

Communication

Internal

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Diversity - EBA and NBB benchmarking exercises and prudential expectations

Scope

- Credit institutions governed by Belgian law
- Stockbroking firms governed by Belgian law
- Branches established in Belgium of credit institutions and stockbroking firms governed by the law of non-Member States of the European Economic Area
- In the context of consolidated or sub-consolidated supervision, approved or designated (mixed) financial holding companies governed by Belgian law¹.

Entities falling within the scope of this communication are hereinafter referred to as “financial institutions”.

Summary/Objectives

Pursuant to Article 31 of the Banking Law² and Article 29 of the Law on the supervision of stockbroking firms³, financial institutions are required to: (i) develop a diversity policy that covers at least the following aspects: age, gender, educational background, professional background and, for institutions that are active internationally, geographical provenance, (ii) set a target for the representation of the under-represented gender in the statutory governing body, and (iii) develop a policy to increase the number of representatives of that gender.

In this context, the National Bank of Belgium (hereinafter “the Bank”) presents the results of the latest diversity and gender pay gap practices benchmarking exercise carried out by the European Banking Authority (EBA), as well as the benchmarking exercise it carried out itself at the Belgian level. The overall conclusion is that financial institutions have made too little progress in recent years with regard to the representation of the under-represented gender in their management bodies, and that these institutions should change their company culture and implement legislation correctly, both in letter and in spirit.

The Bank therefore expects financial institutions to step up their efforts in this area.

¹ With regard to approved or designated (mixed) financial holding companies governed by Belgian law, diversity obligations apply not on an individual basis, but indirectly on a consolidated or sub-consolidated basis.

² Law of 25 April 2014 on the legal status and supervision of credit institutions.

³ Law of 20 July 2022 on the legal status and supervision of stockbroking firms and containing various provisions.

Dear Sir,
Dear Madam,

Diversity is an important societal issue today in building a cohesive and fair society for future generations. More than ever, financial institutions have a societal responsibility to contribute to the development of a diverse and inclusive culture.

In this context, the Bank, together with the European Central Bank⁴, supports the promotion of diversity. More diverse management bodies contribute to better decision-making on strategies and risk-taking by accommodating a wider range of views, opinions, experiences, values and backgrounds.

Diversity helps to avoid groupthink, facilitates independent opinions and critical challenge, and strengthens the risk monitoring and resilience of financial institutions. One reason for this is that people from different backgrounds bring different perspectives. They are better able to recognise mistakes because they are less likely to form biases based on their own experiences, and are more inclined to question the status quo, which strengthens the development of a risk culture. In this way, diversity can be used as a risk management tool.

Although diversity covers a wide range of aspects, in prudential terms it is a factor to be taken into account in the composition of financial institutions' management bodies (application of the "tone at the top" principle), as well as their staff.

The promotion of diversity in management bodies, with a particular focus on gender issues, is anchored in the European Capital Requirements Directive (CRD)⁵ and Investment Firms Directive (IFD)⁶/Markets in Financial Instruments Directive (MiFID II)⁷ and in the supervisory laws that transpose them. The EBA has clarified the expectations at the European level in its Guidelines on internal governance and its Guidelines on the assessment of suitability⁸. The Bank has also detailed its prudential expectations at the Belgian level as part of the update of its Governance Manual in October 2022 and its Fit & Proper Manual in December 2022⁹.

For instance, all financial institutions are required to adopt a policy to promote diversity in their statutory governing body, to set a target for the representation of the under-represented gender in that body and to develop a policy to reach that target. The issue of diversity is not limited to gender, but also includes age, professional and educational background and geographical provenance¹⁰ of the members of the statutory

⁴ The European Central Bank has listed diversity as one of its priorities for the Single Supervisory Mechanism: see [ECB Banking Supervision: SSM supervisory priorities for 2023-2025](#).

⁵ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures.

⁶ Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU.

⁷ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

⁸ Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance and EBA/GL/2021/06 of 2 July 2021 on the assessment of the suitability of members of the management body and key function holders.

⁹ See Communications NBB_2022_23 of 11 October 2022 on the update of the Governance Manual for the banking sector and NBB_2022_34 of 20 December 2022 on the update of the Fit & Proper Manual. With regard to diversity, please see in particular paragraphs 1:22, 4:16 to 4:18 and 4:159 of the Governance Manual, and paragraphs 1:25, 2:92 to 2:94, 2:106 to 2:108, 3:88 to 3:90 and 3:103 to 3:108 of the Fit & Proper Manual.

¹⁰ The term "geographical provenance" refers to the region where a person has gained a cultural, educational or professional background. This aspect is particularly important for institutions that are active internationally.

governing body. The Bank supports diversity in all its facets, as a wide range of backgrounds, experiences, values, opinions and views enhances the decision-making process¹¹.

1. Reminder of statutory and regulatory diversity requirements

Article 91(10) of the CRD requires that diversity be included as a criterion for the composition of the management bodies of credit institutions. In addition, Article 88 of the CRD provides that credit institutions should set a target for the representation of the under-represented gender in the statutory governing body, and develop a policy to reach that target. These provisions also apply to stockbroking firms in accordance with Article 9(1) of the MiFID II.

These diversity requirements have been incorporated into Article 31 of the Banking Law and Article 29 of the Law on the supervision of stockbroking firms. Pursuant to these provisions, financial institutions are required to: (i) develop a diversity policy, (ii) set a target for the representation of the under-represented gender in the statutory governing body, and (iii) develop a policy to increase the number of representatives of that gender in order to reach that target. Article 67 of the Banking Law and Article 74 of the Law on the supervision of stockbroking firms also provide that remuneration policies must be gender neutral.

1.1. Development of a diversity policy

In accordance with Article 31 of the Banking Law and Article 29 of the Law on the supervision of stockbroking firms, financial institutions are required to establish a policy promoting diversity in the statutory governing body, so that it is composed of a diverse group of members and that a variety of views are represented on it. The diversity policy may be integrated in the suitability policy or be separate from it, provided that it is mentioned in the suitability policy.

Moreover, as stated in paragraphs 2:107 and 3:104 of the Fit & Proper Manual, the Bank recommends that the diversity policy cover at least the following aspects of diversity: age, gender, educational background, professional background and, for institutions that are active internationally, geographical provenance. It also recommends that the diversity policy be extended to all staff, in order to foster a sufficiently diverse pool of candidates for management positions (see paragraph 4:159 of the Governance Manual).

Specific rules also apply when the financial institution is a listed company¹².

1.2. Setting a target for the representation of the under-represented gender in the statutory governing body and development of a policy to increase the number of representatives of that gender

Article 31 of the Banking Law and Article 29 of the Law on the supervision of stockbroking firms require the nomination committee to set a target for the representation of the under-represented gender in the statutory governing body and to develop a plan to increase the number of representatives of that gender.

In accordance with paragraphs 2:108 and 3:105 of the Fit & Proper Manual, the Bank expects financial institutions to set a quantitative target for the representation of the under-represented gender in the statutory governing body. This target may be split between the statutory governing body and the management committee in the case of a sufficiently large management committee. The supervisory laws also provide that the target, the plan and the implementation arrangements should be made public in accordance with Article 435(2)(c) of Regulation No 575/2013 and Article 48(b) of Regulation 2019/2033.

¹¹ See in particular paragraphs 4:16 et seq. of the Governance Manual for the banking sector.

¹² See paragraph 7:86 of the Companies and Associations Code. Paragraph 3:6, §2 also states that diversity must be addressed in the annual report.

Paragraph 4:18 of the Governance manual for the banking sector recommends also that, as part of the annual review of the composition of the statutory governing body, financial institutions shall document the achievement of the targets set.

1.3. Development of a gender-neutral remuneration policy

Article 67 of the Banking Law and Article 74 of the Law on the supervision of stockbroking firms provide that remuneration policies must be gender neutral. As stated in Circular NBB_2021_30 on remuneration policy, the Bank expects this requirement to be met in the context of both collective bargaining agreements and individual contracts.

2. EBA and NBB benchmarking exercises

A summary of the results of the latest EBA diversity and gender pay gap benchmarking exercise and of the Bank's own benchmarking exercise in this context is provided in Annexes 1 and 2 to this communication.

In short, they show that, despite the legal requirements, some financial institutions have still not adopted a diversity policy and set a target for the representation of the under-represented gender, and that progress in terms of representation of the under-represented gender in management bodies is too slow.

3. Outlook

The Bank reiterates that all financial institutions are obliged to adopt a diversity policy. It will devote particular attention to reviewing the content of diversity policies and their implementation, including the recruitment processes for members of the statutory governing body.

The Bank urges financial institutions to continue their efforts to remedy the weaknesses identified, taking into account the results of the benchmarking exercises presented in the annexes to this communication.

The Bank recommends that financial institutions pay greater attention to gender diversity in their boards of directors in the short to medium term. Further benchmarking exercises will be carried out in the coming years, at European and Belgian level, in order to assess any improvements.

Yours faithfully,



Pierre Wunsch
Governor