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ERAC
EQUAL RIGHTS FOR ALL COALITION

GENDER QUOTA IN CORPORATE BOARDS IN KOSOVO

May, 2019

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Lead NGO for publishing the report
Kosovar Gender Studies Center (KGSC) (www.kgscenter.net)
KGSC has been contributing to gender mainstreaming since 2002 and continuously makes efforts to achieve gender equality in Kosovo. It has been pioneering changes to the discriminatory system, social norms, and double standards within Kosovar society, and is very active in monitoring public institutions. KGSC's mission is to integrate gender-sensitive analysis, programs, and policies in all sectors of Kosovar society by increasing gender awareness and focus on gender issues, developing gender studies and ensuring the inclusion of gender-sensitive policies through research, policy development, advocacy, and lobbying.

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Equal Rights for All Coalition
ERAC brings together seven (7) NGOs that work in the domain of ***rule of law*** and ***fundamental rights*** that will work together with an additional ***nineteen (19) grass root NGOs***, with a particular focus on the establishment of a sustainable network of NGOs that are active in the protection and promotion of the fundamental rights of vulnerable and/or marginalised groups. The project's special focus are the following groups: ***all minority communities*** in Kosovo, ***women, youth*** and ***LGBT community***. Although working on similar topics and issues, these NGOs are often divided on the basis of the particular target groups they are working with or the region they are active in. By establishing structural cooperation between selected NGOs and providing formal opportunities for continuous learning, the action generates the sharing of knowledge and experience between NGOs, strengthens their capacities for advocacy with relevant central and municipal institutions, and increases their visibility.

ERAC members are the following organisations:
- European Centre for Minority Issues Kosovo – leader of the Coalition;
- Centre for Social Group Development – member of the Coalition;
- Centre for Equality and Liberty for the LGBT Community in Kosovo – member of the Coalition;
- Kosovo Center for Gender Studies – member of the Coalition;
- Youth Initiative for Human Rights – member of the Coalition;
- Kosovo Glocal – member of the Coalition;
- Centre for Legal Aid and Regional Development – member of the Coalition.

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EXECUTIVE SUMMARY

Gender equality is a wider problem and not specific to Kosovo. Nevertheless, women in Kosovo constitute about 50% of the population and are entitled to gender equality based on the Constitutional principles and other legislation. The Law on Gender Equality, in particular, stipulates for equal representation of genders in all spheres of life, including the gender representation in corporate boards. Kosovo's Law no. 06/L-016 on Business Organizations defines a corporation as a Joint Stock Company or Limited Liability Company.

Therefore, in line with the law and pursuant to European best practices, the discussion to make up for this gap on women representation was raised at the Kosovo Assembly by introducing an amendment to the Law on Business Organization. This amendment to the Law requires the 40% representation of women in corporate boards in the first two years of its adoption and then bringing gender representation to equal numbers after this initial period.

However, ten months after the adoption of the law in May 2018, things have not progressed and women continue to be at a low number in boards as seen by the percentages received by the respective Ministry. Even in publicly owned enterprises women representation is very low. There is need for a follow-up on this topic to ensure that this Law does not remain only modern and progressive on paper but it actually gets implemented in practice.

Therefore, Kosovar Gender Studies Center recommends the following:

- The gender quota deriving from the Law on Business Organizations should start being implemented;
- An awareness campaign for the legislative changes should be organized;
- Sub-legal acts should be drafted and adopted;
- Affirmative actions shall be put in place;
- Data on the board members to be collected, disaggregated based on sex, and published;
- Corporate board leadership trainings to be organized for women; and
- A follow-up research to be carried out.

INTRODUCTION

Gender equality is one of the principles of a democratic country and it is often one of the subjects of political talks in particular during election campaigns. However, gender equality continues to be a struggle for Kosovo despite having almost equal number of population from the two sexes. Law on Gender Equality (Official Gazette, 2007) also stipulates for equal representation of genders in all spheres of life, which is not the case in many of them starting from the senior leadership in governing institutions (KGSC, 2017), inclusive of gender representation in corporate boards.

According to the European Commission (2018), only a quarter of board members in the largest publicly listed companies in the EU Member states are women; while only 3% (European Platform of Women Scientists, 2019) of the Chairpersons of the Boards of the largest companies in Europe were women. Therefore, the EU Member States tried to narrow this gender gap through various means (from legal instruments to voluntary regimes). Quotas for women representation on corporate boards are awaiting implementation in few countries and those are adopted in order to rectify the gender imbalance which persists on corporate boards. Norway and Iceland are the only ones that have achieved to meet their national quota objectives for women representation in boards (Birkvad, 2016), while France is the only EU Member State which has over 40% women in boards (European Commission, 2018).

Given the mindset in Kosovo, which is also illustrated by the very low number of women in the current Government Cabinet (only 2 Minister out of 21[1]), it cannot be expected that women will take their role in corporate boards without it being legally stipulated (as it was the case with the gender representation quota for the Kosovo Assembly).

A debate on the women representation in corporate boards took the central part of the media following an amendment proposed (and then adopted at the Plenary on March 15, 2018) by the Member of Parliament, Mimoza Kusari - Lila, without the functional committee's support of the Law No. 06/L-016 on Business Organizations. Ms. Kusari - Lila proposed to amend and supplement the law by introducing a fixed quota of 40% to be met after the implementation for the next two years which guarantees women representation in business organizations which shall be implemented six months after the entry into force of the law. The amendment further stipulated that the gender equality shall be enforced after two years of the entry into force of the Law and that the business organizations that do not obey shall undergo sanctions to be regulated by sub-legal acts.

[1] As of March 2019

This Law, however, was sent back for revision to the Assembly of Kosovo from the President with the justification that Kusari-Lila's amendment is not in line with Article 7(2), Article 24, and Article 119 (1) of the Constitution of Kosovo and with the CEDAW - which is directly implemented in Kosovo and has supremacy over domestic legislation. Furthermore, the President claimed that the quota limits the implementation of constitutional and legal guarantee on gender equality since it was proposed to have the quota only for the corporations. The President also justified his decision to return the Law to the Assembly stating that the provisions proposed by Ms. Kusari-Lila do not create favourable legal environment in the freedom of economic activity of business organizations (in this case the corporations) and are not in line with the Constitution (President of Kosovo, 2018). Furthermore, the provision which stipulates that sanctions are to be regulated by sub-legal acts issued by the Executive in cases of non-compliance, the President claims to potentially create insecurity in the freedom of economic activity. As a solution, the President proposes to add an Article to the Law in its Final Transitional Provisions which includes the adoption of legislative and other measures to promote and set up the gender equality in business organizations, effective protection of women against discriminatory acts, and support for business organizations to achieve the increase of underrepresented sex in their decision-making bodies.

Following the procedures as required by the Rules of Procedure of the Assembly (2010), Article 61, paragraph 3 on Signature and promulgation of laws, the Law was sent back to the functional-lead committee. The responsible committee processed the draft-law at the Plenary Session as required and the Assembly voted in favour of the quota of 40% proposed by the Member of Parliament, Kusari-Lila. The Law then was promulgated and published (Assembly of Kosovo, 2018) in the Official Gazette of Kosovo.

The same situation concerning the lack of women representation in boards lies with the publicly owned enterprises. Based on the official data received by the Ministry of Economic Development, women constitute only 10% of the positions of boards in publicly owned enterprises while the rest (90%) are held by men. Nevertheless, another figure is presented in the Kosovo Gender Analysis (Kosovo Women's Network, 2019) which claims that in the 31 publicly owned enterprises in Kosovo, out of 159 board members 85% are men and 15% are women. Furthermore, women head only 16% of all boards of the publicly owned enterprises. The Law on Publicly Owned Enterprises is also undergoing a revision currently (KGSC, 2018a) and will foresee the same provision of having 40% women in the boards in the first two years followed by equal number (50%) after this period. This will ensure that these two sectors are harmonized.

METHODOLOGY

Kosovar Gender Studies Center hired an external consultant to carry out this research. The expert utilized a mixed methods approach in carrying out this policy brief. Initially, the proposal of the Kosovo Member of Parliament, Ms. Mimoza Kusari-Lila was analysed in depth, followed by a desk research carried out in order to gain a clearer insight on how the gender representation in corporate boards in other regional and EU Member States is regulated. Other countries outside of EU were also taken into account in order to have a complete picture of the matter of concern.

Given the fact that Kosovo aspires to join the European Union, it is of utmost importance for Kosovo institutions to understand how various matters are regulated by EU acquis and to start aligning its national legislation with the European one.

In addition, a focus group was organized with representatives of think tanks involved in the matter, MP Kusari-Lira, corporates representatives, business organizations, and other interested parties. The recommendations deriving from the focus group are included in the policy recommendations of this research report.

Data on board members in corporate boards and publicly owned enterprises were requested officially from the Ministry of Economic Development and Ministry of Trade and Industry's. Ministry of Economic Development provided KGSC with an overall percentage of sex-based board membership data in publicly owned enterprises, while the Ministry of Trade and Industry (Personal communication, 2019) reported that the data on corporate boards membership are not available as they were not registered in the old system while the new system has been in place only for a month.

LEGISLATION

INTERNATIONAL LEGISLATION

There are numerous legal acts that promote and legislate gender equality in the world. Kosovo recognizes and has enshrined them in its higher legal act, Article 22 of the Constitution. Having less women in corporate boards is a form of discrimination which is prohibited under the Charter of the United Nations (1945), the 1948 Universal Declaration of Human Rights, and the 1967 Declaration on the Elimination of Discrimination against Women and the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1976). In addition, the International Labour Organisation (ILO) has adopted conventions to improve women's rights at work, among them the Equal Remuneration Convention (No.100), Discrimination (Employment and Occupation) Convention (No.111), Workers with Family Responsibilities Convention (No.156) and Maternity Protection Convention (No.183).

Goal 5 of the 17 Sustainable Development Goals of the United Nations' 2030 Development Agenda "Achieve gender equality and empower all women and girls" specifies that 'Gender equality by 2030 requires urgent action to eliminate the many root causes of discrimination that still curtail women's rights in private and public spheres', and that 'discriminatory laws need to change and legislation adopted to proactively advance equality'. This shall mean, among others, real decision-making power in public and private spheres.

KOSOVO LEGISLATION

Constitution of Kosovo in its Article 7, that is Kosovo's highest legal act, provides for equal treatment of all citizens and, in addition, putting in place affirmative measures that will protect and promote the rights of individuals and groups that are at an unequal position. The Constitution stipulates gender equality in Kosovo as a fundamental value for democratic development of the society. Kosovo should provide equal opportunities for both men and women in the political, social, cultural, and economic life. This is achieved when both sexes are equally represented in all legislative, executive, and judicial bodies and other public institutions as stipulated by the Law No. 05/L-020 on Gender Equality (LGE).

Nevertheless, women in top positions in business organizations have not and do not enjoy the 50% that LGE stipulates. The first Kosovo legislative act regulating corporate boards was adopted in 2008 (now abolished). Chapter 6 Board of Directors and Officers (Assembly of Kosovo, 2008), that regulated how the board of directors should be established and comprised of, had no reference to women directors at all. Even three years later, in 2011, when the now abolished law was amended and supplemented (Assembly of Kosovo, 2011), no word was used to reference any gender representation or quota in corporate boards. The number of board directors, their selection and any other matter was left on the will of the shareholders when agreeing on the establishment of a business organizations. Only in the current law, upon the proposal of MP Kusari-Lila, the Assembly of Kosovo adopted a 40 percent quota of women's participation in Joint Stock Companies. According to the Article 34 Initial Registration of a Joint Stock Company of the Law No. 06/L-016 on Business Organizations, the implementation of this quota should commence not later than six (6) months after the adoption of the law and after two years of law enforcement, namely starting in November 2020, there should be gender equality in boards. The sanctions for the lack of implementation of the quote should be determined by sub-legal acts that derive from the applicable Law.

FINDINGS

This topic has not been researched before; thus, there are no previous findings or research reports. Even the data on the board members of the corporates are not found anywhere. Despite repeated efforts from Kosovar Gender Studies Center to gather these data and the requests submitted to the respective bodies to provide them, it has been impossible to collect them. The only data KGSC could get were the number of businesses and the overall percentage of women in boards of publicly-owned enterprises. According to the data received from the Ministry of Trade and Industry (Personal communication, 2018), there are 65,418 businesses registered in Kosovo (data from 2012 - August 2018); 150 of these businesses are corporates, namely Joint Stock Companies or Limited Liability Companies as defined by Kosovo's legislation; and only twelve of them have at least one woman owner (sic. they could have more than one owner).

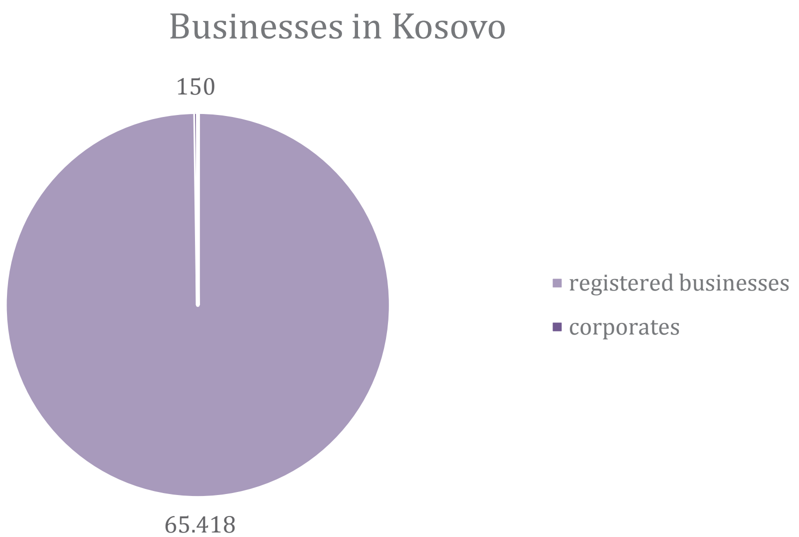

Figure 1. Businesses in Kosovo

In the conference "Law on Business Organizations and the Gender Quota" that Kosovar Gender Studies Center organized with the stakeholders from Assembly, NGOs, donors, Chambers of Commerce, and other interested parties (KGSC, 2018), it was mentioned by some of them that there are not enough professional, qualified women to fill the positions of the board members. In addition, the maternity leave was referred as another obstacle for companies not to have women on their boards.

A LOOK INTO OTHER COUNTRIES' PRACTICES

In 2012, European Parliament and the European Council proposed the directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures as it was noticed that the gap was significant. The purpose of the proposal is to increase the percentage of women on corporate boards by 40% as a minimum objective (EUR-Lex, 2012). Since then, EU Member States have legislated the gender representation in corporate boards in various ways such as: using voluntary efforts, progressive sanctions, or stages.

Below is a summary of how certain countries have regulated the gender quota in their corporate boards; the target dates they have set, the progressive sanctions in place and also the affected companies.

EU Member States

- **Belgium** adopted its 33% gender quota in 2011 (CESifo Group, 2013). The target date for the implementation was set for 2012 for state owned companies while the listed companies have to meet this deadline between 2017-2019. The progressive sanctions Belgium undertook included the invalidity of any appointment to vacant positions as long as the quota is not fulfilled and suspension of any advantage (financial or otherwise) for board members. However, since 2012 (SAIS Center for Transatlantic Relations) the publicly traded companies in Brussels are not legally obligated to meet this quota. It is rather seen as an objective for the companies.

- **France** arranged the quota requirement in two stages back in 2011. The first stage of 20% was to be met by 2014 and the second stage of 40% to be met by 2017 (CESifo Group, 2013). This quota impacts listed companies on the stock exchange, non-listed companies with at least 500 employees and revenues of over EUR 50 million, and state-owned companies. France ruled out benefits of directors as progressive sanctions for meeting the quota. It also nullified the board elections but keeping valid their decisions.

- **Germany** adopted its Frauenquote in 2014 (Groebecker & Nase, 2015). According to it, affected companies determine a period of five years in the maximum within which the objectives have to be implemented. The first period was to be determined by 30 June 2015 and not exceed two years. There is no rigid minimum target figure prescribed by law. However, if and as long as the actual proportion of women is less than 30%, the target figure to be determined must not fall below this status quo. This figure impacts companies with the legal statute of an AG, KGaA, German limited liability company (GmbH), registered cooperative society (eG), mutual insurance society (VVaG), regularly employ more than 500 employees, or those companies that are publicly listed. Germany did not impose any particular sanctions if the statutory requirements relating to the determination of said objectives are not fulfilled. However, pursuant to the explanatory memorandum to the draft bill, members of the corporate bodies could be held liable for damages if they breach the obligation to set specific objectives.

- **Italy** adopted the 33% quota in 2011 and set 2015 as the target date to meet it (CESifo Group, 2013). This quota impacts publicly listed companies and state owned companies. This is also valid for management boards. The progressive sanctions that Italy undertook are official warnings, fines between 200,000 - 1,000,000 EURO, and forfeiture of the offices of elected board members.

- **Netherlands** regulates gender quota within its Civil Code since 2011. The quota set from the Netherlands is 30% and was determined to be reached by 2016 (CESifo Group, 2013). This regulation impacts larger private and public limited companies, and companies that meet at least two of the following three criteria: 1. Total value of company's assets > EUR 17.5 Mill. and 2. Net annual turnover > EUR 35 Mill., and 3. Annual average number of employees > 250. The gender quota is also valid for management boards. Failure must be reported in the annual report along with a declaration of corrective measures.

- **Spain** has regulated the gender representation in corporate boards within its Spanish Organic Law on Gender Equality in 2007. The quota set is 40% to be met by 2015 and the impacted companies are listed companies on IBEX 35 with more than 250 employees (CESifo Group, 2013). Spain did not set any progressive sanctions for companies not meeting the quota but takes it into account in procedures to award a public contract or the "equality label".

- **United Kingdom** does not have a legislated quota. However, it knows a voluntary effort, founded by money manager Helena Morrissey, known as the 30% Club (Smale & Miller, 2015), which has helped to substantially increase women's representation using persuasion to help double the percentage of women on the boards of major British companies since 2010, to 23 percent.

- **Austria** regulated the gender representation back in 2011. It split its target date into two: the first one of 25% to be met by the end of 2013 and the second of 35% to be met by the end of 2018 (McGrath & Hastings, n.d.). The impacted companies by this gender quota are those in which the state owns half or more of them.

- **Denmark** introduced the gender quota in 2012 (Hesgaard & Nørkær, 2013). The target date the country decided to set is ideally less than a 4-year time frame to be implemented by individual companies. If there is not a 40/60 gender distribution, companies must set a target for the quota of the underrepresented gender in the supreme governing body and must prepare a policy to increase the quota of the underrepresented gender at the other levels of management. They must also state the status of the fulfilment of set target, including, if applicable, why the company has not yet reached the target, in the companies' annual report as part of the management's review. The companies affected by this are listed companies, companies, businesses and foundations who have debt instruments or other types of securities listed for trade on a regulated market in an EU/EEA country, large public and private limited companies and limited partnership companies, large partnerships and limited partnerships in which all partners and general partners are public or private limited companies, large foundations, and state-owned public limited companies. If the affected companies do not comply, a fine might be given to them.

- **Greece** has a quota of 33% stipulated in its Gender Equality Act (CESifo Group, 2013). This impacts state-appointed portion of a board of all executive bodies consisting of member appointed by the state or local authorities, including companies fully or partially state-controlled. Appointment decisions failing to comply with the quota are subject to annulment by administrative courts, and decisions adopted by these boards are subject to annulment by civil courts.

- **Finland** regulated the gender representation through The Act of Equality Between Women and Men (CESifo Group, 2013). It legislated the matter through a 50% unless there are "special reasons to the contrary".

- **Slovenia** has regulated the gender representation through The Regulation on Criteria for Respecting the Principle of Gender Balanced Representation in 2004 (CESifo Group, 2013). The 40% representation of each sex impacts the process of nominating or appointing government representatives in public enterprises and other entities of public law, including management and supervisory boards of state-owned enterprises.

- **Norway**, which is not an EU Member State, began with the idea in 2003, when the implementation of the gender quota was voluntary and then followed it in 2006 when the 40% quota had to be met by 2008 (Sweigart, 2012). The companies impacted by this legislation were the publicly listed companies which, in case of not meeting the quota, would be denied registration as a business enterprise in the Bronnoysund Register Centre and be subject to forced dissolution by the courts. This impacts bodies, agencies, and institutions exercising public authority and companies in which the government or a municipality is a major shareholder with an executive or administrative body consisting of elected representatives.

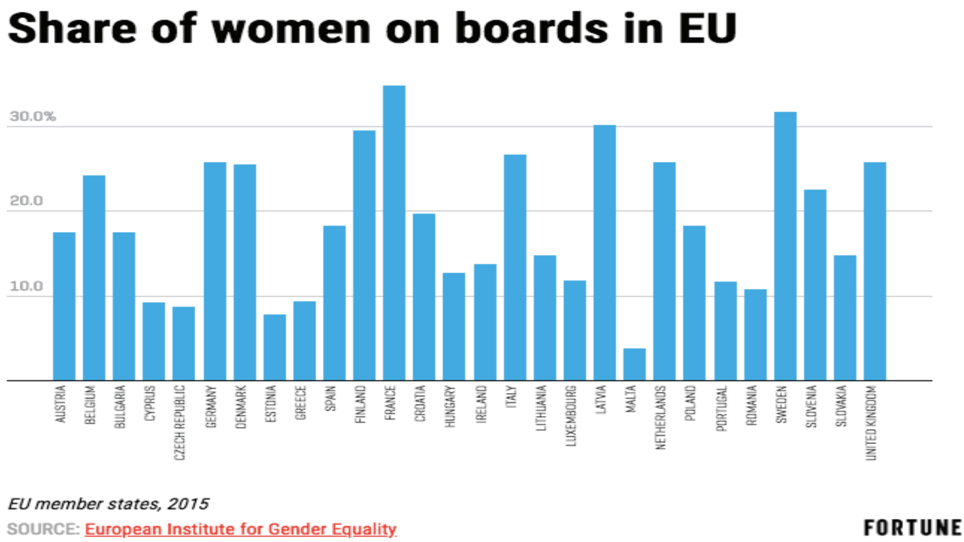

Figure 2. Share of women on boards in EU (Source: Fortune, 2017)

CONCLUSIONS

Gender gap in corporate boards is described as an issue of justice and company economic performance. European Union institutions took action back in 2012 to narrow this gap; actions which are still being taken as countries are still lagging behind in this obligation. The experiment on Spain's gender quota implementation (de Cabo et. al., 2019) shows that soft-quota does not trigger its adoption.

This discussion became more vocal in Kosovo only in 2018 when the Law on Business Organizations was undergoing amending and supplementing and this proposal came forward at the Kosovo Assembly.

Lack of professional women and maternity leave was referred in KGSC Conference (2018) as some of the obstacles for companies to not have women board members. The low number of women in decision-making is seen as a barrier and their lack does not create a role model for other women to pursue. Only 15% of the board membership is women, while the rest is filled by men. In addition, only 12 women are owners or co-owners of the corporates.

This research was carried out shortly after the Law was adopted and its results are yet to be seen. A follow-up and deeper research shall be carried out in the near future to understand how this new legislation is being implemented and if the corporate boards have been affected by it.

RECOMMENDATIONS

The legislation on the gender quota in corporate boards, as it is currently, is considered to be progressive and provides for gender equality; however, in real life the joint stock companies (that are obliged to have board of directors) are not adhering to it even months after its adoption by the Kosovo Assembly. Therefore, the first and foremost recommendation is for the companies to start implementing the law that obliges them to have 40% women in their boards.

Other recommendations include:

- Awareness campaign for the legislative changes - this should be done by the Ministry of Economic Development as the responsible government body to oversee the functioning of the companies and the Agency for Gender Equality as the executive agency in charge of monitoring the implementation of the Law on Gender Equality that requests all public spheres to provide for gender equality;
- Sub-legal acts need to be drafted and adopted - Law on Business Organizations stipulates the adoption of sub-legal acts yet to be drafted. These sub-legal acts shall be drafted and include specific provisions on how the gender quota will be implemented and what are the sanctions for the companies that do not fulfil this legal obligation within the set timeline;
- Affirmative actions shall be put in place for companies that implement the gender quota when applying for public tenders in forms of additional points;
- Ministry of Trade and Industry should collect data on corporate boards and disaggregate them based on sex and make them available online for the interested parties;
- Corporate board leadership trainings to be organized for women by women non-governmental organizations, Agency for Gender Equality, and other international donors focused on gender equality; and
- A follow-up research to be carried out in the near future to deeply analyse the impact the new Law on Business Organizations, in particular Article 34, on corporate boards' memberships.

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