

ARTICLE

Germany: Second Law Establishing Gender Quotas to Increase Number of Women in Company Leadership Positions Enters into Force

On August 8, 2021, a [second law](#) to increase the number of women in leadership positions in private and public sector companies in Germany (FüPoG II) entered into force. Starting August 1, 2022, private companies that are both publicly traded and [codetermined](#) will be required to appoint at least one woman and one man to an executive board with more than three members. (FüPoG II, art. 7, no. 1.) Furthermore, other private companies must set a target figure for women and must ensure that the target figure (in percentage) equals a full person. (Art. 7, nos. 1, 6; art. 10, nos. 2, 4; art. 11, no. 2.) Companies that set a target figure of zero women for the supervisory board, the executive board, or the two highest managerial levels below the executive board must explain their reasoning in detail (100–150 words) and include it in their annual reporting. (Art. 5, no. 1; Art. 7, no. 6; [BT-Drs. 19/26689](#) at 85.) Noncompliance with the obligations may trigger fines of, alternatively, up to 10 million euros (about US\$11.8 million), 5% of the annual turnover, or twice the amount of the economic benefit gained for publicly traded companies. ([HGB](#) § 334, para. 3a.)

Federal essential and supervisory bodies, at least two of whose members are determined by the federal government, must have an equal number of men and women appointed. (FüPoG II, art. 1, no. 3, § 4.) Furthermore, supervisory boards of companies in which the federal government is the majority shareholder, such as Deutsche Bahn AG (German railway company), must have at least 30% women and 30% men on the board. (Art. 7, no. 7; art. 10, no. 5.) The second law aims to achieve equal participation of men and women in leadership positions in public sector companies by December 31, 2025. (Art. 2, no. 3.)

Background to the New Law

A [first law](#) on the equal participation of women and men in leadership positions in private and public sector companies adopted in 2015 required supervisory boards of private publicly traded companies that are codetermined to be composed of a minimum of 30% women and 30% men. Other private sector companies that are either publicly traded or codetermined did not have a mandatory quota but needed to set target figures to increase female representation on the executive board, the supervisory board, and at the two highest managerial levels below the executive board. The private sector companies that had to fulfill either the mandatory quota or that had to set a target figure were required to report annually whether they had fulfilled the gender quota or explain why not (“comply or explain”). Federal essential and supervisory bodies

whose members are determined by the federal government had to fulfill similar quotas of 30% women and 30% men starting on January 1, 2016. The quotas were increased to 50% by January 1, 2018. The first law was repealed by the second law. (Art. 27.)

A [study](#) on behalf of the [German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth](#) found that there were 7.7% women on the executive boards of companies that were covered by the 2015 law. A majority of companies (80.7%) had no women on the executive board. 78.2% of the companies set no target figure or a target figure of zero. The authors of the study therefore concluded that mandatory quotas are an important instrument to achieve equal participation of women in leadership positions. The second law aims to further increase the number of women in leadership positions, in particular on executive boards.

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