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Gender balance by 30 June 2026: 33% to achieve... are you ready to explain your position?

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1. INTRODUCTION – CONTEXT AND KEY REMINDERS

In a previous client briefing on this topic, we outlined the key provisions of the law of 19 December 2025 (the **Law**), which transposes Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies.

By way of reminder, this framework applies exclusively to listed companies with their registered office in Luxembourg, excluding SMEs, and requires that, by no later than 30 June 2026, a minimum representation of 33% of the underrepresented sex be achieved among all directors, whether executive or non-executive, as part of its implementation.

The number of positions to be held by the underrepresented sex corresponds to the figure closest to the 33% threshold, without exceeding 49%, in accordance with the calculation methods set out in the Law.

Beyond this numerical threshold, the core of the regime lies in the qualitative requirements governing the selection process. Companies are required to carry out a comparative assessment of candidates on the basis of pre-established, clear and neutral criteria. Where candidates are equally qualified, priority must, in principle, be given to the underrepresented sex, unless objectively justified. In the event of a challenge, the burden of proof rests with the company.

The framework also entails enhanced transparency and reporting obligations. Companies are required to publish and submit, on an annual basis, information relating to the composition of their governing bodies and the measures implemented. The *Commission de surveillance du secteur financier (CSSF)* monitors compliance with these obligations and, in particular, publishes a list of compliant companies.

It is not the quantitative target as such that is subject to sanction, but rather any failure to comply with the applicable conduct, transparency and governance requirements, which may give rise to administrative sanctions of up to EUR 250,000.

For a detailed analysis of this new framework, please refer to our previous client briefing: *Newsletter - Law of 19 December 2025 establishing a quantitative objective for gender balance among directors of listed companies*.

2. WHERE DO YOU CURRENTLY STAND?

With only a few months remaining until the 30 June 2026 deadline, in-scope companies must now be in a position to assess their level of compliance in concrete terms. In this respect, the following points should be reviewed:

- > What is the current composition of the board of directors, distinguishing between executive and non-executive directors?

- > Does the underrepresented sex meet the required threshold, taking into account the size of the board and the calculation rules set out in the Law?

- > If not, how many appointments or renewals are required to achieve this target?

> Does the current term schedule allow these adjustments to be anticipated in a manner consistent with the applicable legal requirements?

Beyond this assessment, companies must also ensure that their internal processes, in particular those relating to the selection of candidates, are properly structured and compliant with the requirements of the Law.

3. THE 33% TARGET: CALCULATION METHOD AND ILLUSTRATIONS

3.1. Objective: at least 33% representation of the underrepresented sex across all director positions, whether executive or non-executive.

3.2. Basis of calculation: total number of positions within the relevant governing bodies.

3.3. Determination of the number of positions: the number of positions to be held corresponds to the number closest to the 33% threshold, without exceeding 49%, in accordance with the calculation method set out in the Law.

3.4. Scope of the calculation: depends on the governance structure adopted by the company.

3.4.1. One-tier system: all members of the **board of directors**, whether executive or non-executive, must be taken into account for the purposes of the calculation.

3.4.1. Two-tier system: all members of both the **management board** and the **supervisory board** must be taken into account on a combined basis for the purposes of the calculation.

3.5. Calculation in a one-tier system (board of directors):

3.6. Calculation in a two-tier system with a management board and a supervisory board

The calculation is based on the total number of positions within the management board and the supervisory board. The variations observed result from the combined composition of these bodies and the application of the rounding rules set out in the Law. The table below illustrates the application of these rules based on typical configurations.

4. QUALITATIVE REQUIREMENTS: THE TRUE CORE OF THE FRAMEWORK

Compliance with the 33% target is not limited to a numerical assessment: it requires the implementation of a structured, documented and auditable internal selection process.

You must define pre-established, clear, neutral and unambiguous selection criteria enabling an objective assessment of candidates. Where candidates are equally qualified, priority must, in principle, be given to the underrepresented sex, unless objectively justified.

This process must be formalised and traceable. In the event of a challenge, you must be able to demonstrate that the selection procedure has been conducted in compliance with the applicable legal requirements, the burden of proof resting with the company.

5. WHAT IF THE 33% TARGET IS NOT MET?

Failure to meet the 33% target does not, in itself, trigger any direct sanction.

The framework is based on a “comply or explain” approach: it does not hinge on achieving a strictly quantified result, but on compliance with governance and procedural requirements.

In the event that the target is not met, you must be able to demonstrate that your selection processes comply with the applicable legal requirements and that your position can be objectively justified.

6. TRANSPARENCY AND DISCLOSURE OBLIGATIONS: THE REAL STAKE

The framework entails enhanced transparency and governance obligations, compliance with which is subject to the direct supervision of the CSSF.

You must anticipate and structure your selection policy, as well as the criteria and processes applied, in order to be able to justify, in a consistent manner, any deviation from the target.

Where the target is not met, you must (i) adjust your selection process and (ii) be in a position to provide a clear and substantiated public explanation of your situation.

These transparency requirements are implemented through (i) annual reporting to the CSSF on the composition of the relevant governing bodies and the measures adopted, (ii) the publication of information on the company's website and, where applicable, (iii) its inclusion in the corporate governance statement.

The risk is twofold: (i) legal, in the event of a failure to comply with transparency and governance obligations, potentially giving rise to administrative measures and sanctions imposed by the CSSF; and (ii) reputational, resulting from the public disclosure and ongoing scrutiny of the information provided.

Should you have any questions or require assistance in assessing your compliance, please do not hesitate to contact our partner, Pierre-Alexandre Degehet (pierre-alexandre.degehet@kleyrgrasso.com)

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