Strelia Employment Newsflash

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Breaking the Glass Ceiling: Increasing the Presence of Women on Boards

Achieving gender equality in the workplace requires not only equal pay for equal work and the closing of the gender pay gap (see Pay Transparency Directive), but also **gender-balanced decision-making** at all levels of the company.

At the end of last year, on 27 December 2022, the **European Women on Boards Directive**, which is Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures (the "Directive"), came into force. Member States have until 27 December 2024 to transpose the Directive into national law.

In this newsletter, we will analyze the key measures from the Directive and its impact on Belgian companies.

Aim

Ten years after the Directive was first proposed, and despite the existence of legislation in EU Member States for combatting gender-based discrimination, the European Council still observed that women continue to be under-represented at the highest decision-making bodies of companies. This Directive aims to achieve a **more balanced representation** of women and men among the directors of listed companies. It lays down effective measures to accelerate progress towards gender balance, diversity, and equality at the top, while allowing listed companies sufficient time to make the necessary arrangements for that purpose.

Listed companies only

The Directive applies to **listed companies only**. It explicitly excludes micro, small and medium-sized enterprises (SMEs), which the Directive defines as a company with fewer than 250 employees and an annual turnover of less than €50 million or an annual balance sheet total of less than €43 million.

Gender-balance targets

The Directive sets **30 June 2026 as the deadline** for listed companies to substantially increase the number of women on their corporate boards by having either

(i) at least 40% of non-executive director positions filled by members of under-represented gender; or
(ii) at least 33% of all director positions, both executive and non-executive, filled by members of an under-represented gender.

Measures to achieve the targets

The Directive lays down measures that enable listed companies that do not meet the above targets to adapt their **candidate selection process** for appointment or election as directors:

- Listed companies must apply clear, neutrally formulated and unambiguous criteria in a non-discriminatory manner throughout the entire selection process.
- When choosing between candidates who are equally qualified in terms of suitability, competence and professional performance, priority must be given to the candidate of the under-represented gender unless there

are, in exceptional cases, reasons of greater legal weight.
- At the request of a candidate who was considered during the candidate selection process for appointment or election to a director position, listed companies must inform that candidate of the following: (a) the qualification criteria upon which the selection was based; (b) the objective comparative assessment of the candidates under those criteria; and (c) if relevant, the specific considerations exceptionally tilting the balance in favour of a candidate who is not of the under-represented gender.
- If the candidate selection process for appointment or election to director position is done through shareholder- or employee-voting, listed companies must ensure that voters are properly informed about the measures under this Directive.

In addition to complying with the targets under this Directive, listed companies will have to report yearly in their annual report about the men–women ratio on their board of directors. This information must also be disclosed on the listed company's website.

Regarding non-compliance, the Member States must individually determine effective, proportionate, and deterrent sanctions.

Current situation in Belgium and transposition of the Directive

Belgium must adapt its national legislation, which already provides for gender quotas for listed companies and public-interest entities (regardless of their size). Indeed, the existing Belgian Quota Law already requires that listed companies:

- with a one-tier governance system, have 1/3 of the board of directors (*raad van bestuur/conseil d'administration*) of the opposite gender, regardless of whether the members are executive or non-executive directors;
- with a two-tier governance system, have 1/3 of the supervisory board (*raad van toezicht/conseil de surveillance*) of the opposite gender, but there is no gender quota for the management board (*directieraad/conseil de direction*).

Although the one-tier governance system in listed companies could be perceived as being Directive-compliant, this is not the case for companies having a two-tier governance model. Hence, Belgium could either:

- apply the first target quota of 40% and therefore adapt its legislation for the two-tier governance system. This means that, to be Directive-compliant, the 33% quota for the supervisory board will have to be increased to 40%. Listed companies will also have to set individual quantitative targets to improve the balance among executive directors; or
- apply the second-target quota of 30% and therefore adapt its legislation for the two-tier governance system. This means, to be Directive-compliant, in addition to the supervisory board, the management board will also have to meet the 33% quota.

On top of that, Belgium will also have to introduce measures to ensure that listed companies that do not meet the targets adapt their candidate selection process regarding the appointment or election as a director.

Our team will continue to monitor the developments on the transposition of the Women on Boards Directive into Belgian law closely.

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