European Commission
DG Justice / D1
LX 46 - 1/101
'Consultation gender balance'
B-1049 Brussels
BELGIUM

28th May 2012

Dear Sirs

Gender imbalance in corporate boards: European Commission consultation

Response of GC100: Association of General Counsel and Company Secretaries of the FTSE 100
EU Interest Representative Register ID: 98477495140-6.

Introduction

The GC100 welcomes the opportunity to respond to the consultation launched by the European Commission on 5 March 2012 to assist it in its assessment of possible EU measures aimed at redressing the current situation of gender imbalance in EU corporate boardrooms.

The GC100 is the association for general counsel and company secretaries of companies in the FTSE100. There are currently some 120 members of the group representing some 80 companies. Please note, as a matter of formality, the views expressed in this letter do not necessarily represent the views of each individual GC100 member or of their employing companies.

As preliminary matters, we would like to comment that:

1) Many companies do not find the focus on gender balance on boards to be relevant or useful. Many companies see a greater need to address the need for diversity of all kinds in the boardroom; and more broadly to ensure and enhance board effectiveness, rather than simply seeking to achieve numerical equality through the imposition of a quota;
2) Many people, including women, dislike the notion of quotas being set since that may give rise to appointments being made with the sole purpose of meeting the quota rather than appointments being made on merit.

Our responses to your consultation questions are set out below.

(1) How effective is self-regulation by businesses to address the issue of gender imbalance in corporate boards in the EU?

Many businesses in the EU are used to self-regulation and there are many examples where it works effectively. We consider self-regulation to be the most suitable form of regulation to address the issue of gender imbalance on boards because companies will be best placed to set realistic goals, define suitable metrics, and introduce effective initiatives to foster achievement of gender balance on boards.

Whilst not amounting to self-regulation, the Davies Review of Women on Boards, which was published in March 2011 had a visible influence on the number of women being appointed to FTSE company boards. It contained a recommendation that FTSE 350 boards should set out the percentage of women they aim to have on their boards in 2013 and 2015 with FTSE 100 boards being encouraged to aim for a minimum of 25 per cent female representation by 2015. By March 2012 the largest-ever annual increase in the percentage of women on FTSE boards had been seen. In the FTSE100, women now account for 15.6 per cent of all directorships, up from 12.5 per cent and the number of male-only boards had reduced in one year from 21 to 11. In the FTSE 250, in March 2012 women accounted for 9.6 per cent of all directorships, up from 7.8 per cent a year previously and the proportion of male-only boards in the FTSE250 had fallen to 44.8 per cent (112 companies), down from 52.4 per cent. We believe that this demonstrates that a voluntary, business-led approach can work.

It will take time for companies to recruit suitable board members and the Commission should give self-regulation initiatives time to be implemented before assessing their effectiveness. In particular, many companies do not want to expand the size of their boards and/or they do not wish to change the balance on the board of executive to non-executive directors and so achieving gender balance on a board may take many years if the appointment of new directors is dependent on existing board members completing their terms of office.

In the UK for example, a typical NED will serve for a 6-9 year period. A Board with say 6 NEDs is only therefore likely to be recruiting one new NED per year. It is therefore unrealistic to expect the percentage of women on boards to increase suddenly, as new appointments will tend to be made only when a current NED has fulfilled their term of office. Even if all replacement appointments were female (which would be discriminatory), it would take at least 2 years to reach one third of the NEDs and longer if the Executive Directors are included in the calculation.

Whilst the pool of women who would make suitable board members is growing, the number of women who are immediately "board-ready" is still fairly small. The imposition of quotas could lead to the same small group of women serving on multiple boards rather than expanding the pool of women suitable for board positions. If women are to be effective on the boards they serve, they need sufficient time to devote to their duties

An alternative is a 'comply or explain' regime which works well in other jurisdictions.

Whilst we support moves to improve board diversity, it is important that all board appointments are made on merit.

(2) What additional <u>action</u> (self-regulatory/regulatory) should be taken to address the issue of gender imbalance in corporate boards in the EU?

There is a wide range of additional action that could be taken to address the issue of gender imbalance in corporate boards in the EU. We suggest the following could be introduced as part of a self-regulatory regime:

- The EC could issue recommendations of the kind made in The Davies Review of Women on Boards and monitor progress over several years. If progress was too slow, then stronger measures could be considered.

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- The EC could mandate reporting by companies that meet certain size thresholds on the number of women on their boards, the number of women in the company's most senior management committee and the proportion of women employees in their workforce.

- The EC could mandate companies to set their own targets regarding the proportion of women on their board, to set an aspirational date for achievement of the target, and to report annually on progress towards achieving their target. Permitting companies to set their own targets for the proportion of women they want on their boards would allow different types of companies to set targets that are realistic for them. It could be mandated that companies provide progress updates in their annual report, along with a narrative describing the issues and challenges the company faces in achieving the target, and an explanation from the Chairman as to how the company has broadened the talent pool in its search for new board appointees.

- There is a need for companies to take steps to ensure there are sufficient numbers of women coming up through organisations and gaining relevant experience to make them suitable for board appointments. Companies could be required to include in their annual reports narrative about what steps they are taking to ensure this is happening in their organisation.

- The EC could sponsor a firm to set up a database of potential women board appointees to improve access to the available women candidates, like the ACT Women's Register in Australia.

- The EC could address some of the other aspects of working life that cause blockages in careers for women, such as pay inequality, lack of child-care facilities at affordable rates etc.

(3) In your view, would an increased presence of women on company boards bring <u>economic benefits</u>, and which ones?

Diversity of boards generally enriching the decision-making process by bringing different perspectives, reducing the risk of Group think and improving Board Effectiveness thereby contributing to company performance. There may not yet be a sufficient body of research to establish a correlation between women on boards and economic benefits. However, the section on "the economic importance of gender diversity in corporate boards" in the EU's "Progress Report on Women in Economic Decision Making in the EU" sets out the micro- and macro-economic benefits of increasing the presence of women on company boards, benefits which go beyond solely economics.

(4) Which <u>objectives</u> (e.g. 20%, 30%, 40%, 60%) should be defined for the share of the underrepresented sex on company boards and for which <u>timeframe</u>? Should these objectives be <u>binding</u> or a <u>recommendation</u>? Why?

We believe that companies should be required to define their own objectives for gender balance on their board, including setting their own target for the percentage of women on the board and the timeframe in which they intend to meet that target. Whilst the obligation to set targets could be mandatory, the choice of target should be left to individual companies so that each company can take account of the factors bearing on it in particular.

There are a plethora of different recommendations/requirements for the minimum

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proportion of women on boards and for the dates by which these recommendations/requirements should be met. Norway introduced a quota for women on boards a decade ago, which catapulted their share from 9% in 2003 to the required 40% now. France brought in legislation just over a year ago under which listed and large unlisted companies must reserve at least 20% of board seats for members of each sex by 2014 and 40% by 2017. Italy and Belgium have mandated a minimum one-third representation. Spain and the Netherlands have introduced new laws, but without stiff penalties. Germany is debating quotas. Some European countries regulate the sex balance on the boards of state-owned companies. Rules vary, but opinion seems to be converging on a near-term target of 25-30% and a longer-term one of 40%. We consider these ranges to be appropriate in most situations but we reiterate that, in our view, these should be applied in the context of targets (as distinct from quotas) and meaningful targets are most likely to be set and achieved if companies are given freedom to set their own targets either without any prescription or, if some boundaries are considered necessary, within a broad range.

(5) Which <u>companies</u> (e.g. publicly listed / from a certain size) should be covered by such an initiative?

There are a range of possible thresholds for the size and/or types of companies that could be covered by such an initiative. Examples of thresholds/criteria include: companies above a certain level of turnover and/or numbers of employees; listed companies; and public companies. Our preference would be for the threshold to be set by reference to a certain level of turnover or market capitalisation.

(6) Which <u>boards</u>/<u>board members</u> (executive / non-executive) should be covered by such an initiative?

The highest board of a corporation (main board in unitary regimes, supervisory board in those member states that have them) is probably the most suitable board to target for ease of identifying it. No distinction between executive and non-executive directors should be made for the purposes of gender balance targets.

(7) Should there be any <u>sanctions</u> applied to companies which do not meet the objectives? Should there be any <u>exception</u> for not reaching the objectives?

In our view, sanctions are not appropriate. Companies should set their own targets for gender balance in their boardroom and should set their own timeframes for achieving their targets. If companies are required to disclose their targets and timeframe and progress towards achieving them, others can monitor and comment on what they are doing which should provide sufficient stimulus to keep companies focused on achieving their goals.

Yours faithfully

Mary Mullally

Secretary, GC100

GC100 Group
The Association of General Counsel and Company Secretaries of the FTSE 100
The GC100 Group is an unincorporated members' association administered by the Practical Law Company Limited

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