



## Directors' Forum "The Value of Having a Board in Times of Uncertainty" Opening Speech

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14 September 2022

I would like to thank the institutions that host this event for inviting me to come back.

In this same Forum, last year, I spoke about the role of board members and how many refer to it as a high-risk profession, given the importance, increasing over time, of the decisions in which they participate. The role, being at the heart of the board of directors or the different commissions that lead companies' management, is increasingly more important, as well as is its imperative nature and liabilities.

Nonetheless, apart from this first reflexion, I would like to focus on different areas I believe to be relevant in the governance of listed companies.

The first one is a classic of the last 7 years and is determined by the diversity in gender, which is a subject to keep in mind during a volatile climate, as the one we experience today. According to the data of the 2021 financial year, which is the latest information we have, the total percentage of female board members in Spanish listed companies is 29%. The recommended percentage is 30%. We clearly have come a long way in the last decade in this respect and over the years there has been an upward trend, to the extent that in 2012 the same percentage was only 12%. When looking at the 35 companies that make up the IBEX35, the government body has a 34.2% of women and 28% if we use the group of companies with market capitalisation of more than €500M.

Such metrics, especially with companies of greater liquidity, bring us closer to the recommendations set by the code of good governance to reach 40% by the end of this year. In fact, several IBEX35 companies (9 to be exact) already exceeded the target in 2021. It would be ideal if Spanish listed companies, with an additional boost, were to reach the minimum set out in the draft European Directive. That will allow us to be one step ahead when it comes into force.

But such an effort is asymmetric and with poor results when analysing the number of women holding top management positions in companies, given that less than 20% of these positions are held by women and 22% in the case of IBEX35 companies.

On a more positive note, we have come a long way: almost 5 percentage points on the IBEX over the last year, but there is still a long way to go. It is important to bear in mind that the idea is not for the board to become an "island" of diversity, but for diversity to extend throughout the organisation.

To elaborate on governance, in June we opened for public consultation for comments on the code of best practice for institutional investors, asset managers and proxy advisors, what we call the "stewardship code". The proposal arose with the advice of a broad group of experts, law firms, auditors, proxy advisors and other local supervisors.

The thought behind its origin is that we understand that the participation of institutional investors in the management of the companies in which they invest and in their corporate governance is indispensable. Not only because of their fiduciary responsibility with their clients, but because investors are one of the levers needed to induce positive changes in listed companies, benefiting the company's shareholders as a whole, the company itself and its stakeholders, and the society in which it operates in general.

The code we have proposed, which is undoubtedly an innovative element for the Spanish market, is based on seven principles. It raises issues related to the importance of having a long-term strategy; knowledge and monitoring of the listed company; the development of a voting involvement policy; transparency in its actions; appropriate management of conflicts of interest; and corporate governance and remuneration policy.

The code is also designed with a number of features and tweaks aimed at adjusting to a wide range of investors depending on their size or scale, and with the idea of following the principle of proportionality, to modulate its scope and obligations. Thus, it is voluntary and is aimed to be introduced with a three-year adaptation period, which I will explain.

Likewise, we have adopted the "implement and explain" model as opposed to the "comply or explain" model. Therefore, those who wish to adhere will have to apply the seven principles, without having the possibility of choosing which ones apply or which do not. The three-year transition period allows, however, for institutions to follow a "comply or explain" criteria, giving some time to choose the principles they do and do not comply with, explaining their decision. The transition period involves a progressive adaptation plan, linked to an implementation schedule, explaining the degree of progress and its deviations for each year, so that by the end of the transition period all member entities apply all the principles.

Those who have an opinion on these issues and have not yet responded to the consultation, who were given almost three months, which is unusual in our country, still have a couple of days to do so until this coming Friday.

I would like to end my speech with a reference to the independence of board members. We are living in turbulent times, in the economy and markets, which require the boards of listed companies to not lose sight of their role. In that quest, independent board members play a crucial role. In the coming months and years, we will face extraordinary strategic changes, technological paradigm shifts, tightening monetary and financial conditions, risks and opportunities of different kinds. How the listed companies navigate the troubled waters will depend on their teams' abilities, as well as on the resilience, experience and functioning of their boards. An independent board member is a bulwark to ensure that the company's mission is upheld for the benefit of all parties: to pursue long-term value for all shareholders, with full respect for the law and the company's responsibilities to other stakeholders and society.

To do so, we need to rely on the general definition of independence of a board member, provided by article 529 of the Spanish Corporate Enterprises Law: "...appointed on the basis of their personal and professional qualifications" and "... who is able to perform their duties without conditions set by relationships with the Company (or its group), its relevant shareholders or its executives". This is much more comprehensive and important than the checklist that the article provides below. Some mistakenly consider that if a board member does not fit into any of the 10 situations listed, they could be considered independent. This is obviously not the case. The general principle must always be assessed and complied, as there are many situations in life that cannot be foreseen by the legislator in specific cases.

CNMV has been, and intends to continue to be, active in monitoring of the condition as independent and rectifying it where appropriate. This is done rigorously and taking the necessary time, without reacting with headlines, but with profound consideration. This is why I encourage listed companies and their advisors to pay close attention to this provision. CNMV will continue to offer assessment, as it has always done, on this issue.

The distinction between independent and dominical board members is a foreign concept outside of Spain. Very few jurisdictions have such a dichotomy, besides Spain. Most speak of "non-executive" directors, which includes dominical directors. Jurisdictions that contemplate the term "independent" include with it, unlike the Spanish standard, dominical directors with more than 3% or 5% (but less than 10%). I have always thought that such "micro-dominicals" play an important role in listed companies, although their characteristics do not make them fully comparable to independent board members, which is why it is worth maintaining this distinction in the Spanish system.

In any case, independent directors deserve maximum protection and safeguarding as we may provide, given the importance of their role in the company; not only the listed company, but Spanish society as a whole. In the last revision of the code made in 2020 we introduced protections and additional measures as recommendations. However, I believe that legislative measures to increase such protection could be explored,

cautiously and with appropriate debate. For example, additional protections on the termination of independent board members. An option would be, for listed companies, that the removal of independent directors to be on the agenda of the general meeting where the latter would be decided, in order to guarantee the right of all shareholders to be informed in advance of the general meeting. This would probably require adjustments to the rules of summoning. In order to avoid the risk of such proposals to only be made by a few (the managers or significant shareholders), extending the possibilities of requesting call addenda for this reason could be considered, in order for it to be shared with more shareholders and a longer period of time after the summon.

This would make the process transparent and allow all shareholders to attend the meeting and participate in an informed manner in the decision, if they so wish, without, however, taking away from the powers of the general meeting, which would remain sovereign in all matters relating to the composition of the board and, of course, the free revocability of the appointment of board members. There may be other measures to be considered, which could be the subject of future debate, aiming to strengthen the governance of Spanish listed companies.

I will end by referring to the evolving debate on companies' mission, the balance between their profitability and their impact on the environment and society. We are living in times when priorities are rapidly changing, as several examples show. Some entities or managers and directors associations in the US, and even in Spain, have started to redefine the mission of a modern corporation. The concept of impact or external materiality has become another dimension of corporate analysis. The OECD itself is currently in the midst of reviewing its corporate governance principles. Topics covered include diversity, the ESG scope, remuneration, risk-taking and the role of stewardship. These will be discussed today in several panels. Nonetheless, such a review has a deeper underlying transformation, a link between listed companies, shareholders, society as a whole and the environment that is probably changing the way we see and handle corporate governance. The way in which we integrate this idea in our listed companies will depend on whether they remain calibrated and connected to the interests of their shareholders, as well as the perception of society.

Thank you for your attention.