



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

### NEWS REPORT

<b>Country:</b>	Spain
<b>Title:</b>	The Government approved a Royal Decree transposing Directive 2013/36 and Directive 2014/95 on the disclosure of non-financial information specifically referring to measures taken by listed companies to increase the percentage of women in non-executive company boards.
<b>Date:</b>	30 November 2017
<b>Expert:</b>	María Amparo Ballester Pastor
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Women on non-executive company boards
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Legislation
<b>Field:</b>	Employment
<b>Applicable law:</b>	Royal Decree 18/2017, of 24 November 2017 on non-financial statement and diversity ( <i>Real Decreto-ley 18/2017, de 24 de noviembre, en materia de información no financiera y diversidad</i> )

### Content

On 24 November 2017, the Spanish Government approved the Royal Decree 18/2017, on non-financial statement and diversity. This piece of legislation transposes Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, and Directive 2014/95 amending Directive 2013/34/EU regarding disclosure of non-financial and diversity information by certain large undertakings and groups. The Royal Decree 18/2017 has been approved through an urgent legislative procedure, given that the deadline for the transposition of the above referred Directives had already passed.

The Royal Decree 18/2017 has affected three pieces of legislation: the Code of Commerce (Royal Decree 22 August 1885), the Law of Corporations (Royal Legislative Decree 1/2010, of 2 July 2010) and the Law of Auditing (Law 22/2015, 20 July 2015). Referring specifically to the obligation of the disclosure of information for listed companies, the new Article 540.4.6 of the Law of Corporations states that a description of the diversity policy applied in the composition of the non-executive board of listed companies must be made public. The aspects to be taken into account include age, gender, and educational and professional backgrounds. The new Article 540.6.6 of the Law of Corporations states specifically that companies must refer to the measures they have taken to include women and reach a gender balance in their non-executive board (*Consejo de Administración*). If no such policy is applied, the statement must explain as to why this is the case. This Article almost literally reproduces what Article 20 (1) (g) Directive 2013/34/EU, after being modified by Directive 2014/95/EU says, but adds a very interesting reference about the gender composition of the non-executive boards. Article 540.4.6 of the old Law of Corporations already stated that companies were

obliged to publicize the measurements that were taken in order to obtain a gender balanced non-executive board. However, the current Royal Decree states that, if no such policy is applied, the statement shall contain an explanation as to why this is the case. This addition reinforces the objective set in Article 75 of the Law on Effective Equality. This Article states that the companies that are obliged to submit a non-abbreviated profit and loss account "will try" to include in their Company's non-executive Boards a number of women in order to reach a balanced presence of women and men over a period of eight years from the date of entry into force of the Law (the deadline was 24 March 2015). The objective refers to very large companies which cannot submit abbreviated profit and loss accounts, employ more than 250 workers and have a turnover exceeding EURO 22 million a year.

The concept of a balanced presence of women and men is contained in the Additional Provision 1 of the Law on Effective Equality. According to this provision, the presence of women and men is well-balanced when the number of people belonging to one sex on non-executive boards, does not exceed sixty percent. This means that the aimed percentage of the underrepresented sex is 40. This is a soft target, since companies only have the obligation to "try" to reach it. Moreover, the obligation to aim for gender balanced non-executive boards only applies to the large companies included in Article 75 of the Law on Effective Equality, and only these companies would have to give explanations if no such policy is applied.

**Key points of analysis:** Royal Decree 18/2017, of 24 November 2017 on non-financial statement and diversity (*Real Decreto-ley 18/2017, de 24 de noviembre, en materia de información no financiera y diversidad*), imposes an obligation to provide a Corporate governance statement in the management report of listed companies which shall include a description of the diversity policy applied when composing their non-executive board of the company (*Consejo de Administración*). This statement will specifically have to refer to the measurements that, if they exist, would serve to include women in order to reach a gender balance in their non-executive board. If no such policy is applied, the statement must contain an explanation as to why this is the case.

**Internet link sources:**

- Royal Decree 18/2017, of 24 November 2017 about non-financial statement and diversity [http://noticias.juridicas.com/base\\_datos/Fiscal/608813-rdl-18-2017-de-24-nov-modifica-codigo-de-comercio-texto-refundido-de-la.html](http://noticias.juridicas.com/base_datos/Fiscal/608813-rdl-18-2017-de-24-nov-modifica-codigo-de-comercio-texto-refundido-de-la.html), accessed 28 November 2017
- Law on Effective Equality between women and men, Law 3/2007 of 22 March 2007 [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2007-6115](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2007-6115), accessed 28 November 2017