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Law of 19 December 2025 establishing a quantitative objective for gender balance among directors of listed companies

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1. INTRODUCTION – GENESIS AND SCOPE OF THE “WOMEN ON BOARD” DIRECTIVE

Directive (EU) 2022/2381 of 23 November 2022 (the **Directive**) forms part of a long-standing European process aimed at ensuring effective equality between women and men, established as a founding value of the Union by Article 2 of the Treaty on European Union and enshrined, in Luxembourg, in Article 15(3) of the Constitution of the Grand Duchy of Luxembourg. Despite decades of public policies, recommendations, European strategies and self-regulatory initiatives, the persistent under-representation of women within corporate governing bodies, and in particular within listed companies, has remained a structural feature throughout the Union.

In light of the limitations of these voluntary approaches, the European legislature decided to take a decisive step by introducing a binding legal framework, on the basis of the powers conferred upon it by Article 157 of the Treaty on the Functioning of the European Union, with a view to ensuring equal opportunities in employment and career advancement. The stated objective of the Directive is therefore to accelerate, in a decisive manner, a movement initiated long ago, by combining procedural requirements, quantitative objectives and enforcement mechanisms, in order to bring about a lasting transformation of corporate governance and to make equality between women and men a driver of economic performance and institutional credibility.

Against this background, the Luxembourg law transposing the Directive of 19 December 2025 (the **Law**) reflects a deliberate commitment to fidelity to both the structure and the purpose of the Directive, in accordance with a pragmatic approach based on the principle of “*the whole Directive and nothing but the Directive*”, while ensuring both legal certainty for undertakings and the normative effectiveness of the European framework.

2. SCOPE OF APPLICATION

The Law applies exclusively to listed companies having their registered office in the Grand Duchy of Luxembourg, defined as companies whose shares are admitted to trading on a regulated market, within the meaning of Directive 2014/65/EU, in one or more Member States.

Listed companies qualifying as micro, small and medium-sized enterprises (**SMEs**) are expressly excluded from the scope of the Law. For the purposes of the Law, SMEs are defined as undertakings employing fewer than 250 persons and having an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million.

The regime is thus deliberately limited to listed companies of significant size, considered to have a structuring effect on governance and diversity within the Luxembourg economy.

It follows that, for any company meeting these criteria, the law applicable to gender balance among directors is the Law, irrespective of the regulated market or markets on which its shares are admitted to trading.

This mechanism is of particular importance in the Luxembourg context, where a significant number of companies have their statutory seat in the Grand Duchy while being listed on regulated markets located in one or more Member States, and nevertheless remain fully subject to the governance requirements laid down by Luxembourg law.

3. QUANTITATIVE OBJECTIVES AND CALCULATION METHODS

3.1. European framework: The Directive leaves Member States the choice between two quantitative objective models, to be achieved no later than 30 June 2026. Member States may require listed companies either:

- > Option 1: that members of the under-represented sex hold at least 40 % of the positions of non-executive directors; or
- > Option 2: that members of the under-represented sex hold at least 33 % of all director positions, whether executive or non-executive.

This choice is intended to offer Member States a degree of flexibility in adapting the regime to their national governance structures, while ensuring a harmonised minimum level of gender balance within corporate decision-making bodies.

3.2. Luxembourg choice: while transposing the Directive, the Luxembourg legislature selected the second option provided for in the Directive.

Accordingly, the Law requires listed companies falling within its scope of application to ensure that, no later than 30 June 2026, members of the under-represented sex hold at least 33% of all director positions, whether executive or non-executive. This approach is intended to secure progress in representation of the under-represented sex at all levels of decision-making, and not solely within supervisory functions, thereby embedding equality across the entire governance structure of the companies concerned.

This broader model is designed to produce a structural effect on the composition of corporate governing bodies and to strengthen the impact of the regime in terms of professional equality and corporate governance.

3.3. Calculation method: the Law further specifies the method for calculating the quantitative objective, taking into account the variable size of boards of directors. It provides that the number of director positions of the under-represented sex required to meet the 33% objective corresponds to the number closest to that proportion, without exceeding 49%.

This mechanism is intended to address the mathematical constraints arising from the often limited size of boards, for which it is arithmetically impossible to achieve an exact 33% threshold. It establishes a mandatory minimum requirement, which companies are free to exceed; the 49% ceiling serves solely to determine the minimum number required to satisfy the objective and does not in any way constitute a maximum limit on representation of the under-represented sex.

Number of board positions

=

Minimum number of directors of the under-represented sex required to meet the 33% objective

> 1 board position = -

> 3 board positions = 1 (33,33%)

> 4 board positions = 1 (25%)

> 5 board positions = 2 (40%)

> 6 board positions = 2 (33,33%)

> 7 board positions = 2 (28,6%)

> 8 board positions = 3 (37,53%)

> 9 board positions = 3 (33,33%)

> 10 board positions = 3 (30%)

> 11 board positions = 4 (36,4%)

Etc.

4. QUALITATIVE REQUIREMENTS AND SELECTION PROCESS

4.1. Where a listed company fails to meet the quantitative objective set by the Law, it is required to review and formally adjust its selection process for candidates for appointment or election to the position of director. That process must be based on a comparative assessment of the qualifications of each candidate, carried out on the basis of criteria which must be clear, formulated in gender-neutral terms, unambiguous, and established prior to the launch of any selection procedure.

4.2. By way of illustration, the criteria may include professional experience in management or supervisory functions, international experience, multidisciplinary background, leadership and communication skills, the ability to work in networks, as well as specific relevant knowledge in areas such as finance, financial oversight or human resources management.

4.3. Where several candidates present equal qualifications in terms of suitability, competence and professional performance, the Law requires that priority be given to the candidate of the under-represented sex, unless, in exceptional and duly justified cases, objective considerations of overriding legal importance, such as the pursuit of other diversity policies, justify a departure from this rule.

4.4. Particular attention must be drawn to this requirement, since where a candidate of the under-represented sex who has not been selected establishes facts from which it may be presumed that he or she had qualifications equal to those of the candidate selected, the listed company must prove that no breach of the statutory obligations has occurred, the burden of proof resting directly with the listed company in the event of a dispute.

4.5. This mechanism transforms the policy governing the appointment of directors into a highly structured, traceable and legally reviewable process, placing corporate governance under a regime of enhanced compliance.

5. TRANSPARENCY OBLIGATIONS, SUPERVISION AND SANCTIONS

5.1. The Law does not provide for a specific sanction attached solely to the failure to meet the quantitative objective; however, it would be incorrect to conclude that the regime lacks binding force. The legislature has established a compliance framework based on highly structured behavioural and transparency obligations, compliance with which is placed under the direct supervision of the *Commission de Surveillance du Secteur Financier (CSSF)*.

5.2. Accordingly, any listed company that fails to meet the objective must not only adjust its selection process but must also report publicly and in a reasoned manner on its situation. This transparency obligation operates at several levels: (i) through annual reporting to the CSSF on the composition of the board and the measures implemented to achieve the quantitative objectives; (ii) through the publication on the listed company's website of information relating to the composition of the board and, where the objective has not been met, the reasons for such failure together with the corrective measures adopted; and, where applicable, (iii) through the inclusion of such information in the corporate governance statement contained in the annual report.

5.3. The CSSF therefore plays a central role in this framework: it analyses the information received, monitors gender balance within the boards of directors of listed companies, publishes and updates the list of companies that have achieved the objective, and may issue injunctions requiring listed companies to comply with their obligations.

5.4. It is therefore not the quantitative objective as such that triggers sanctions, but rather the failure to comply with the behavioural, transparency and governance obligations. Breaches of these obligations expose the listed company to a comprehensive range of administrative measures and sanctions imposed by the CSSF, which may range from a warning to an administrative fine of up to EUR 250,000.

6. LAW OF LIMITED DURATION

Article 10 of the Law provides that it shall cease to have effect on 31 December 2038, in accordance with the temporal framework established by the Directive, whose structure and mechanisms it faithfully reproduces.

This time limitation reflects the intention of the European legislature to frame the reform as a targeted, proportionate and time-limited intervention. The regime is conceived as a lever for transforming governance practices, designed to be reassessed at the end of the relevant period to determine whether the progress achieved in terms of gender balance justifies its maintenance, adaptation or replacement.

The Law thus strictly follows this European timeline. The reform is conceived as an instrument of transformation aimed at producing a profound structural change in governance practices by 2038, rather than as a permanent regime.

For listed companies, this time horizon in no way weakens existing obligations: the 33% objective remains fully applicable as from 30 June 2026, and all governance, transparency and supervisory mechanisms remain mandatory throughout the entire duration of the Law.

7. ENTRY INTO FORCE AND COMPLIANCE TIMELINE

The Law does not provide for any specific transitional provisions and therefore entered into force on the fourth day following its publication in the Official Journal (*Mémorial A*).

As the quantitative objective must be met no later than 30 June 2026, the listed companies concerned are already required to carry out a comprehensive review of the current composition of their boards of directors, their selection processes, as well as their reporting and publication mechanisms, in order to ensure a progressive and well-controlled compliance with all new obligations arising from the reform.

This timetable requires gender balance to be addressed as an immediate governance priority, rather than as a purely declaratory exercise approaching the deadline.

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