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Strelia ESG Series

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Are We Breaking Through the Glass Ceiling Yet?

Achieving gender equality in the workplace is no small feat. It requires not only equal pay for equal work (thus closing the gender pay gap; see Pay Transparency Directive) but also gender-balanced decision-making at all levels of a company. As a step towards reaching this goal, the European Parliament and the Council adopted Directive (EU) 2022/2381 of 23 November 2022 on improving the gender balance among directors of listed companies and related measures (the "Directive").

Ten years after it was first proposed, it finally came into force at the end of last year, on 27 December 2022. It lays down effective measures to accelerate progress towards gender balance, diversity, and equality at the top, while allowing companies sufficient time to do everything necessary for that purpose. Member States have two years (until 27 December 2024) to transpose it into national law. This Strelia ESG Series analyzes the Directive's essential elements and what Belgium still needs to do to comply with the Directive.

Large Listed Companies

The Directive applies only to companies whose registered office is in a Member State and whose shares are traded on a regulated market in a Member State.

Quantitative and Qualitative Criteria

These companies have until 30 June 2026 to increase the number of women on their corporate boards substantially by attaining one of the following: (i) at least 40% of non-executive director positions are filled by members of the under-represented gender; or (ii) at least 33% of all director positions, both executive and non-executive, are filled by members of the under-represented gender.

To lower the barrier to achieving greater gender balance among directors, listed companies that do not meet those thresholds will have to satisfy several qualitative criteria relating to the selection of candidates for appointment or election to director positions. Listed companies will need to use transparent and clearly defined selection processes and conduct objective comparative assessment of candidates' qualifications in terms of suitability, competence and professional performance.

Listed companies will have to report the gender ratio on the board every year to a government body of the Member State and will have to disclose this information on their website. Member States will publish and update a list of the companies that have reached the set ratio, and they must also determine effective, proportionate, and deterrent sanctions if companies do not satisfy this.

Enough?

Belgium is no stranger to equality-enhancing measures because, since 2011, it has already required that listed companies, regardless of their size, have at least 33% of either (i) the members of the board of directors (if the company has a one-tier governance system) or (ii) the members of the supervisory board (if the company has a two-tier governance system) who represent the opposite sex of the rest of the board. These companies must also report yearly on the diversity policy they have in place and on the efforts they have made to reach said quota. However, this is not enough. The Belgian Code of Companies and Associations does not impose a quota on the executive board in the two-tier governance system. To comply with the Directive, the Belgian legislature will therefore have to adjust the quotas for the two-tier governance system by either increasing the quota to 40% concerning the supervisory board or by applying 33% to both the supervisory board and the executive board.