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Dear Sirs

**House of Lords EU Subcommittee B on Internal Market, Infrastructure and Employment – Call for Evidence on the EU women on boards proposals**

**Introduction**

The GC100 welcomes the opportunity to respond to the call for evidence on the EU women on boards proposals made by the House of Lords EU Subcommittee B on Internal Market, Infrastructure and Employment.

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. To what extent does the EU have a role to play in improving the representation of women on boards? Should this be tackled through measures at a European level or is it a matter for national Governments? Do the differences in board structures across the EU affect the pursuit of a common European approach?**

In our view, the EU is not the best forum in which to take steps to improve the representation of women on boards. Whilst there may be some steps the EU can take (see our response to question 9

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**GC100 Group**

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below), the numerous differences in the laws and cultures of member states make it likely that more effective measures could be taken at national, rather than supra-national, level. For example, structures of boards in different types of companies in different jurisdictions in the EU may call for different approaches.

## **2. Can a “voluntary approach”, or self-regulation, achieve a fair representation of women on boards? How can change through voluntary measures be sustained?**

A “voluntary approach” may work and it should be tried as a first step rather than moving straight to legislation.

We consider a voluntary approach to be the most suitable way 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.

We believe that a voluntary, business-led approach can work. It will take time for companies to recruit suitable board members and the Commission should give voluntary 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/or they have particular skills requirements for their board at that moment that cannot be met immediately by the then available women candidates. 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, in itself, 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.

That said, the Davies Review of Women on Boards, which was published in March 2011 has 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 and it appears the goal of 25 per cent female representation by 2015 may be achievable. 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.

Whilst we support moves to improve board diversity, it is important that all board appointments are made on merit. Whilst the pool of women who would make suitable board members is growing, it will take some time for a broad and deep roster of women potential board appointees to be established. Until that roster is better developed, the imposition of quotas could lead to the same small group of women serving on multiple boards with the attendant risk that they may not have sufficient time to devote to their duties on each board.

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An alternative is a 'comply or explain' regime which works well in other jurisdictions. Sustained improvement can be achieved by using this approach with the emphasis on transparency and disclosure. Audit firms, and other organisations that are in a position to do so, can play a valuable role in sharing information on (and thus encouraging adoption of) best practices in transparent reporting on gender statistics in the workplace.

### **3. How should progress be monitored and audited? Should monitoring be coordinated at the European level?**

We consider that progress should be monitored at a national, rather than European, level. If companies are required to disclose their progress in their annual reports their progress can be monitored by people and organisations interested in monitoring it. This approach works well in other areas, such as adherence by companies to the UK Corporate Governance Code.

### **4. Should progress be incentivised, or a lack of progress punished? If so, how could this be achieved?**

Disclosure and transparency can often be an effective way of encouraging companies to improve their performance; many companies do not want to be on the bottom of performance ranking. The Davies Review progress report, published one year after the Davies Review was published, has to some extent served to incentivise companies to improve diversity. It has identified publically companies who have failed to take sufficient action on diversity, and this has "incentivised" corporate action. We would not support any stronger incentives or punishments.

### **5. What level of progress is acceptable? Is there a point at which it should be determined that self-regulation is not working and that a legislative intervention (whether at national or European level) is needed?**

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 may come a time when it is apparent that progress is too slow without regulation. However, we do not think a "deadline" should be set yet. It should be borne in mind that it takes time for boards to change since directors hold tenure for several years so the rate of turnover tends not to be rapid.

### **6. Has the introduction of quotas in some Member States had any impact on the single market? What are the arguments for and against consistency across the EU on women on boards?**

It may be that the introduction of quotas in some countries within the EU will reduce the number of women available for board appointments in other member states, resulting in some companies facing difficulties in recruiting women from outside their own jurisdictions.

We do not think it is necessary nor serves any useful purpose to require consistency across the EU on women on boards.

### **7. What impact would a higher level of representation of women on boards across Europe have on the UK? Would it bring any advantages and/or disadvantages?**

There is some research that indicates that diversity of boards generally enriches 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, and perhaps demonstrate causation, 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.

Until there are sufficient numbers of boards with a good proportion of women on them it will not be possible to determine whether a higher level of representation of women on boards does (or does not) bring advantages.

### **8. What are the positive and negative effects of legislative quotas?**

Introducing quotas brings the risk of tokenism.

There appears currently to be a shortage of board-ready women so introducing quotas may put an unachievable requirement on to companies. In our view, effort should first be put in to building the pipeline of women in senior executive roles so that there is a pool of board-ready women from which companies may make suitable selections in future years.

### **9. Other than quotas, what measures could be considered at European level to directly improve the representation of women on boards? Are there alternative measures that should be pursued, but which are better suited for action at a national level?**

There is a range of actions that could be taken to address the issue of gender imbalance in corporate boards in the EU. However, in our view these initiatives would be better if they were introduced at national level. We suggest the following could be introduced:

- The EC could address some of the other aspects of working life that cause blockages in careers for women, such as flexible working arrangements, pay inequality, lack of childcare facilities at affordable rates etc.
- The EC could issue – or recommend member states to 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.
- The EC could mandate – or encourage member states to 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 – or encourage member states to 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 a 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.


**10. Is support needed for women when making their choice of careers, and throughout their careers, to ensure that there are sufficient candidates for board appointments? Is this a matter for European-level action, or should it be a matter for national governments?**

Please see the response to Question 9 above.

**11. What does success look like? What should be the ultimate goal with respect to women on boards across the EU?**

In our view success should be measured by measuring the improvement in company performance. Broader, societal indicators of success with respect to women on boards across the EU could be evidence that women are being given the opportunity to develop their skills and experience to equip them to succeed at board level, thereby ensuring that increased board diversity happens organically.

Yours faithfully



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