



## THE IMPORTANCE OF AN INDEPENDENT DIRECTOR

MONTserrat MARTÍNEZ PARERA, VICE-CHAIR OF CNMV

26 January 2023

Thank you to Woman CEO and Ana Lamas, its Chairwoman, for inviting the CNMV another year. As Vice-Chair of the CNMV, it is a pleasure to participate in these conferences and to be here today.

I would like to start with a short advertising spot that is related to good corporate governance. Next Thursday, we will hold, in Madrid's Stock Exchange events room, the third conference focused on encouraging companies to enter securities markets. In the two previous workshops held, one of the main and outstanding advantages of going public that companies have highlighted is the improvement in corporate governance.

Good corporate governance is not a guarantee to success for a company or its business model, but it is an essential leverage, even imperative to reach success. We could say that this is not a sufficient but a necessary condition.

That is why the CNMV constantly insists on the importance for companies to follow best governance practices. Good corporate governance is the necessary gear between companies and the investment community, and it is vital for it to work effectively, and with an inclusive and international point of view.

The benefits are not only individual to the company, but also for the Spanish market as a whole, as it contributes to greater credibility and, therefore, assurance among investors, which, as you know, is the raw material on which the financial markets feed.

Up to this point, I am sure we can all, more or less, agree. The debate arises with questions such as how to encompass an effective board of directors, how to create business value and maintain long-term sustainable growth through corporate governance, or how to manage new regulatory obligations and the increasing responsibility of directors. There is currently an interesting debate that is redefining the strategy and mission of companies in an increasingly demanding society. Interesting reflections are sure to come up during the course of the day.

Beyond these and other questions that may arise, today I would like to focus on two aspects related to the structuring of Boards: firstly, on the position and role of independent directors and, secondly, and particularly appropriate for a forum developed by WomanCEO, I will speak on the progress in diversity and, in particular, gender diversity.

## Regarding the figure of the independent director

During times of great disruption, such as the current situation, having good counsellors is more important than ever. Directors should not only monitor the company's executives, but should also be able to actively contribute to the company's strategic debate, going beyond the traditional regulatory box ticking. It is also about facing the challenges set by technological changes, climate, environmental and social risks, and growing shareholder activism<sup>1</sup>. This means “looking ahead”, anticipating difficulties and opportunities that may arise, because we know that when the sea is steady, anyone can be a sailor, but we must also know how to weather the storm.

In such a complex environment, independent directors take on a differential role, as they are the ones who, after all, defend the interests of minority shareholders and can have a broader point of view.

The CNMV pays special attention to protecting such a figure, in order for them to act independently and without conflict.

Despite the progress made, upon analysing the data for Spanish listed companies as a whole, there are signs that point to room for improvement, and I am not referring to specific cases.

According to study published in today's quarterly newsletter<sup>2</sup>, data shows that senior or longer-serving independent directors appear to be less engaged in supervisory tasks, as they attend fewer board meetings. This fact supports a key fact that has been emphasised over time and which is already included in the Spanish Corporate Companies Law: the need to limit the terms of seniority of independent directors. It is legally limited to twelve years. This aims to avoid the potential seize or lack of diligence that can come from holding the same task over time.

On the other hand, and although it may seem contradictory, independent directors must also be given certain stability over time. That is, a degree of continuity that allows them to be protected from the wishes of the company's executives or significant shareholders, in addition to acquiring deep knowledge on the company.

The aim, as stated in our Code of Good Governance, is to protect them in situations where the proper performance of their duties requires them to have occasional disagreements with other members of the board of directors or management. To this end, the code contains recommendations aimed at increasing transparency, both in the case of dissenting positions and in the case of terminations before the end of the mandate<sup>3</sup>.

However, the work published today by two researchers<sup>4</sup> external to the CNMV, shows that these recommendations are still important: with data updated to 2020, the

---

<sup>1</sup> “Board of directors in disruptive times”, Jordi Canals (2023)

<sup>2</sup> Gutiérrez and Sáez, “Determining factors and impact of the seniority of directors in their post.”, IV CNMV’S Quarter Bulletin, 2023.

<sup>3</sup> See recommendations 23 and 24 of the “Code for good governance of listed companies”.

<sup>4</sup> Gutiérrez y Sáez, “Determinantes e impacto de la antigüedad de los consejeros en el cargo”, IV CNMV’S Quarter Bulletin, 2023.

influence of the top executives is high, both in the appointment process of independent directors and in determining their tenure, which may increase the risk of capture.

What can we conclude from all this?

That reaching a balance is neither simple nor immediate. On one hand, it is logical and advisable for executives to pursue a functional, effective and value-adding board, but this must be done without falling into the herd effect, which can only be achieved by encouraging dissenting speeches that, from a diversity standpoint, enrich the debate and creates a link to the preferences and interests of shareholders and other stakeholders. As mentioned before, this is one of the challenges companies face today.

In this regard, as has been announced, we are discussing an internal process to propose legislative measures or review recommendations to strengthen the protection of independent directors, with special emphasis on transparency measures.

Moreover, another initiative that we are to publish shortly is aimed at stimulating shareholder involvement in corporate governance. To do so, we have been working for some time on a code of good practice for institutional investors and other shareholders (stewardship code) in which the latter could be involved, on a voluntary basis and under the principle of "apply and explain", in the day-to-day of the companies in which they invest, thereby improving the corporate governance model and promoting best practices.

### **Gender diversity**

The second aspect I would like to address today is that of gender diversity. I would first like to acknowledge the work of Woman CEO for its analysis of the extent of women's representation in boards of directors and the work it does in this area.

In my opinion, there is no room for debate on the substance of the matter: as a country and as a society, we cannot waste the knowledge, intelligence and experience of half of the population. We need all the resources we can have. The issue is how to integrate them and how to properly diagnose where the problems or barriers that limit this integration are, because only then will we be able to find the right solutions.

We chose years ago, in Spain, to apply an approach based on recommendations, or soft law, which has had its profits. We have been observing this for some time.

Women's representation on company boards continues to improve every year. The latest official data published by the CNMV for 2021 show a recommendation percentage of almost 30%. It's important to remember that in 2012, this percentage was a meagre 12%, 17 points lower. If we only look at the 35 companies of the Ibex, the presence of women in the governing body amounted to 34.2%.

The current recommendation since the end of last year is that such presence should not be less than 40%. We are not there yet, but the information we have for 2022, and in line with what Woman CEO published today, points to this improvement is ongoing and we are coming closer to the recommended 40%, especially with regard to the Ibex 35 companies. By 2021, nine companies had met the 40% recommendation.

I therefore encourage companies to continue fostering diversity on their boards, not only to reach the 40% but, more importantly, to make the best use of all available resources.

I would like to highlight the usefulness of the recommendations approach.

Last November, a regulation that stipulates that all member states must set minimum targets by law by 2026 was passed at European level<sup>5</sup>: 33% of all management positions and 40% of non-executive directors.

Considering such minimum requirements, we can say that the Spanish market is prepared to meet these objectives.

In fact, 2021 data shows that more than 75% of Ibex 35 companies have already complied with these minimums, and those that didn't were very close to doing so. That is, only eight Ibex banks would not meet the established minimums. Taking into account all the listed companies, the percentage drops to 60%, even if it is still high.

In the last few years, Spanish companies have made a considerable effort to increase diversity and, in particular, the presence of the under-represented gender on boards, and there is time for further improvement.

I believe, and as the CNMV has pointed out on several occasions, the problem today is not focused on the boards, but on senior management.

Less than 20% of top management positions are held by women, 22% in the case of Ibex companies. Such amounts are worrying, as senior management is the quarry or incubator needed to increase diversity, and the improvement experienced in recent years is very limited.

Although this is not something particular to Spanish companies, as it is also the case in other geographies, this should not be an excuse. We cannot give up. If we have been able to take advantage of talent through diversity on boards, we can do the same thing in management positions.

Data shows that in our society there clearly still are limitations or biases that limit women's careers. It is not my job, nor do I intend to analyse the problems or the causes, which are several and have diverse origins, but I think it is an important debate, as we will only find the right solutions with a proper analysis of the causes.

Women continue to carry an extra load, sometimes imposed, sometimes self-imposed, which limits their capacity for professional development. It is important that the equality plans that companies have drawn up to address this challenge start with a good analysis of the underlying causes. It is not just a matter of empowering women and providing better training, but also of analysing in detail the elements that may cause such constraints and ensuring that companies do everything in their power to correct them.

---

<sup>5</sup> Directive (EU) 2022/2381 of November 23 on achieving a better gender balance among directors of listed companies and related measures.

## Final Reflections

I will finish. We are living in times of intense changes that require dynamic companies, capable of providing fast and effective responses. As mentioned, to survive in this environment, good corporate governance is more important than ever. This is not only good for individual companies, but also contributes to improving the credibility, reputation and confidence in the Spanish economy. We will continue to work to promote these best practices in the market.

Thank you for your attention.