

Review of policies promoting diversity within the management body of credit institutions

Article 38-2(8) of the law of 5 April 1993 on the financial sector as amended (hereinafter the "LSF") and §102 *et seq.* of the joint EBA and ESMA guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2021/06, hereinafter the "Guidelines") require credit institutions¹ to implement policies that promote diversity within the management body.

In its capacity as the competent authority responsible for checking compliance with diversity requirements, the CSSF sent a diversity questionnaire in April 2023 to forty-six credit institutions with the aim of collecting data on the compliance of their diversity policies with the legal and regulatory requirements.

On 10 October 2023, the CSSF published a press release summarising the findings of this questionnaire², which revealed shortcomings in the understanding and implementation of the regulations on diversity.

As part of this monitoring, the CSSF then enjoined sixteen credit institutions to communicate their diversity policies in order to carry out an initial series of checks. This first review of diversity policies enabled the CSSF to confirm the existence of significant issues in relation to the application of the legal and regulatory requirements on diversity in the management body.

¹ These are "less significant" credit institutions as defined in Articles 39 *et seq.* of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation). For significant institutions, the ECB is responsible for the supervision of these obligations.

² Diversity – the CSSF takes stock of the situation through data collection exercise

Main pitfalls encountered by the CSSF:

- ❖ There is a lack of knowledge or understanding of the applicable legal and regulatory provisions on diversity.
- ❖ The policies communicated do not contain sufficient undertakings and detailed measures on the basis of which a real impact on diversity within the management body could be observed in the short or medium term.
- ❖ The qualitative objectives set by the diversity policies reviewed are not sufficiently concrete.
- ❖ Diversity policies often focus exclusively on the provisions applicable to members of the management body. However, it is crucial to also implement the requirements applicable to members of staff, including measures aimed at career planning and equal treatment and opportunities.

1. Lack of knowledge of applicable legal provisions

The CSSF has noted that a large proportion of the diversity policies it reviewed does not take into account the applicable legal and regulatory provisions. This reveals a lack of knowledge thereof, which most of the time results in low levels of compliance with the regulation for the concerned credit institutions.

Some policies ignore these provisions altogether and fail to include effective and concrete objectives in line with legal and regulatory requirements. Others cite the relevant legal and regulatory provisions, but do not properly reflect them in their articles.

The CSSF therefore requires credit institutions to be aware of the applicable legal and regulatory provisions and to apply them in their diversity policies, in particular §102 et seq. of the Guidelines. Diversity policies must be amended where they do not comply with the requirements set out therein. The CSSF will verify the correct application of these provisions during its forthcoming inspections.

2. Implementation of qualitative objectives

In accordance with §103 of the Guidelines, less significant credit institutions are not subject to the obligation to set quantitative targets for diversity within the management body. They must nevertheless express qualitative objectives.

Whilst the CSSF has observed certain provisions that may constitute good practices, it notes that a significant proportion of the diversity policies it has reviewed did not contain sufficiently detailed and concrete measures that could be qualified as qualitative objectives.

Indeed, some credit institutions simply state that they wish to promote diversity at management body level, without however providing for qualitative objectives that would make it possible to do so. However, the mere intention to promote diversity is not enough to satisfy the legal requirements, as without concrete objectives, it is impossible to initiate a change in practices, as well as to measure the impact that the diversity policy may have on the composition of the management body.

In order to ensure the relevance of the qualitative objectives set, credit institutions should question whether they believe that any given measure is sufficiently strong and detailed to bring about a real change in terms of diversity within the management body in a short or medium term. A negative answer to this question should lead to a change of the contemplated measure.

Examples of qualitative objectives that could be described as “good practices” include:

- **drawing up an annual diversity report;**
- **a commitment to take diversity into account when appointing a member of the management body;**
- **a regular assessment of the diversity policy and its impact on the composition of the management body;**
- **implementing effective career planning measures for staff eligible for future management positions (see point 3 below).**

Credit institutions are encouraged to include all types of relevant qualitative targets in their diversity policies. The absence of such objectives will render their diversity policy non-compliant with legal and regulatory requirements, which the CSSF will be sure to point out in the event of an inspection.

3. Implementing diversity policies for staff members

Ensuring a diverse pool of candidates

Paragraph 107 of the Guidelines requires credit institutions to put in place diversity policies focusing on staff members, in order to ensure the existence of a sufficiently diverse pool of candidates for future management positions. However, the CSSF has noted that some diversity policies focus solely on the management body but do not contain any provisions relating to staff members. Moreover, some policies do not even cover the entire management body but favour the supervisory function over the management function (or vice versa), whereas both functions should be covered by the diversity policy.

On the other hand, the CSSF noted that some policies are applicable to staff but remain very vague in their measures and do not include any specific provision for the management body. This is problematic insofar as the regulation provides for more provisions and cover different aspects with regard to members of the management body, which should therefore also be reflected in diversity policies.

The CSSF therefore reminds credit institutions that diversity obligations are twofold: some rules apply to all staff (with the objective of creating a sufficiently diverse pool of candidates for management positions), while others, different and more numerous, apply only to the management body.

It is essential that all these rules are complied with, and the CSSF requires that any diversity policies that do not comply with them be amended accordingly.

Measures to ensure equal treatment and opportunities and career planning

The Guidelines state that the diversity policy must contain career planning measures and other measures aimed at ensuring equal treatment and opportunities for staff of different genders.

The CSSF observed that the policies reviewed tend to promote the benefits of diversity, without however detailing real career planning objectives or measures aimed at equal treatment and opportunities.

Concerned credit institutions must remedy this situation, as any failure to implement appropriate provisions will lead to an insufficiently diverse pool of candidates for management positions.

Furthermore, the CSSF noted that credit institutions do not correctly appraise the objective of these measures and career planning aspects, which is not to teach individuals the notion and merits of diversity, but rather to focus on their training with the aim of providing them with managerial skills, while ensuring that the participants selected for these training programmes are sufficiently diverse.

4. **Supervision of the CSSF with regard to diversity**

As stated in its previous press release, diversity is a growing concern for the CSSF, and the market needs to accelerate its transition towards diversity in compliance with current regulations. The CSSF therefore informs credit institutions that it intends to continue its controls in this area, in particular through the review of existing diversity policies.

Credit institutions are therefore already required to bring their diversity policies in line with the applicable regulations, in particular on the basis of the requirements detailed by the CSSF above.