

**CONTRIBUTION OF AFEP, THE FRENCH ASSOCIATION OF LARGE COMPANIES,
TO THE PUBLIC CONSULTATION
ON BEST PRACTICE PRINCIPLES FOR GOVERNANCE RESEARCH PROVIDERS**

BACKGROUND TO THE PRINCIPLES

Q.1-What are your views about the Principles development process?

Q.2- Respondents are welcome to express their expectations regarding the review and monitoring of the Principles. As the ongoing governance of the Principles has yet to be determined, the committee particularly welcome suggestions by stakeholders as to how a representative feedback mechanism can be implemented?

The Principles have been developed by the industry of proxy advisors itself. We are not against self-regulation provided that safeguards are put in place:

- **The Principles but also their evolution should be elaborated in a transparent way and include stakeholders' consultation.**
- **The implementation of the Principles should be monitored by a separate entity. In Afep's view, the best placed entity to ensure monitoring is ESMA. Alternatively, monitoring could be done by an ad hoc dedicated body, the 'Monitoring Board', which should be composed of independent personalities representing various stakeholders such as national regulators, issuers, shareholders...**
- **ESMA or the 'Monitoring Board' should be in charge of the monitoring of the code's implementation by making an annual report. It should assess the explanations in case of deviation from the Principles and make recommendations in order to improve their quality. If a signatory does not apply a Principle without giving sufficient explanations, the name of the signatory should be disclosed in the report (implementation of the 'name and shame' principle). In addition, in order to prepare future developments of the Principles, it should highlight best practices.**
- **Issuers or their representatives as well as shareholders should have the possibility to submit to ESMA or the 'Monitoring Board' issues that relate to their relations with signatories (dialogue, erroneous data, content of voting policies...).**
- **ESMA or the 'Monitoring Board' should have a website where its report, recommendations and warnings should be published.**

COMPLY OR EXPLAIN

Q.3- Please share your views on the practicality of a comply-or-explain approach to the Principles.

Q.4- Could the effectiveness of the Principles be further enhanced? Please elaborate and provide specific examples and/or suggestions.

Afep favours the ‘comply or explain’ approach, which introduces the necessary flexibility enabling proxy advisors to adapt from one market to another. The guidance concerning what a good explanation is (as stated in §1.1 p.7 of the consultation document) should be included in the Principles.

In addition, Governance Research Providers (GRPs) should register themselves with ESMA or national competent authorities. In the latter case, this information should be communicated to ESMA. This information should be made available by ESMA to allow continued monitoring and transparency of the industry at EU level.

In addition, the Principles should state that when a legal instrument regulating proxy advisors is in place in a Member State (which is the case in France where the AMF has published a recommendation applicable to proxy advisors), GRPs should disclose if they implement that regulation and if not they should explain why they deviate.

APPLICATION OF THE PRINCIPLES

Q.5- Do you believe that the Principles and/or supporting Guidance conflict with obligation under legislation or other best practice principles? If yes, please elaborate and provide specific examples and/or suggestions.

We do not see any kind of conflict.

Q.6- Please share your views on the procedures for registering as a signatory, describing and disclosing how Principles and related Guidance are being applied, and for disclosing the Statement of Compliance.

Q.7- What should the regional scope of the Principles be, in terms of signatories and services provided? For example, do you think that the Principles should be global?

Registering as signatory should be mandatory instead of optional. Otherwise, we do not see the rationale for developing high-level principles to address the key issues highlighted during the consultation process.

We consider that the Principles should be global. The ‘comply or explain’ principle gives enough flexibility for GRPs to adapt the Principles to their own specificities or the specificities of each market. However, GRPs should also ensure consistency between the different markets, as some provisions in voting policies may raise concerns of competitiveness: for instance there is no reason why the maximum percentage of dilution required for stock options or bonus shares may vary for companies in the US versus the EU.

Q.8- For additional potential signatories only: Are there factors that generally would keep you from becoming a signatory to the Principles? If yes, please elaborate and provide specific examples and/or suggestions.

Q.9- For additional potential signatories only: What are your views on the Guidance for subscription, adoption and ongoing compliance from an organizational point of view? Do you think the ongoing management of the Principles could be improved? If yes, please elaborate and provide specific examples and/or suggestions.

We are not concerned by questions 8 and 9

SCOPE AND DEFINITIONS

Q.10- Do you agree with the definition of “governance research services? Is the scope of the definition adequate? If not, please elaborate and provide specific suggestions.

Q.11- Are the definitions of “vote agency services” and “engagement and governance overlay services” and their distinction from “governance research services” sufficiently clear and accurate? If not, please elaborate.

The core business of GRPs consists in advising investors on how to vote. This business gives mainly rise to contest due to the significant influence of proxy advisors over the outcome of individual votes, although they hold no economic interest in issuers. Voting power is increasingly in the hands of large institutional investors, which are more likely than retail holders to subscribe to and follow the recommendations of proxy advisory firms.

Other problems may arise when proxy advisors develop consulting services at the same time as they offer voting recommendations or when they sell reports, concerning for examples issues relating to directors’ remunerations or an analysis of the outcomes of the last AGM season. Issuers may rightly feel that they are at disadvantage if they do not subscribe to these consulting services or do not buy these reports.

The high correlation between proxy advice and voting outcomes derives also from the use of voting platforms by proxy advisors on behalf of their clients (who are investors). GRPs send reports with voting recommendations to their clients together with the ballot paper which is already filled according to the voting policy. This is a questionable practice. Another practice, which goes further, consists in offering within the voting platform a ‘quick vote’ option: when pressing a single button, investors cast a vote that follows the proxy voting recommendations. Issuers have noticed a clear link between the receptions of voting report by the investors and the votes cast immediately after.

As the main problems derive from conflicts of interest that may arise when proxy advisors perform these activities, we consider that the definition of Governance research services should include as well ‘vote agency’.

Q.12- Do you agree that the Principles should not impose standards of conduct on investors? If not, please explain why.

Due to the scope of the Principles, we agree that they should not be applied to investors. However, it could be useful that ESMA develops on the same model a stewardship code for investors operating in the EU.

PRINCIPLE ONE: SERVICE QUALITY

Q. 13- Do you think that Principle One will help the market to better understand the different kinds of services and approaches that participants operate? If not, please explain.

Yes

Q.14- Do you see any issues of service quality that are not addressed in this section? If so, please provide examples and specific information on the purpose and merits of any additional disclosures.

The signatories should be submitted to a general Principle: the information they disclose should aim to provide accurate, precise and faithful information in accordance with stock market practice. The principles should remind the signatories that they are liable if they provide incorrect information.

As regard voting policies/guidelines, the Principles remain too vague. It should be stated that:

- **The rationale and the expected benefit of the updates of voting policies should be clearly explained and documented in the specific context of the relevant market (country by country in the Eurozone).**
- **Voting policies have to be clear and precise and the concepts used strictly defined. They should take into account the specificities of the relevant market and be communicated to the national regulator.**

As regard Employee Qualification & Training, the Principles should be strengthened; Instead of “signatories should make reasonable efforts to ensure staff are trained on the relevance and importance of their activities and how they contribute to service delivery”, it should be stated: “signatories should employ and train an adequate number of employees which have to be sufficiently qualified, with a solid knowledge of the market practice and legislative framework of the relevant market”. In addition, the studies or the reports should mention the name of the persons that have been in charge of them.

As regard Complaints & Feedback Management, it should be added that signatories should undertake to correct at short notice any error that might be identified through dialogue with issuers or investors.

Q.15- Do you think the disclosure of the research policy, voting guidelines and research methodologies will enable stakeholders to determine how signatories consider local market conditions? If not, please provide reasons.

Q.16- Please express your views on the scope and content of the proposed research-related disclosure under this principle with respect, to: a. research policy b. voting guidelines c. research methodologies.

We agree with the perceived lack of transparency in the industry. Increased disclosure of information about how signatories elaborate their voting recommendations will help issuers and investors to assess the quality and the credibility of the analysis on which the voting recommendation is based.

We therefore welcome the guidance whereby methodologies and assumptions supporting voting recommendations should be disclosed, as this would allow the market to evaluate the rationale for these recommendations.

In determining what information should be disclosed, we are well aware that some information is proprietary or should remain confidential for legitimate business purposes. We do not consider, however, that this applies to the process undertaken by proxy advisory firms to generate their voting recommendations.

PRINCIPLE TWO: CONFLICTS OF INTEREST MANAGEMENT

Q.18-Does Principle Two address the relevant issues or considerations relating to potential conflicts of interest in the provision of governance research? If not, please explain.

Q.19-Do you agree with the proposed conflict management and mitigation procedures? If not, please explain why and what additional measures you would propose.

Q.20 -Do you agree with the proposed approach on disclosure of material conflicts? If not, please explain.

We agree that the list of examples provided includes the most relevant types of conflicts, e.g. conflicts between consulting services and proxy advisory services provided by the same firm, conflicts in ownership structures, etc.

We agree as well that conflicts of interest should also be addressed through adoption of policies and organisational structures that mitigate the conflicts.

In addition and in order to build a comprehensive system, we consider that:

- **each signatory should elaborate a code of conduct published on its website that would supplement the Statement of Compliance;**
- **each signatory should disclose to ESMA or the ‘Monitoring Board’ the existence of conflicts of interest;**

- the Principles should require Signatories to establish Chinese walls in order to separate their proxy voting services from advisory or consulting services such as ratings, company specific advice...

PRINCIPLE THREE: COMMUNICATIONS POLICY

Q.22 Please express your views on the scope and content of the proposed policy disclosure under this principle with respect to

- a. Issuers
- b. Media and the public

Q.23- Are there any other aspects of **issuer-related** dialogue that should be taken into account? If yes, please elaborate and provide specific examples and/or suggestions.

Q.24 - Are there any other aspects of **media and the public** dialogue that should take into account? If yes, please elaborate and provide specific examples and/or suggestions.

A permanent, high-quality dialogue between GRPs and issuers is in the interest of the markets.

We consider that, in order to enhance issuer-related dialogue:

- **Voting policies should be available free of charge and sufficiently ahead of the general meeting to allow issuers to be in a position to fine-tune the resolutions they intend to submit to their shareholders.**
- **Updates on voting policies should be formulated and made public in a way that allows issuers to take them into consideration and maintain a constructive dialogue for the upcoming shareholders meeting season. In addition, voting policies should be made available on the signatories' website on a consolidated format.**
- **Unlike the proposed Principle, which makes it optional, signatories should be required to initiate a dialogue with issuers. If issuers are informed of the reasons behind negative votes on shareholders proposals, they can reflect on the wisdom of future changes. This is the positive dynamic recognised by the UK Stewardship Code applicable to institutional investors. Without knowing the reasoning behind negative votes, issuers cannot engage constructively with their shareholder base.**
- **Issuers should be able to respond to the positions taken by the signatories, who in many cases may be based on incorrect facts, misunderstanding of the corporate governance legal framework or debatable governance positions. If the issuers are not informed of the positions taken by the signatories, this critical debate cannot take place. Therefore, issuers should be offered the possibility to review the content of voting recommendations with a reasonable delay (a minimum of 2 business days) before they are sent to clients, allowing the issuer to correct mistakes and exchange views. In addition, the issuer must be allowed to insert in the report a dissenting opinion before it is sent to clients.**

GENERAL FEATURES OF THE PRINCIPLES

Q. 26- In addition to comments on the specific questions addressed in the remainder of this consultation Document, views are invited on the general approach taken by the Committee and the general features of the Principles

Q.27- Do you feel that the Principles meet the policy principles set forth in ESMA's Final Report? If not please explain

Q.28- Do you have any other comments that the Committee should take into account when finalizing the Principles

Those Principles are a good step in the right direction, but they should be enhanced, as already mentioned, by the setting up of a monitoring system by ESMA or an ad hoc 'Monitoring Board' in order to make the 'comply or explain' regime more effective.

*

ABOUT AFEP

The purpose of **Afep**, the **French Association of Large Companies**, is to present their views to the European Institutions and the French authorities, mainly with regard to the drafting of non-sectoral legislation (on the economy, finance, taxation, company law, financial information and markets, competition, intellectual property rights, consumer affairs, social protection, employment legislation, environment and energy, corporate social responsibility, etc.).

In 2013, Afep represents more than 100 of the top private sector companies operating in France. The companies which belong to Afep have 6.7 million employees and a combined turnover of 1,700 billion euros. Their market capitalisation in 2012 amounted to 1,100 billion euros.

As a major force for analysis and proposals, Afep is also a prime forum for contacts between member firms and public authorities, which consult the Association when considering plans for reforms or regulations. Senior officials in the European Union and French administrations regularly take part in meetings organised at the head office of the Association, enabling direct and constructive dialogue to take place.

Afep (French Association of Large Companies)

11, avenue Delcassé, 75008 Paris, France

4-6, rue Belliard, 1040 Bruxelles, Belgique

*Transparency Register identification number: **953933297-85***

CONTACTS

Odile de Broses

Director for Legal Affairs

Email service.juridique@afep.com

Tel +33 1 43 59 85 25

Jérémie Pélerin

European Affairs Director

Email jeremie.pelerin@afep.be

Tel +32 2 227 57 23