

Update on the application of the rules designed to increase the presence of women in the boardrooms of large French companies

Law n°2011-103 of January 27, 2011 on balanced representation of men and women on boards of directors and supervisory boards and on gender equality in the workplace, also known as the “Copé-Zimmermann” Law, provides for the phased introduction of a greater gender diversity in boards of directors of large French companies.

The last stage of implementation of this Law will start on January 1, 2017. This provides an opportunity to make a status report on this legislation that has already inspired many other countries.

The so-called “Copé-Zimmermann” Law (the “Law”) was published on January 27, 2011. It required that certain companies include 40% of women on their corporate boards, effective as from January 1, 2017. The Law was supplemented by a law n°2012-347 of March 12, 2012 on the access of women to senior positions in the Civil Service, and more recently by a law of August 4, 2014 on real equality between men and women.

1. Targeted companies

In the private sector, the obligation to implement gender diversity imposed by the Law applies to boards of directors and supervisory boards of:

- listed companies; and
- unlisted *sociétés anonymes* (joint stock corporations) and *sociétés en commandite par actions* (limited

partnerships) (i) employing an average of at least 500 people, and (ii) with revenues or total assets over 50 million euros, for the last three financial years.

One might legitimately wonder why this legislation does not apply to *sociétés par actions simplifiées* (simplified joint stock companies), a legal form that is commonly used by corporate groups, even large ones, insofar as such companies can provide in their by-laws for the creation of a board of directors, just like in *sociétés anonymes*.

2. Introduction of progressive quotas for board representation

In order to allow targeted companies to prepare the implementation of this legislation, the Law provided for a phased transitional period of six years that started running as from the enactment of the Law. As such:

- In 2011: If one gender was not represented on a board, at least one representative of that gender had to be appointed at the next general meeting;
- In 2014: The percentage of directors of each gender could not be less than 20% of the aggregate number of board members;
- As from January 1, 2017: The quota for each gender may not be less than 40% of the aggregate number of board members. In addition, in boards that comprise more than eight members, the difference in the number of members of each gender may not be more than 2. The composition of boards must be made compliant with the above provisions at the first general meeting that will take place after January 1, 2017^[1].
- As from January 2020: In unlisted companies, the aforementioned threshold of 500 employees will be reduced to 250 employees.

3. Sanctions

Non-compliance with the rules on gender diversity in boards of directors and supervisory boards is sanctioned by:

- The nullification of the appointment made in violation of the above-recalled rules but the deliberations to which the irregularly-appointed director or member of the supervisory board took part remain valid;
- The suspension of the compensation due to board members as long as the composition of the board is not compliant.

4. Assessment of the impact of the “Copé-Zimmermann” Law on the eve of the next phase due to start on January 1, 2017

The *Haut Conseil à l’Egalité entre les femmes et les hommes* (High Council for Gender Equality, an independent consultative body that reports to the Prime Minister) issued on February 10, 2016 a “mid-term report” on the application of the Law.

Generally speaking, it appears that the rules imposed by the Law are “*rather well implemented within listed companies*”. However, and despite an undeniable momentum, many observers agree on the fact that the 40% quota will not be achieved in all decision-making bodies targeted by the Law. Faced with this situation, some legal practitioners even call for strengthened sanctions, such as for example the nullification of the decisions made by a board of directors or supervisory board that do not meet the gender diversity requirement.

5. International perspective on gender diversity in decisions-making bodies

Gender imbalance in corporate decision-making bodies remains an important challenge internationally, including, in particular, for EU Member States. Yet, legislative measures and initiatives to increase gender diversity on corporate boards multiplied over the last few years and took a number of various forms[2].

Just like France, several countries have adopted a specific legislation that imposes mandatory quotas, sometimes with sanctions and local penalties in case of non-compliance (Italy, Belgium), sometimes not (the Netherlands, Spain). Other countries preferred to set up a range of initiatives and tools that can be implemented on a voluntary basis. In the UK, the government encouraged FTSE 350 companies to set the percentage of women they aim to have in their top decision-making bodies. Lastly, it appears that some European companies concerned with the need to rebalance the proportion of men and women on their corporate boards and fully aware of the issue of having women on such boards, took initiatives on their own. As such, in Germany, DAX30 companies have announced their individual targets for increasing the presence of women in management positions.

It could also be noted that the European Commission presented in 2012 a draft Directive setting a 40% objective of the under-represented gender in non-executive board-member positions in publicly listed companies, with the exception of small and medium businesses. The draft Directive is, however, still pending as it has not yet been adopted[3].

Even though comparisons between countries remain difficult since each initiative has its own scope, France has now joined the group of countries where the measures implemented have been the most effective: In 2015 only Norway – and France – had a percentage of women sitting on boards of listed companies in excess of 30%[4].

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- [1] Legal Commission of ANSA (French association of joint stock companies) – Meeting of September 7, 2016
- [2] Women in economic decision-making in the EU: Progress report, A Europe 2020 initiative
http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf
- [3] http://europa.eu/rapid/press-release_MEMO-15-4563_en.htm
- [4] According to Deloitte Global Center for Corporate Governance’s fourth edition of “Women in the Boardroom: A Global Perspective”

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