



A code of good practice to promote gender equality on boards of directors of medium-sized enterprises as a corporate sustainability goal

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Abstract

This paper presents a Code of Good Practice to promote gender equality within senior management and on boards of directors of companies. The underrepresentation of women on such bodies indicates the need to promote inclusive, diverse leadership based on the fundamental principle of the right of equality in the private sector also, without forgetting the advantages that this brings to the companies themselves. The gradual incorporation of “hard law” regulations to foster equality derived from the initiatives of the national legislator and promotion via European regulations falls far short of guaranteeing a balanced presence in this sphere. This lends significance to “soft law” instruments. Measures are proposed with regard to the selection and promotion of candidates, work–life balance and training and internal and external communication at companies. The measures are initially focused on small and medium-sized enterprises in Gipuzkoa (Basque Country), but could be implemented at larger companies and elsewhere, taking into account the legal framework. At the same time, a number of 20 indicators have been proposed to quantify the impact of the implementation of these recommendations.

Keywords Gender equality · Code of good practice · Board of directors · Selection and promotion criteria · Work–life balance and training · Transparency

JEL Classification J7 · J16 · J31 · K22 · K38 · M12 · M14 · M51

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Introduction

Purpose of the study

This study sets out to draw up a code of good practices or guidelines in the form of recommendations, in order to facilitate the incorporation of women into senior management posts and boards of directors of small and medium-sized companies (SMEs).

More specifically, an institutional programme¹ to promote the transformation and sustainability² of the small region of Gipuzkoa,³ part of the Basque Country in Spain, has served to structure and develop a regulatory instrument to incorporate gender equality into senior management and boards of directors⁴ at trading companies and cooperatives, although the recommendations could also be implemented at large or very large companies.

As mentioned above, the territory of Gipuzkoa is located in the Basque Country,⁵ a region in which the industrial sector has been fundamental for the development of its economy and its companies. Therefore, we think that the application of the recommendations of the Code could fit well with the business and companies from other regions of different Member States, where their socio-economic and business reality is similar and, in economic terms, they have a similar GDP and business growth.

Without listing exhaustively, the regions with similar economic characteristics and as a guideline, we propose the visualization of the Eurostat maps,⁶ about the data related to different economic indicators of diverse European regions, as well as those referred to the creation and increase of companies.⁷

The Spanish regulations governing capital companies set out programmatic legal norms that structure the access of women to the boards of directors of large

¹ The *Etorbizuna Eraikiz Think Tank* programme forms part of the Gipuzkoa Provincial Council's Strategic Plan (2020–2021). Retrieved September 29, 2021, from <https://www.gipuzkoa.eus/en/web/etorkizuna-eraikiz/listen/think-tank>.

² Gender equality (SDG 5 of the 2030 Agenda) is formulated as a fundamental human right, entailing full and effective participation by women in political, economic and public life. Resolution adopted by the General Assembly on 25 September 2015, "Transforming our world: the 2030 Agenda for Sustainable Development", A/RES/70/1.

³ Its capital is Donostia-San Sebastian, its surface area is 200,000 ha and its population is 720,498, Eustat 2020, Retrieved October 4, 2021, from https://en.eustat.eus/municipal/datos_estadisticos/donostia_san_sebastian.html.

⁴ The term "board of directors" here includes the various forms of managerial decision-making admitted under Spanish Law (a sole director, one or more joint or joint and several directors, or a board of directors).

⁵ Integrated in Spain by three territories: Bizkaia, Gipuzkoa y Araba.

⁶ Gross Domestic Product indicators. Retrieved September 16, 2023, from <https://ec.europa.eu/statistical-atlas/viewer/?mids=BKGCNT,C07M01,CNTOVL&o=1,1,0.7&ch=C01,ECO,C07¢er=48.9576,9.98263,3&lcls=C07M01&>.

⁷ Indicators related to company creation and growth. Retrieved September 16, 2023, from <https://ec.europa.eu/statistical-atlas/viewer/?mids=BKGCNT,C08M01,CNTOVL&o=1,1,0.7&ch=C01,ECO,C08¢er=48.9576,9.98263,3&lcls=C08M01&>.

companies. The Securities Market Commission (CNMV) also promotes a good governance code for large companies (Good Governance Code).⁸ However, this self-regulating framework is not well suited to SMEs, which make up the backbone of business and the economy in both the region of Gipuzkoa and Spain as a whole.

Data from September 2022 show that 55.12% of businesses in Spain are micro-enterprises without employees, 38.30% are micro-enterprises with employees (from 1 to 9), 5.50% are small companies (10 to 49 salaried employees), 0.90% are medium-sized companies (50 to 249 salaried employees) and only 0.18% are large companies (over 250 salaried employees).⁹

Data on Gipuzkoa for 2021 show 24,039 micro-enterprises without employees, 20,831 micro-enterprises with employees (1–9), 2,222 small companies (10–49 employees), 408 medium-sized companies (50–249 salaried employees) and only 81 large companies (over 250 salaried employees). Taking the number of companies per 10,000 inhabitants in Spain as a reference, Gipuzkoa is ranked 20th out of the 50 Spanish provinces (including the cities of Ceuta and Melilla). In terms of the Autonomous Community of the Basque Country (which also includes Bizkaia and Araba), Gipuzkoa has 34% of the total number of companies. A breakdown by sectors shows that the province has 39.10% of the industrial companies in the Basque Country. As for legal form, 58.1% are owned by a natural person and 28% are private limited companies.¹⁰

Justification of the study

As mentioned, there are two main Spanish regulations governing capital companies, which are subject to a range of programmatic regulations: the Spanish Capital Companies Act (*Ley de Sociedades de Capital*, or ‘LSC’)¹¹ (Articles 260.10; 529 *bis*; 529 *quindecies* 3.b and 540.4.c.8) and the Code of Good Governance for listed companies (CNMV 2020). These regulations include measures to foster the presence of women on boards of directors and give a greater role to non-financial information and sustainability (Recommendations 10 and 14) (Del Val Talens 2019, pp: 186–7; Sala Andrés 2019, pp: 232). However, they make up a regulatory framework that affects only large companies and places no obligations upon SMEs.¹²

This has led revealed a gap in studies, firstly due to the insufficient development of proposals for guidelines or suitable codes for incorporating women into senior

⁸ Approved by the National Securities Market Commission (CNMV) in 2015 and revised in 2020.

⁹ Retrieved November 20, 2022, from https://industria.gob.es/es-es/estadisticas/Cifras_PYME/Cifras_PYME-septiembre2022.pdf.

¹⁰ Retrieved from https://industria.gob.es/es-es/estadisticas/Estadisticas_Territoriales/Estructura-Dinamica-Empresarial-2021.pdf.

¹¹ Royal Legislative Decree 71/2010, of 2 July 2010, approving the recast text of the Capital Companies Act, BOE-A-2010-10544.

¹² In this sense, see also Article 2 of the Directive (EU) 2022/2381 of the European Parliament and of the Council, of 23 November 2022, on improving the gender balance among directors of listed companies and related measures, recently approved by the European Parliament (17 October 2022), PE/59/2022/INIT, ELI: <http://data.europa.eu/eli/dir/2022/2381/oj>.

management and boards of directors of SMEs in general and family companies in particular (Díaz Gómez 2017, pp: 43). Secondly, the level of application of this kind of self-regulation has been low and there have been few studies of doctrine in this regard (Aguilera and Cuervo-Cazurra 2011; Garnacho Cabanillas 2019, pp: 36).

These statements are based on the analysis of codes and guidelines in our local setting and examinations carried out by public bodies and leading business associations at both state level (Institute of Equality, Ministry of Economy, CEPYME) and regional level (Emakunde, Gipuzkoa Provincial Council, Aspegi, Adegí, Chamber of Commerce of Gipuzkoa). These analyses have led to the conclusion that no comprehensive codes or guidelines have been drawn up that factor the gender perspective into senior management or boards of directors of SMEs.

Additionally, a search for specialist doctrine on the subject in the main Spanish legal databases (Dialnet, Aranzadi and VLex) has turned up works related mainly to the good governance codes of large, listed companies.¹³

Structure of the study

This study is organised into two main sections. The first covers data and evidence to justify the drawing up of a code or guidelines for good practices for incorporating women into senior management and the boards of directors of SMEs in general and those in Gipuzkoa in particular.

The following section analyse and explain the specific measures proposed in the recommendations for incorporating women into senior management and boards of directors. Specifically, the analysis focuses on three essential frameworks that make up the structure of companies: selection and promotion of candidates for senior management and boards of directors, work–life balance and training measures at companies and, finally, transparency measures to improve external and internal communications at companies.

Methodology

The Code of Good Practice (CGP) is developed using an eclectic methodology. Based on an empirical analysis of the actual situation, in which good practice standards are hardly applied at all at SMEs (including family businesses), which make up the core of the business network in Gipuzkoa, the Basque Country and Spain as a whole, the study follows the classic methodology of legal science (Garrigues 1947; De Eizaguirre 2008; Gondra 2013). Hence, it also incorporates nuances of modern economic analysis of law (Paz-Ares 1995; Embid 2017).

¹³ Retrieved November 20, 2021, from https://dialnet.unirioja.es/buscar/documentos?querysDismax.DOCUMENTAL_TODO=codigos+de+buen+gobierno; Aranzadi, Retrieved November 20, 2022, from <https://insignis.aranzadidigital.es/maf/app/search/run/multi>; Retrieved November 20, 2021, from La Ley Digital, <https://laleydigital.laleynext.es/Content/Inicio.aspx>; Retrieved November 20, 2021, VLex, from https://app.vlex.com/#search/jurisdiction:ES+content_type:4/codigo+de+buen+gobierno+g%C3%A9nero+pymes/p2.

Thus, the classic construction of civil law is considered, i.e. the programmatic and legal norms that make up the legal regime governing companies (the “hard law” of the Capital Companies Act) and also the “soft law” that regulates good governance at large companies in Spain (Code of Good Governance). It also considers the guidelines and legal proposals of the European Commission in relation to the incorporation of women into decision-making bodies in the private sphere of large companies. More specifically, this means the Directive of the European Parliament on improving the gender balance among non-executive directors of companies listed on stock exchanges and regulated markets.¹⁴

These norms are not binding for SMEs (including family businesses). Moreover, their adaptability and flexibility to such businesses are limited. Nor should it be forgotten that various regulations (Capital Companies Act and European Directives) do not cover them.

This fact, along with the small number of good governance guidelines or codes drawn up and treated doctrinally,¹⁵ has led to the setting up soft law regulations with recommendations of a simple, broad, flexible nature, structured into three large blocks: recruitment processes, conciliation and transparency. These seek to act as a legal instrument to guide SMEs in Gipuzkoa in incorporating women into decision-making positions.

Contribution

The regulatory instrument drawn up comprises a Code of Good Practice (CGP) to promote real, effective gender equality and diversity in the decision-making bodies of certain enterprises within the region.¹⁶ The 27 Recommendations of the CGP thus focus essentially on the SMEs that account for most of the socio-economic structure of Gipuzkoa.¹⁷

The Recommendations of the CGP are also structured in accordance with certain proposals regarding recruitment, promotion, work–life balance¹⁸ and transparency measures set out below (Mateu De Ros 2019, pp: 89; Pérez Troya 2019, pp: 201; Sala Andrés 2019, pp: 223).

¹⁴ *OJ L 315*, 7.12.2022, 44–59, ELI: <http://data.europa.eu/eli/dir/2022/2381/oj>.

¹⁵ Covered in the section “Legal and economic context of the study”.

¹⁶ Vid. Annex.

¹⁷ In 2020, Gipuzkoa was home to 14,146 private limited liability companies and a total of 747 active cooperatives; 3/4 of its businesses are small enterprises (average 3 employees) and almost 1/4 are of medium size (16.6 employees). INE, Retrieved October 4, 2021, from <https://www.ine.es/jaxiT3/Tabla.htm?t=302andL=1>.

¹⁸ Retrieved December 2, 2022, from <https://eur-lex.europa.eu/legal-content/ES/TXT/HTML/?uri=CELEX:32019L1158andfrom=EN>.

Legal and economic context of the study

This section looks at some of the guidelines and codes from our territory, based on their legal affinity with the type of organisation that we set out to analyse. Our initial analysis reveals that most of them do not incorporate standards that facilitate women's access to senior management and boards of directors of SMEs.

At the level of Spain as a whole, the Spanish Confederation of Small and Medium Enterprises (CEPYME) publishes a Guide to Good Governance for SME companies, Recommendation 6 of which gives a rule that superficially includes the gender criterion in the selection of the people that make up the board of directors.¹⁹

At the level of the Basque Autonomous Community, the Basque Institute for Women (*Emakunde*) has a section dedicated to advising and helping companies and other organisations to implement equality plans, though it does not include a code or specific guidelines on incorporating the gender perspective into recruitment of senior management and membership of boards of directors of companies.²⁰

Likewise, *Aspegi* (Association of Professionals and Entrepreneurs of Gipuzkoa) published a guide in September 2015 containing recommendations on equalising the conditions for the access of women to boards of directors and managerial positions at companies that dealt generically with this issue. This guide was intended mainly as advice for companies and organisations in the territory.²¹

In 2020, *Ekonomistak* (Basque Institute of Economists) published a practical guide for Basque companies to help them implement the 2030 Agenda of the United Nations, so as to contribute to attaining the Sustainable Development Goals (SDGs). This is also a principled, generic guide in relation to the need not to discriminate against women.²²

Like *Emakunde*, the Institute for Equality, a body answerable to Spain's Ministry of Equality,²³ provides Spanish companies with a variety of tools for implementing equality plans and remuneration audits. The Institute's catalogue includes a number of guides related to the implementation of work–life balance measures.²⁴ However, there are few publications or reports that specifically take the gender perspective into account in setting out good practices for attracting and holding on to talent and

¹⁹ Retrieved November 20, 2022, from <https://cepyme.es/wp-content/uploads/2022/08/Guia-Buen-Gobierno-Pymes.pdf>.

²⁰ Retrieved November 20, 2022, from <https://www.emakunde.euskadi.eus/empresa-organizaciones/-/empresa-organizaciones/>.

²¹ Retrieved November 20, 2022, from https://www.aspegi.org/images/pdf/GUIA_RECOMENDACIONES_ES.pdf.

²² Retrieved November 20, 2022, from https://bideoak2.euskadi.eus/2020/11/24/news_65067/GU%C3%8DA_PR%C3%81CTICA_PARA_ORGANIZACIONES_VASCAS.pdf.

²³ Retrieved November 20, 2022, from <https://www.igualdadenlaempresa.es/asesoramiento/herramientas-igualdad/home.htm>.

²⁴ Retrieved November 20, 2022, from <https://www.igualdadenlaempresa.es/asesoramiento/herramientas-igualdad/home.htm>.

for promotion processes, or that address the presence of women on the boards of directors and in senior management of state-level publicly owned companies.²⁵

Hence, we set out here to develop a code of good practice (CGP) or guidelines that provide a regulatory instrument for SME companies in our territory and in Spain as a whole in incorporating women into their decision-making bodies, and to provide a number of indicators for assessing the extent to which this incorporation has a positive impact.²⁶

As mentioned above, the 27 Recommendations of the CGP are structured in accordance with certain proposals of the European Union²⁷ connected to recruitment, promotion, work-life balance and transparency measures, which are set out below in Annex. In addition, each part of the outline of the recommendations includes a reasoned explanation of the measures taken.

The Spanish legal framework in relation to European Union goals

Although there has been considerable progress in terms of the participation of women in decision-making bodies in both the public and private sectors in the European Union (EU), there are still few women in executive positions or on company boards of directors (Ruiz Garijo 2011, pp: 354–5).²⁸ This is why the European Commission (EC) sees the need for inclusive, diverse leadership so as to resolve complex challenges in decision-making, formulating new ideas and promoting innovation within the EU. Based on this principle, the EC has devised its 2020–2025 Gender Equality Strategy, the third priority area of which is to underpin “Leading equally throughout society”, so as to achieve a gender balance in decision-making and politics.²⁹ In this regard, the EC is working and promoting a number of actions,

²⁵ Retrieved November 20, 2022, from https://www.inmujeres.gob.es/servRecursos/ServicioPublicaciones/docs/Catalogo_Historico_Publicaciones_2022.pdf.

²⁶ Within the framework of the Etorbizkizuna Eraikiz Project for equality on boards of directors and the promotion of the work/life balance of the Gipuzkoa Provincial Council (2020–2021) by Ana Lasa Somocurzio, there is a “Proposal for indicators to assess the application of the Code of Good Practices for promoting gender equality in senior management and on the boards of directors of companies”. This proposal includes 20 direct, indirect long-term indicators which make it possible to set up an effective monitoring and assessment system for the objectives set. Retrieved from <https://egelaportfolio.ehu.es/view/view.php?id=18360>.

²⁷ Retrieved December 2, 2022, from <https://eur-lex.europa.eu/legal-content/ES/TXT/HTML/?uri=CELEX:32019L1158&from=EN>.

²⁸ 7.5% of women on board of directors, and 7.7% in executive management positions. Gender Statistics Database, European Institute for Gender Equality, Retrieved June 15, 2021, from https://eige.europa.eu/gender-statistics/dgs/browse/wmidm/wmidm_bus.

Grant Thornton 2021 estimates that women hold 34% of executive positions in Spain as a whole and 23% in The Basque Country (Gipuzkoa, Bizkaia and Araba). Women in Business 2021, Retrieved October 5, 2021, from https://www.grantthornton.global/globalassets/1.-member-firms/global/insights/women-in-business/2021/grant-thornton-women-in-business-report-2021.pdf?mkt_tok=NjQyLVNERS05MjQAAAGAiT6rkfmZCaQNwy0EEC4ma9rob7GVcRHL9EOUcee7n0IioqAxyuf4o9inIRo8ViEEGhvy8Fw2vpDuMp_3W11DfHwOtuIeEcdn2RhirA7w.

²⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Union of Equality: Gender Equality Strategy 2020–2025, COM (2020) 152 final.

since having a wide range of talents and abilities helps to improve decision-making and corporate governance (Shi et al. 2017, pp: 115; Maurer and Qureshi 2021) and drives economic growth (Maderaet al. 2019; Mckinsey and Company 2017; Catalyst 2020).

With this goal in mind, the aim was to adopt the 2012 Proposal for a Directive on improving the gender balance on company boards of directors,³⁰ which sets a minimum target of 40% of non-executive members of the underrepresented gender on boards of directors (Mateu De Ros 2019, pp: 90).

In this sense, in 2022, the European Parliament approved a mandatory law to improve gender balance on company boards. The Directive, which has yet to be transposed into national law, establishes that by 2026 at least 40% of non-executive director positions at listed companies should be held by members of the underrepresented sex. If member states choose to apply the new rules to both executive and non-executive directors, the target is 33% of all director positions by 2026.³¹

The core of the Directive stipulates that listed companies which fail to reach these targets will need to establish mechanisms to consider gender perspective in their recruitment and promotion process. In this regard, they will have to put in place fair and transparent selection and appointment procedures based on a comparative assessment of the different candidates on the basis of clear, neutrally formulated criteria. When companies have to choose between equally qualified candidates, they should give priority to the candidate from the underrepresented sex.

Additionally, in accordance with strategic line 3 of the 2020–2025 Equality Strategy, the EC will facilitate the exchange of good practices that address gender balance on boards of directors and in management positions in national or regional projects managed by public administrations, civil society or the private sector. Thus, it cooperates with the European Union Platform on Diversity Charters³² and with the European Gender Diversity Index.³³

Our CGP fits precisely into the framework of regional projects promoted by public administrations. It sets out good practices and good governance from a gender perspective at SMEs in the territory of Gipuzkoa.³⁴

Following in the wake of the EU 2020–25 Strategy, the aim is for the CGP to become established as an instrument for good practice, facilitating gender balance on the decision-making bodies of companies (Núñez Romero-Balman 2019, pp: 362–3). At the same time, once implemented it can contribute to future assessment by means of a set of 20 indicators,³⁵ which serve to quantify in the medium and long

³⁰ Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures, COM (2012) 614 final—2012/0299 (COD).

³¹ *OJ L 315*, 7.12.2022, 44–59, ELI: <http://data.europa.eu/eli/dir/2022/2381/oj>.

³² Retrieved December 2, 2022, from <https://www.eudiversity2022.eu/es/mes-europeo-de-la-diversidad-2022/plataforma-de-la-ue-sobre-las-cartas-de-la-diversidad/>.

³³ Retrieved December 2, 2022, from <https://europeanwomenonboards.eu/>.

³⁴ The *Etorkizuna Eraikiz Think Tank* programme forms part of the Gipuzkoa Provincial Council's Strategic Plan, Retrieved September 29, 2021, from <https://www.etorkizunaeraikiz.eus/en/>.

³⁵ Vid. Note 26.

term the impact of putting these recommendations into practice, following the path of the European Index of Gender Equality in the context of the EU's "Women on Board" project.³⁶

To contextualise the Code drawn up, we must refer to the legal structures on which the Spanish and Basque parliaments have been working to safeguard effective equality between women and men within the legal system and in the context of corporate social responsibility (CSR) (Campuzano Laguillo 2019, pp: 47–8). They include Framework Act [*Ley Orgánica*] 3/2007 of 22 March 2007 for the effective equality of women and men (*Ley Orgánica para la Igualdad* or LOI),³⁷ and Act 1/2022 of 3 March 2022 for the equality of women and men in the Basque Country (*Ley de Igualdad de Mujeres y Hombres de Euskadi* or LIMHE).³⁸ In this regard, the CGP complies with the structure of the legislation in question and acts in harmony with the provisions of the subsection focused on CSR (Articles 73–75 LOI). This means that the CGP forms part of what is known as the "soft law" structure, with no penalties in the event of non-compliance. This issue has been subject to academic debate over recent years between those who call a mandatory quota (Campuzano Laguillo 2007, pp: 446–7; Senent Vidal 2007, pp: 540; Huerta Viesca 2009, pp: 390) and those who oppose this on the grounds that company law is private law. The reason is that the principles of corporate law regulate private relationships, which is why the legal literature is reluctant to allow mandatory law to govern private relationships, so some authors do not considerate appropriate to impose mandatory quotas in this area (Luján Alcaraz 2007, pp: 7).

In any event, the self-regulatory structure has not prevented the introduction of other "hard law" regulations which, without directly affecting the boards of directors of companies, indirectly affect access to the decision-making centres of businesses in the future (MacNeiland Li 2006; Mensi-Klarbach et al. 2021, pp: 580; Ahland Marlow 2021, pp: 54). In that sense, the recital 25 of the Directive 2022 of the European Parliament to improve gender balance on company boards, which calls on the Member States to stipulate binding measures to achieve a quantitative target for the gender composition of company boards of directors and to establish policies that support and encourage SMEs to significantly improve gender balance at all levels of management and on boards of directors.

The obligation on companies with 50 or more workers to draw up equality plans and other measures to promote equality in employment (Articles 45.2 and 46.1 LOI; 40 LIMHE) is worth highlighting.³⁹ These equality plans must include an ordered set of measures based on a diagnostic study from the gender perspective, intended to

³⁶ EWOB, European Gender Index 2020, Retrieved October 15, 2021, from <https://europeanwomenonboards.eu/portfolio/gender-diversity-index-2020/>.

³⁷ BOE-A-2007-6115.

³⁸ This Act is the second modification of the Act for the Equality of Women and Men (Act 4/2005 of 18 February 2005), published in the Official Gazette of the Basque Country (BOPV) issue n° 42, 02/03/2005 and in the Official State Gazette of Spain (BOE), [BOE-A-2011-17779](https://www.boe.es/boe/BOE-A-2011-17779).

³⁹ Royal Decree-Act 6/2019 of 1 March 2019 on urgent measures to guarantee equal treatment and opportunities for women and men in work and employment, [BOE-A-2019-3244](https://www.boe.es/boe/BOE-A-2019-3244).

achieve equal treatment and opportunities for women and men at the company and to eliminate gender discrimination. To that end, the plan will define specific equality targets to be met, strategies and practices for attaining them and effective monitoring and assessment systems for the targets set.⁴⁰

The provisions of law lay down much more robust foundations for the future to give women opportunities to take up positions of responsibility and senior management roles at medium-sized companies, and will unquestionably encourage more companies within the region to apply equality and good practice standards and protocols and to draw on external consultancy from experts in the field and seek institutional support.⁴¹

Notwithstanding the regulatory framework and the safeguards described, the fact must not be overlooked that the continuity and sustainability of companies depend on their economic performance and corporate profits. There is, therefore, a need to take into account the outcomes in terms of positive impact and efficiency at those companies that opt to include more women in their senior management and boards of directors.

The Code has not been tested yet, and in this sense, it is mentioned in the text that it is one of the limitations of the work. However, considering the statement 16 of Directive (EU) 2022/2381 on a better gender balance among directors of listed companies and related measures, the direct consequence of gender balance is the improvement in corporate governance. This is due to the fact that gender balance increases both team performance and quality of decision-making and it also generates diversity and collective mindset whilst adding broader perspectives.

Studies have also shown that diversity in general, and gender diversity in particular, translates into a more proactive business model, more balanced decisions and improved professional skills on boards of directors that reflects better both social realities and needs of consumers, while also fostering innovation.

One of these studies is the one made by *Peterson Institute for International Economics* (2016), investigating the impact of gender diversity in companies. The study analyzed 21,980 companies in 91 countries, demonstrating that corporate governance improves when the proportion of women in corporate leadership positions is higher. The research concluded that companies with at least 30% female presence in top executive positions achieve 15% higher profits (Nolan et al. 2016).

Another study that proves the previous point is the one made by the *Boston Consulting Group* in 2018. This study demonstrates the positive relationship between diversity in senior management and the company's financial results. The investigation showed that companies with greater board diversity earned higher profits (%19 more) than their competitors without diversity on their boards of directors. In addition, other research indicated that greater board diversity is associated with lower

⁴⁰ Royal Decree 901/2020 of 13 October 2020 governing equality plans and their registration (RD 901/2020), BOE-A-2020-12214.

⁴¹ *Emakunde*, 'Instituto Vasco de la Mujer', an autonomous agency of the Basque Government, "Equality in private companies and organisations", Retrieved October 20, 2021, from <https://www.emakunde.euskadi.eus/service-businesses/u72-coteieo/en>.

stock volatility and better governance. Both proposals have growing shareholder support, leading to a significant long-term sustainable growth (Lorenzo, Voigt, Tsusaka and Abouzahr 2018).

The third study that we want to refer to is closer to the type of company that has been analyzed on this paper, and it was carried out in Spain by the Pompeu Fabra University (UPF-BSM) in Catalan SMEs (Amat 2020a, b). This research has concluded that, as the proportion of women on board increases, companies are more profitable and less risky, mainly due to three factors. The first one is that women are more risk averse, hence they ask more questions about the risks of any decision and, in addition, women evaluate the decision from the perspective of all interested and involved parties.

It is worth noting the high number of studies that prove that gender balance and women's presence helps companies and economies to function more efficiently, increasing the likelihood of improving results, attracting talent and innovating, thereby promoting social progress and sustainability (McKinsey and Company 2017, pp: 17; ILO 2019; Huse 2007, pp: 95–6; Scott 2021, pp: 22–3), also for SMEs (Nasihin et al. 2023; García Solarte et al. 2018; Madison et al. 2022; Arora and Singh 2020; Luque-Vilchez et al. 2019). In any case, it is necessary to take into account the many circumstances that occur in relation to the appointment of women as members of the senior management or the board of directors, and which may influence the assessment of the data obtained by some studies, especially when they are not positive, as is the case with the “glass cliff” (Glass and Cook 2016, 2019; Patten 2018). From another point of view, some studies also link a greater presence of women in administrative and management bodies with more ethical behaviour and greater and better compliance with competition law (Haucap et al. 2021; Borrell et al. 2021; Abate and Brunelle 2021).

However, the gender balance of decision-making bodies of companies should not be set solely on the basis of business sustainability and efficiency, over and above any other economic or business justification. The basis for any positive action to give women access to senior management and board roles at companies lies in the fundamental principle of the right of equality between men and women, as set out in the Spanish Constitution (Article 14)⁴² (Huerta Viesca 2009, pp: 120–1; Rodríguez González 2018, pp: 368) and the various international texts enshrining this universal principle of law, in particular the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979 UN General Assembly),⁴³ which calls on Member States to take appropriate measures, including legislation, to prohibit all discrimination against women (Article 2) (Mateu De Ros 2019, pp: 90), or the Beijing Declaration and Platform for Action adopted in 1995,⁴⁴ which

⁴² BOE-A-1978-31229.

⁴³ Ratified by Spain by virtue of the Ratification Instrument of 16 December 1983 of the Convention on the Elimination of All Forms of Discrimination against Women, made at New York on 18 December 1979, BOE-A-1984-6749.

⁴⁴ UN Women Beijing Declaration and Platform for Action. Report of the United Nations Fourth World Conference on Women, Beijing (China), 4–15 September 1995, United Nations, New York, 1996, A/CONF.177/20/Rev.1.

sets strategic objectives and actions linked to them to ensure the full implementation of the human rights of women, removing all the obstacles to women's active participation in all spheres of public and private life thought a full and equal share in economic, social cultural and political decision-making (in relation to this study, particularly the objectives F –Women and the economy- and G –Women in power and decision-making). As this last text argues, discrimination against women in all spheres is not due to women's diminished capacity, but to the gender roles and stereotypes that still prevail today, which result, among other things, in the exclusion of women from public and decision-making spheres and spaces, including the business sphere. This is compounded by pernicious dynamics such as “boys clubs” or other elements that continue to hinder women's access to these spaces. Therefore, the main focus of this work is the need to create and promote instruments to remove such difficulties, a framework in which the proposed CGP is to be understood.

In any case, our perspective on performance and productivity is not exclusively profit-driven, although numerous studies support the direct link between gender balance and positive business performance outcomes, as we have said.

Analysis and justification of the measures proposed in the code of good practice

Selection and promotion of candidates for senior management and boards of directors of companies

Gender equality is a cornerstone of sustainability which, among other specific aspects, entails full and effective participation by women and equal opportunities for leadership at all decision-making levels in political, economic and public life (SDG 5, 2030 Agenda).⁴⁵ The most effective measures for attaining that end include positive action in selection and internal promotion processes at companies (Preamble, Part II, CGP). Indeed, positive actions proposed in the Beijing Declaration⁴⁶ to achieve the strategic objective of ensuring women's equal access to and full participation in power structures and decision-making focus on the process of recruitment and appointment of members of advisory and decision making bodies, while stressing the value of appointment criteria to be relevant and non-discriminatory against women, as well as the need to restructure this process and career-development programmes to ensure that women have equal access to managerial, entrepreneurial, technical and leadership training, including on-the-job training (G.1., §192 c, f, g). These processes are of course a cornerstone of a gender-focused human resources policy (Velasco et al. 2015, pp: 123–24). Even more so, one efficient way to ensure

⁴⁵ This and other fundamental rights recognised in the Charter of Fundamental Rights of the European Union are involved: equality between men and women (art. 23); non-discrimination based on sex (art. 21); freedom to choose an occupation (art. 15); freedom to conduct a business (art. 16), among others. 2012/C 326/02, ELI: http://data.europa.eu/eli/treaty/char_2012/oj.

⁴⁶ A/CONF.177/20/Rev.1.

the application of policies for social justice and fairness in recruitment is unquestionably to have women form part of the corporate bodies of companies (Burke and McKeen 1993).

First of all, it should be noted that there is very little in the domestic and international literature on business initiatives concerning positive measures aimed at appointing members of the board of directors and senior management on the basis of gender equality, and even less in relation to SMEs. Most of the literature on gender diversity on boards is empirical and based on management literature. The most frequently mentioned theories are “human capital theory”, “social identity theory”, “social network and social cohesion theory”, “resource dependency theory” and “agency theory” (Reddy and Jadhav 2019, pp: 1–3). In this respect, perhaps more attention should be paid to authors who examine the characteristics of people who have served on the boards of directors of companies in different parts of the world, in an effort draw conclusions as to what elements have been decisive in their selection and to note that equal participation was not guaranteed. This lack of justification means that the proposal presented here is both necessary and timely.

Part of this literature reveals that companies formerly considered the presence of women on boards of directors to be unnecessary because boards were “already filled with qualified candidates” or because of the “difficulty in finding experientially qualified candidates” (Elgart 1983, pp: 124). Other studies attribute this underrepresentation of women directors on company boards to lack of experience, especially on specialised committees (audit, nomination, compensation and executive board committees) (Kesner 1988, pp: 79). However, others reveal systematic bias based on sex aimed at preventing women from taking up management positions (Bilimoria and Piderit 1994, pp: 1469). Similarly, it has also been confirmed that this underrepresentation of women has been motivated by the prejudices of executive directors and chairs of boards and by a fear of being displaced by women (Burke 1997b, pp: 913). Women are still convinced that there is gender bias in the formation of company boards and that the attitudes of male board members fosters it (Reddy and Jadhav 2019, pp: 3). Other studies have also found that board selection is not gender-neutral (Farrell and Hersch 2005, pp: 86).

For whatever reason this pretext that men have more experience actually conceals the real reason why many qualified women are still ignored: that most governance systems still do not provide for an objective appointment procedure based on the skills that directors must have in order to guarantee a competent and balanced board of directors. This is especially true of SMEs, and even more so of family businesses, where women’s access to boards of directors is usually associated with kinship (Martín-Ugedo and Mínguez-Vera 2013, pp: 157). Because of their essential characteristics, succession is of particular importance in family businesses, on which the sustainability and success of the business depends to a large extent. Traditionally, “primogeniture” has been used as a criterion for choosing a successor to pass on both management and ownership of the company to the next generation (Curimbaba 2002; Haberman and Danes 2007; Nelson and Constantinidis 2017), but more recent studies show that ability and competence criteria are more highly valued by companies, rather than gender, although paradoxically the choice of men over women still prevails (Aldamiz-Echevarría González de Durana, Idígoras Gamboa and Vicente

Molina 2010; Pascual García 2013, pp: 31; Nelson and Constantinidis 2017:226). Studies also show that few family businesses (28%) both internationally and domestically formalise a “succession plan”, which is considered a key element for their survival, and those companies that have women on their management teams and/or boards of directors are more likely to have agreed succession plans (Botella-Andreu et al. 2021).

Indeed, Spain’s corporate legislation, which is applicable in the region of Gipuzkoa, gives no assurances of a balanced presence of women and men in senior management and board roles. In general, it places no obligations on those responsible for appointing governance teams with regard to criteria based on skills and job performance of SMEs. The choice of candidates for boards of directors, of whatever form, is subject to the discretion of shareholders or of the board of directors itself (González Menéndez and Martínez González 2012).⁴⁷ The requirements for serving as a director are confined to operational capability, the absence of any incompatibility, prohibition or disqualification from company positions and not having committed certain infringements of law or offences (Articles 213 LSC; 41 LCoop.; 44 LCE). In specific terms, no training or experience in company management is required, although implicitly and generically the duty to perform the role with the diligence required of a responsible businessperson does call for such experience (Articles 225.1 LSC; 49 LCE) (Vicent Chuliá 2012, pp: 750). In practice, these positive rules do not guarantee that directors will be appointed according to equal selection criteria (Leñena Mendizábal 2016). Furthermore, in large trading companies, membership of management bodies is self-perpetuating, either by re-election (Article 221.2 LSC) or by co-option (Article 244 LSC). Moreover, at private limited liability companies (the company form most frequently set up in Gipuzkoa), unlike public limited companies, the term of office is indefinite (Articles 221.1 and 216.2 LSC), which means that the presence of men on boards can be perpetuated even further. Technical competence is invoked to justify this continuity, but this is mostly due to the interdependence between the persons involved in the management of the company and the majority shareholders (Broseta Pont and Martínez Sanz 2020, pp: 489–490).

For listed companies, the situation is different: the board of directors is obliged to set procedures in place for selecting board members that support gender diversity, and in particular facilitate balanced representation (Article 529 *bis* LSC). Proposals for the appointment or re-election of board members are the responsibility of an “appointments and remunerations committee”, in the case of independent directors, and must be accompanied by a report from the board of directors assessing the “skills, experience and merits” of candidates. Particular mention should be made of the function of establishing a “target for representation of the underrepresented

⁴⁷ Articles 129–132, Royal Decree of 22 August 1885 publishing the Code of Commerce (*Código de Comercio* or CCom.), BOE-A-1885-6627; Article 34, subsections 1 and 2, of the Cooperatives Act (Act 27/1999 of 16 July 1999, known as the *Ley de Cooperativas* or LCoop.), BOE-A-1999-15681; Articles 22(e), 47(e), 197 *bis*, 214, 243–244 and 529.1 *decies* LSC; Article 43 of the Basque Cooperatives Act 11/2019 of 20 December 2019 (the *Ley de Cooperativas de Euskadi* or LCE), published in BOPV issue n° 247, 30/12/2019, BOE-A-2020-615.

gender on the board of directors”, and the generation of guidelines on how to achieve that target. The fact is that the legal framework in place at listed companies provides greater support in achieving the goal of balanced representation. Nonetheless, these provisions remain subject to the principle of “comply or explain” (Article 540.4.c.8 LSC). Meanwhile, the remit of the appointments committee highlights the significance of the election of its members (Leñena Mendizabal 2016). And it is precisely with regard to the make-up of that committee and of the board of directors itself that the CGP could prove useful.

The recommendations set out in the CGP are actually intended mostly for those responsible for appointing the members of the board of directors of a trading company established under any other legal form that aspires to achieve equality in its corporate structure.

In securing equal leadership opportunities for women, the designation of senior management staff is equally important, above all because directors are typically chosen from among those senior managers who are best positioned within the company structure (Burgess and Tharenou 2002, pp: 41; Leñena Mendizabal 2016). That designation is now left up to the shareholders and, in most cases, the board of directors. Indeed, it is up to the board to appoint senior management after being informed by the appointments committee, and in particular to organise the succession of the chair of the board and the Chief Executive Officer (CEO) for the committee (Article 529 quincecies LSC). However, the law says nothing about the criteria and procedures to be followed in selecting senior management staff or in the succession of the CEO.

Particular mention should be made of the appointment of staff to those senior management roles governed by a special employment regime: although they maintain a relationship with the business owner based on trust and free will,⁴⁸ it is tied to measures to regulate staff selection processes within the context of equality plans. These must include a diagnostic analysis which must include the selection process (Article 7.1.a RD 901/2020). This is extended to all hierarchical levels of the company (Article 7.2 RD 901/2020), and must furthermore indicate the criteria, methods and/or processes employed in regard to each professional profile and job description. The profiles of those involved in such processes must likewise be indicated and, where applicable, their training in the field of quality and unconscious gender bias. The plan itself must also make at least basic provision for objective personnel selection systems and must incorporate measures to redress any underrepresentation of a particular gender in any position or at any hierarchical level, so as to eliminate the occupational segregation of women both horizontally and vertically (Article 7.4 RD 901/2020).

In short, it is vital to ensure the objectiveness of any process to select individuals, so as to guarantee gender equality (Fernández Garrido 2002–2004; Aramburu-Zabala Higuera 2002–2004).⁴⁹ The formal development of a protocol for selecting

⁴⁸ Royal Decree 1382/1985 of 1 August 1985 governing the special employment relationship of senior management personnel. BOE-A-1985-17006.

⁴⁹ This is likewise the consideration of the EC in proposing the adoption of selection procedures based on a comparative analysis of the qualifications of each candidate, applying clear, preset criteria formulated in neutral terms and free of ambiguities for the appointment of non-executive members of the board of directors of listed companies. COM (2012) 614 final.

candidates for corporate bodies of a business helps to avoid the continuity of similar individuals, who tend predominantly to be male (Burgess and Tharenou 2002, pp: 42; Higgs Report 2003, pp: 10.24) and an ‘old boys’ network’ (Burke 1997a, pp: 125; Cadbury Report 1992, pp: 4.15). Strengthening this process can also help to retain the most talented individuals (Gabaldon and Giménez 2017, pp: 70) and to improve the functional performance of the bodies in question (Doldor et al. 2012, pp: 22–3, 69; Martín-Ugedo and Minguez-Vera 2013, pp: 157). Recommendations 8 to 19 of the CGP cover the implementation of such a protocol.⁵⁰ It governs the succession plan for members of senior management and the board of directors, establishing the principle of correlation between experience and the level of skills required, in accordance with the overall composition of the body, and proposing that women should be hired if there is an imbalance. Emphasis is placed on the need for recourse to equality criteria and personnel trained in equality, even with external consultants and equality audits. The importance of analysing and assessing the posts to be filled is noted, defining specific posts, indicating skills, task types and performance criteria. Guidelines are proposed to ensure a process based on criteria of excellence and professionalism, and in the final instance to avoid unconscious gender bias. This must be a process with set templates, such as the use of balanced candidate lists, blind analysis of CVs, professional selection techniques, positive discrimination in favour of the minority gender and recognition of leave for carers, leave of absence and work–life balance. Other notable aspects are assessment and communication of selection and promotion processes and provision for corrective mechanisms in the event of a breach.

This proposal must be consistent with various legislative initiatives at both EU and national levels. This is the case with the Spanish legislative initiative on equal pay for women and men, which provides for the promotion by public institutions of protocols which are aimed at identifying and overcoming stereotypes in recruitment and promotion, especially among managers and those with responsibilities in human resources within companies, and which facilitate appropriate assessment of jobs (First additional provision of Royal Decree 902/2020 of 13 October 2020 on equal pay between women and men,⁵¹ that develops the Royal Decree-Law 6/2019 of March 1, on urgent measures to guarantee equal treatment and opportunities between women and men in employment and occupation.⁵²)

On the occasion of the Proposal for a Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related

⁵⁰ These Recommendations are backed up by models supported by international society, such as the European Voluntary Code of Conduct for Executive Search Firms, adopted in 2013 by the Association of Executive Search Consultants (AESC) in collaboration with the EC. Retrieved October 4, 2021, from <https://www.bluesteps.com/blog/bluesteps-offering-complimentary-access-7500-board-ready-female-executives>.

⁵¹ BOE-A-2020-12215.

⁵² BOE-A-2019-3244.

measures, the EC itself recognised that a lack of transparency in the selection procedures and qualification criteria fostered by most of the internal legislation of Member States was a decisive factor in the underrepresentation of women on the administrative bodies of companies, despite the large number of highly qualified women with professional experience and a willingness to take up such posts. It emphasised the divergence or lack of rules relating to the selection procedures of administrators in Member States and proposed that certain minimum standards be set.⁵³

The recently enacted Directive does not actually harmonise national laws on selection processes and qualification criteria for directorships in detail, but sets minimum procedural requirements for the selection of candidates for appointment to directorships based on transparency and merit and, in particular, on criteria in which the qualifications, knowledge and skills of candidates are considered on an equal basis, regardless of their gender (Article 6; Recitals 7, 22–24, 42 and 45). It must be stressed that the Directive does not address the composition of the administrative bodies of SMEs (Article 2; Recital 29) but, in any case, Member States should support SMEs and give them incentives to improve gender balance at all levels of management and on their boards (Recital 50).⁵⁴ The provision calls on Member States to “designate bodies for the promotion, analysis, monitoring and support of gender balance on boards. Furthermore, information campaigns and the sharing of best practices would significantly contribute to the raising of awareness of the issue among all listed companies and encourage them to achieve gender balance proactively. In particular, Member States are encouraged to put in place policies to support and incentivise SMEs to improve significantly the gender balance at all levels of management and on boards”.

In this respect, developments in the national systems of the Member States show a positive trend mainly in listed companies. There are several domestic legislative initiatives aimed at ensuring a balanced presence of women and men in the management bodies of this type of company, and some of them seem to have achieved this goal (France, Italy, Denmark, Netherlands, Belgium, Germany, e.g.⁵⁵). To give an example, Germany, by enacting in 2015 the Act for the Equal Participation of Women and Men in Leadership Positions in the Private and Public Sector, requires listed companies subject to co-determination to reach 30% of the seats on the supervisory boards of large companies and, in case of non-compliance, orders that the seats remain empty.⁵⁶ This «empty chair rule» is shared by Austria and Belgium. In France, the Act 2021–1774, of 24 December 2021, aiming to accelerate economic and professional equality is in force, imposes a 40% quota of women in senior management positions in large companies by 2030, with the corresponding financial penalties.⁵⁷ Denmark, on the other hand, is one of the few countries to reach the target,

⁵³ COM (2012) 614 final—2012/0299 (COD).

⁵⁴ *OJ L 315*, 7.12.2022, 44–59, ELI: <http://data.europa.eu/eli/dir/2022/2381/oj>.

⁵⁵ Retrieved October 1, 2023, from https://eige.europa.eu/gender-statistics/dgs/indicator/wmidm_bus_bus_wmid_comp_compbm/bar.

⁵⁶ Federal Law Gazette of Federal Republic of Germany (BGB) vol 1, n° 17, 30/04/2015, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGB1&jumpTo=bgbl115s0642.pdf.

⁵⁷ Official Gazette of the French Republic (JORF) issue n° 0300, 26/12/2021, ELI: <https://www.legifrance.gouv.fr/eli/loi/2021/12/24/MTRX2110876L/jo/texte>.

that requires all companies to take self-regulatory measures, but foresees penalties in case of non-compliance (Informa D&B 2023). Many other Member States have still not taken any special legislative measures, and even less so in relation to SMEs. In most cases, no special legislative initiatives seem to have been taken to ensure the election of board members of other types of companies (Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Luxembourg, Romania, Slovakia and Sweden) (Informa D&B 2023), for which codes of good practice such as the one presented here could be useful as a reference. A solid comparative study on the different legislative measures adopted by Member States' domestic laws would help to adapt the application of this CGP to SMEs in other states, though it would go beyond the scope of this study. In any case, the proposed measures may provide inspiration for companies seeking to self-regulate.

Lastly, these measures for positive action are also compatible with the case-law of the Court of Justice of the European Union, in which the court recognises the appropriateness of granting priority to the underrepresented gender in selection processes for initial employment or promotion where the candidate of the underrepresented gender has the same qualifications as their competitor of the other gender in terms of suitability, skills and job performance, and both candidates are subject to objective assessment.⁵⁸

Work–life balance and training measures at companies

In every country around the world, women spend more time on average on household responsibilities than men. Gender norms not only contribute to more being expected of women at home but also impact their ability to take advantage of family-friendly policies at work. In this scenario work-life balance measures play an important role in helping to achieve equality between men and women. Before delving into the analysis of the subject, it is convenient to point out that one thing is the selection process and the criteria to be followed when choosing women for decision-making positions, and another thing is the importance of a company articulating reconciliation measures to facilitate the promotion to decision-making roles. Both aspects will be addressed at this point, because work–life balance measures help women to apply for and reach decision-making positions in companies in their professional careers (Recital 14 of Directive 2022 of the European Parliament to improve gender balance on company boards).

Work–life balance means enabling both men and women to reconcile their family lives with their careers by establishing a system in which new social relationships arise and there is a new form of cooperation and commitment between women and men. The aim is to achieve equal employment opportunities, to modify roles and traditional stereotypes and to meet the need to look after and care for dependent people

⁵⁸ Court of Justice of the European Union (CJEU) Judgment of 17 October 1995, *Kalanke*, C-450/93, ECLI:EU:C:1995:322; CJEU Judgment of 11 November 1997, *Marschall*, C-409/95, ECLI:EU:C:1997:533; CJEU Judgment of 6 July 2000, *Badeck*, C-158/97, ECLI:EU:C:2000:367.

(Larrieta et al. 2015, pp: 8–9). In terms of gender equality, this concept can be seen as the basis for restructuring working and social systems so as to achieve fair participation by men and women in the labour market. That restructuring must be directed towards a culture of social co-responsibility which equally distributes the tasks of caring for children and the elderly between men and women. It is about making it possible for both men and women to achieve compatibility between work and care and maintenance responsibilities at home (Fernandez and Tobio 2005, pp: 66).

In recent years, work–life balance has become a topic of great importance that has made its mark on company policies, as fostering it entails several benefits not only for workers but also for companies themselves. In this sense, the benefits of work–life balance for workers include improvements in the quality of life of workers, fostering of cooperation in addressing family responsibilities, greater personal satisfaction, and a bigger increase in career development. For companies the benefits of these policies are less absenteeism, higher productivity and a better work environment. Moreover, a correct balance helps improve a company’s image, which in turn will attract talent to it. These benefits work both in big and small companies. Even though the implementation of some measure might be more difficult in small companies, the benefits of their implementation does not give rise to any doubts. Small companies can benefit from the aforementioned measures, as big companies do.

The EC has decided to take a broader approach in addressing the underrepresentation of women in the labour market. One of the deliverables of the European Pillar of Social Rights is the Work–life Balance Initiative, which addresses the work–life balance challenges faced by working parents and carers. Following the same approach as European institutions, focused on the regulatory treatment of work–life balance and co-responsibility (Ballester Pastor 2011, pp: 17), Spanish legislation has gradually incorporated a range of measures in recent years, as set out in Chapter II, section 5 of the Workers’ Statute (*Estatuto de los Trabajadores* or ET).⁵⁹ Work–life balance regulations are also supplemented by the LIMHE. The balance covers a series of rights, including adaptation of working hours (Article 34.8 ET), paid leave following the birth of a child, an increase in equivalent breast-/bottle-feeding leave for both parents (Article 37.4 ET), an increase in paternity leave to 16 weeks (Articles 45.1.d and 48 ET) and the declaration of dismissal of victims of gender violence as null and void (Article 53.4.b ET) (Roqueta 2015). In this matter, the Beijing Declaration and Platform puts in place different actions to be taken by Governments in cooperation with non-governmental organizations and the private sector, and sets the need to provide affordable support services, such as high-quality, flexible, and affordable childcare services, that take into account the needs of working men and women.

A correct work–life balance system entails the passing of various legislative measures but also the need to foster a family policy framework in companies. The ET regime does not apply to boards of directors or senior management, which have their own special regime, but the measures that it contains provide guidelines for

⁵⁹ Royal Legislative Decree 2/2015, of 23 October 2015, approving the recast text of the Workers’ Statute Act, BOE-A-2015-11430.

companies which, in accordance with their own specific circumstances, can promote a family policy framework by passing specific resolutions regarding the work–life balance of their employees.

It is more difficult to set up a work–life balance framework in the context of boards of directors and senior management, because of the demands derived from the posts involved in terms of availability and working hours, and the difficulty is even bigger in small companies. This results in far fewer women than men taking up such roles (Agut and Martin 2007, pp: 203). The CGP opts for a number of recommendations to be implemented in order to attain gender equality in such posts, ranging from reduced working hours to the possibility of remote working, so as to put work–life balance into practice.⁶⁰ However, the problem of work–life balance is not resolved by remote working, since this form of work does not have the same impact on men as on women (Duran 2021).

The possibility of adapting working hours is the most significant measure in the CGP considered here. In this regard, Recommendation 20 establishes the dedication of sufficient time by members of the board of directors and senior management, with appropriate availability of time in order properly and effectively to perform their functions. Working shorter hours is one of the measures most widely accepted by women, but on many occasions this means exclusion from promotion for them. Studies have shown that the policies and structures of organisations are frequently designed to consider the period between the ages of 30 and 40 as the most important for the development of a career. This is precisely the period that requires the most intensive dedication to the care of family (Agut and Martin 2007:206).

To avoid this, the CGP suggests facilitating remote attendance at board or management meetings when appropriate. These bodies sometimes meet outside working hours, which forces their members to spend longer at the workplace, so facilitating remote attendance would seem to be an attractive measure conducive to work-life balance which it would be advisable to implement. As set out in Recommendation 20.3 of the CGP, new technologies also make it easier for female professionals who are on maternity or carer leave to stay in touch and avoid becoming disengaged from the corporate project.

In the male-dominated sphere of boards of directors and senior management, work–life balance measures may be seen as insufficient in terms of promoting access by women. Data have shown this to be so, as women accept more reduced workdays and leaves than men. It has been found that the careers of women give out or come to a halt before they reach such positions, which are traditionally set aside for men. One reason for this is failure to promote training initiatives that facilitate the development of skills and abilities equally, with no gender distinction. In the private sector, including transnational and national enterprises, women are largely absent from management and policy levels, denoting discriminatory hiring and promotion policies and practices, in the scenario, the Beijing Declaration and Platform for Action sets as its strategic objective F.3, the need to provide business

⁶⁰ The adaptation of working hours through remote working is a right confirmed by the High Court of Justice of Galicia in its Judgment of 5 February 2021, Appeal 3191/2020.

services, training and access to markets, information and technology, particularly to low-income women actions to be taken. The Declaration adds the need to take measures to ensure equal access of women to ongoing training in the workplace, including unemployed women, single parents, women reentering the labour market after an extended temporary exit from employment owing to family responsibilities and other causes, and women displaced by new forms of production or by retrenchment, and increase incentives to enterprises to expand the number of vocational and training centres that provide training for women in non-traditional areas. A lack of mentoring or reference models for women is another barrier to women's access to leadership positions. In this context, "receiving career assistance from a variety of developers should increase the individual's information, resources, and access to a variety of career possibilities" (Higgins and Kram 2001, pp: 277).

The goals of active employment policies including improving the placement of women in work and their possibilities of promotion, so that working conditions are effectively equal. Training for employment, the purpose of which is to boost human capital and employability by improving specialist capabilities and skills, could play an essential role in reducing inequality. On boards of directors and in senior management it is vital to have policies in place that encourage people to take training courses which help both men and women to develop their abilities and skills. In recognition of this need, Recommendation 22 in the CGP is to conduct training initiatives focused on women in order to strengthen executive skills and thereby make women more likely to take up senior management and board of directors roles (Parke 2010; Beijing Declaration and Platform for Action, G.1.192). Programmes such as mentoring and coaching for women can serve to help in their career development of women by motivating their access to senior management posts and boards of directors (Kram and Isabella 1985, pp: 110).

Mentors can be helpful at any stage of careers, but they are especially important for developing leadership skills. Mentoring and role models are an important factor in helping women move forward towards their future within an organisation and encouraging their progress. In this scenario, networks are useful for employees to connect with others in a similar position, enabling them to share experiences and ideas and creating a sense of community and support within organisations (Parke 2010).

In addition to mentors, contacts and networks are also key for the career development of women. Support networks provide social support and visibility. However, there is a problem: women are disadvantaged in this regard, as they are not typically in leadership positions and occupy fewer important posts (Larrieta et al. 2015). The idea is to encourage the setting up of training programmes to create networks of female talent equipped to take up positions at the highest corporate level.

Introducing work-life balance and training measures at companies would bring only positive consequences. Firstly, the number of women in management positions would increase. If work-life balance measures are used by both men and women, promoting co-responsibility, women will have the same options for career development and will occupy management positions. Secondly, the gender pay gap would be reduced. If men also share responsibility in the field of care, the number of men who take advantage of measures such as reduced working hours or leave of absence

will increase, which will have a significant economic impact on remuneration. And lastly it would attract female talent, because it is still mostly women who take care of children and the elderly, and the potential for work-life balance is a factor that helps women join or rejoin the labour market.

The fact that women spend more time on average than men on household responsibilities is unquestionable. Work-life balance measures have a major role to play in achieving equality between men and women. The restructuring needed must be directed towards a culture of social co-responsibility. But even though work-life balance has become a topic of great importance in recent years there is still a need for a broader approach in addressing the underrepresentation of women in employment. However, work-life balance measures may be seen as insufficient in terms of promoting access by women. In this scenario, training for employment, which is intended to boost human capital and employability by improving specialist capabilities and skills, could play an essential role in reducing inequality.

Transparency measures to improve external and internal communication at companies

The many research studies conducted into the reasons for adopting CSR and sustainability measures and the corresponding transparency measures in business indicate that such schemes are beneficial to companies. They include studies from different approaches such as agency theory (MacNeil & Li 2006), stakeholder theory (Roberts 1992; Branco and Rodrigues 2006), legitimacy theory (Hooghiemstra 2000; Branco and Rodrigues 2008; Reverte 2009; and in regard to gender perspective disclosure Cosentino and Venuti 2022). However, these studies do not in themselves fully explain the reasons for implementing such measures (MacWilliams et al. 2006; Testera Fuertes and Cabeza García 2013; Gray et al. 2001).

The size of companies is a relevant element in relation to disclosure regarding CSR practices. At the same time, it has often been associated with higher exposure to public scrutiny and bigger groups of stakeholders (Reverte 2009). However, as indicated here, it must be taken into consideration that legal duties of disclosure are greater for large companies. At the same time, several studies suggest that family businesses may be more likely to engage in CSR (but not specifically in gender equality) which is usually linked to socio-emotional wealth (McVey and Draho 2005; Déniz Déniz and Cabrera Suárez 2005). However, some studies are inconclusive and/or reach contradictory conclusions regarding the transparency of such actions, which is conditioned by multiple factors (Ferramosca and Ghio 2018). Family firms have more severe agency problems between controlling and non-controlling members, so they are less likely to make voluntary disclosures about corporate governance practices (such as how shareholders nominate directors to the board, details of the board committees, whether there is a nomination committee, disclosure of names on the nomination committee and director training and remuneration). It could thus be easier to get family members onto the board (Ali et al. 2007). The existence of a second large shareholder which is a foreign investor (not another family) may moderate or reduce families' resistance

to CSR disclosure (Cabeza-García et al. 2017). On the other hand, it has been found that the presence of women on boards of directors has a positive effect in enhancing non-financial disclosure (Nicolò et al. 2022), although that effect may depend on the number of women on the board (the existence of a “critical mass”) or on the positions that they hold (Amorelli and García Sánchez 2020). It has been noted that for female CEOs, there is no such correlation (specifically on gender policy disclosure, Furlotti, et al. 2019).

Consistent with the above, the proposed CGP is based on the interest of companies themselves in carrying out CSR actions, but at the same time on the perspective of the social functions of the company [underlining the varying interests that coexist at a company (in particular big business), the impact of its activities on the interests of other agents and the social context (Sequeira Martín 2021)]. Given the limitations of purely financial information in assessing the different aspects of business activity (Eccles, et al. 2001; Saitua Iribar 2015; Ferramosca and Ghio 2018), there is a need for external transparency in line with the interests of stakeholders and of society at large to learn about a company’s impact, in this case in terms of gender equality or inequality. This can have repercussions on the company’s standing, can help ascertain the commitment genuinely taken on board by companies as a whole and individually and the effectiveness of the measures adopted, and can serve as a driver in this sphere, although we should not fall into the trap of thinking that transparency duties or commitments per se will result in such benefits (Hess 2019). Thus, public monitoring of fulfilment of the CGP is an essential element for its effectiveness (Mensi-Klarbach et al. 2021). Meanwhile, internal communication facilitates the development and implementation of measures at companies by reporting them to their addressees, as does oversight of effective compliance on the part of their various stakeholders. In addition, adequate communication is essential to overcome the internal resistance that is likely to occur in some organisations when adopting equality measures such as those proposed in this CGP. Truthful communication (of both positive and negative data) as to the commitments taken on board and the degree to which they are fulfilled must therefore be a commitment in itself (Ferramosca and Ghio 2018; Global Reporting Initiative 2021).

The above considerations apply to both large companies and SMEs, which individually may have less visibility and less social and economic weight, but which as a whole are decisive for the maintenance or eradication of gender discrimination at companies and in particular for the access of women to positions of responsibility and decision-making. Therefore, there is a need to focus on transparency in the area of CSR at such companies, particularly taking into account their lesser tendency to report. As shown below, the legislation in this area, including soft law, mainly refers to larger and/or listed companies. Although studies show that the legislation regarding disclosure is not very successful in its application, especially in terms of quality, it has been found to improve disclosure somewhat, albeit mainly in quantitative terms (Chauvey et al. 2015). From a gender equality perspective, the entry into force of Directive 2014/95/EU has been described as having a very positive impact on the quantity and quality of information produced by companies (Cosentino and Venuti 2022). The situation described above and the lack of legal impetus with respect to SMEs reinforce the need to promote transparency at such companies, in this case

through the proposed CGP, albeit in proportion to their specific characteristics. At the same time, this instrument can be useful for the development of gender transparency in larger companies.

In this context, the EU has established the disclosure of social and environmental information as a priority element of CSR, with a fundamental role played by Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014, amending Directive 2013/34/EU and focusing essentially on “large public-interest undertakings”.⁶¹ Among other matters, and based on the “comply or explain” principle, this text sets out a duty to provide a non-financial statement in the management report (Article 19 *bis*) and a corporate governance statement. This last statement must include at least the following: “a description of the diversity policy applied in relation to the undertaking’s administrative, management and supervisory bodies with regard to aspects such as, for instance, age, gender, or educational and professional backgrounds, the objectives of that diversity policy, how it has been implemented, and the results in the reporting period” (Article 20.1.g) [These matters are further developed in the European Commission Communication on Guidelines on non-financial reporting (2017/C 215/01), which, for example, cites gender and other diversity issues, parental leave entitlement, seasonal employment and average hours per annum spent on training per employee (by sex) as key performance indicators to be disclosed (European Commission 2017; Saitua Iribar 2017, pp: 192–6)].⁶² These regulations have been transposed into Spanish Law by means of Royal Decree-Act 18/2017 of 27 November 2017⁶³ (on background and regulations, see Saitua Iribar 2017, pp: 184–9), expanded on by Act 11/2018 of 28 December 2018 amending the CCom. and the LSC. The minimum content required in the annual corporate governance reports which must be published by public listed companies in Spain thus includes information on the diversity policy applied with regard to the board of directors, management and specialised committees (plus the measures agreed by the appointments committee and a duty to report whether this information has been provided to the shareholders). There is also a duty to explain the degree of adoption of the recommendations of the CNMV Unified Code (2015) (Article 540.4 LSC) (Leñena Mendizábal 2016). More recently, Directive (EU) 2022/2381 also refers to information duties regarding gender representation on boards and measures taken in this regard, with the emphasis on selection criteria. The legal reporting duties of SMEs are less stringent, but for the purposes of the topic discussed here, they are obliged to provide information as to the measures adopted specifically with regard to gender (in Spanish law this concept is defined, for these purposes, in Art. 3.8 and

⁶¹ Definition in Article 2.1 Directive 2013/34/EU (in some cases, as with Article 19 *bis*, certain additional requirements are established).

⁶² The Proposal for a Corporate Sustainability Reporting Directive of the European Commission of 21 April 2021 extends the subjective sphere of application of the standard and underpins reporting duties with regard to gender policies, which it would make mandatory. Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) 537/2014 as regards corporate sustainability reporting, COM/2021/189 final.

⁶³ BOE-A-2017-13643.

9 of Act 22/2015 of 20 July on the auditing of accounts, which, within the scope of this regulation, excludes a large number of companies.). In any case, this regulation and the European Commission guidelines (2017) can be taken as a reference for organisations of all types (Ferramosca and Ghio 2018).

Article 47 LOI refers to internal transparency in the implementation of equality plans, guaranteeing access by workers' representatives to their content and the extent to which their goals are attained. Entry in the Register of Equality Plans is likewise mandatory and their content is available to the public (Articles 46.5 LOI; 11 RD 901/2020). Also mentioned is voluntary filing of measures to prevent gender discrimination and prevent sexual harassment and gender-based harassment at work (Article 12 RD 901/2020). RD 902/2020⁶⁴ (on this regulation, see Sáez Lara 2020) sets obliges companies to have a remuneration register with a gender breakdown for the entire workforce, including executive personnel and senior officers, with the contents being accessible to workers' legal representatives (and, where applicable, to workers directly). On the importance of pay surveys from a gender perspective, among others, from Finland's point of view, see Saari 2013. Despite the gradual approval of new regulations in this area, legislation on the issue is less developed in Spain than in neighbouring countries such as France, where a more detailed *Rapport de situation comparée* (an analysis broken down by job categories of the respective situations of women and men in terms of hiring, training, promotion, qualifications, classification, working conditions and effective remuneration) is compulsory for companies with more than 300 employees (and partially for those with more than 50 employees) (Milner et al. 2019).

The CGP envisages the drawing up of internal and external communication plans (Recommendations 24 and 25), with a requirement to disclose equality policy to the entire workforce and underlying social context, as well as to the various stakeholders (e.g. clients, supplier companies, public authorities and the community). This can be done via various instruments, such as the management report, non-financial statements, the register of the equality plan and a wide variety of other instruments targeted at different audiences (Ferramosca and Ghio 2018).

In line with the above, reporting should not only be desirable for large companies but also for smaller ones, albeit in a way that is tailored to them. This is why the CGP is flexible and does not impose specific measures. However, it should be borne in mind that for the effective implementation of these measures companies (especially smaller ones) need support measures such as external expertise (from private consultants or public agencies) and informational resources such as guides and toolkits (Milner et al. 2019). Although a homogeneous model for all companies may not be appropriate (Ferramosca and Ghio 2018), it is desirable to have instruments that not only facilitate the adoption and maintenance of these measures by individual companies but also provide an overview of companies as a whole.

For this reason, together with the CGP a number of indicators have been developed that may be useful in fulfilling the recommendations and assessing the

⁶⁴ BOE-A-2020-12215.

evolution of equality policies, indicating where responsibility for these points lies on the part of administrative units, management and the board of directors.⁶⁵ These indicators follow commonly recognised criteria such as comparability, materiality, relevance, reliability and verifiability (Teixeira Silva and Saitua Iribar 2020). They also refer to issues that are easy to measure and represent, which also makes them easy to use on a continuous basis over time (Rincón, 2012). As mentioned, the information must be fair and balanced (EC 2017; Global Reporting Initiative 2021). It is also considered that the quality of the information should be prioritised over quantity, which can be a supplementary criterion when quality is guaranteed (Beretta and Bozzolan 2008). 20 indicators are therefore proposed that may be more meaningful than a larger number. These indicators take into account previous models and proposals (Generalitat de Catalunya. Departament de Treball 2010; Instituto Andaluz de la Mujer 2004), some of which may be compatible (United Nations Global Compact et al. 2017; and specifically in Gipuzkoa, Altzelai Uliondo et al. 2018), while remaining in line with the content of the CGP itself, maintaining the necessary overall coherence. Thus, the indicators focus on issues such as women/men in executive and responsibility positions, promotion, positive actions, participation in training courses, actions or recommendations of the CGP implemented, actions to correct inequality due to weaknesses detected, staff selection processes, average annual pay, work-life balance, sexual or gender-based harassment, remote working, time banks, non-sexist communication and corporate image and advertising.

The proposed CGP also includes the possibility of obtaining independent recognition to serve as public corroboration of a company's equality policy. This may typically be used for advertising purposes, as well as potentially being associated with such other benefits as being open to assessment in the granting of public subsidies and the awarding of public contracts (Pérez Troya 2013, pp: 44–8; Ballester Pastor 2007).⁶⁶

It is emphasised that in the field of communication, in the broadest sense, an appropriate communication plan should be adopted from the perspective of gender equality (Recommendation 26). Specific reference is made to inclusive language and respectful, non-discriminatory messages and images which are free of stereotyped roles. This is a significant aspect in terms of the overlooking, exclusion and degradation of women (regarding sexist language see, among many other authors, Briere and Lanktree 1983; Hamilton 1988; Kleinman 2002; Balaguer Callejón 2008; Saitua Iribar 2015, pp: 9–14; UNESCO 1999; European Parliament 2018). However, there has been little legislative development with regard to private entities in Spain, except in regard to sexist advertising (Article 3.a Act 34/1988), where there has been an interesting evolution (Pérez Troya 2013, pp. 32–44), with measures that must be complied with by all companies, irrespective of their size. Article 8.3 RD 901/2020 mentions the possibility (not as a requirement) of including measures regarding non-sexist language and communication in equality plans. The CGP also places

⁶⁵ Vid. Note 26.

⁶⁶ The CGP refers to recognition by *Emakunde*. In Spain, see Article 50 LOI, developed by RD 1615/2009, of 26 October 2009 (“Company Equality” mark).

importance on the visibility and promotion of the presence of women at events and in tools such as websites as a way of helping to normalise and promote the image of women in senior positions and to structure networks of female talent (Larrieta et al. 2015; Jonnergård et al. 2010).

For the measures proposed to be effective, mechanisms are required to monitor levels of compliance (in coherence with e.j. Beijing Declaration and Platform for Action, G.1.192.b; f.5.178.f) and possible complaints. To that end, it is proposed that a protocol be drawn up which must guarantee the absence of negative consequences for whistle blowers (Recommendation 27). In terms of positive legislation, this is reflected in the obligation to establish effective systems for the monitoring and assessment of equality plans, with the requirement to have a specific oversight body in place (Articles 46 LOI, 8.5 and 6 RD 901/2020), and to conduct and register gender-based pay audits (RD 902/2020) (on the importance of enforcement, see Milner et al. 2019).

Conclusions

Our study has led us to draw a number of conclusions in this area. The first is that SMEs do not have regulations or legal normative instruments to facilitate the incorporation of women into their decision-making bodies.

Therefore, our proposal to promote gender balance in the management bodies of SMEs integrates issues of social justice such as non-discrimination based on gender (Article 14 of the Spanish Constitution), and it is even based on one of the backbones of the Directive (EU) 2022/2464, named commonly *Corporate Sustainability Reporting Directive* or CSRD. This directive, in addition to the information on the environment and climate change, requires companies to disclose information on human rights (UN) and, in particular, on gender diversity in senior management and the number of members of the underrepresented sex on their boards of directors (Statement 49).⁶⁷

In this sense, we understand that the above provision must be relate to the Directive (EU) 2022/2381 on improving gender balance in companies, urging Member States to establish policies that support and encourage SMEs in order to improve significantly gender balance at all levels of management and on boards of directors (Statement 50).

In our opinion, SMEs, through the regulatory instrument we are proposing, should try to incorporate a gender balance in their management bodies, firstly, for reasons of social justice and, secondly, due to the better performance that has been endorsed by the aforementioned studies.

The second is that the company law applicable in the Province of Gipuzkoa does not guarantee that members of boards of directors are elected based on equality of candidates, especially in SMEs. That is why a protocol such as the one proposed in this code could be useful.

⁶⁷ DOUE-L-2022-81871.

Focusing our attention on the data of the industrial sector, which is the principal business sector in Gipuzkoa, as well as on its specific weight in the industrial economy of the region (Basque Country), with an estimated proportion of 39.10%, we have to highlight that it is the sector where there are fewer women on the boards of directors of companies, specifically 17% in Gipuzkoa.

Similarly, looking at size, most of the companies (2222) employ between 10 and 49 people, while 408 of the companies employ between 40 and 249 people. The presence of women on the boards of directors is scarce, given that the companies in the region (Basque Country) that have between 50 and 100 employees only have 15.3% of women on the boards of directors. If we look at the sector, their presence drops to 7% in the industrial sector, which is a key sector in the territory of Gipuzkoa.⁶⁸

Therefore, the application of the Code in the industrial companies of the territory would be a step forward for the incorporation of women in those boards of directors that are unbalanced from a gender perspective. Thus, we think that in the selection processes for candidates to the boards of SMEs, particularly in those industrial companies with between 25 and 250 employees, companies should make an effort to incorporate more women.

The third conclusion is that work-life balance measures may be insufficient in terms of promoting access by women. Improving professional capabilities and skills could thus play an essential role in reducing the inequality between women and men on the decision-making bodies of SMEs.

The fourth conclusion is that disclosure is important for the measures and commitments undertaken to be effective. In this regard, for recommendations to be effective, supporting measures and appropriate assessment instruments are needed. Gender mainstreaming in all communication is also an important element in promoting equality. Measures to facilitate enforcement are also necessary.

Based on these conclusions and the analysis presented in this paper, a code of good practice is proposed. We consider that it can be a significant instrument for promoting gender equality in SMEs, particularly in the territory indicated.

Furthermore, as we have mentioned above, we believe that the Code is sufficiently flexible in order to be adapted to SMEs from other regions of the EU.

Limits of the study

This study has been conducted in a very specific legal-economic context, conditioned by the fact that SME companies make up the majority of business in both Gipuzkoa and Spain as a whole. There is also a scarcity of adequate regulations for implementing many recommendations and measures to facilitate the incorporation of women into the decision-making bodies of SMEs. The business structure of SMEs conditions the application of measures, which is why our proposed recommendations are broad in nature and, in some cases, wide and flexible.

⁶⁸ Retrieved September 16, 2023, from <https://www.aedbiz.org/files/PRESENTACION-AED-CONSEJOS-EUSKADI.pdf>.

Another limitation of our study is the difficulty of implementing the code in this type of company in our territory: prior awareness-raising is required to convey to the current senior management the importance of regulating this issue, in order to incorporate women and diversity into their management bodies.

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Declarations

Competing interests The authors have no relevant financial or non-financial interests to disclose.

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