



## 2017 Best Practice Principles ("BPP") Review

### Input from ecoDa (The European Voice of Directors)

#### Introductory statements:

ecoDa would like first to applaud the initiative taken by the proxy advisors' industry to revise their Best Practice Principles for Providers of Shareholder Voting Research and Analysis.

This review is not only timely because of the Shareholders' Rights Directive, but it responds also to a broader demand from the corporate world to apply similar transparency and independence rules to all actors in the governance of listed companies.

Proxy advisers have to acknowledge that their increasing role in general meetings requires a firm stand and goes hand in hand with greater transparency, greater accountability and compliance with the fundamental Corporate Governance principles adopted at European and national level.

The industry has to respond to a general call for a better dialogue with issuers and fix red lines to avoid conflicts of interests. Statutory auditors have been through the same journey and inspiration can be taken from the new requirements imposed by the Audit Reform.

We hope that our comments might contribute to the finalisation of your revised Best Practice Principles.

This response expresses the views of:

- The Belgian "GUBERNA"
- The French "IFA"
- The Luxembourg "ILA"
- The "Slovenian Directors' Association"
- The British "Institute of Directors" (IoD)
- The "Norwegian Institute of Directors"
- The Swedish "StyrelseAkademien"
- "Vereinigung der Aufsichtsrate in Deutschland" e.V., VARD
- The Dutch "Nederlandse vereniging van Commissarissen en Directeuren"
- The Italian Directors' Association, "Nedcommunity"
- The Portuguese "Forum de Administratores Emprases"

## **2017 BPP CONSULTATION: QUESTIONNAIRE: Best practice Principles for Shareholder Voting Research “BPP”**

### **Introduction**

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Thank you in advance for your valuable feedback <https://bppgrp.info/the-principles/the-principles-detail/> The closing date for comments is 15 December. There are two ways in which you can submit your views:

- By Completing this online survey ( 15 minutes participation time): or
- By submitting comments in writing – please see all details on this page: <https://bppgrp.info/2017-consultation/>.

All responses will be published on the website at the end of consultation period, unless respondents specifically request that they be treated as confidential?

## Information on Respondent

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### 1. Name of Organisation

ecoDa – European Confederation of Director Associations

### 2. Type of organisation ( Select on )

- Investor
- Company
- Governance
- Representative body
- Other (Please specify)

### 3. Main country /region of operation

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### 4. Are you currently a client of a voting research provider?

Yes

No

5. **All responses will be posted on the Review website unless requested otherwise. Please indicate below if you wish your comments to be treated as confidential.**

Please treat comments as confidential

6. **If you would like to be informed of the outcome of this consultation, please provide contact email.**

contact@ecoDa.org

### General Questions on the principles

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7. **Were you previously aware of the Best Practice Principles?**

Yes

No

8. **If yes, how would you rate the positive impact of the Principles since they were included in 2014? ( Scale of 0-5 where 0 is no impact, 5 is very positive)**

0 no impact

3

1

4

2

5 very positive

Please give your response for your rating

No clear view on their impact. Not highly promoted externally, nor public monitoring on its application.

9. **If you are a user of voting research services, do you, or, will you in future check whether a service provider had signed up to the Principles before appointing them?**

Yes

No

10. **Would it be beneficial to have a set of principles that are capable of being applied in all markets?**

Yes

No – more detailed arguments follow in box below

Although ecoDa respects the fact that proxy advisors should align their principles with the interests of their clients, they should realize as well that it is not in the best interest of institutional investors (and their asset managers) to foster a one-size-fits-all approach.

The value added by proxy advisors will be much more relevant to institutional investors, if they opt for the more difficult route of a tailored approach, respecting the local governance rules and recommendations as well as the specific governance challenges of the listed companies. See also comments under Q18.

### Scope and Structure of the Principles

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11. At present, the Principles address three areas: service quality (which includes duties to clients, research methodology and voting policy); managing conflicts of interest; and communication with issuers, the media and other stakeholders (see the [BPPG website here](#)). Are there other issues or activities that should also be covered by the Principles ( tick each that applies )

Intermediary vote

ESG advisory services and indices

Governance engagement services

other (please specify)

Proxy advisors should be careful in developing new domains that can create additional potential for conflicts of interest! It might therefore be advisable to shed more light on the ESG advisory services and indices as well as on the governance engagement services. Those latter services should never be leading to close relationship with the issuers (see further developments under Q.28).

To allow a stricter control of their independence, proxy advisors should give a clear view of their product portfolio and provide greater transparency on their business model. To this end, the policy guidelines for non-audit services might be an interesting reference for developing such additional guidelines for additional services offered. Statutory auditors have restrictions in terms of non-audit services that they can provide to the same company to preserve their independence. Audit Committees have to pre-approve the list.

**12. Each Principle is accompanied by guidance which sets out practices to be followed and information to be disclosed, on a “comply and explain basis. Is this structure clear and appropriate?**

Yes,

No, see additional information in the box below (point 13)

**13. If no, how might it be improved?**

The basic assumption underlying the governance guidelines for listed companies is that governance practices should be tailored to the specific challenges the governance model poses. To this end, the guidelines offer sufficient flexibility through the principle of ‘comply or explain’. Over the years, most European countries have opted for a ‘comply or explain approach’ in relation to governance matters (for more information see the [ecoDa/Mazars study](#)). Although there is still quite some room for improvement, the market regulators as well as the European Commission, find the comply or explain approach the route for the future regulation of most governance matters, even beyond the mere respect of governance codes. It is therefore certainly defensible that also the organization of proxy advisors opts for this type of self-regulation. It will hopefully lead them to reconsider their reluctance to accept this approach, when judging the governance of listed companies.

### **The Content of the Principles (1: Service quality)**

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Principle 1 : Service quality

**14. If you are a client of one or more signatories, do you consider that this Principle deals adequately with the various service commitments that you expect?**

Yes

No

**15. If no, how might it be improved?**

16. Depending on the wishes of their individual clients, those signatories that make voting recommendations will follow either bespoke or house voting policies. How satisfied are you with the process used by signatories to develop their house voting policies? ( Scale 0-5 where 0 is dissatisfied and 5 is very satisfied)

0 dissatisfied

3

1

4

2

5 very satisfied

17. How might the process be improved?

18. In addition to national law and listing rules, which, if any of these considerations should signatories take into account when deciding whether to adjust their house policies for difference markets? (Tick all that apply)

Standards in national corporate governance codes and equivalent

Views and practices of local companies

Views of local and international investors

Other (please specify)

National Corporate Governance Codes cannot be ignored by proxy advisors. In addition, Proxy Advisors should be more country sensitive, otherwise their advices might be pointless.

In fact, governance structures and processes can hardly be (completely) harmonized across countries. The best example in this respect is the statement of the former European High Level Expert Group on corporate law and corporate governance, stating that governance should be tailored to the specific legal and socio-economic context of the countries, rather than striving for a harmonized European governance code. If the differences across Europe are already considerable, proxy advisors, should acknowledge that it is no option striving to harmonize the 'world', let alone align their principles of good governance with the US governance model, that is drastically different e.g. than the continental European or Asian ones. In fact, governance guidelines and recommendations try to cure the challenges, specific governance models face. For each governance disease, an appropriate remedy is/should be foreseen. For example, the definition of independent directors mainly highlights the independence towards powerful managers in a US company with dispersed shareholders. On the contrary, the governance recipe of continental European or Asian countries will mainly focus on the independence towards powerful shareholders in the listed companies that have controlling shareholders. Independence should mainly be defined in relation to those 'in power', those that can influence decision-making in their own interest.

19. **How informative are signatories' descriptions of their research methodologies ( see BPPG website here), including how they ensure that the research is reliable? ( Scale 0-5, where 0 is uninformative and 5 is very informative)**

- |  |   |
|--|---|
| <input type="checkbox"/> 0 uninformative | <input type="checkbox"/> 3                  |
| <input type="checkbox"/> 1               | <input type="checkbox"/> 4                  |
| <input type="checkbox"/> 2               | <input type="checkbox"/> 5 very informative |

20. **While recognising the need for signatories to protect their intellectual property, how might the statements be made more informative?**

## **The Content of Principles (2: Conflicts)**

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### Principle 2: Conflicts

21. **The principle does not attempt to eliminate potential conflicts, but to ensure that the signatories disclose the procedures by which they are managed. Is this an adequate approach?**

- Yes
- No, see remarks point 22 & remarks point 11

22. **If no, how might it be strengthened?**

As state above, the policy guidelines for non-audit services might be an interesting reference for developing such additional guidelines for additional services offered.

23. The principle include the following non –exhaustive list of potential sources of conflict:

- A signatory’s ownership or shareholder base/structure, such as when a signatory is owned by an investor that owns shares in companies under coverage or when the investor is owned by an insurer under coverage;
- A signatory’s employee activities, such as board memberships, stock ownership, etc;
- Investor-client influence on the signatories, such as when an investor who is a client of the service provider is a shareholder proponent or is a dissident shareholder in a proxy contest;
- Issuer-client influence on the signatories, such as when signatories provide consulting services to companies under coverage for research; and
- Influence of other investor clients
- Are there any others that should be included in this list?

Yes

No

**24. If yes, please specify**

**25. If you are a client of a signatory, how satisfied are you with the information you receive on how potential conflicts are being managed? (Scale 0-5, where 0 is dissatisfied and 5 is very satisfied)**

0 dissatisfied

3

1

4

2

5 very satisfied

**26. How might procedures be improved?**

**The Content of the Principles (3: Communications policy)**

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Principle 3: Communication policy

**27. How satisfied are companies with their communication with signatories? ( scale 0-5, where 0 is completely dissatisfied and 5 is very satisfied)**

- |  |   |
|--|---|
| <input type="checkbox"/> 0 completely dissatisfied | <input type="checkbox"/> 3                |
| <input type="checkbox"/> 1                         | <input type="checkbox"/> 4                |
| <input type="checkbox"/> 2                         | <input type="checkbox"/> 5 very satisfied |

**28. How might communication be improved?**

Communication with Issuers (listed companies) is another point for improvement. The communication should be more explicit with regards to:

- the voting policy on the proxy site accessible to the public,
- the references (external and internal ) used for their analysis,
- the relationship developed with investors and corporations (attendance to governance road shows, contacts with executives and boards),
- the sending of the pre-report in time and delays for reaction (with a minimum of opening days),
- explanation if /when corporations' explanations have been or not incorporated.

Too often proxy advisors don't give issuers the chance to explain and argue with proxy advisors, and this in a timely manner. Some issuers feel that their comments are insufficiently listened.

It is therefore preferable that the Principles also express the obligation for proxy advisors to engage in consultations with companies before distributing their final advice to their clients (institutional investors and their asset managers).

Such consultation would facilitate that proxy advisors make a much more nuanced and tailored report, that fully takes into consideration the governance challenges and remedies of a specific listed company.

However this type of dialogue should not be leading to close relationships with issuers. Proxy advisors should keep their scrutiny and independence. They should not start negotiating with companies.

**29. If you are a company, have you used the procedures set up by one or more signatories to make a complaint or provide feedback on their research on, or engagement with, your company?**

- Yes  
 No

30. **If yes, how satisfied more If yes, how satisfied were you with how your complaint was handled? ( scale 0-5, where 0 is not satisfied and 5 is very satisfied)**

- |  |   |
|--|---|
| <input type="checkbox"/> 0 not at all dissatisfied | <input type="checkbox"/> 3                |
| <input type="checkbox"/> 1                         | <input type="checkbox"/> 4                |
| <input type="checkbox"/> 2                         | <input type="checkbox"/> 5 very satisfied |

Please give a reason for your rating

31. **Many companies consider they should have the opportunity to comment on the analysis and recommendations in research reports before they are finalized? If you are an investor, which of these statements most closely reflects your views? ( Tick one only)**

- I find it helpful to know the company's views on the research report before deciding how to vote, ahead of the custodian cut-off
- I have no objection in principle to this practice, as long as it does not reduce the amount of time I have to make voting decisions or impact on costs
- Companies already have opportunities to explain their case in their annual reports, the papers for the general meeting and direct engagement with their shareholders; they do not need another one
- It is not appropriate for companies to have a right to review or comment on draft research reports of which they are the subject
- Other (please specify)

**Reporting on the Principle:**

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32. **At present, signatories are required to produce a public statement on how they have applied the Principles, which they update as necessary; some have chosen to update the statement every year. Signatories also produce a summary in a standard format for purposes of comparison (see BPPG website here). Do the statements adequately cover all the matters that signatories are supposed to report on under the Principles?**

- Yes
- No

33. If no, please identify which matters are not adequately reported on?

34. How informative and useful are the statements? Scale 0-5 where 0 is uninformative, 5 is very informative)

- |  |  |
|--|--|
| <input type="checkbox"/> 0 uninformative | <input type="checkbox"/> 3             |
| <input type="checkbox"/> 1               | <input type="checkbox"/> 4             |
| <input type="checkbox"/> 2               | <input type="checkbox"/> 5 Informative |

35. How might the statements be made more useful?

### Monitoring the Application of the Principles

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36. As part of this review, the BPP Group intends to introduce an independent element into the monitoring arrangements. Which of the following features should be part of the arrangements for monitoring the implementation and impact of the Principles? ( tick all that apply)

- Oversight body including members independent of the sector
- Surveys of the market participants
- Third party certification of how the Principles have been implemented by signatories
- Other (please specify

ecoDa wants to highlight the necessity to complement the use of self-regulation (Best Practices Principles) and the comply or explain approach with a robust monitoring mechanism.

As was clearly stated by the European Commission, the self-regulation of governance practices (by issuers) is only feasible as long as a transparent and objective monitoring mechanism is in place. Although shareholders are considered to be the best monitors of governance practices in listed companies, their monitoring role is also complemented by the legal obligation of reporting on the respect of the governance code in the annual governance statement. On top of that, national –

independent- organizations take care of a regular monitoring of the local practices and compliance track records.

These practices should certainly inspire the organization of proxy advisors to –at least- apply a comparable set of monitoring rules and recommendations. It is in the interest of proxy advisors and their clients that regulators, issuers and society at large have trust in the respect of those Best Practices Principles. Given the self-regulatory approach for developing such principles, their credibility is dependent upon a truly independent monitoring. An institution should be charged to control the compliance of proxy advisors to their reference code and to publish an annual report, mentioning improvements, deficiencies, voting statistics etc.

**37. If you have specific suggestions for how the Principles should be monitored, please provide details:**

**38. Have you ever used the complaint procedure to complain about a breach of the Principles (See BPPG website here)**

- Yes
- No

**39. If yes, how satisfied were you with how your complaint was handled? ( scale 0-5, where is not at all satisfied and 5 is very satisfied)**

- |   |   |
|---|---|
| <input type="checkbox"/> 0 not at all satisfied | <input type="checkbox"/> 3                |
| <input type="checkbox"/> 1                      | <input type="checkbox"/> 4                |
| <input type="checkbox"/> 2                      | <input type="checkbox"/> 5 very satisfied |

Please give reason for your rating

**Signing up process:**

**40. The process of signing up to the Principles is being looked at as part of this review. Other than a commitment to apply and report on the Principles and to be subject to the monitoring arrangements, are there other criteria that service providers should have to meet in order to be accepted as signatories?**

- Yes

No

41. If yes, please specify

**Other commitments**

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42. If there are any additional comments you would like to make as part of this consultation, please do so here:

An additional point of attention might be that the market for proxy advisers is very concentrated and as such, more attention should be paid to the fairness of the market for proxy advice.

Proxy advisers play an increasing and critical role in CG, as some investors tend to rely entirely on their advice especially when they own a small % of shares. In a world where institutional investors become more important in many countries, the voting advice of proxy advisers might therefore create a concentrated voting block and even allow a powerful, controlling position without being subject to the rules of take-over bids.

Investors should disclose if they give a proxy to a proxy advisor. As it is now compulsory in the Shareholders Rights Directive to disclose share-holding, proxy advisors should disclose the total % of shares that they are representing on behalf of institutional investors. This information would also be valuable to get more useful insights and to better understand the market concentration.