

---

# Gender equality in governance regulations

OVERVIEW OF THE SITUATION  
IN CERTAIN EU COUNTRIES

May 2021

- 2 Introduction to Gender Equality
- 3 The entities and corporate bodies concerned
- 4 The tools used
- 5 The sanctions in case of non-compliance
- 6-7 The results of the EU regulations
- 8-46 Overview per jurisdiction
- 47 Key contacts



**Gender equality is a concern in many countries around the world as a general/ideological principle.**

To achieve this objective, many countries have adopted laws and regulations enhancing this principle and applicable to various areas: individual rights, family, maternity/paternity protection, political matters, employment, remuneration, access to equal opportunities, governance of companies.

The tools used to improve gender equality vary depending on the area concerned, the country at stake and its local culture and situation on this topic. The range of tools vary from mere recommendations or mandatory rules, to minimum mandatory ratios of each gender or mandatory equality.

This presentation focuses on gender equality in governance regulations across a benchmark of selected EU countries (Belgium, France, Germany, Italy, Luxembourg and Spain).

Whereas all are sharing the principle of equal treatment between men and women, and whereas all there EU members are close to each other, these countries have adopted different approaches and implement different tools to promote gender equality in the governance of companies. Surprisingly, the regulations on this topic are domestic and not driven by a European regulation or directive.

*"**Gender Equality** refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality [...] means [...] that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female."*

**EUROPEAN INSTITUTE FOR GENDER  
EQUALITY**

# The entities and corporate bodies concerned

---

The definition of the entities concerned by gender equality rules is not homogeneous and the approach retained varies from a country to another.

Certain countries like France limit the applicability of these rules to specific corporate forms, other countries like Luxembourg impose rules only to listed companies.

Similarly, the corporate bodies targeted by the regulations differ: Spain and Luxembourg for instance focus on boards only, whereas Italy and Germany capture also management boards.

A generally common criteria however is the size of the entity: only entities crossing certain thresholds are likely to be subject to these rules. Said criteria or thresholds include in particular the number of employees, the turnover or total figure of balance sheet.

As a general rule, the larger the entities/companies are, the greater the duties regarding gender equality apply.

*Beyond these differences, a common element thus arises.*

*None of the jurisdictions observed imposes by law universally gender equality rules in the governance of companies, which somehow weakens the impact of these regulations.*

# The tools used

---

All the countries observed have adopted in their legal arsenal a gender quota system applicable at least to certain corporate bodies, save Luxembourg which refers to “an appropriate representation of both genders” at the boards of directors.

Gender quota system can result:

- either from minimum legal criteria (40% of each gender in French boards, 30% of each gender in German supervisory boards of large companies, 30% quota of women in Spain),
- or from criteria freely determined by a corporate body such as the supervisory board of certain German companies.

These gender quota systems are all mandatory by law, save In Spain where this is a “comply or explain” recommendation. The X Principles applicable in Luxembourg are also based on a “comply or explain” recommendation.

France also imposes constraints with respect to the recruitment process of the deputy managing director (*directeur général*

*délégué*) which must ensure that there are candidates of both genders until the last round.

Aside, and sometimes on top of, gender quota systems, many countries have adopted general statements around gender equality, such as France with states that SA and SCA must tend to the objective of a balanced allocation of board seats between the two genders, and Spain which imposes to large companies to aim for equality.

*Interestingly, none of the jurisdictions observed impose a strict 50/50 representation whereas the common objective is gender equality. Probably to anticipate reverse discrimination, or to comply with constitutional principles, all the regulations analysed refer to the representation of both genders, and not only of women.*

# The sanctions in case of non-compliance

---

With the notable exceptions of Luxembourg and Spain, where the regulations are based on a “comply or explain” recommendation and therefore are not sanctioned, all the other jurisdictions analyzed comprise a set of sanctions in case of non-compliance with the constraining rules above. However, the nature of such sanctions differs.

Germany and France are the only two countries where the appointment of a board member which would not comply with the gender quota rules (at least in large German companies) would be null and void.

France also provides for the suspension of the remuneration of all the board members until the situation is cured, which is unique within the jurisdictions analyzed.

As per general principles under French law, the personal liability of the directors/managers could be sought in case of non-

compliance with the rules applicable to the recruitment process of certain officers mentioned above, as no specific sanction is provided in the law.

Italy has taken a different approach and sanctions breaches by fines payable by the concerned companies up to EUR 1m in certain cases.

*The effectiveness of the implementation of a constraining regulation is generally directly linked to the level of sanctions attached to it.*

*France in particular has adopted since several years severe sanctions to accelerate changes in behaviors and ensure the improvement of the representation of women in the corporate bodies of companies, the result of which appears in the recent surveys (see below).*

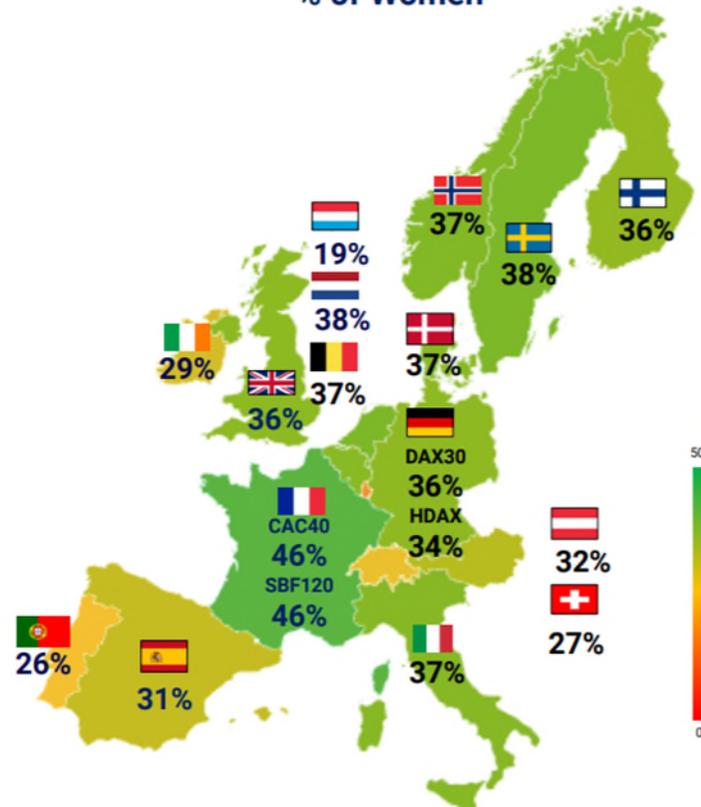
# The results of the EU regulations (boards of directors)

## STATISTICS/SURVEYS IN THE DIFFERENT COUNTRIES



### Gender Diversity on Boards % of Women

	AUSTRIA	ATX(20)
	BELGIUM	BEL20
	DENMARK	OMXC(20)
	FINLAND	OMXH(25)
	FRANCE	CAC40 / SBF120
	GERMANY	DAX30 / HDAX(99)
	IRELAND	ISEQ(20)
	ITALY	FTSE MIB(40)
	LUXEMBOURG	LuxX Price(9)
	NETHERLANDS	AEX-Index(25)
	NORWAY	OBX(25)
	PORTUGAL	PSI20
	SPAIN	IBEX(35)
	SWEDEN	OMXS(30)
	SWISS	SMI(20)
	UNITED KINGDOM	FTSE100



### % Women on Boards STOXX Europe 600 Average

36%

Source: Ethics & Boards, January 2021

# The results of the EU regulations (executive committees)

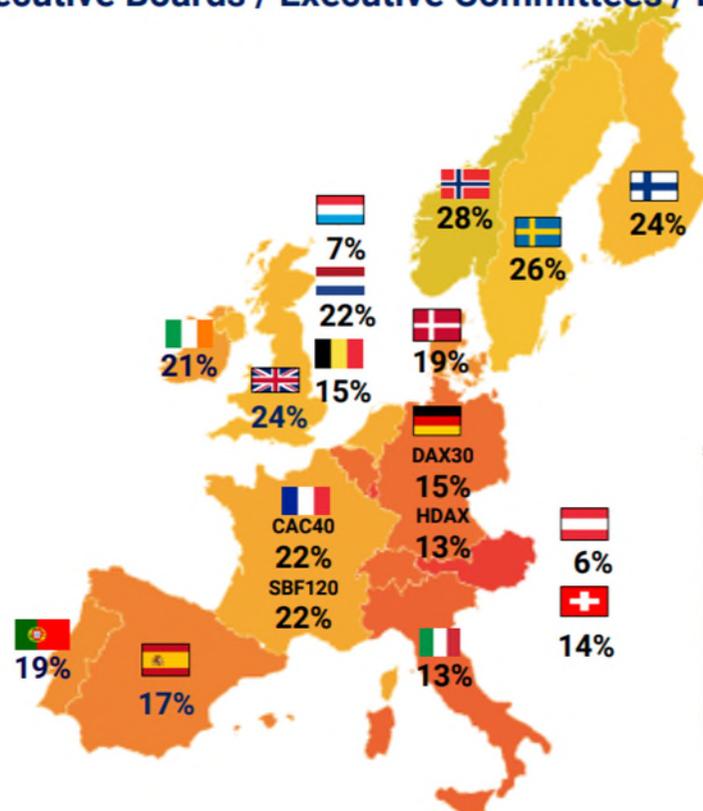
## STATISTICS/SURVEYS IN THE DIFFERENT COUNTRIES



### Gender Diversity in Executive Leadership

#### % Women in Executive Boards / Executive Committees / Executive Leadership

	AUSTRIA	ATX(20)
	BELGIUM	BEL20
	DENMARK	OMXC(20)
	FINLAND	OMXH(25)
	FRANCE	CAC40 / SBF120
	GERMANY	DAX30 / HDAX(99)
	IRELAND	ISEQ(20)
	ITALY	FTSE MIB(40)
	LUXEMBOURG	LuxX Price(9)
	NETHERLANDS	AEX-Index(25)
	NORWAY	OBX(25)
	PORTUGAL	PSI20
	SPAIN	IBEX(35)
	SWEDEN	OMXS(30)
	SWISS	SMI(20)
	UNITED KINGDOM	FTSE100



**% Women in Executive Leadership**  
STOXX Europe 600 Average

**20%**



Source: Ethics & Boards, January 2021

# Belgium

- 9 The composition of the board of directors and the supervisory board
- 10 The results of these regulations
- 11 Conclusion – What's next ?



# The composition of the board of directors and the supervisory board

## BELGIUM

### The rules

For **listed companies**, a quota rule requiring that **at least one-third** of all members of the board of directors/supervisory board must be of a **different gender than the other members**.

For **autonomous public companies** and the **National Lottery**, a quota rule requiring that at least **one-third of the directors** appointed by the Belgian State or by a company controlled by the Belgian State must be of a **different gender**.

These rules are **mandatory**.

### The sanction

For **listed companies, autonomous public companies** and the **National Lottery**, the (re)**appointment** of a director who does not respect the quota rule is automatically **null and void**.

In case of a breach of the quota rule by a **listed company, all benefits** in connection with a director's mandate (of financial or other nature) are **suspended** for as long as the board's composition is in breach of the quota rule.



- **Listed public limited companies<sup>1</sup>** and **private limited companies<sup>2</sup>**
- Three **autonomous public companies** (Proximus, bpost and Belgocontrol)
- The **National Lottery**



- The board of directors
- In a two-tier SA/NV, the supervisory board only



- The Quota Law of 28 July 2011, whose quota rules have been implemented in:
  1. Belgian Code of Companies and Associations dated 23 March 2019 (art. 7:86, art. 7:88, § 2, and art. 7:106)
  2. Law of 21 March 1991 reforming several public economic companies (art. 18)
  3. Law of 19 April 2002 on National Lottery (art. 8)

1. Société anonyme (SA)/naamloze vennootschap (NV)  
2. Société à responsabilité limitée (SRL)/besloten vennootschap (BV)

# The results of these regulations

## BELGIUM

---

In 2008, the **proportion of women** in boards of directors of listed companies in Belgium was **8.2%**, whereas in 2020 it reached **33%**.

**8.2%**

Proportion of women in boards of directors of listed companies in Belgium in 2008



**33%**

Proportion of women in boards of directors of listed companies in Belgium in 2020

Although the proportion of women in boards of directors of listed companies in Belgium has significantly increased in the last decade, **31%** of listed companies **still did not comply** with the Quota Law and solely **4.3%** of companies had a woman at the **head of their board of directors** in 2017.

**31%**

Proportion of listed companies in Belgium which did not comply with the Quota Law in 2017

**4.3%**

Proportion of listed companies in Belgium having woman at the head of their board of directors in 2017

Nevertheless, the **total number of members in boards of directors** of companies has **remained more or less the same** as compared to the period before the entry into force of the Quota Law. Hence, no additional seats have been created for women, while the representation of women in companies' boards of directors has increased. This indicates that women have effectively succeeded or replaced male directors.

# Conclusion - What's next ?

## BELGIUM

---

The representation of women in boards of directors of listed companies in Belgium has significantly increased over the last decade by virtue of the Quota Law.

Despite the provisions of the Quota Law being mandatory and the related sanctions, 31% of the listed companies in Belgium still do not respect the quota rules.

Moreover, as the Quota Law only concerns listed companies, autonomous public entities and the National Lottery, the presented statistics do not reflect the current overall representation of women in Belgian companies.



The Belgian Parliament will assess the Quota Law in 2023.



In a recent interview, the Belgian State Secretary for Gender Equality, Equal Opportunities and Diversity announced that the Belgian government will, by 2024, amend the Quota Law in order to increase the quota and strengthen the existing sanctions.

# France

## 13-15 French regulation

16 The results of these regulations (board of directors)

17 The results of these regulations (executive committees)

18-20 Conclusion – What's next ?



# The composition of the board of directors, supervisory boards and directorates (1/2)

## FRANCE

### The rule

General principle stating that boards of directors, supervisory boards, and directorates must be composed taking into account the objective to **reach a balanced representation** of the two genders.

### The sanction

There is **no specific sanction** in the event of non-compliance with this general principle.



- **SA** (*société anonyme*) and **SCA** (*société en commandite par actions*) of all sizes
- **Listed and non listed SA and SCA**



- Commercial Code : L.225-17 al. 2, L.225-58, and L.226-4 al. 2
- Law of 27 January 2011 (Copé-Zimmermann) as amended by the law of 22 May 2019 (known as *loi PACTE*)



- The board of directors
- The supervisory board
- The directorate (*directoire*)

- **46%** of the directors of French listed companies are women (vs 12.3% in 2010)
- Companies where gender parity is effective have better financial performances ([\*Diversity & inclusion within the CAC 40, Skema Observatory\*](#))

# The composition of the board of directors and the supervisory board (2/2)

## FRANCE

### The rule

**Minimum ratio** (quota) of directors of **each gender** cannot be less than **40%** in boards of directors and supervisory boards.

When the board is composed of **8 members or less**, the gap between the members of each gender may not exceed **2**.

This rule is **mandatory**.

### The sanction

- **Nullity** of any **decision of appointment** made in violation with this rule. Also, risk of nullity of all the boards' decisions made when their composition does not comply with this parity obligation.
- **Suspension of the remuneration** of the board members (in such capacity) until the situation is cured. The remuneration, including unpaid arrears, can only be recovered once the composition of the board has become compliant with this rule.



- **Listed SA and SCA<sup>1</sup>**
- **Non listed SA and SCA** if, for the third consecutive fiscal year, (i) they have at least **250 employees** and (ii) their turnover or total balance sheet is at least **€50m**.



- The board of directors
- The supervisory board



- Commercial Code : L.225-18-1 ; L.225-69-1 and L.226-4-1
- Law of 27 January 2011 as amended by the law of 4 August 2014 and the law of 22 May 2019 (known as *loi PACTE*)

Lobbying in France to apply these rules to executive committees. A draft law has been submitted to the French Parliament for review on March 8, 2021 (*cf. page 20*).

1. Companies listed on **Euronext Paris** (regulated market) only ; companies listed on Euronext Growth (non-regulated market, formerly Alternext Paris) are included in the group designated as "non listed", although they are listed on a Euronext Paris market.

# The selection process of the deputy managing director and of the members of the directorate

## FRANCE

### The rule

Regarding the selection process, **all SA** must ensure that:

#### 1. Selection process

- SA with a board of directors : during the whole selection process of **deputy managing director** (*directeurs généraux délégués*) there is **at least one candidate of each gender**.
- SA with a directorate (*directoire*) and a supervisory board : during the whole selection process of the **directorate's members** there is at least one candidate of each gender.

#### 2. Proposed candidates

**Proposals for appointment** of deputy managing directors and the **composition of the directorate** must seek a **balanced representation of women and men**.

#### The sanction

There is **no specific sanction**. However, the directors or members of the supervisory board may be held liable if the agreed process is not implemented.

Proportion of women within the executive committees of the largest French listed companies is **22.4%**, whereas it is 46% on boards. A more constraining legislation is expected soon (*cf. page 20*).



- **All SA** (of all sizes)
- Listed and non listed SA



- The deputy managing director (not applicable to the managing director)
- The members of the directorate



- Commercial Code : L.225-53 and L.225-58
- Law of 22 May 2019 (loi PACTE)

# The results of these regulations (boards of directors)

## FRANCE

---

France is currently the **European and world leader** in terms of women representation in boards of directors of listed companies.

In 2010, the proportion of women on the **boards of directors** of French largest listed companies was 12.3%, whereas in 2021 it reaches 46%, an increase of 33.7%.

**46%**

The proportion of women within **French listed companies' boards of directors (CAC 40/SBF 120 indexes)** whereas the European average is 36%

**45.1%**

The proportion of seats that were held by women in 2020 within **the 50 largest French listed companies' boards of directors** whereas the average for OECD members was 26.7% (i.e. a 18.4% gap)



*These results illustrate the **significant progresses made in France** over the last decade on gender equality topic, but one may note that these figures are relating to board of directors of listed companies only, and therefore are **not reflecting the reality of all boards of French companies** (not listed or not a SA and SCA; indeed, the regulation is not applicable to other forms of companies).*

# The results of these regulations (executive committees)

## FRANCE

Although there has been a significant increase in terms of gender diversity in boards, progress is still insufficient within executive committees/management committees (*comités exécutifs/comités de direction*) which are not concerned by French law on gender equality:

**22.4%**

The proportion of women within executive committees of the largest French listed companies (SBF 120)

The difference between executive committees and boards – 46% (*cf. page 16*) – is clear and shows how slower is the evolution of women's place in executive committees.

Should however be underlined the fact that this ratio has increased from 7.3% to 22.4% between 2010 and 2021, i.e. a 15.1% increase.

*Even if it is still to be improved, the increase of the representation of women in executive committees of French companies is not due to French regulation but to a general evolution of French culture on this topic and on the incentive power of soft law (cf. page 18).*

Women's role is often confined to human resources management or communications

### DID YOU KNOW ?

There are **only 3 women CEOs** among all the SBF 120 companies.

There are **only 11 women chairman of board** and **10 women managing directors** among the SBF 120 companies.

There are **still 11.6% companies** of the SBF 120 **that have zero women in their executive committees**. 43% of the SBF 120 companies have less than 20% women.<sup>1</sup>

1. Ethics & Boards, *International Women's Rights Day*, webinar of March 8, 2021

# Conclusion - What's next ? (1/3)

## FRANCE

---

*The representation of women at the board of directors of French listed companies has significantly increased over the last decade as a result of legal constraints but it does not reflect accurately the actual representation of women in French companies generally. Indeed, the set of constraining rules in France are applicable to large or listed SA and SCA only, representing only a minority of the French companies.*

### The importance of soft law in France

**As a relay to French law, listed companies' corporate governance Code** (which is not binding, it contains only recommendations) has been updated by Afep/Medef in January 2020 to place gender diversity at the heart of boards of directors'/supervisory board's concerns. A new dedicated section (§7) of the Afep-Medef Code makes the following **recommendations** :

- the board shall identify, on CEOs' proposal, **gender diversity objectives within management bodies** (including senior management in addition to the legal bodies) ;

- CEO shall present to the board the terms and conditions of the objectives of implementation, with an action plan and the timeframe in which these actions will be carried out ; CEO shall inform the board annually of the results achieved ;
- in its corporate governance report, the board shall describe the gender diversity policy applied to the management bodies, as well as the results obtained during the past financial year, including, where applicable, the reasons why the objectives were not achieved, and the measures taken to remedy them.

**French lobbying industry associations representing professionals (such as France Invest)**, or large companies have adopted non-binding charters relating to gender equality in the entities of their groups or of their portfolios. Whilst non-binding, these recommendations participate to the general concern of gender equality in companies as an indirect incentive; indeed, certain of these charters for instance provide that their signatories should not select suppliers of good or services which do not apply with gender equality in their corporate and management bodies.

# Conclusion - What's next ? (2/3)

## FRANCE

*One of the most important critics made to the French regulation in force is that the efficient provisions (i.e. the constraining ones, whose non-compliance is sanctioned) concern essentially the representation of genders at the boards, and not at other governance or management bodies such as executive committees.*

According to conclusions highlighted by the High Council for Equality between women and men (HCE)<sup>1</sup>, **quotas and monitoring work best.**

### Quotas and monitoring

The law is a success : 46% of women on boards of the largest French listed companies in 2021

### No quotas

There are no results : less than 20% of directors on the boards of Euronext Growth listed companies are women

### Quotas but no monitoring

The results are below the legal obligations : women occupy barely (i) 34% of the seats on the boards of listed companies below the SBF 120 and (ii) 24% in non-listed companies with 500 or more employees and 50 million euros in revenue in 2018

### Parity stops at the "power gates"

Only 3 women are CEOs of a SBF 120 company and 1 woman is the managing director of a CAC 40 company

Only 22,4% of women are part of the executive/management committees of SBF 120 companies in 2021.

# Conclusion - What's next ? (3/3)

## FRANCE

*The representation of women in executive committees in France is likely to change in the near future.*

In November 2021, **six major French asset management companies** (Amundi, AXA IM, LBP, Sycomore, Mirova and Ostrum AM), which manage nearly 3,000 billion euros in assets, have called on the largest French companies to draw up **an action plan to achieve at least 30% of women in their executive committees by 2025.**

Regretting the slow progress of women appointment at the highest management level, Bruno Le Maire, the French Minister of the Economy and Finance, said in January 2021 that it was necessary to move up a gear and “*enter into a more ambitious logic that involves **quotas***” applicable to executive committees, along the lines of the Copé-Zimmermann law of January 2011. He then announced an up-coming legislative text.

More recently (March 23, 2021), members of the French Parliament introduced a **law proposal** to strengthen the presence of women in high responsibility positions (*law proposal Rixain*).

The text has been adopted by the French National Assembly on May 12, 2021 and will be submitted to the vote of the French Senate shortly.

### Content of French Parliament's law proposal



- 1 Companies with at least 1,000 employees will have to publish a gender ratio of the top 10% management positions.
- 2 As from 2027, quotas would apply, with 30% of women required in management positions (raised to 40% in 2030), in companies with at least 1,000 employees. The breach of such quotas would be punished by financial fines.
- 3 The sanction for non-compliance with the rule will be a fine equal to 1% of the payroll.
- 4 Furthermore, as per the current law proposal, the French public investment bank Bpifrance would be bound by specific rules: (i) it would be bound by gender diversity objectives within the companies it supports, and (ii) a threshold of 30% of women in its investment committees would apply.  
Further to an amendment of the National Assembly, the law proposal now provides that these gender diversity targets set for Bpifrance shall be extended to all investment funds.

# Germany

- 22 Overview
- 23 The composition of supervisory board, management board and subordinate management levels
- 24 The composition of supervisory board
- 25 The impact of the existing rules
- 26-27 What's next ?



# Overview

## GERMANY

### Gender quota rules in Germany are primarily dependent on the following characteristics:



#### Listing of the company

Shares admitted to trading on the **regulated market** of a stock exchange (Prime Standard, General Standard; free market is not sufficient)



#### Applicability of co-determination rules

- Co-determination in accordance with the German One-Third Participation Act (DrittelbG)
- Companies with **500 or more** employees
- **One third** of supervisory board members must be **employee representatives**



#### Applicability of equal co-determination rules

- Equal co-determination in accordance with German Co-determination Acts (MitbestG, MontanmitbestG, MitbestErgG)
- Companies with **2000 or more** employees
- **Half** of supervisory board members must be **employee representatives**

### Boards subject to gender quota rules

	Board of management	Supervisory board
Description	<ul style="list-style-type: none"><li>• Management and representation of a company</li></ul>	<ul style="list-style-type: none"><li>• Supervises board of management of the company</li></ul>
Companies	<ul style="list-style-type: none"><li>• AG (<i>Aktiengesellschaft</i>)<sup>1</sup></li><li>• SE (<i>Societas Europaea</i>)<sup>2</sup></li><li>• GmbH (<i>Gesellschaft mit beschränkter Haftung</i>)<sup>3</sup> with more than 500 employees</li></ul>	

### DID YOU KNOW?

German stock corporations have a dualistic governance system.

That means that German stock corporations have strictly separate management and supervisory bodies.

The management board constitutes the management body and the supervisory board constitutes the supervisory body.

1. German stock corporation
2. European company
3. German limited liability company

# The composition of supervisory board, management board and subordinate management levels

## GERMANY

### Current legislation

#### The rule

The supervisory board shall **freely choose a target quota** (may be 0%). As long as quota of 30% is not reached, the target quota may not be lower than the factual proportion of women on the board.

#### The sanction

There is **no specific sanction** in the event of non-compliance with this general principle.

- 
- 
- **GmbH** (*Gesellschaft mit beschränkter Haftung*), **AG** (*Aktiengesellschaft*) and **SE** (*Societas Europea*)
  - Companies subject to **co-determination** rules (>500 employees) or **stock listing**

- 
- „**FüPoG I**“ amending **AktG** (*German Stock Corporation Act*), **SEAG** (*SE Implimentation Act*), **GmbHG** (*German Limited Liability Companies Act*), and **GenG** (*German Cooperative Societies Law*)
  - Effective since **1 May 2015**

- 
- Management board
  - Supervisory board
  - Subordinate management levels

# The composition of supervisory board

## GERMANY

### Current legislation

#### The rule

Minimum quota of **30%** of each women and men on the supervisory board.

#### The sanction

**Election** of a member of the supervisory board is **null and void** in the event of non-compliance with this rule.



- **AG** (*Aktiengesellschaft*) and **SE** (*Societas Europea*)
- Companies subject to **equal co-determination** rights (>2000 employees) and **stock listing**



- „**FüPoG I**“ amending **AktG** (*German Stock Corporation Act*), **SEAG** (*SE Implimentation Act*), **GmbHG** (*German Limited Liability Companies Act*), and **GenG** (*German Cooperative Societies Law*)
- Effective since **1 May 2015**



- Supervisory board

# The impact of the existing rules

## GERMANY

### Supervisory Boards

In 2015, the proportion of women on the supervisory boards of companies subject to the 30% quota<sup>1</sup> was **25%**, whereas in 2020 it reached **35.2%**, an **increase of 10.2%**.

At the same time, the proportion of women on the supervisory boards of companies subject only to a freely chosen target quota grew from **17.9%** in 2015 to **19.9%** in 2017, an **increase of 2%**. In light of these developments, the binding 30% quota is considered to be more effective than a freely chosen target quota.

# 32.2%

The proportion of companies who did not choose a **target quota**. Of the 67.7% who did, **26.2% chose a target quota of zero percent**.

# 35.2%

The proportion of supervisory board seats that were held by women in 2020 within the **companies subject to a 30% quota**.<sup>1</sup>

### Boards of Management

From 2015 to 2019, the proportion of women on the boards of management of companies subject to the voluntary quota target rule rose from **5.7%** in 2015 to **11.5%** in 2020, an **increase of 5.8%**.

**75 out of 165** companies are still without a woman on their board of management and still choose a voluntary target quota of **0% women**.

#### DID YOU KNOW?

There are **only 6 female CEOs** among all the 160 Dax-, MDax and SDax- companies.

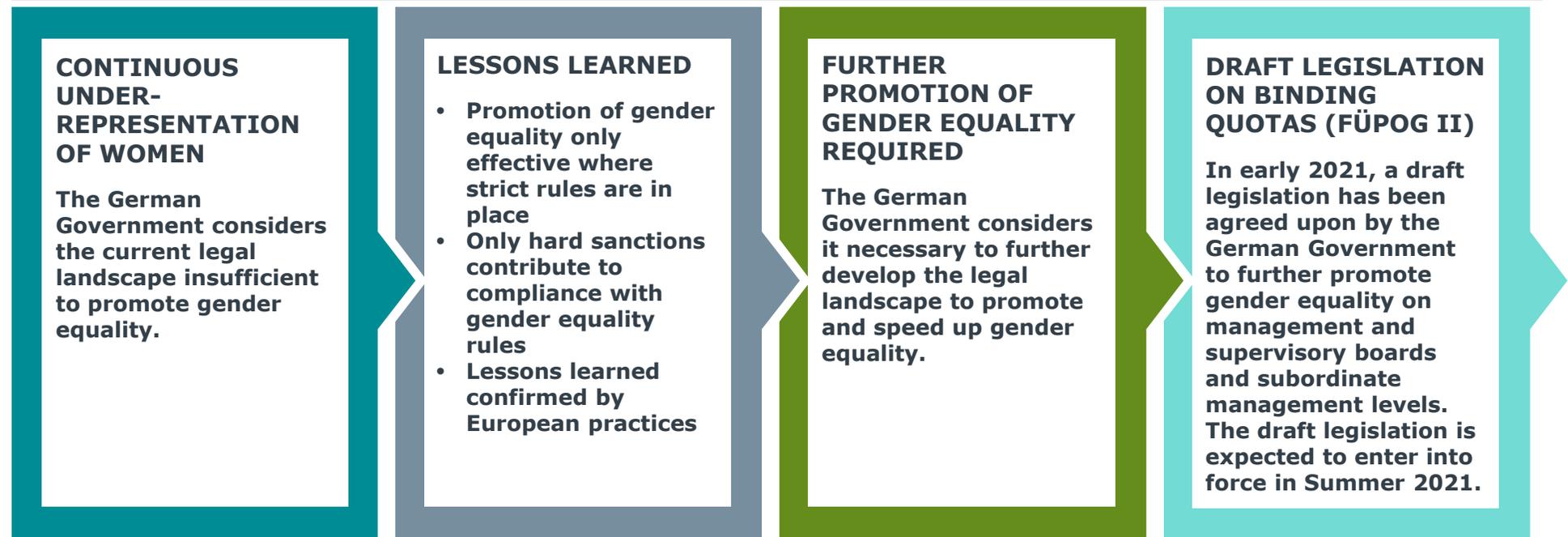
There are **only 31 women on boards of management** among all the 160 Dax-, MDax and SDax-companies.

**60% of DAX-companies do not have a single woman** on their board of management.

1. Listed stock corporations (AG, SE) with at least 2000 employees  
<https://www.bmfsfj.de/resource/blob/162402/86e9ad8f2a0f8a4613719d3a0b4b5d8c/evaluation-fuepog-data.pdf>

# What's next ?

## GERMANY



The aim of the **"FüPoG II"** is to further develop the regulations already introduced in 2015 by the "FüPoG I" to increase the proportion of women in leadership positions and to close existing gaps.

The German Federal Government bases its current legislative proposal especially on an evaluation of the FüPoG I, which showed that women continue to be severely underrepresented on boards of management and that many companies chose a target of zero for the proportion of women in management positions. Although the FüPoG I was an important milestone on the way to more equality, it was nevertheless **necessary to improve the effectiveness** of these measures through further mandatory requirements.

# What's next ?

## GERMANY

Current legislation	Draft legislation (FüPoG II)
<p align="center"><b>Co-determined or listed companies</b> Supervisory board, board of management and subordinate management levels</p>	
<ul style="list-style-type: none"> <li>• Target quota can be freely chosen (may be 0%)</li> <li>• As long as quota of women is below 30%, the target quota may not fall below the factual proportion of women on the board</li> </ul>	<ul style="list-style-type: none"> <li>• Target quota can be freely chosen (may be 0%)</li> <li>• As long as quota of women is below 30%, the target quota may not fall below the factual proportion of women on the board</li> <li>• <b>Target quota of 0% needs to be justified extensively; violation subject to fine</b></li> </ul>
<p align="center"><b>Equally co-determined and listed companies</b></p>	
<p align="center">Supervisory board</p>	
<ul style="list-style-type: none"> <li>• Binding minimum quota of 30% of each women and men on the supervisory board</li> </ul>	<ul style="list-style-type: none"> <li>• Binding minimum quota of 30% of each women and men on the supervisory board</li> </ul>
<p align="center">Board of management</p>	
	<ul style="list-style-type: none"> <li>• <b>At least one female board member if there are more than three board members</b></li> <li>• <b>Non-compliant election of a board member is null and void</b></li> </ul>



# Italy

- 29 Italian regulation
- 30 The composition of management and control bodies (listed companies)
- 31 The composition of management and control bodies (State-controlled companies)
- 32 The results of these regulations (board of directors)
- 33 The results of these regulations (key executives)
- 34 Conclusion – What's next ?



# Italian regulation

## ITALY

### The rule

The composition of management and control bodies shall ensure a **balanced representation** of the two genders.

### The sanction

There is **no specific sanction** in the event of non-compliance with this general principle.



- **Listed joint-stock companies** (*società per azioni*)
- **Non-listed companies<sup>1</sup> controlled** (directly or indirectly) **by public administrations**



- Law 12 July 2011, no. 120 (as subsequently amended)
- Presidential Decree 30 November 2012, no. 251
- Legislative Decree 24 February 1998, no. 58
- Legislative Decree 19 August 2016, no. 175



- The board of directors
- The board of statutory auditors
- The supervisory board
- The management board

- **36.3%** of the directors of Italian listed companies are women (vs 7.4% in 2011)
- Women member of boards of directors of listed companies rarely are in key positions

1. Both joint-stock companies (*società per azioni*) and limited liability companies (*società a responsabilità limitata*)

# The composition of management and control bodies (listed companies)

## ITALY

### The rule

**Minimum ratio** (quota) of **each gender** cannot be less than **40%** in management and control bodies, for **six consecutive mandates** starting from the first renewal of the bodies following 1 January 2020.

**Minimum ratio** (quota) of directors of **each gender** cannot be less than **20%** in management and control bodies, for the first renewal of the bodies following the listing.

This rule is **mandatory**.

### The sanction

**Fines** (i) up to Euro 1 million for breach relating to the composition of the board of directors and management board; (ii) up to Euro 200 thousand for breach relating to the composition of the board of statutory auditors and supervisory board

**Forfeiture** of the **management or control body** in case of perduring breach following a 4-month grace period



- The board of directors
- The board of statutory auditors
- The supervisory board
- The management board



- Law 12 July 2011, no. 120 (as subsequently amended)
- Legislative Decree 24 February 1998, no. 58

# The composition of management and control bodies (State-controlled companies)

## ITALY

### The rule

**Minimum ratio** (quota) of **each gender** cannot be less than:  
(i) **20%** in management and control bodies, for **1 mandate** starting from the first renewal of the bodies following 12 August 2013 and (ii) **33%** in management and control bodies, for the **2 consecutives mandates** following the first renewal of the bodies after 12 August 2013.

**Minimum ratio** (quota) of directors of **each gender** cannot be less than **33%** in management bodies, for any renewal following the renewals above.

This rule is **mandatory**.



- The board of directors
- The board of statutory auditors
- The supervisory board
- The management board

### The sanction

**Forfeiture** of the **management or control body** in case of perduring breach following a 6-month grace period



- Presidential Decree 30 November 2012, no. 251
- Legislative Decree 19 August 2016, no. 175

# The results of these regulation (boards of directors)

## ITALY

---

In 2011, the proportion of women on the **boards of directors** of listed companies was 7.4%, whereas in 2021 it reaches 36.3%, an increase of 28.9%.

**36.3%**

The proportion of women within **Italian listed companies' boards of directors** whereas the European average is 36%

**28.4%**

The proportion of women within **Italian State-controlled companies' boards of directors**



*These results illustrate the **progresses made in Italy** over the last decade on gender equality topic, but at the same time show that the result of at least 33% of gender equality has not been reached among the State-controlled companies.*

*In addition, these figures are relating to board of directors of listed and State-controlled companies only, and therefore are **not reflecting the reality of all boards of Italian companies**.*

# The results of these regulations (key executives)

## ITALY

---

Although there has been a significant increase in terms of gender diversity in boards, progress is still insufficient within key executives (chief executive officer and chairman) as women rarely hold key positions.

**6.3%**

The proportion of listed companies having a female CEO

**10.7%**

The proportion of listed companies having a chairwomen

According to a report released in February 2020 by the National Social Security Agency assessing the effects of gender equality laws in Italy ([Report INPS 2020](#)), **the gender quota system has produced the intended results but has not led to the spread of practices and situations that go beyond the mandatory provisions of law.**

In addition, the report shows that **women member of boards of directors of listed companies rarely are in key positions** (among listed companies only 6.3% of the listed companies has a female CEO and 10.7% has a chairwomen).

**Finally, another issues spotted is the concentration of several positions on same women.** Women on boards of directors hold positions in multiple listed companies more often than man. In particular, 13.8% of women hold an office in at least two board of directors, compared to 8.8% of men.

The above data may suggest the lack of inclusiveness towards women. As a result, those women who manage to gain access to and be accepted among the top management of various companies are few.

# Conclusion - What's next ?

## ITALY

---

*The representation of women in board of directors of Italian listed companies has significantly increased over the last decade as a result of legal regulations but still it does not reflect accurately the actual representation of women in Italian companies generally. Indeed, the set of rules in Italy are applicable and applied only to listed or publicly controlled companies, representing a minority of all the Italian companies.*

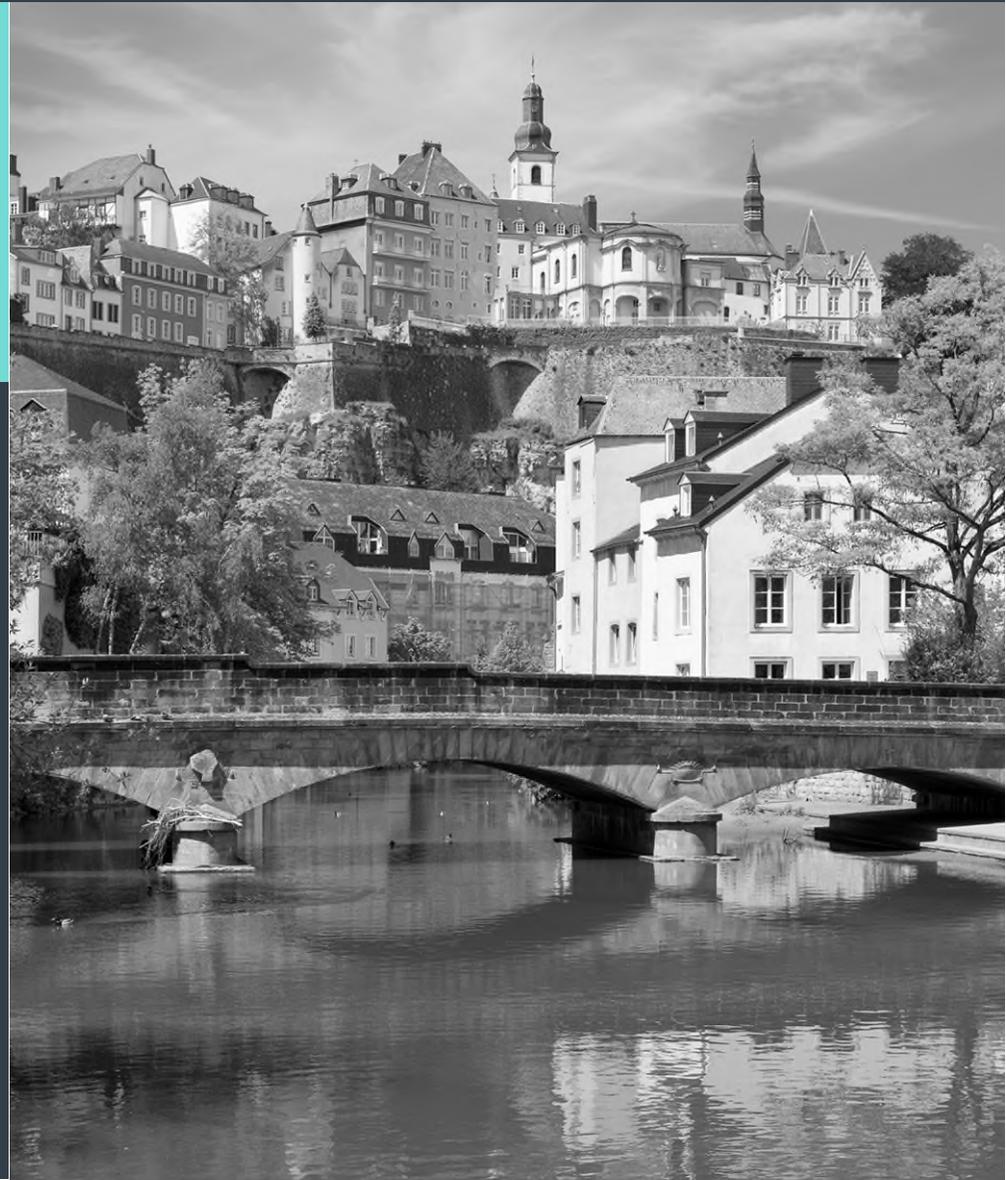
*The legal regulations implementing the gender quota system has produced the intended results, but a lot still needs to be done in order to spread virtuous practices going beyond the mandatory provisions of law and leading to a general evolution of Italian culture on this topic*

*One of the most important critics made to the Italian regulation in force is that the provisions relate only to the representation of genders at the management and control bodies, not involving also other governance bodies or corporate functions*

**As a mitigant to such critic, Italian listed companies' corporate governance Code** (which is not binding, it contains only recommendations) has been recently updated in November 2020 improving the gender equality best practices and providing, under recommendation no. 8, that "companies shall adopt measures aimed at promoting equal treatment and opportunities between genders within the entire company organization, monitoring their concrete implementation".

# Luxembourg

- 36 Luxembourg regulation
- 37 The results of these regulations (structure of the rules)
- 38 Conclusion – What's next ?



# Luxembourg regulations

## LUXEMBOURG

---

### The Rules

No specific legal framework apart from the X Principles of Corporate Governance of the Luxembourg Stock Exchange (the “**X Principles**”) with respect to gender equality exists in Luxembourg and **no particular quotas** have been introduced.

The X Principles only apply in a **mandatory way** to companies incorporated under **Luxembourg law** which have issued **shares** that have been admitted to trading on **the regulated market of the Luxembourg Stock Exchange**.

However, the X Principles can be chosen to be used as a reference framework for any company incorporated under Luxembourg law or the laws of a third country (including any company incorporated under Luxembourg law that has obtained a regulated market listing in a third country).

### Applicable to one-tier and two-tier structures

The X Principles have primarily been drawn up for listed companies with a single-tier structure (board of directors/managers). However, they are also intended to apply in a two-tier structure including an additional supervisory board. In such a case the X Principles apply mutatis mutandis.



- Public Limited companies (S.A.) and private limited companies (S.à r.l.) whose shares are listed on the regulated market of the Luxembourg Stock Exchange.



- The board of directors/managers.
- Applicable mutatis, mutandis, to supervisory board in a two-tier structure.

# The results of these regulations (structure of the rules)

## LUXEMBOURG

### The Structure of the X Principles

#### The General Principle 4 (mandatory)

- **Principle 4** of the X Principles stipulates that the listed company must establish a formal procedure for the appointment of members of the Board of Directors/Managers. This principle is mandatory and therefore must be applied.

- **Recommendation 4.1 (comply or explain basis)**

Furthermore Principle 4 includes a **Recommendation (4.1)** pursuant to which the listed company must ensure with respect to the appointment of directors/managers an **appropriate representation of both genders**.

Recommendation 4.1 must be applied on a “comply or explain why non-compliance” principle. In case the listed company has chosen not to comply with Principle 4 it must provide an explanation for this in the statement on corporate governance included in its annual report.

- **Guideline (optional)**

With respect to Recommendation 4.1 a **guideline** exists according to which a nomination procedure should define to whom appointment proposals are to be sent, any deadlines to be complied with and the arrangement for disclosure. Guidelines are optional and are not subject to the obligation of “comply or explain”).

- **The Sanctions**

There are no specific rules for non-compliance of the X Principles. However, in specific cases according to Rules and Regulations of the Luxembourg Stock Exchange a mandatory delisting imposed by the Luxembourg Stock Exchange might not be fully excluded. However, to our understanding such a case based on gender inequality issues only have not occurred yet.

- general Principle (mandatory)
- recommendation (comply or explain basis)
- guideline (not mandatory)

No specific sanctions are foreseen in the X Principles

# Conclusion - What's next ?

## LUXEMBOURG

---



In February 2021, the Luxembourg Government announced that a percentage of 41.19% women representing the State on public institutions boards has been reached.



In addition, a Luxembourg National Action Plan on Equality 2018-2023 adopted the Strategy towards a better balance between men and women and intends to increase the number of women on boards of private companies.

# Spain

40-42 Spanish regulation

43-44 The results of these regulations (board of directors)

45 The results of these regulations (executive positions)

46 Conclusion – What's next ?



# Spanish regulations (1/3)

## SPAIN

---



1

**Regulation with the status of law** - *The Spanish Gender Equality Law<sup>1</sup> and the Spanish Companies Act<sup>2</sup>*

- *The provisions contained herein are mandatory for companies*
- *But there is **no specific sanction** foreseen in the event of non-compliance*



2

**Soft law** - *The Corporate Governance Code of the CNMV<sup>3</sup>*

- *It contains mere recommendations for listed companies*
- *Recommendations are **non-binding**, as they follow the "comply or explain" principle*

1. Organic Law 3/2007, of 22 March, for the effective equality of women and men.  
2. Royal Legislative Decree 1/2010, of 2 July, approving the revised text of the Companies Act.  
3. Corporate governance code for listed companies of the Spanish Securities and Exchange Commission (CNMV) of June 2020.

# Spanish regulations (2/3)

## SPAIN

### Spanish Gender Equality Law

Article 75  
and  
Additional  
Provision 1

Large companies i.e. those which in two consecutive financial years meet two of the following three requirements:

- i. their total assets are more than 11.4 million euros;
- ii. their turnover exceeds 22.8 million euros;
- iii. they employ, on an annual average, more than 250 persons;

shall **endeavor to reach gender equality** in their board of directors within eight years of the entry into force of this law (2007).  
Equality (*composición equilibrada*) shall be deemed to exist when there is at least 40% of women in the board of directors.

### Spanish Companies Act

#### All companies

Provision 10  
of Article 260

All companies shall **include information on gender parity** as part of their **annual accounts** in relation to the members of the board of directors and the executive team.

# Spanish regulations (3/3)

## SPAIN

### Listed companies

Article 529 bis	The board of directors shall ensure that the procedures for the selection of its members <b>favour gender equality</b> and do not suffer from implicit biases that could imply discrimination, <b>encouraging the selection of female directors</b> in a number that allows a balanced presence of women and men.
Article 529 quidecies	The appointment and remuneration committee shall <b>set a target for the representation of the under-represented gender</b> on the board of directors and develop guidelines on how to achieve this target.
Article 540	The annual corporate governance report shall set out a <b>description of the gender equality policy</b> applied in relation to the board of directors, executive boards and any specialised committees set up within them, including their objectives, the measures adopted, the way in which they have been implemented and, in particular, the procedures for seeking to achieve a balanced presence of women and men on the board of directors and the results in the reporting period, as well as the measures, if any, agreed by the appointment and remuneration committee in relation to these issues.

### Corporate Governance Code of the CNM

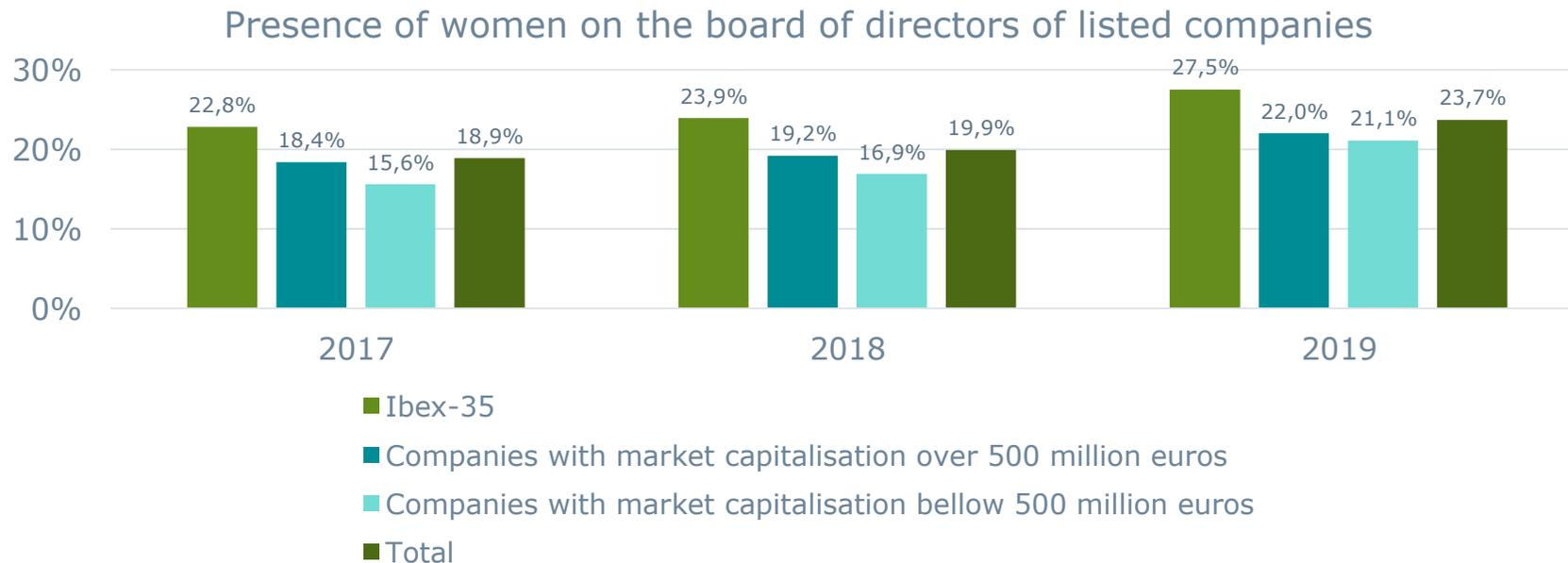
Recommendation 14	It is recommended that the board of directors <b>approves a policy aimed to promote gender equality</b> with measures that encourage the existence of a significant number of female executives in the company. The appointment and remuneration committee shall annually verify the compliance of this policy.
Recommendation 15	It is recommended that the <b>number of female members of the board of directors is at least 40% by the end of 2022</b> and thereafter, and not less than 30% before such date.

# The results of these regulations (boards of directors) (1/2)

## SPAIN

*The percentage of women on the boards of listed companies reached 23.7% in 2019, an increase of 3.8 points, compared to 19.9% in 2018, but it is still far from reaching the 30% target set for 2019 by the Corporate Governance Code of the CNMV. However, it is worth noting that in 2019 almost 10% of the listed companies had no female presence in their boards of directors.*

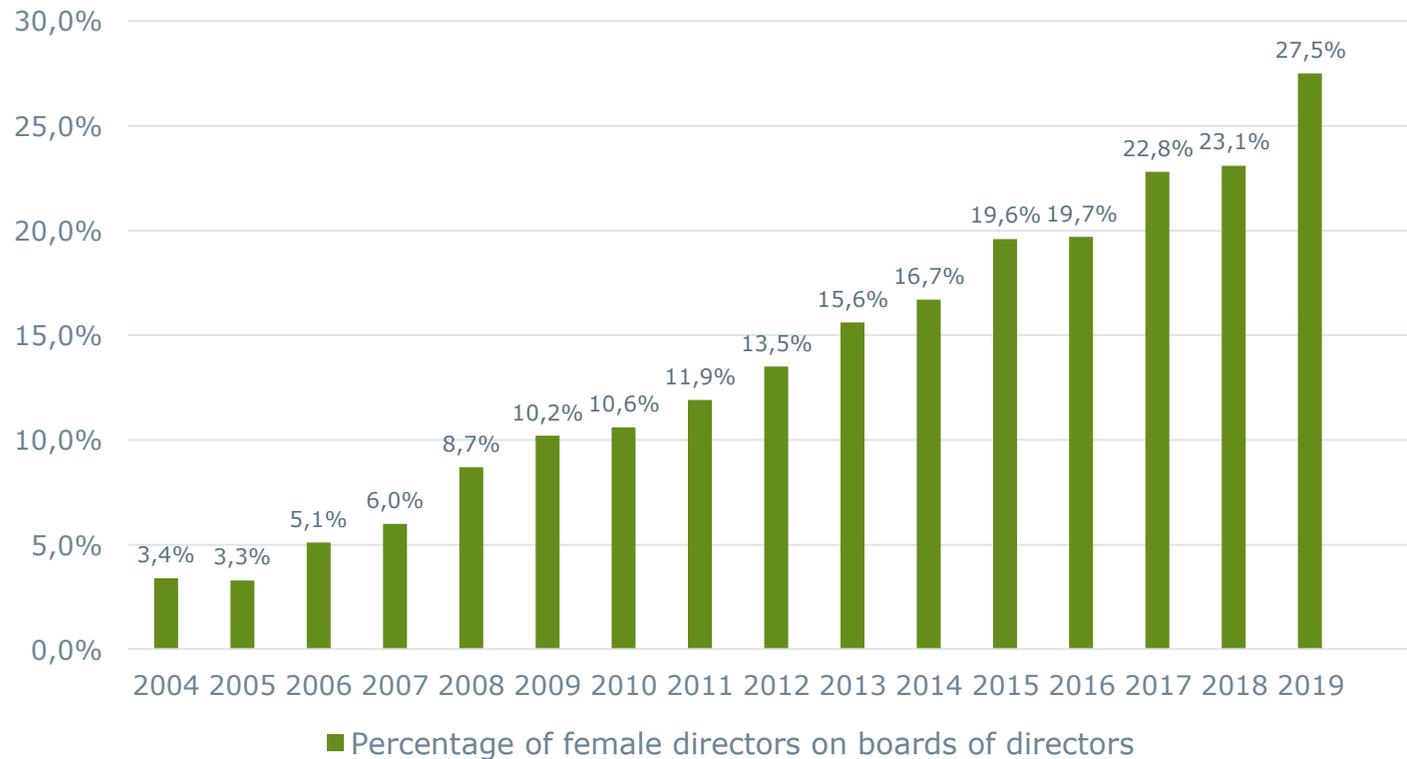
The presence of women on IBEX-35 companies' boards has almost doubled in the last decade by reaching 123 female directors in 2019, compared to the 66 appointed in 2011. This means that if the top 35 Spanish listed companies have a board of directors with an average of 13 members, 3.5 seats are occupied by women. However, in order to aim for 40% parity in 2022 set out in the Corporate Governance Code of the CNMV, each company would have to appoint one more female director, without changing the composition of its members.



# The results of these regulations (boards of directors) (2/2)

## SPAIN

Evolution of female directors of IBEX-35 companies



*The presence of women on IBEX-35 companies' boards has increased by four points in 2019 reaching 27.5%, almost the 30% goal set for 2020 by the Corporate Governance Code of the CNMV.*

### DID YOU KNOW ?

In 2019...

Only 1 IBEX-35 company reported a women representation of less than 10% in its board.

3 IBEX-35 companies already met the goal of having a number of women on their boards equal to or higher than 40% set out by the Corporate Governance Code of the CNMV.

12 IBEX-35 companies had a representation of women between 30% and 39% among its directors.

# The results of these regulations (executive positions)

## SPAIN

Although there has been a significant increase in terms of gender diversity in boards, progress is still insufficient within executive positions (i.e CEO, CFO, CMO, etc.):

**15.7%**

The proportion of women in executive positions in IBEX-35 companies in 2019

Presence of women (non-directors) on executive positions of listed companies



## Where do we find more women in executive positions?



The number of female CEOs has fallen two points in 2020.



# Conclusion - What's next ?

## SPAIN

We are experiencing a **cultural change** in Spain. The percentage of women on the boards of listed companies has strongly increased in the last years. In particular, the presence of women on IBEX-35 companies' boards has more than doubled in the last decade. However, taking into account that:



1 The provisions of the Spanish Gender Equality Law, certain provisions of the Spanish Companies Act and the recommendations of the Corporate Governance Code of the CNMV are only applicable to listed companies,

2 Listed companies represent a minority within the existing total registered companies in Spain,

3 The recommendations of the Corporate Governance Code of the CNMV follow the "comply or explain" principle, so companies are not obliged to comply with them; and

4 No sanctions are foreseen in the event of non-compliance with the provisions established by Spanish Law,

In recent years we have seen a significant growth in private initiatives from Spanish companies in promoting diversity and inclusion policies. However, it seems that the economic situation resulting from **COVID-19 has stopped the promotion of these gender equality initiatives**, leaving the gender equality issue as a secondary concern for companies.

*this will take time and **it is essential to continue working towards a change of mentality** in the teams that lead companies in order to promote the presence of women in top management positions.*

# Key contacts

---

## BELGIUM



**David du Pont**  
Partner

T +32 2 626 1923  
M +32 471 129987  
David.DuPont@ashurst.com

## FRANCE



**Anne Reffay**  
Partner

T +33 1 53 53 54 99  
M +33 6 11 49 04 71  
Anne.Reffay@Ashurst.com

## GERMANY



**Gerrit Clasen**  
Partner

T +49 69 97 11 28 42  
M +49 172 61 37 680  
Gerrit.Clasen@Ashurst.com

## ITALY



**Fabio Niccoli**  
Partner

T +39 02 85423440  
M +39 349 4344939  
Fabio.Niccoli@ashurst.com

## LUXEMBOURG



**Isabelle Lentz**  
Partner

T +352 28 133 222  
M +352 621 798 357  
Isabelle.Lentz@ashurst.com

## SPAIN



**María José Menéndez**  
Partner

T +34 91 364 9867  
M +34 616 469 179  
MariaJose.Menendez@ashurst.com

London Fruit & Wool Exchange, 1 Duval Square, London E1 6PW. T: +44 (0)20 7638 1111 F: +44 (0)20 7638 1112 ashurst.com. Ashurst LLP and its affiliates operate under the name Ashurst. Ashurst LLP is a limited liability partnership registered in England and Wales under number OC330252. It is a law firm authorised and regulated by the Solicitors Regulation Authority of England and Wales under number 468653. The term "partner" is used to refer to a member of Ashurst LLP or to an employee or consultant with equivalent standing and qualifications or to an individual with equivalent status in one of Ashurst LLP's affiliates. Further details about Ashurst can be found at ashurst.com.

© Ashurst 2021

ashurst