

Draft Basic Law on equal representation and a balanced presence of women and men

On 15 December 2023, the Official Gazette of the Spanish Parliament published the Draft Basic Law on equal representation and a balanced presence of women and men, which amends, among other legislation, the Companies Law and the Securities Markets and Investment Services Law and introduces new gender-equality obligations on, among others, boards of directors and senior management of listed companies and public-interest entities that comply with specific thresholds. This briefing summarises its most notable aspects, which, naturally, could be modified during the parliamentary process. The full text of the Draft Basic Law is available at the following [link](#).

- **Implements Directive (EU) 2022/2381** of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures (“**Directive**”).
- Amends the Companies Law (“**CL**”) and the Securities Markets and Investment Services Law (“**SML**”) and exceeds the Directive’s requirements. It also affects regulations in other areas (the Constitutional Court, courts of justice, the Government, the General State Administration, professional associations, elections, etc.).
- In matters related to companies, it applies to:
 - **listed companies** on regulated markets; and
 - **unlisted companies** on regulated markets that, pursuant to auditing regulations are considered “**public-interest entities**” (see [article 3.5](#) of the auditing law and [article 8](#) of the auditing regulations) and meet two thresholds: have an average number of employees during the financial year > 250 and annual net turnover > EUR 50M or assets > EUR 43M, as from the financial year following the one in which both thresholds are met.
- Introduces the following obligations relating to **boards of directors**:
 - To **have** a minimum presence of **40%** of persons of the **underrepresented sex**, understood as being the number of directors determined by the percentage closest to 40% and not exceeding 49% (article 529 *bis* 3 CL). For example, for an eight-member board the number would be three and for a twelve-member board the number would be five.
 - To **adjust** the **selection processes** in accordance with specific rules on ensuring a non-discriminatory procedure when the 40% threshold is not met in order to ensure the achievement

of this objective (article 529 *bis* 4 and 5 of the CL) and **demonstrate**, in any **legal proceedings** that might be initiated by a candidate who is ruled out, that it acted correctly in not selecting the candidate of the underrepresented sex (article 529 *bis* 7 of the CL).

- To annually **report** to the **general meeting** on necessary measures regarding the balance between women and men and the potential penalties for non-compliance (article 529 *bis* 6 of the CL) and to annually **prepare** and **publish**, included in the sustainability report, specific information on the representation of the underrepresented sex and, for listed companies, to **send** this information to the Spanish Securities Market Commission (“**CNMV**”) (article 529 *bis* 9, 10 and 11 of the CL).
- Introduces the following provisions relating to **senior management** (article 529 *bis* 8 of the CL):
 - To **procure** the achievement of a minimum presence of **40%** of persons of the **underrepresented sex**.
 - To **detail** compliance with this threshold in the **annual report** and, if the threshold is not reached, to provide a detailed explanation of the reasons for non-compliance and the measures taken (principle of comply or explain).
- Entrusts the **monitoring** of the evolution of gender balance in listed companies to the **CNMV** and to the **Instituto de las Mujeres** (Ministerio de Igualdad) in relation to public-interest entities.
- For listed companies, categorises any failure to comply with the new CL obligations on this matter as a “**serious infringement**” under article 292 of the SML.
- Proposes that it apply to listed companies as from:
 - **30 June 2024**, for the **35 companies** with the **largest market capitalisation** on the date the law enters into force (note that this will not necessarily include all companies listed on the IBEX 35, as criteria other than capitalisation is considered for inclusion in the index);
 - **30 June 2025**, for companies with **market capitalisation > EUR 500M** on the date the law enters into force; and
 - **30 June 2026**, for companies with **market capitalisation < EUR 500M** on the date the law enters into force.

For **public interest entities** other than listed companies, it proposes a **gradual** application, reaching 33% of the underrepresented sex on the board of directors and the senior management by 30 June 2026 and 40% by 30 June 2028.

CONTACT LAWYERS



Carlos Paredes Galego
+34915860334
carlos.paredes@uria.com



Marta Ríos Estrella
+34915860367
marta.rios@uria.com



Carla Alonso Cogollos
+34915860778
carla.alonso@uria.com