

Bill submitted: stricter gender diversity rules on the horizon in the Netherlands

November 17, 2020

A [bill](#) introducing stricter gender diversity measures for Amsterdam-listed NVs and BVs, as well as for “large” listed and non-listed NVs and BVs, was submitted to the lower house of the Dutch parliament on 6 November 2020. The bill contains changes to the [consultation version](#), and we discuss the key ones.

While the bill still needs to be discussed and adopted by both the lower house and the upper house of the Dutch parliament, we expect it to enter into force in 2021. We will keep you informed as the bill makes its way through the parliamentary stages.

Diversity quota for Amsterdam-listed NVs and BVs and gender balance targets for “large” listed and non-listed NVs and BVs
Once the bill enters into force, Amsterdam-listed NVs and BVs will have to comply with a quota of at least one-third for both women and men on supervisory boards. For one-tier boards, this implies that at least one-third of the non-executive directors must be women and at least one-third must be men. New appointments that do not contribute to this gender balance will be invalid (null and void).

In addition, all “large” listed and non-listed NVs and BVs will have to set ambitious gender balance targets for their boards and senior management. This includes NVs and BVs listed on a stock exchange other than Euronext Amsterdam too. These “large” companies will also have to be transparent and account for how they are achieving these targets in their annual reporting.

An NV or BV qualifies as “large” if it meets at least two of these criteria:

- The value of the assets – as included in the balance sheet with explanatory notes – exceeds EUR 20 million
- The net turnover for the financial year exceeds EUR 40 million
- There are, on average, 250 or more employees at the company during the financial year

To read more about the bill, see our previous [In context article](#). At an earlier stage, De Brauw also submitted feedback on the consultation document, which you can read [here](#) (only in Dutch).

Changes to proposed diversity quota for Amsterdam-listed NVs and BVs

Compared to the April 2020 [consultation version](#), there are some changes to the bill and the explanatory notes.

Applicability for non-executive directors

Contrary to the [consultation document](#), the [explanatory notes](#) to the bill explicitly clarify that in the case of a one-tier board, the one-third quota applies to the non-executive directors.

Permitted non-compliant reappointments

The bill focuses on new appointments. This means that companies can reappoint a supervisory (or non-executive) director without complying with the one-third quota, but only where the reappointment(s) occur within eight years after the year of the director's first appointment. This provision is now in line with the Dutch Corporate Governance Code (provision 2.2.2).

Exceptional circumstances

A new appointment that does not contribute to a gender-balanced supervisory or one-tier board will be allowed under *exceptional circumstances*. These are defined in article 2:135a (5) of the Dutch Civil Code and may only be invoked if the appointment serves the long-term interests and sustainability of the company or ensures its viability. For example, if a significant number of the supervisory or non-executive directors resign unexpectedly or if a company in distress urgently needs to appoint a new supervisory director, but does not have the time or resources to search extensively for a suitable candidate. Such appointment under exceptional circumstances is limited to a maximum period of two years.

One-third quota further explained

The bill introduces a one-third quota instead of a 30% quota. According to the explanatory notes, a one-third quota more clearly expresses that this concerns people and that diversity balance is related to the size of the supervisory or one-tier board. According to the explanatory notes, a percentage could give the false impression that gradual differences are possible.

Changes to the requirement to set gender-balance targets

In reference to the consultation document, the following changes have been made to the obligation to set appropriate and ambitious gender-balance targets for the management board and senior management of large NVs and BVs:

- Gender balance targets do not have to be set annually, but progress and achievements in respect of meeting these targets are to be accounted for on an annual basis.
- Amsterdam-listed NVs and BVs, which need to comply with the one-third diversity quota as described above, do *not* have to set a target figure for their supervisory/non-executive directors.

“Large” group companies are exempted, but only if their parent company complies with the obligations set out in the bill, also on their behalf.