclosure (transparency) Political contributions lobbying 	✓	✓	✓	✓	✓
	General Corporate Governance	<ul style="list-style-type: none"> Executive compensation Board leadership structure Share structure (multiple classes, board election) 	✓				✓
Risk Management and Mitigation	<ul style="list-style-type: none"> Code of conduct Sensitivity analysis and stress testing 	✓	✓		✓	✓	



Source: Pay Governance, 2020



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Directive targets: Stakeholder Model and ESG

- Consultation with internal key stakeholders such as executive and management on the targets.
- Combine the consultation with communications campaigns that frame the purpose of the targets.
- Companies will need to be able to demonstrate to their internal and external stakeholders how they propose to achieve the targets.
- Targets should be accompanied with specific infrastructure (KPIs, incentives, etc.).
- “Tone at the top”. Companies need to demonstrate that the leadership are going to be the key drivers of achieving the targets, along with counterparts in relevant internal functions.
- Change in the culture of the company?!



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