



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Austria
<b>Title:</b>	Austria enacts legislation for a 30% quota of women on supervisory company boards
<b>Date:</b>	23 November 2017
<b>Expert:</b>	Martina Thomasberger
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Gender equality, women on boards
<b>Ground of discrimination:</b>	Sex
<b>Sources:</b>	Federal legislation
<b>Field:</b>	Employment
<b>Applicable law:</b>	Act on Equality of Women and Men on Supervisory Boards (Gleichstellungsgesetz von Frauen und Männern im Aufsichtsrat, GFMA-G, BGBl I 104/2017) published on 27 July 2017

### Content

**New legislation concerning gender equality on supervisory boards:** The governing coalition of the Social Democrats and the conservative People's Party ended in May 2017, and early elections for parliament were scheduled for 15 October 2017. During the period after the falling apart of the governing coalition and the new elections, the process for the adoption of new legislation was more flexible than normal. Usually the government drafts legislative proposals accompanied by explanatory notes. The explanatory notes are then submitted to stakeholders for an extensive assessment process before starting deliberations in Parliament. During the transition period before the election, parties took the opportunity to draft legislation without this preliminary process. Social Democrats and Conservatives presented a joint proposal for Equality of Men and Women on Supervisory Boards, which was passed with the support of the Green Party in one of the last legislative sessions before the elections. Due to the more informal legislative process there are no explanatory notes or stakeholder evaluations of the legislation available. This resulted in some ambiguities in the understanding of the new provisions.

**Key points of analysis:** From 1 January 2018, appointments and postings to supervisory boards of listed stock companies, and of companies with more than 1000 employees whose boards consist of at least six seats, must consist of a minimum of 30% of the underrepresented sex. Only "single gender" companies (defined as companies that have a workforce with less than 20% employees of one sex) are exempt from the new regulations. The 30% quota is sanctioned with an "empty seat" policy meaning that appointment votes and postings that fail to meet the required minimum are void and board members holding such seats are barred from voting. The new regulations take effect on 1 January 2018 and are applicable to all board elections from that date onward. Current seat holders on company boards will not be affected.

**Analysis:** The quota is only required for company boards with six or more seats. This results in the fact that there may still be all male company boards under the new legislation. The regulations state that quota calculations resulting in decimal points must be rounded up or down to reach full seat numbers if the decimals are 0.5 or more. Under Austrian law supervisory boards consist of double the amount of stakeholders compared to employee's representatives posted by the works council. The quota can be fulfilled by counting all board members together, except in cases where shareholders' representatives and works council representatives object; in these cases, each group has to meet the quota requirement separately. Where there is a joint quota policy in place, the required seats can be filled by both groups or by one group alone, so that theoretically on a company board with eight shareholder seats and four works council seats an all-female employees' delegation could meet the quota requirement without the shareholders having to act. The calculation rules also imply that in cases where shareholders and works council's decide to meet the quota's separately, only three seats would be enough to meet the requirement. For example: 30% of eight shareholder seats results in 2,4 seats which is rounded down to two seats, and 30% of four works council seats result in 1,2 seats which is rounded down to one seat, therefore the quota requirement would already be met in this case with only three instead of four seats. Experts in company law are debating the implications of the new legislation, e.g. the applicability on the level of limited liability of companies. The regulations are open to interpretation, so that it is not clear whether the quota requirement for company boards with at least 1000 employees has to be calculated for single companies or also for legally incorporated concern companies (which would be implied by regulations in the applicable legislation). Due to the unusual legislative process, there are no explanatory notes that would give some indications as to how the legislator understands the regulations. Much interpretation work will be left to the developing practice in companies and to legal expertise.

**Internet link source:**

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