



Speech at the Ninth Conference on Good Corporate Governance: Directors facing the challenges of the new economy

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Thank you very much, Ana (Lamas) and thank you also to Women CEO and Georgeson for inviting me to this conference focused on good corporate governance and the role of directors in the face of the challenges of the new economy.

Gender equality

I would like to start by addressing the issue of gender diversity on boards and in senior management positions in listed companies. I have said several times that this is not just an issue of equality, but of the need to bring all available talent and intelligence into listed companies, not just 50% of it.

Last week, European Commission President Ursula von der Leyen publicly lamented that progress in terms of gender equality in top-level roles in large European companies is not fast enough, or at the same speed in all member states. In doing so, she announced the promotion of a directive to encourage the incorporation of women on the boards of European listed companies.

The approach of the President of the European Commission is not new (it entails rescuing a draft Directive from 2012, no less) but it raises two fundamental questions: the need to achieve true gender diversity in the corporate world and the instrument for its achievement, via the legal imposition of quotas or through recommendations.

Unlike countries such as Germany or France, Spain chose the second option and the different governments decided not to promote a quota system through legislation. In this context, the CNMV took the initiative by establishing gender diversity

recommendations for listed companies. We started in 2006, with the recommendation to explain the absence or insufficient number of women on the Board and the recommendation to change the selection methods to avoid this. We continued to insist in the 2015 code on the director selection policy, but with a specific target of 30% by 2020. And in the last review, precisely in 2020, we raised the target to 40% by the end of this year, 2022.

What has been the result of this journey? In 2012, the percentage of women on the boards of directors of Spanish listed companies was only 12%, while at the end of 2020 it stood at 26.1% for all listed companies as a whole and 31.3% for Ibex companies. According to the data of the study presented below, the percentage of female presence continued to increase throughout 2021.

We are often asked whether progress is happening fast enough or whether a system of mandatory quotas should be adopted. My answer is that it depends on how you look at the matter. A snapshot analysis of one year in comparison to the previous year tells us that the pace of progress on gender equality on boards is slow. But if we broaden the focus of analysis, looking at it from the perspective of the decade 2012-2022, reaching the proposed target this year 2022 (40%) would mean a gain of 28 percentage points. If Spanish listed companies reach the targets we have set in the Code by 2022, the European directive (the first draft of which set the minimum presence of women at 40%) will no longer be necessary in our country, although it will undoubtedly be positive in terms of reducing the deviation from the average and homogenising the pace of the different countries.

But far from complacency, to reach the new 40 per cent target, the accelerator must be pressed. The time is now, and the goal is fair and beneficial for business and society.

Our real Achilles' heel in gender equality, however, is in the area of women's presence in the top management of companies. In 2020, only 17% of senior managers were women, only one percentage point more than in 2019. Their study shows that, as of 2021 year-end, this percentage has risen by only one percentage point over the course of the year as well. Clearly, not enough progress is being made, given that senior management is the natural incubator or breeding ground for future female executive directors, which is where women have the least weight. It is true that the greater the diversity on Boards, the greater the sensitivity in CEO and senior management selection procedures. In any case, in 2020 we decided to incorporate for the first time in the Good Governance Code a recommendation to expressly encourage the incorporation of female senior managers.

In all of this, transparency of information is the most effective tool. Although we do not act as quickly as the diversity report presented today, with data from 2021, as we obtain the data from the official source of the ACGRs we receive, which can be submitted until April, the CNMV decided a few years ago to provide gender diversity

information by individual company, in comparative tables to facilitate its analysis. I firmly believe that such transparency and the associated scrutiny works.

The international comparison also works. Care must be taken here with sources and methodologies, as there is no uniform mandatory reporting for listed companies, which can lead to misinterpretation of the statistics. With all that caution, if we compare ourselves with the four or five benchmark countries in the EU, in terms of size of economy and development, we can take reports such as those produced by EWOB (European Women on Boards). If we look at the percentage of female directors and female executives in the top 600 European companies, we see that the average for Spain, France, Germany, Italy, the Netherlands and Sweden is 35% for female directors and 17% for female executives. In other words, we are below average, but in a very similar order of magnitude.

Shareholder activism and the Stewardship Code

Now I would like to move on to shareholder activism and the agency problem existing between executives and shareholders in listed companies, which is one of the most classic issues in corporate governance.

Numerous authors have pointed to the risks of listed companies being managed by senior management without aligning strategy with shareholder interests. Hundreds of academic papers point to the need for shareholders to influence and have an impact on the life and direction of companies. Some authors, such as JK Galbraith, devoted the last publication of his academic life to this problem, warning of the risk of capitalism becoming the bureaucracy of executives.

But from all angles from which this issue has been analysed, one measure is unanimous among academics: encouraging shareholder voting and subjecting executive control to shareholder choice. In our country, recent governments, regardless of their political party colours, have internalised this objective and have encouraged shareholder participation and activism, reinforcing the mechanisms for convening, powers and participation in the general shareholders' meeting. These include the 2014 reform of the Spanish Corporate Enterprises Act and the 2020 and 2021 reforms to encourage remote participation in meetings.

Among shareholders in general, there is one group where their participation is particularly important: institutional managers and investors, a term which encompasses fund and pension fund managers and the insurance sector. Their importance lies in the fact that they actually represent a number of "indirect shareholders", i.e., the unitholders or clients to whom they have a significant fiduciary duty.

An interesting element in this debate is the hypothetical contradiction that some point to between the defence of shareholders' interests and that of other stakeholders. Such

a dilemma arises, for example, when the financial profit of the listed company and the creation of value, which should be the objective of shareholders, is set against the introduction of long-term factors and social or environmental sustainability, which should supposedly be the objective of other stakeholders and society as a whole. The first temptation is to conclude that if shareholders are to be pleased, the share price must be the only objective and social or environmental considerations take second place and are subordinate to the former.

I strongly disagree with this approach, for two reasons. The first, which affects all companies, is that sustainability is now part of company strategy, precisely in order not to destroy value and to survive. Regulatory, political and social pressures have already permeated companies' strategies: in the medium term, ESG factors are already determining factors in the company's own value creation and business continuity. For example, there is not a single relevant company in the automotive or oil sector that does not have demanding decarbonisation plans today. It is not an option, rather it is a vital business necessity.

The second reason, which particularly affects listed companies, is that social and environmental sustainability preferences are already being mainstreamed by savers and, through them, institutional investors. The supply of capital, that is, savings, is already acting as a catalyst for ESG factors in listed companies. Investors, shareholders, are no longer "financial" or "conscientious" investors. They are both and therefore directors, in defending the interests of shareholders, must incorporate both dimensions. We could say that institutional investment is an element of reconciling these two perspectives, the financial and the broader ESG world and the long term. And in that sense, it may prove to be an essential factor in the transformation that listed companies are undertaking and will have to continue to undertake in the remainder of this decade.

Changes to MiFID regulations will, for example, require banks and IFs to ask their clients in a few months' time (at the earliest in August this year, if the regulatory timetables are not changed) whether they have sustainability preferences when allocating their investments. And the regulations require them to tailor the products they advise on or manage to those preferences expressed by their clients. This will result in a better connection between unitholders, fund managers and the companies in which they invest, in terms of ESG factors and how they are embedded in their business.

But beyond this sort of squaring of the circle, in the normal life of a company, nothing good comes from a passive and meek shareholder who leaves key decisions in the hands of managers and who does not scrutinise their management, their results or their remuneration.

This is why many countries have sought, beyond regulation, recommendations addressed to institutional investors holding significant stakes in listed companies.

These are recommendations encouraging them to get involved in the decision-making mechanisms, to know the companies in which they invest and above all to vote, exercising responsible activism that leads to improved management and benefits for shareholders as a whole.

This has led the CNMV to initiate in 2021 an exercise to assess the extent to which it might be appropriate to adopt such a code of recommendations in Spain. Should we conclude that this is appropriate, the idea would be to have a document that could be put out for public consultation in this first half of the year.

Importance of improving corporate governance

Another always relevant aspect of corporate governance is the adoption of the recommendations of the Good Governance Code for listed companies. The level of monitoring by our listed companies is high (close to 85%). But let us not fool ourselves. A set of recommendations followed by 100% of companies will no longer represent an improvement objective. The codes are therefore reviewed periodically, as our target horizon and international best practices evolve. We do not foresee any upcoming revisions of the code, given the recentness of the last one (2020), but there will certainly be evolutions to incorporate in the next four to five years.

Ultimately, the aim is to maintain investor confidence, which is, after all, the raw material of stock markets. To this end, listed companies need to be extremely vigilant in their corporate governance and avoid reputational damage in the face of certain irregular behaviours. Undoubtedly, most of our listed companies have governance systems comparable to those of the most developed international markets, as well as ethical standards as high as those of companies in our neighbouring countries, but we cannot become complacent, because investor scrutiny is becoming ever closer and deeper. Spanish companies are competing with other European companies for international capital, and in this competition the good governance angle is increasingly important.

Crypto-assets

I shall conclude by referring briefly to one specific matter.

The economic transformation linked to digitalisation affects not only society as a whole, but also the profile of directors and the competency matrix to be covered in listed companies. Digital transformation therefore affects corporate governance, and also the rise of new instruments that require specific regulation.

In recent years, the world of crypto-assets and the technology that supports them have gained a presence in the financial system so that these assets are being offered as investment objects, not only to specialised investors but also to the retail public. The

promotional banner is a supposedly quick return in a context of meagre returns on more traditional assets. But the associated risks are many and substantial.

Last week we published in the BOE (Spanish Official State Gazette) the CNMV circular that regulates the advertising of these assets when they are offered as an investment object. It develops the rules, principles and criteria to which the advertising activity of crypto-assets as a possible investment should be subject, but under no circumstances regulates such products or their providers or their specific characteristics.

But surely one of the most important aspects of the Circular on crypto-asset advertising is the fact that it regulates this advertising activity not only for the firms providing crypto-assets, but also for the natural persons who promote and sponsor the investment activity in this type of product, known as influencers on social networks or "finfluencers", who have emerged in recent years. I encourage these influencers to read the Circular carefully to avoid infringements: complying with the Circular will also improve their accountability to their followers so that they are aware of the risks associated with these unregulated products.

In conclusion, firstly, I would like to praise the initiative of this conference, because of the relevance of the subject, as I have tried to illustrate. Secondly, I want to call on Spanish listed companies to continue, in the coming years, the progress they have shown in this area. And finally, I would like to encourage business organisations, investor associations, academics and legal experts to keep the debate on good governance alive as a real instrument for the transformation of our society. We at the CNMV will certainly endeavour to continue to do so. Thank you very much.