

Per email only

Subject: Diversity of management bodies in insurance and pensions

Dear Ms Tinagli, dear Mr Le Maire, dear Commissioner McGuinness,

Diversity and inclusion is an important topic in many respects. Indeed, next month is EU Diversity Month – a month dedicated to raising awareness about the importance of diversity and inclusion in the workplace and across society. On this occasion I would like to write to you in relation to diversity of management bodies in insurance and pensions. The EIOPA Board of Supervisors (BoS) supported in principle at its meeting of 31 March 2022 the proposal to pursue diversity of management bodies of European insurers and institutions for occupational retirement provision (IORPs). In this respect, I believe the ongoing review of the Solvency II Directive represents a good opportunity to introduce for the European insurance sector provisions promoting diversity in the companies' governance. Likewise, the forthcoming review of the IORP II Directive provides a similar opportunity.

Diversity of management bodies is of particular importance firstly to ensure adequate representation in the management body of the population as a whole; secondly to facilitate independent opinions and critical challenge, thus helping to address the phenomenon of 'groupthink'; and thirdly to more effectively monitor management and therefore contribute to improved risk oversight and resilience of institutions. More generally, a diverse and inclusive environment at all levels of the decision-making process helps mitigate biased decision making. In addition, as both insurance and pension products entail significant social and financial impact on European consumers, it is important that insurance and pensions fully reflect diversity considerations in their decision-making process.

Legislative provisions at European level in relation to diversity criteria for the composition of management bodies already exist for the banking sector, specifically in the CRD IV Directive¹. From our perspective we would propose to align the diversity requirements between banks on the one hand, including in relation to remuneration policies, and on the other for insurers and IORPs.

Against this background, I appreciate if you could consider, when amending respectively the Solvency II Directive and the IORP II Directive, the suggested drafting recitals and articles which are attached to this letter.

Yours sincerely,



¹ Recital 60, Article 3, Article 74, Article 88 and Article 91 of the CRD IV Directive.

Annex I: draft recital and articles for the Solvency II Directive

Following the EIOPA Board of Supervisors which supported the proposal to pursue diversity of management bodies of European (re)insurers, please find suggested drafting recital and articles (signalled in *italic*) inspired by the current CRD IV Directive:

- The addition of a recital about diversity in the administrative, management or supervisory bodies which is inspired by the recital 60 in the Directive CRD IV;
- The amendment of the Article 41 in the Solvency II Directive which is inspired by the Article 91 in the CRD IV Directive. This draft suggestions provide that (re)insurance undertakings shall put in place a policy promoting diversity on administrative, management or supervisory bodies, as well as EIOPA shall issue guidelines on this notion of diversity;
- The amendment of the Article 41 in the Solvency II Directive which is inspired by the Article 88 in the CRD IV Directive introducing a notion of target for underrepresented gender in the administrative, management or supervisory bodies for significant (re)insurance undertakings;
- The amendment of the Article 41 in the Solvency II Directive which is inspired by the Article 74 in the CRD IV Directive. It states that remuneration policies and practices shall be gender neutral, as well as EIOPA shall issue guidelines on gender neutral remuneration policies. Alternatively, the amendment could be done in the Article 275 of the Delegated Regulation (EU) 2015/35 dedicated to remuneration policy;
- The amendment of the Article 13 in the Solvency II Directive which is inspired by the Article 3(65) of the CRD IV Directive to define a gender neutral remuneration policy.

Recital

The lack of monitoring by administrative, management or supervisory bodies of management decisions is partly due to the phenomenon of 'groupthink'. This phenomenon is, inter alia, caused by a lack of diversity in the composition of administrative, management or supervisory bodies.

To facilitate independent opinions and critical challenge, administrative, management or supervisory bodies should be sufficiently diverse as regards age, gender, geographical provenance and educational and professional background to present a variety of views and experiences.

Gender balance is of particular importance to ensure adequate representation of the population. In particular, insurance and reinsurance undertakings not meeting a threshold for representation of the underrepresented gender should take appropriate action as a matter of priority.

Employee representation in management bodies could also, by adding a key perspective and genuine knowledge of the internal workings of institutions, be seen as a positive way of enhancing diversity. More diverse administrative, management or supervisory body should more effectively monitor management and therefore contribute to improve risk management and resilience of insurance and reinsurance undertakings. Therefore, diversity should be one of the criteria for the composition of administrative, management or supervisory body. Diversity should also be addressed in institutions' recruitment policy more generally. Such a policy should, for instance, encourage institutions to select candidates from shortlists including both genders.

Article 41

General governance requirements

1. Member States shall require all insurance and reinsurance undertakings to have in place an effective system of governance which provides for sound and prudent management of the business.

That system shall at least include an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information. It shall include compliance with the requirements laid down in Articles 42 to 49.

The system of governance shall be subject to regular internal review.

2. The system of governance shall be proportionate to the nature, scale and complexity of the operations of the insurance or reinsurance undertaking.

3. Insurance and reinsurance undertakings shall have written policies in relation to at least risk management, internal control, internal audit and, where relevant, outsourcing. They shall ensure that those policies are implemented.

Those written policies shall be reviewed at least annually. They shall be subject to prior approval by the administrative, management or supervisory body and be adapted in view of any significant change in the system or area concerned.

4. Insurance and reinsurance undertakings shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, the undertaking shall employ appropriate and proportionate systems, resources and procedures.

5. The supervisory authorities shall have appropriate means, methods and powers for verifying the system of governance of the insurance and reinsurance undertakings and for evaluating emerging risks identified by those undertakings which may affect their financial soundness.

The Member States shall ensure that the supervisory authorities have the powers necessary to require that the system of governance be improved and strengthened to ensure compliance with the requirements set out in Articles 42 to 49.

6. Member states or competent authorities shall require insurance and reinsurance undertakings to engage a broad set of qualities and competences when recruiting members to the administrative, management or supervisory body and for that purpose to put in place a policy promoting diversity on the administrative, management or supervisory body.

EIOPA shall issue guidelines on the notion of diversity to be taken into account for the selection of members of the administrative, management or supervisory body.

7. Member States shall require insurance and reinsurance undertakings to decide on a target for the representation of the underrepresented gender in the administrative, management or supervisory body and prepare a policy on how to increase the number of underrepresented gender in the administrative, management or supervisory body in order to meet that target in a manner that is proportionate to their size, internal organisation and the nature, scope and complexity of their activities. The target, policy and its implementation shall be made public, including in the Solvency and Financial Condition Report.

8. Member States shall require that remuneration policies and practices are gender neutral.

9. EIOPA shall issue guidelines, on gender neutral remuneration policies for insurance and reinsurance undertakings.

Article 13

Definitions

(41) 'gender neutral remuneration policy' means a remuneration policy based on equal pay for male and female workers for equal work or work of equal value.

Annex II: draft recital and articles for the IORP II Directive

Following the EIOPA Board of Supervisors which supported the proposal to pursue diversity of management bodies of European institutions for occupational retirement pensions, please find suggested drafting recital and articles (signalled in italic) inspired by the current CRD IV Directive:

- The addition of a recital about diversity in the management or supervisory bodies which is inspired by the recital 60 in the Directive CRD IV;
- The amendment of the Article 21 in the IORP II Directive which is inspired by the Article 91 in the CRD IV Directive. This draft suggestions provide that IORPs shall put in place a policy promoting diversity on management or supervisory bodies;
- The amendment of the Article 21 in the IORP II Directive which is inspired by the Article 88 in the CRD IV Directive introducing a notion of target for underrepresented gender in the management or supervisory bodies for significant IORPs;
- The amendment of the Article 23 in the IORP II Directive which is inspired by the Article 74 in the CRD IV Directive. It states that remuneration policies and practices shall be gender neutral;
- The amendment of the Article 6 in the IORP II Directive which is inspired by the Article 3(65) of the CRD IV Directive to define a gender neutral remuneration policy;
- Contrary to the issuance of guidelines by EIOPA or ESMA related to insurance and banking regulation, there is no guidelines for IORPs which is issued by EIOPA. Therefore, the introduction of guidelines proposed in the drafting suggestions for the Solvency II Directive is not reflected in this annex.

Recital

The lack of monitoring by management or supervisory bodies of management decisions is partly due to the phenomenon of 'groupthink'. This phenomenon is, inter alia, caused by a lack of diversity in the composition of management or supervisory bodies.

To facilitate independent opinions and critical challenge, administrative, management or supervisory bodies should be sufficiently diverse as regards age, gender, geographical provenance and educational and professional background to present a variety of views and experiences.

Gender balance is of particular importance to ensure adequate representation of the population. In particular, IORPs undertakings not meeting a threshold for representation of the underrepresented gender should take appropriate action as a matter of priority.

Employee representation in management bodies could also, by adding a key perspective and genuine knowledge of the internal workings of institutions, be seen as a positive way of enhancing diversity. More diverse administrative, management or supervisory body should more effectively monitor management and therefore contribute to improve risk management and resilience of insurance and reinsurance undertakings. Therefore, diversity should be one of the criteria for the composition of management or supervisory bodies. Diversity should also be addressed in institutions' recruitment policy more generally. Such a policy should, for instance, encourage institutions to select candidates from shortlists including both genders.

Article 21

General governance requirements

1. Member States shall require all IORPs to have in place an effective system of governance which provides for sound and prudent management of their activities. That system shall include an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information. The system of governance shall include consideration of environmental, social and governance factors related to investment assets in investment decisions, and shall be subject to regular internal review.
2. The system of governance referred to in paragraph 1 shall be proportionate to the size, nature, scale and complexity of the activities of the IORP.
3. Member States shall ensure that IORPs establish and apply written policies in relation to risk management, internal audit and, where relevant, actuarial and outsourced activities. Those written policies shall be subject to prior approval by the management or supervisory body of the IORP and shall be reviewed at least every three years and adapted in view of any significant change in the system or area concerned.
4. Member States shall ensure that IORPs have in place an effective internal control system. That system shall include administrative and accounting procedures, an internal control framework, and appropriate reporting arrangements at all levels of the IORP.
5. Member States shall ensure that IORPs take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, IORPs shall employ appropriate and proportionate systems, resources and procedures.
6. Member States shall require IORPs to have at least two persons who effectively run the IORP. Member States may allow that only one person effectively runs the IORP, on the basis of a reasoned assessment conducted by the competent authorities. That assessment shall take into account the role of social partners in the overall management of the IORP, as well as the size, nature, scale and complexity of the activities of the IORP.
7. *Member states or competent authorities shall require IORPs to engage a broad set of qualities and competences when recruiting members to the management or supervisory body and for that purpose to put in place a policy promoting diversity on the management or supervisory body.*
8. *Member State shall require IORPs to decide on a target for the representation of the underrepresented gender in the management or supervisory body and prepare a policy on how to increase the number of underrepresented gender in the management or supervisory body in order to meet that target in a manner that is proportionate to their size, internal organisation and the nature, scope and complexity of their activities. The target, policy and its implementation shall be made public.*

Article 23

Remuneration policy

1. Member States shall require IORPs to establish and apply a sound remuneration policy for all those persons who effectively run the IORP, carry out key functions and other categories of staff whose professional activities have a material impact on the risk profile of the IORP in a manner that is proportionate to their size and internal organisation, as well as to the size, nature, scale and complexity of their activities.

2. Unless otherwise provided for in Regulation (EU) 2016/679, IORPs shall regularly disclose publicly relevant information regarding their remuneration policy.

3. When establishing and applying the remuneration policy referred to in paragraph 1, IORPs shall comply with the following principles:

(a) the remuneration policy shall be established, implemented and maintained in line with the activities, risk profile, objectives, and the long-term interest, financial stability and performance of the IORP as a whole, and shall support the sound, prudent and effective management of IORPs;

(b) the remuneration policy shall be in line with the long-term interests of members and beneficiaries of pension schemes operated by the IORP;

(c) the remuneration policy shall include measures aimed at avoiding conflicts of interest;

(d) the remuneration policy shall be consistent with sound and effective risk management and shall not encourage risk-taking which is inconsistent with the risk profiles and rules of the IORP;

(e) the remuneration policy shall apply to the IORP and to the service providers referred to in Article 31(1), unless those service providers are covered by the Directives referred to in point (b) of Article 2(2);

(f) the remuneration policy and practices shall be gender neutral;

(g) the IORP shall establish the general principles of the remuneration policy, shall review and update it at least every three years, and shall be responsible for its implementation;

(h) there shall be clear, transparent and effective governance with regard to remuneration and its oversight.

Article 6

Definitions

(20) 'gender neutral remuneration policy' means a remuneration policy based on equal pay for male and female workers for equal work or work of equal value.