ecoDa's Written Input on Draft Revisions
to the G20/OECD Principles of Corporate Governance

Company/Organization Name	ecoDa – The European Confederation of Directors' Associations

General Comments

Section or page #	Comments
	The Principles seem to address almost exclusively the issues related to listed companies, and this feature has been accentuated by the proposed revisions. This is understandable to the extent that the Principles are primarily directed to governments and regulators, whose involvement is generally more justified by the necessity to regulate financial markets. However, good governance is also essential for unlisted companies, which often outweigh listed companies in their contributions to a country's economy. Governmental policy also affects them, through the framing of corporate law and the practice of state-owned enterprises, which should be exemplary. These points should be stressed in the Principles. ecoDa would recommend to insert a definition of what is meant by sustainability as it is done for Corporate Governance. Reference to "relevant stakeholders" should be made all over the text. It should be specify that it is up to each board to define who are the company's relevant stakeholders. In addition, policy makers should be encouraged to develop common standards, harmonised across countries in order to avoid fragmentation of public policies and "gold plating". It is not the case in the proposed principles (except for a weak sentence at the end of p. 10). ecoDa would also like to stress the necessity for OECD to coordinate with the European Union on CG related initiatives. Moreover, ecoDa would like to see the principles enlarged to not only be intended to board members, but also to risk managers and auditors who have a role to play in supporting board members especially on sustainability matters. The Three Lines Model is a principles-based approach that amplifies the need for robust risk management and controls as a fundamental part of governance. The OECD principles should cover all governance actors and should not be restricted to board members.

*Please add lines as needed.

Introduction & About the Principles section

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19 (p. 7)	In line with the above, move this to § 16 (after the first sentence) : this should be the first "policy benefit".

20 (p. 7)	Define “semi-government”

*Please add lines as needed.

I. Ensuring the basis for an effective corporate governance framework

Section or page #	Comments
Introduction (p. 10, 2nd §)	The sentence “at the same time, not all solutions are effective” is not useful and can be omitted. Additionally, this paragraph prompts the regulator to regulate in markets where concentration is higher i.e., “*while in markets where investors adopt a more passive role, the regulator may choose to require and enforce the implementation of certain corporate governance standards.*” Alternatively for discussion: to suggest for higher level of assurance of the corporate governance statement by the external auditor. (2006/46/EC,)
I.B. (p.11, 1st §)	In the sentence “shareholders, and ~~other~~ stakeholders” it is positive that “other” has been deleted.
I.C, (p. 11, 1st §)	- add antitrust laws to the list - the need for regulatory stability over time should also be mentioned, as too frequent changes are clearly detrimental
I.E	It should be specified that all the relevant parties have to be consulted in the elaboration process and the results of the consultation should be published before issuing the code.
I.F (p. 13, 2nd §)	The “human element” is indispensable : “may help” is too weak
I.H (p. 13, 5th §)	“Publicly traded companies within group structures” may be understood as “listed subsidiaries” while the listed company is generally holding the group companies

*Please add lines as needed.

II. The rights and equitable treatment of shareholders and key ownership functions

Section or page #	Comments
	In general, the Principles focus mainly on institutional investors. they should recognize the particular role played by the reference shareholder(s)/influential shareholders. In that line of thinking, the possible advantages of control enhancing tools could also be mentioned, and not only the downsides.
II.B (p. 15)	Read “all or a substantial part of corporate assets” instead of “all or substantially all”
II. (p.16)	The emphasis should not be put on shareholders’ ability to initiative legal and administrative proceedings against board members, but rather on their ability to dismiss board members. This is the first manifestation of disagreement even before any litigation.
II.C.5 (p. 17)	The OECD should acknowledge that having a nomination committee formed of shareholders is also good practice in some parts of the world especially in Nordic countries.

II.C.5 (p. 17, 2nd §)	The sentence: "Directors' and officers' liability insurance policies may change managerial incentives, thus warranting shareholder approval or disclosure" (II.C.5.) is unclear. Also, it makes no sense to ask for shareholder approval of D&O policies. The whole paragraph should be rephrased. What really matters is to disclose the policy without mentioning the maximum level of D&O insurance given that it may serve ass an incentive for litigators, providing them an easily measurable target under which the company will not really defend itself. In any way, the D&O policy should not be connected to remuneration as it cannot be perceived as remuneration in kind.
II.D (p. 18)	In addition to the concern that encouraging direct consultation between shareholders of listed companies may facilitate market manipulation, there is the concern that it may generate "factions" in unlisted companies defending their specific interests to the detriment of other shareholders and the corporate interest, while disclosure of concert action is not compulsory
II.E.1	Optimal capital structure is best decided by the board (if not GM decision is not required). ecoDa would recommend that it should be up to each government to take a position on the «one share, one vote» principle as there is no universal agreement even in Europe.
	The fact that shareholder rights in cases of violation can be obtained at reasonable cost is an excellent target but does not always get fulfilled.

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III. Institutional investors, stock markets, and other intermediaries

Section or page #	Comments
III.D (p. 24)	- title paragraph: are proxy advisors, analysts, etc. "regulated entities" " in all jurisdictions or "entities that should regulated"? - ecoDa advocates clearly that proxy advisors should be regulated. This obligation should be formulated more clearly.
III.G (p. 25)	Not sure what the new paragraph adds to the contents of the previous one

*Please add lines as needed.

IV. Disclosure and transparency

Section or page #	Comments
IV.A.2 (p. 29)	The reference to non-financial information might be broader than sustainability information (it can for instance include innovation); At least the Principles should keep the same terminology all over the text (some variation exists)
IV.A.5 (p. 30)	So far, remuneration policy as in SRDII, specifically covers board members and allows for key executives not to be included. Is this a new obligation?

	In the sentence "*the contribution of incentive schemes, such as stock option schemes, to company performance, including resilience and sustainability*" assessing the contribution of incentive schemes to company *resilience* is unclear. The OECD should clarify whether this notion refers to the company's going concern or to its viability in the medium/long term.
IV.A.6 (p. 29)	Title: read "their contribution to the board's mix of competencies and skills" instead of "their composition"
IV.A.7 (p. 29)	This paragraph double-counts with paragraph II.F
IV.D (p. 32)	Direct communication between auditors and shareholders should respect eh equality of information between shareholders. Shareholders do have such possibility, i.e., to communicate directly with the external auditors, during the AGM as the external auditor is present in the meeting.
IV.E (p. 34)	ecoDa is questioning the order of the principles. Should this general paragraph about information dissemination appear after the paragraphs related to the auditor?
	In this chapter, sustainability is approached mainly from a risk and disclosure-based perspective. The strategic perspective is quite weak. The reference to CG codes is also lacking in this section.

*Please add lines as needed.

V. The responsibilities of the board

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	ecoDa welcomes the fact that the OECD attaches more importance to the subject of gender diversity in the revised draft principles.
	Reference to the Nordic model of non-executive board is fully missing for this part.
p.35	The description of the responsibilities of the board in the beginning of Chapter V concentrate on control, omitting the boards' great responsibility to steer companies to a successful future (strategic decisions). The first sentence could read "*The corporate governance framework should ensure the strategic guidance of the Company **by the board**, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.*"
	Reference to relevant stakeholders should be made. ◦ anyone should not have one-sided right to classify oneself as a stakeholder ◦ a company should be allowed to identify its relevant stakeholders
V.D.	In the sentence "The board should fulfill certain key functions" it is not clear whether these functions can or cannot be delegated. According to ecoDa the listed functions should be delegated by the board (to the management), provided that it still exercise its oversight.
V.D.5 (p. 36)	The fact that in many cases non-executive directors receive only fixed fees should be taken into consideration

V.E, 3^{RD} § (p. 38)	- separate the reference to the company secretary from the consideration relating to 2-tier boards - the issues posed by former chief executives taking over non-executive board chairmanship also occur in one-tier companies
V.F (p.43)	In terms of information, most of the time, directors rely on the information given by the management, which makes them vulnerable and dependent. Access to various external and internal sources of information is essential. To provide concrete input, independent directors should get prepared and bring any relevant external information into the boardrooms.
V.F (p.43)	In general, more attention should be dedicated to the training of board members especially concerning the new challenges like sustainability.

*Please add lines as needed.

VI. Sustainability and resilience

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	As already expressed, sustainability is approached mainly from a risk and disclosure-based perspective. The strategic perspective is quite weak. The reference to CG codes is also lacking in this section The notion of resilience, yet present in the title of the chapter, is little developed in the chapter. ecoDa acknowledges that most of the content under this chapter is still work in progress. Therefore, it might not be easy to move away from cetrtain generalities.
VI.D (p. 46)	The introductory paragraph is not very clear, especially with the reference to "investment" by stakeholders other than shareholders. Also, it is not clear what is meant by "encouragement of active co-operation between corporations, shareholders and stakeholders".
VC p.36	ecoDa would recommend to refer to advocacy instead of lobbying
VE.2	It should be mentioned that when a company does not have an audit committee the whole board is responsible for those tasks; Many companies have started to emphasized the importance of employees below the executive team and many companies have changed their remuneration committees to people committees (names may vary), covering not just top-level remuneration but people issues more widely (V.E.2.); Not all corporate governance codes require nomination and remuneration committees, although they are given a tool to strengthen preparatory work of the board (V.E.2.).
VE.2	Industry knowledge should be added to diversity criteria

*Please add lines as needed.

ABOUT ecoDa:

The European Confederation of Directors' Associations (ecoDa) represents 21 national institutes of directors and more than 55000 individual board members. Over the past years, ecoDa has positioned itself as the European Voice of Directors, representing pan-European interests of key actors in financial markets.

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