

GERMAN LAW NEWSFLASH – SEPTEMBER 2014

THE IMPLEMENTATION OF A GENDER QUOTA IN THE GERMAN LAW ON STOCK COMPANIES

The governing parties Christian Democratic Union (CDU) / Christian Social Union (CSU) and Social Democratic Party of Germany (SPD) put a gender quota in motion. After they had decided on a gender quota in the coalition agreement on 16 December 2013, the Federal Minister of Familiar Affairs, Manuela Schwesig, and the Federal Minister of Justice, Heiko Maas, presented a draft bill in June.

HOW IT USED TO BE

Until now, there are no binding regulations regarding gender quota in the private sector in Germany. The Corporate Governance Codex that is established by a Government Commission also contains no codified gender quota.

Only the law on equal opportunities for men and women in the public service (Gesetz zur Gleichstellung von Frauen und Männern in der Bundesverwaltung und in den Gerichten des Bundes (Bundesgleichstellungsgesetz) contains a quota up to now. According to this law, the job advertisements in the public service contain the reference that in case of equal qualifications women shall be preferred.

Some companies committed themselves to fulfill a certain quota and to support women. However, until now only one-tenth of the supervisory board's seats are filled with women. So far, a political consensus could not be found.

As an example, it might be worth taking a look up North: Norway became the first country in the world to impose a gender quota in 2003. Norway's law requires at least 40 percent of public limited company board members to be women. If a company does not comply, it would be shut down. Before the law was passed, women made up just 7 percent of the seats on supervisory boards. Norwegian companies did not have any trouble finding enough women for their corporate boards.

HOW IT IS NOW

On 16 December 2013 the governing parties decided in the coalition agreement to increase the amount of women in leading



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positions. Therefore, they agreed to legally impose a gender quota in supervisory boards (Aufsichtsräte) of listed companies which are subject to full employee participation (paritätische Mitbestimmung). Such supervisory boards shall be obliged to fill a vacancy from January 2016. Their supervisory boards shall have a gender quota of at least 30 percent. This quota must be fulfilled. Otherwise, it is not permitted to fill the seats of the underrepresented gender (so called "empty seat").

Furthermore, companies which are either listed or subject to employee participation would be required to set objectives for the increase of the percentage of women in supervisory boards, executive boards (Vorstand) and in the two upper management levels beyond the executive boards. They shall publish and report their objectives in a transparent manner.

Now the draft bill of the Federal Minister of Familiar Affairs and the Federal Minister of Justice contains a guideline that 30 percent of the supervisory boards shall be female. However, this shall only apply to the around 110 companies which are listed on the stock exchange and which are subject to full employee participation. They would therefore be obliged to completely obey the quota.

Regarding the companies that are either listed or subject to employee participation, the draft bill proposes that the companies set themselves own targets. These companies shall be obliged to agree by themselves on binding quotas for the supervisory boards, the executive boards and the two upper management levels beyond the executive boards. These target figures may differ and for example comply with the number of women who already are in leading positions. The respective quotas may be common for the particular industrial sector. These regulations shall also apply for leading positions in the Federal administration as well as for courts and Federal companies - and also boards in which the Federal State delegates representatives. Small and medium-sized companies are excluded from this regulation. However, also private limited liability companies (Gesellschaften mit beschränkter Haftung-GmbH) and registered co-operatives (eingetragene Genossenschaften-eG) that are subject to employee participation shall be obliged to increase the employment of women in leading positions. For these companies there shall not be a fixed minimum quota.

HOW IT WILL BE IN THE FUTURE

There are skeptical voices within the German economy because they fear that there would not be sufficient women who are suited for leading positions. However, the development regarding equation in Norway can be described as successful. It remains to be seen, if there is a comparable development like in Norway in

case the draft bill would be adopted as law.

This newsflash was originally published by Magnusson Berlin LLP, of which Dr. Thomas Kaiser-Stockmann is also the Managing Partner.