

ASSEMBLY OF THE REPUBLIC

Law No 26/2019 of 28 March

Balanced representation regime between men and women with regard to the management staff and in Public Administration's bodies

The Assembly of the Republic, under the terms of subparagraph c) of article 161 of the Constitution decrees as follows:

Article 1

Object

The present law establishes the balanced representation regime between men and women with regard to the management staff and in Public Administration's bodies.

Article 2

Scope

1 — The present law shall be applicable to direct and indirect state administration management staff, including public institutes and public foundations. It is also applicable to governing and managing bodies of public higher education institutions and to decision-making, executive, supervision and oversight bodies of professional public associations and other public entities of associative basis.

2 — The present law shall be also applicable to autonomous regional administrations of the Azores and Madeira, without prejudice to the publication of a regional piece of legislation that adapts it to the organic specificities of the management staff of the respective regional administration.

3 — The present law shall also apply to the local administration management staff pursuant to Law No 49/2012, of 29 August, in its current wording, being the minimum threshold of balanced representation assessed in relation to the whole management staff of each city council.

4 — The present law shall not cover the public corporation sector, which is subject to the balanced representation regime as

defined in the Law No 62/2017, of the 1st of August.

Article 3

Definitions

For the purposes of the present law, it is meant by:

a) «Management staff», the persons in the top and middle management positions and equivalent ones to which applies Law No 2/2004, of 15 January, in its current wording;

b) «public institutes», the legal entities governed by public law, set up under the terms of Law No 3/2004, of 15 January, in its current wording;

c) «Public foundations», the public foundations governed by public law and state, local and regional public foundations governed by private law, covered by Law No 24/2012, of 9 July, that passes the Foundations Framework-Law;

d) «Public higher education institutions», all those covered by Law No 62/2007, of 10 September, that passes the legal regime of higher education institutions;

e) «Professional public associations», all those, which are covered by Law No 2/2013, of 10 January, that lays down the legal regime of setting up, organization and operation of professional public associations;

f) «Other public entities of associative basis», the legal entities governed by public law that are based on a plurality of persons or public or private entities.

g) «Appointment», the appointment act, renewal of the limited executive tenure and the appointment under a substitution regime.

Article 4

Minimum threshold of balanced representation

1 — The appointment of position and bodies holders to which refers the present law, due to their competences, capacities, experience and training legally required for the fulfilment of the respective functions shall

comply with a minimum threshold of balanced representation between men and women, in cases and under the terms provided for in the following articles.

2 — It is meant by the minimum threshold of balanced representation the proportion of 40 % of persons of each gender in positions and bodies to which refers to the present law, rounded to the nearest unit, where required.

3 — In the case of elective collegiate bodies, the application lists shall comply with the following sort criteria:

a) The first two candidates shall not be of the same gender;

b) There cannot be more than two followed candidates of the same gender.

4 — The provisions set out in paragraph 1 shall not be applicable to the participation in positions and bodies to which refers the present law dictated by reason of performance of other duties.

Article 5

Management staff of the direct and indirect state administration

1 — The Recruitment and Selection Commission for Public Administration (CRESAP) takes into account the objective of the balanced representation between men and women in the composition of the applicants' list for filling a position addressed to the Government.

2 — The CRESAP shall be released from complying with the provisions set out in the preceding paragraph when the applicant pool, selected according to their competences, capacities, experience, and training legally required, shall not allow it.

3 — The Government members shall promote the appointment of management staff that contributes to a balanced representation between men and women whenever the same shall not take place in the respective governmental area and the applicant list presented by CRESAP so permits it.

4 — In cases of public institutes governed by special regime to which the general regime of appointment of board members shall not be applicable, under the terms of Law No 3/2004, of 15 January, in its current wording, the Government members shall observe the minimum threshold of balanced representation in the appointment of the respective board collegial bodies.

Article 6

Public higher education institutions

1 — The proportion of persons of each gender, who meet the requirements provided for in paragraph 1 of article 4, shall not be lower than 40 % in the lists submitted for the election of governing and managing collegial bodies' members of public higher education institutions and the respective organic units.

2 — The threshold defined in the preceding paragraph shall also be complied with in the composition of the boards of trustees of public higher education institutions of a foundational nature.

Article 7

Public associations

1 — The proportion of persons of each gender, who meet the requirements provided for in paragraph 1 of article 4, shall not be less than 40 % in the lists submitted for election of decision-making, executive, supervision, and inspection collegial bodies' members of professional public associations.

2 — The threshold defined in the preceding paragraph shall be also observed in the composition of the decision-making, technical and advisory bodies of a collegial nature provided for in the statutes of professional public associations and that are not included in the preceding paragraph.

3 — The provisions set out in preceding paragraphs are to apply, with due adaptations, to equivalent bodies of other public entities of an associative basis.

Article 8

Non-compliance

1 — The non-compliance with the minimum threshold of the balanced representation in the appointment act of the board collegial body of public institutes of a special regime to which refers the paragraph 4 of article 5 shall entail the respective nullity.

2 — The electoral rules of each public higher education institution and public association foresee a time limit for the applicants' list regularization, in case of this one shall not comply with the minimum threshold of balanced representation, under penalty of the refusal of the whole list.

3 — The inobservance of the minimum threshold of balanced representation in the appointment of non-elected bodies of public higher education institutions and of public associations to which applies the present law shall entail the respective nullity.

Article 9

Follow-up

1 — The Commission for Citizenship and Gender Equality is the competent authority for following-up the enforcement of the present law.

2 — It is incumbent upon the Commission for Citizenship and Gender Equality to draw up annually a report on the implementation of the present law, the delivery to the Government member to whom reports to up to the end of the first semester of each year.

3 — The annual report on the progress of equality between men and women at work, in employment and vocational training, provided for in Law No 10/2001, of 21 May, shall include information concerning the evolution of the balanced representation between men and women in positions and bodies covered by the present law.

4 — The disaggregated data by gender related to management staff, received by the Directorate General for Administration and Public Employment, and the composition of the public higher education institutions

bodies, received by the Directorate General for Science and Higher Education, are shared with the Commission for Citizenship and Gender Equality and the Commission for Equality in Labour and Employment, for the purposes of the present law.

5 — The professional public associations and other public entities of associative basis shall communicate the change as to the composition of bodies covered by the present law to the Commission for Citizenship and Gender Equality and the Commission for Equality in Labour and Employment within the time limit of 10 working days calculated as from the tabulation of results or as of the date of the appointment act.

Article 10

Assessment

The application of the present law shall be the object of assessment after four years have elapsed since its entry into force.

Article 11

Transitional regime

1 — The provisions set out in the present law shall not be applicable to the filling of management staff of the state direct and indirect administration when on the date of entry into force of the present law the open competition procedure for filling in the position in question has already commenced at CRESAP.

2 — The minimum thresholds of balanced representation defined in articles 6 and 7 are to apply as of 1 January 2020.

3 — The minimum thresholds of balanced representation defined in the present law are not to apply to current terms of office.

Article 12

Entry into force

The present law shall enter into force on the following day of its publication.

Passed on February 8, 2019.

The President of the Assembly of the Republic, *Eduardo Ferro Rodrigues*.

Promulgated on March 21, 2019.

Let it be published.

The President of the Republic, MARCELO REBELO DE SOUSA.

Countersigned on March 22, 2019.

On behalf of the Prime Minister, *Augusto Ernesto Santos Silva*, Minister for Foreign Affairs.