



Questions and Answers (Q&A)
Relating to Organic Law 2/2024, of 1 August,
on Parity Representation and the Balanced presence of
Women and Men

FINANCIAL AND CORPORATE REPORTING DEPARTMENT
MARKETS DIRECTORATE-GENERAL
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INTRODUCTION

The CNMV's 2025 Activity Plan includes, among other objectives, the publication of a document containing questions and answers to clarify any interpretative concerns regarding the application of Organic Law 2/2024 of 1 August on Parity Representation and the Balanced Presence of Women and Men (hereinafter, the Organic Law on Parity, the Organic Law or the OL). This law will be implemented gradually from 2026 onwards by listed companies and other unlisted public-interest entities. It also establishes the new powers conferred on the CNMV in this area, as it will be the authority responsible for supervising compliance by listed entities.

The Organic Law on Parity aims to give full effect to the principle of equality between women and men, with the goal of achieving a balanced composition of the boards of directors and senior management of listed companies and other public-interest entities.

For the purposes of the Organic Law, parity representation and a balanced presence of women and men is defined as a situation in which, within each entity subject to the OL, persons of each gender do not exceed sixty per cent nor fall below forty per cent in a given sphere.

However, where women represent more than 60%, the criterion of parity representation and balanced presence between women and men may not apply, in accordance with the principle of positive action, which must in all cases be duly justified.

The applicable regulation is as follows:

Royal Legislative Decree 1/2010 of 2 July, approving the revised text of the Spanish Limited Liability Companies Law (hereinafter, the LSC):

- Article 529 bis
- Seventh Additional Provision
- Sixteenth Additional Provision

Organic Law 2/2024 of 1 August, on Parity Representation and the Balanced Presence of Women and Men:

- Fourth Additional Provision: Authorities responsible for promoting, analysing, monitoring and supporting gender balance on boards of directors
- First Transitional Provision: Application of measures on parity representation and balanced participation in electoral processes, the state institutional public sector, listed companies and other entities

Law 6/2023 of 17 March, on Securities Markets and Investment Services (hereinafter, the LMVSI):

- Article 292: Infringements for failure to comply with the obligations set out in the revised text of the Spanish Limited Liability Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July

Selection procedures

1. The second paragraph of section 4 of Article 529 bis of the LSC literally states: “A procedure must be established that enables a comparative assessment of the competencies and abilities of each candidate. This system must be designed on the basis of clear, neutral and unambiguous criteria, ensuring a non-discriminatory process throughout all stages of the selection process, including the preparation of vacancy notices, pre-selection, the preparation of the shortlist and the formation of candidate selection groups.”

Establishing a broader framework for diversity and balance, section 2 of the same Article states the following: “The board of directors must ensure that the procedures for selecting its members promote equality between women and men, as well as diversity in relation to age, disability, professional training and experience, and are free from implicit bias that could lead to discrimination. In particular, they must facilitate the selection of female directors in sufficient numbers to achieve a balanced representation of women and men.”

How should the second paragraph of section 4 of Article 529 bis of the LSC be interpreted?

Each entity subject to the above obligations must establish the specific procedure it deems most appropriate, in accordance with its own particular characteristics.

However, the wording of the paragraph suggests that the procedure should be set out in writing and communicated, at a minimum, to all those responsible for the selection process—including directors, in particular the members of the

appointments and remuneration committee, and external advisers. In addition to complying with other applicable principles and regulatory requirements, it would be advisable for the procedure to follow the recommendations and best practices set out in Technical Guide 1/2019 on Appointments and Remuneration Committees issued by the CNMV.

Composition

2. When is the minimum target of 40% of the under-represented gender on the Board of Directors considered to be met?

The total number of directors deemed the minimum necessary to achieve this objective, as set out in section 3 of Article 529 bis of the LSC, must correspond to the percentage closest to forty per cent, either above or below, without in any case exceeding forty-nine per cent of the members of the board of directors.

By way of illustration, on a board of directors consisting of 5 or 6 members, the percentage would be met with 2 persons of the under-represented gender. On a board of directors consisting of 9, 10, or 11 members, the percentage would be met if 4 of its seats are occupied by persons of the under-represented gender. On a board with 12 or 13 members, the percentage would be met with 5 persons of the under-represented gender, and on a board of directors consisting of 14 or 15 members, it would be met with a total of 6.

3. In the event of a vacancy arising, when must the company regain the percentage of representation?

In any case, the date by which this minimum percentage must be regained shall not be later than the date of the first General Shareholders' Meeting held after the vacancy has arisen.

However, if, on a voluntary basis, and considering it to be the most appropriate course of action in the specific circumstances, the listed company were to decide to appoint a new director prior to the holding of the meeting, by means of co-optation, the company shall be required to regain said percentage at that very moment.

4. In accordance with the second paragraph of section 2 of Article 529 bis of the LSC, in the event of an early vacancy, the minimum percentage must be definitively regained at the first General Shareholders' Meeting held after the vacancy arises.

What happens if the vacancy occurs only a few days before the meeting is called, making it impossible to appoint a new candidate in time?

Entities must make every effort and act with due diligence to identify and appoint to the Board a new director who will restore compliance with the minimum required percentage. If this is not possible and no new director is appointed at the meeting, entities must assess which measure would be most appropriate to rebalance the composition of the Board as soon as possible by appointing a suitable person, either through co-optation or by convening a new meeting, provided that such meeting is to be held within a reasonable period of time.

5. Can listed companies exclude executive and proprietary board members from the calculation used to determine the 40% representation of the under-represented gender?

No. Listed companies may not exclude executive or proprietary board members from the calculation of the 40% representation of the under-represented gender.

Only public interest entities (PIEs) that are not listed companies, and that are under direct or indirect control of a family, may, at the company's discretion, exclude executive and proprietary board members from the calculation.

An entity shall be deemed to be controlled when the parent company is, in relation to another subsidiary, in any of the following situations:

- a) It holds the majority of voting rights
- b) It has the power to appoint or remove the majority of the members of the administrative authority
- c) It is able to dispose of the majority of voting rights by virtue of agreements entered into with third parties
- d) When an entity has appointed, through its voting rights, the majority of the members of the administrative authority who hold office at the time the consolidated financial statements are to be prepared, as well as during the two immediately preceding financial years. In particular, such control shall be presumed to exist where the majority of the members of the administrative

authority of the controlled company are members of the administrative authority or senior management of the controlling company, or of another company under its control. However, this circumstance shall not give rise to consolidation where the company whose directors have been appointed is linked to another company in any of the cases referred to in points (a) and (b) above.

For the purposes of this provision, “family” shall be understood as including persons related to each another in the direct line, ascending or descending, without limitation, and in the collateral line up to the fourth degree.

6. In accordance with Article 8.1(f) of Royal Decree 2/2021 of 12 January, approving the Regulation implementing Law 22/2015 of 20 July on Auditing, the following shall be regarded as PIEs: “Groups of companies in which the parent company is one of the entities referred to in the preceding subparagraphs.”

Does this mean that all companies belonging to a group in which the parent company is regarded as a PIE are subject to the obligation to achieve a balanced representation of women and men on their boards of directors in accordance with provisions of Organic Law 2/2024?

No. In the situation described, only the parent company would qualify as a PIE, the subsidiaries within the group would not, individually, have such status. Likewise, it is understood that the parameters established in the sixteenth additional provision of the LSC—relating to the average number of employees, net annual turnover, and total assets—must be assessed, for the purposes of determining whether the entity falls within the scope of the Organic Law, on the basis of the data of the PIE considered individually, without taking into account the data of its consolidated group.

Transparency

7. Section 9 of Article 529 bis of the LSC provides that: “The board of directors of listed public limited companies shall prepare and publish, as part of the sustainability report, and annually on the company’s website, information on the representation of the less represented gender on the company’s board of directors, which shall be easily accessible.”

This provision also applies to PIEs that exceed the thresholds established in the sixteenth additional provision of the LSC.

Are all listed companies and PIEs required to prepare information on the under-represented gender, or, given that such information must be included in the sustainability report, should it only be submitted by those companies required to prepare such a report?

For entities subject to the Organic Law, there are no exceptions to the obligation to prepare and publish information on the representation of the under-represented gender. This must be done annually and published on the company's website and, in the case of listed companies, submitted to the CNMV. Consequently, listed companies and other PIEs subject to this obligation must prepare information on the representation of the under-represented gender on their boards, irrespective of whether or not the company is required to prepare a sustainability report.

Accordingly, where the company is required to prepare a sustainability report, this information shall be included within that report. Conversely, where the company is not required to publish a sustainability report, the information on the under-represented gender shall be included in its management report.

The inclusion of information on the under-represented gender on the websites of listed companies must comply with the technical specifications set out in CNMV¹ Circular 3/2015 of 23 June.

The same obligation and the criteria set out above—except for the reference to Circular 3/2015 of 23 June—shall apply to PIEs that meet the thresholds mentioned in the previous question, with the difference that PIEs shall not be required to submit this information to the CNMV.

8. How and with what content should information regarding the level of representation of the under-represented gender on the board of directors be submitted to the CNMV as Other Relevant Information, and when?

Listed companies shall specifically disclose the information required by section 9 of Article 529 bis of the LSC concerning the under-represented gender on the board of directors (that is, the sustainability report as a whole shall not be disclosed, but only the specific section addressing the requirements set out in the Organic Law), as Other Relevant Information (OIR). This disclosure shall be

¹ Spanish National Securities Market Commission (CNMV) Circular 3/2015 of 23 June, on the technical and legal specifications and information that must be included on the websites of listed companies and savings banks issuing securities admitted to trading on official secondary securities markets.

made simultaneously with the annual corporate governance report and the annual report on directors' remuneration.

To this end, such information shall be submitted to the CNMV through the corresponding procedure, which shall be made available for this purpose on the CNMV's virtual office (website).

Entry into force

9. When does the obligation to prepare and publish information on the representation of the under-represented gender on the boards of directors of listed companies come into force? Please distinguish according to market capitalisation

For the thirty-five companies with the highest market capitalisation, determined by the closing share price on the date on which Organic Law 2/2024 entered into force (i.e. the price on 22 August 2024), these obligations shall apply from 30 June 2026.

For all other listed companies, the obligations shall apply one year later, on 30 June 2027.

This means that, although the required percentages of representation of the under-represented gender on the board must be met from the dates indicated above, the information on the representation of the under-represented gender on the board and in senior management will not have to be published for the first time on the websites of the entities concerned—and listed companies will not have to submit it to the CNMV—until they file their first annual financial report closed after the dates referred to in the first and second paragraphs of this question.

For example, this means that the thirty-five companies with the highest market capitalisation will not be required to publish information on compliance with the requirements of the Organic Law, and on the policies and measures adopted, until the publication of their annual financial report for the 2026 financial year, which, for entities with a calendar year, shall be published within the first four months of 2027.

10. What about unlisted public interest entities?

Thresholds differ as follows: by 30 June 2026, they must achieve 33% representation of the under-represented gender on the board of directors and

ensure that, on that same date, senior management has a composition guaranteeing the presence of at least the same percentage (33%). Three years later, on 30 June 2029, these thresholds shall rise to 40% for both the board of directors and senior management.

As with listed companies, information on the percentages achieved and on the policies and measures adopted shall not be published until the release of the first annual financial report closed after the date of entry into force of the obligations established by the Organic Law.

Supervisory and Promotion Powers

11. Powers of the CNMV: Who is responsible for preparing the updated list of listed companies reporting compliance with the minimum representation target on the board?

The CNMV is the authority responsible for publishing an annual list of all listed companies that declare, in their sustainability reports, that they have achieved the target set for balanced representation on the board of directors.

Accordingly, this list shall be compiled on the basis of the information provided by the listed companies themselves in their sustainability reports and also submitted through the corresponding procedure on the CNMV's virtual office.

12. Which authority is responsible for supervising compliance with composition and transparency requirements regarding the representation of the under-represented gender, as these are considered rules governing the organisation and discipline of securities markets?

The CNMV, but only in relation to listed companies.

13. Which authorities are responsible under the Organic Law for promoting, analysing, monitoring and supporting compliance with the obligations established by that law in relation to listed companies and public interest entities?

In the case of listed companies and other public interest entities that are not insurance undertakings, these functions are jointly attributed to the CNMV and the Women's Institute.

In the case of insurance undertakings, the authority responsible shall be the Directorate-General for Insurance and Pension Funds.

14. What actions could reasonably be understood to fall within the scope of promoting, analysing, monitoring and supporting compliance with the obligations established by the Organic Law in relation to listed companies and other unlisted PIEs?

Although it is still too early to anticipate how these actions, entrusted jointly to the CNMV and the Women's Institute, will be implemented in practice, the range and intensity of possible actions are very broad. They will depend on the specific circumstances, the degree of engagement and general involvement of each authority with each type of entity, and the resources available to them at any given time.

Promotional and compliance support tasks could include participation by one or both authorities in public events addressing these matters, or the publication of any digital or printed material deemed appropriate at any given time—for example, articles in the CNMV's quarterly bulletin—as well as responding to specific requests made by entities subject to the Organic Law. In relation to listed companies, this would include the CNMV's contacts and dialogue with listed companies within the framework of its supervisory activities.

The Women's Institute, for its part, may publish materials and good practice guides to promote awareness of the Organic Law and to foster balanced participation of women and men in business, organise workshops, and enhance the visibility of good practices and benchmarks through social media, as well as holding public events to disseminate such initiatives.

The analysis and monitoring of listed companies will primarily focus on entities subject to annual supervision. For these entities, the CNMV will make use of the information that such companies are required to provide concerning gender diversity and the representation of the under-represented gender on the board of directors and in senior management—both in the Annual Corporate Governance Report (IAGC), in the notes to the individual annual accounts, and in the sustainability report—and, where necessary, may request any additional specific information deemed relevant within the context of its supervisory activities..

As regards other public interest entities subject to these obligations, given their large number and the fact that they are not required to submit this information either to the CNMV or to the Women's Institute, it would be reasonable for analysis and monitoring to be carried out on the basis of a representative sample of entities, identified each year, from which the relevant information would be requested.

Publication of information

15. How long must information on compliance with the rules on representation of the under-represented gender and on promotion, analysis, monitoring and support be retained?

In accordance with paragraph 11 of Article 529 bis of the Spanish Limited Liability Companies Law (LSC), information regarding the representation of the under-represented gender on the board of directors shall remain freely accessible on the company's website and on that of the National Securities Market Commission (CNMV) for a minimum period of ten years.

With regard to measures for promoting, analysing, monitoring and supporting compliance with the obligations established under the Organic Law, and concerning unlisted public interest entities, the information—as provided for in section 3 of the fourth additional provision of the Organic Law—shall be made freely accessible on the website of the Women's Institute for a minimum period of ten years, and may also be published by the corresponding authorities of the autonomous communities with competence in this area.