

**Business at OECD (BIAC) Written Input on Draft Revisions
to the G20/OECD Principles of Corporate Governance**

14 December 2022

*Please note that, in this document, sentences and paragraphs where we suggest specific wording changes are highlighted in yellow.

General Comments

We appreciate the opportunity to provide written feedback on the Draft Revisions to the G20/OECD Corporate Governance Principles once again. Following the OECD's public consultation process, to which we contributed, we were delighted to see the revised version of the draft prepared by the OECD for the November stakeholder consultation session and to see that the draft revisions had been further enhanced by incorporating many of our suggestions. Nevertheless, we discovered portions of the new draft that did not reflect the concerns we raised during the public consultation. Some of the areas where our input was not reflected include points that we believe are particularly important for maintaining the relevance of the Principles in a rapidly changing environment. We reiterate these points in this document and encourage the OECD Corporate Governance Committee to take into consideration our overarching and specific comments presented below.

In addition to the written contribution we are submitting here, we are ready and willing to contribute to enhancing and strengthening the Principles through face-to-face discussions (in-person/online) with the OECD Corporate Governance Committee and its Secretariat, both at committee meetings and on other bilateral meeting occasions so that they can remain relevant and applicable now and in the future.

I. Sustainability

Sustainability should not be seen only from the risk control point of view but also as a source of opportunities. We applaud the incorporation of the sustainability and long-term value creation approach into the latest draft of the Principles but would suggest a more thorough integration of sustainability and cross-references of Chapter VI throughout the Principles. We recommend taking a balanced approach to shareholder rights while recognizing the critical importance of other stakeholders to the long-term value creation of companies.

Regarding consistency of wording and terminology, we suggest the term "sustainability" be used consistently throughout the Principles. There are several references to "environmental and social" throughout the Principles, which imply that "ESG" may be redefined by the Principles to be only "ES." The Principles must be careful not to separate "E," "S," and "G" issues unnecessarily, and for that reason, we would suggest simply using "sustainability" rather than "environmental and social." It would be useful to emphasize in the Principles that the notion of "sustainability" extends beyond climate change and includes pollution, biodiversity, social, and governance-related issues. Furthermore, we suggest avoiding the term

“non-financial information” as it may be misleading. After all, non-financial information that is material to the assessment of company value creation may well become financial information in the future, even if it is not now. “Pre-financial” or “sustainability information” would be preferable.

In addition, in the context of sustainability, it would also be helpful to emphasize the importance and value of corporate culture. As we have seen many times in the past and recently, culture can be a material risk to the organization’s ability to meet its objectives, which also applies to the transition to net-zero as well as other sustainability goals and SDGs commitments.

To incorporate and integrate sustainability into the Principles further, we resubmit the following three perspectives, including new and additional subpoints:

(i) Board roles and responsibilities on sustainability

We suggest the Principles include provisions on board accountability, enforcement, and management oversight of sustainability as the board’s roles and responsibilities are evolving, including more expansive oversight of sustainability.

- We suggest including guidance on how the board should integrate sustainability into its strategy and board duties. We also propose to explicitly mention that the transition to net-zero requires the board to retain the ability to take risks, given the need for a broad and fast transition and the technological risks transition plans will face.
- We suggest including guidance for the board and the audit committee roles, anticipating additional responsibilities in light of the emphasis on sustainability and related disclosures.

(ii) ESG ratings

We recommend including a more detailed discussion on ESG ratings, which play an increasingly important role in assessing the company’s sustainability and ESG performance. We propose that the Principles promote consistency and alignment between ESG rating information and sustainability disclosures based on internationally recognized standards.

(iii) Assurance of sustainability disclosures

We suggest the Principles acknowledge the advancements in the assurance of sustainability disclosures and the benefits independent assurance brings to good corporate governance. We propose that the Principles discuss different levels of assurance as it would be beneficial and relevant to start with limited assurance over sustainability reporting and consider moving to reasonable and higher levels of assurance over time.

We are aware that the OECD has changed the term “assurance service” to “attestation service” in this version of the draft, but we propose changing it back to “assurance service” since it is a more widely used term.

II. Risk management and internal control systems

We recommend that the Principles emphasize the role of risk management and internal control as a crucial system for assisting the management, the board, and the audit committees, as well as its broader set of stakeholders. Risk management and internal control systems must evolve to aid those charged with governance in assuming additional responsibilities. We suggest that the Principles be reviewed and confirmed to ensure that they align with each country's most recent developments and future expectations of risk management and internal control.

In addition to discussions on risk management at the management, board, and committee levels, the Principles also need to emphasize the importance of using a common language throughout the company to ensure an effective risk culture and raise risk awareness in light of today's complex risk environment. This necessitates communication and collaboration across all business functions, which requires additional effort due to the risks posed by the rapid changes.

III. The role of the external auditor

We suggest that the external auditor's role in the corporate governance framework be described more explicitly and holistically in the Principles. Recognizing the stakeholder-company-external auditor relationship within the corporate governance triangle is helpful. In addition, the Principles can explain the external auditor's relevance and added value, including the broader elements of an external audit, such as:

- o Key Audit Matters and the role of the company and its board in relation to these matters;
- o External auditor observations and recommendations with respect to internal control in management letters/board reports;
- o Role of the external auditor in connection with the board/directors' report (ISA 720), which is especially important given the integration of sustainability in the Principles (sustainability information)

IV. Clear language and definitions

Throughout the Principles, clear language and definitions assist users in interpreting the relevant guidance.

- We note that the 2015 version of the Principles uses clear language, including specific examples of what companies should do, to articulate the expectations included in the principles and sub-principles explicitly. This sets a clear direction, while the current draft document uses more cautious "may" clauses in several principles and sub-principles. Where needed, we expect the OECD Corporate Governance Committee to stress the need for principles/sub-principles considered essential for good governance.
- Shareholder/stakeholder terminology: We appreciate the enhanced language on the role of broader stakeholders in corporate governance, particularly in Chapter VI. We believe it would be beneficial to review the draft holistically to promote consistent use of this new language throughout the Principles. Cross-referencing and, where possible, achieving consistency with the discussion related to the "relevant

stakeholders” definition in the MNE Guidelines (The OECD Guidelines for Multinational Enterprises), which the OECD is also now revising, is recommended for overall consistency.

- The proposed revisions emphasize that the Principles are designed for listed companies. On the other hand, it goes without saying that unlisted companies, state-owned enterprises, and family companies also need good governance. Furthermore, with changing business models and evolving organizational structures, business and investment forms are expanding, including but not limited to private equity and family offices, in which good governance can and should also be pursued. Against such background, we suggest that the Committee considers developing additional targeted guidance for other forms of companies than listed, as is the case for SOEs (OECD Guidelines on Corporate Governance of State-Owned Enterprises).

Introduction & About the Principles section

Section 1.

We suggest the following amendment as we believe “relevant stakeholders” is sufficient here, which includes the workforce, financial intermediaries, etc. This is consistent with the treatment of shareholders vs. stakeholders in section 10 of this chapter.

This is primarily achieved by providing shareholders, board members and executives, ~~the workforce~~ and relevant stakeholders ~~as well as financial intermediaries and service providers~~, with the right information and incentives to perform their roles and help to ensure accountability within a framework of checks and balances.

Section 5

A formal structure of procedures that promotes the transparency and accountability of board members and executives to shareholders helps corporations to access capital markets.

In some jurisdictions, the collegiality of the Board (i.e., all decisions are taken collectively) is a key principle. Providing accountability of individuals comprising board members would be contrary to some corporate law regimes. Bearing in mind that corporate law is a local regulation, it is advisable to avoid jeopardizing this key principle.

Section 9

We support the proposed amendment (addition of “Companies vary in maturity, size and complexity”), which aligns with the proportionality principle.

I. Ensuring the basis for an effective corporate governance framework

I. B.

We welcome the OECD third draft that introduces a better recognition of corporate governance codes as complementary tools of the corporate governance framework. Moreover, the code's contribution to the global governance framework could also be emphasized in the introduction to new Chapter VI, considering that the flexibility and the adaptability of corporate governance codes can represent – and actually already represent in most OECD jurisdictions – an important tool for the evolution of the corporate governance framework and the corporate practices toward a more sustainable business activity.

I. C.

Regarding the second sentence of the paragraph, the list of legal domains that can influence corporate governance requirements and practices should also include sectorial regulation (for example, related to the financial sector).

I. E.

In addition to conflicts of interest assessment for the members of the supervisory, regulatory, and enforcement authorities, it is also recommended that their members should also be subject to Fit & Proper assessment, which should be publicly available considering that they are the guardians of the corporate governance framework.

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

II. Preamble

We have concern that the annotation, "*As a practical matter, however, the corporation cannot be managed by shareholder referendum,*" may lead to a misunderstanding about the reason for the corporate form. The corporate form was established to protect shareholder from liability for the actions of the corporation. Shareholders do not manage the corporation, because that would expose them to liability for the actions of the corporation. In other words, shareholders do not manage the corporation because the corporate statutes do not give them that authority. If readers thought that the OECD believes that shareholder do not manage the corporation only because it is not practical for them to do so, some readers might look for means that are practical for the shareholders to manage the corporation. To avoid unnecessary misunderstanding, we suggest the following amendment:

As a practical matter, and to protect them from liability from its actions, the corporation cannot be managed by shareholder referendum.

II. Preamble

We appreciate the inclusion of the reference to “board member slates.” We would also suggest recognizing clearly that the presentation and election of minority candidates within the boards of investee companies can represent a continuous and constructive method of engagement. Minority-appointed directors can positively contribute to sustainable value creation through their ongoing work within the boardroom and of stimulating and participating in board-shareholder dialogue.

II. Preamble

We suggest deleting “*independent*” included in the latest draft of the principles since it is already contemplated in the wider concept of “*board members*.”

Additional rights have also been established in various jurisdictions, such direct nomination of individual ~~or independent~~ board members or board member slates; ..

II. Preamble

We suggest not referencing class actions here, as the legal nature of class actions may vary depending on the jurisdictions.

The confidence of minority investors is enhanced when the legal system provides mechanisms for minority shareholders to bring lawsuits ~~and class actions~~ when they have reasonable grounds to believe ..

II. Preamble

It is key to make a distinction between executive and non-executive directors. This cannot apply to the latter as in most countries, they do not represent the companies vis-à-vis third parties (as this is the responsibility of the executive directors). Moreover, in some countries, they cannot make decisions individually but only collectively (so it shall not be possible to have individual fiduciary duties for non-

executive directors). Also, it should be noted that regarding directors, the major right that shareholders have is to have the possibility to remove the directors during the shareholders assembly.

II. Preamble

We suggest adding the following sentence to balance the powers provided to minority shareholders:

Some countries have found that derivative lawsuits filed by minority shareholders on behalf of the company may be serve as an efficient additional tool for enforcing directors' fiduciary duties, if the distribution of litigation costs is adequately set. In order to be fully efficient, these tools should be strictly framed from a legal point of view to avoid any risk of instability to the detriment of enterprises. The provision of such enforcement mechanisms ..

II. A.

As it is stated in the right column that the approval of the external auditor is effectively a right of shareholders in nearly all jurisdictions, we suggest the language modified as below or including “approve the external auditor” within 7 rights listed here:

Basic shareholder rights **may should** also include the right to approve the external auditor.

II. C. 2.

We suggest deleting “bundling resolutions” as it is necessary to bundle resolutions in some cases.

*Other potential impediments include prohibitions on proxy voting, the requirement of personal attendance at general shareholder meetings to vote, **bundling resolutions**, holding the meeting in a remote location and allowing voting by show of hands only. ..*

II. C. 3

We suggest a further discussion on whether to permit fully virtual shareholder meetings without limitation to exceptional circumstances or to give preference to a hybrid format, with the starting point that, regardless of the format of the meeting, the shareholders' rights are fully effective. We propose amending the text as follows:

II.C.3. General shareholder meetings allowing for remote shareholder participation should be permitted by jurisdictions as a means to facilitate and reduce the costs to shareholders of participation and engagement. Such meetings should be conducted in a manner that ensures equal access to information and opportunities for participation of all shareholders.

Virtual or hybrid (where certain shareholders attend the meeting physically and others virtually) general shareholder meetings can help improve shareholder engagement by reducing their time and costs to participate. There should be no impediments in the legal and regulatory framework to holding fully virtual meetings. By using virtual and professional platform providers, ..

II. C. 3

We have concerns about the last sentence of II. C. 3's first paragraph, which aims to prevent the boards from "cherry-picking the shareholder questions." On the one hand, many OECD jurisdictions, starting with EU countries, already regulate – even for in-person meetings – the shareholders' right to ask questions and to receive answers before or during the shareholder meeting; on the other hand, guidelines for remote meetings are intended to enhance their effective participation to the discussion, and the same objective has been pursued – at least in some countries – also by companies themselves and business associations. In this light, cherry-picking as a general phenomenon does not reflect reality or, at least, not the ordinary reality of the board of directors' approach toward shareholders' meetings but rather rare and extreme cases. Therefore, we suggest the following amendment:

Some jurisdictions have issued guidance to facilitate the conduct of remote meetings, including for handling shareholder questions, responses and their disclosure, ~~with the objective of discouraging cherry picking of questions by boards and management,~~ and enhancing transparency around how questions are collected, combined, answered and disclosed.

II. C. 4

We suggest the following amendment:

.. Shareholders should also be able to ask questions relating to the external audit report ~~as well as other assurance engagement reports with respect to material information, such as sustainability-related disclosures.~~

II. C. 5.

On the one hand, the information on committees' membership could be helpful but represents a specification of the role of director in the same company; on the other hand, the declaration of independence made by the individual candidate represents important information for the board election. To further clarify and emphasize those points, we suggest the following amendments:

.. It is required or considered good practices in some jurisdictions to also disclose information about any other board positions, ~~eventually specifying also of~~ committee membership that nominees hold, and in some jurisdictions also positions that they are nominated for. ~~This information may usefully also contain candidates' own declaration of independence and the relevant criteria used, when the nomination concerns an independent board member.~~

II. C. 7

To eliminate impediments to cross-border voting and to achieve intensive and cost-effective cross-border voting, we propose the addition of a note encouraging the use of appropriate and available technology, such as blockchain technologies.

II. G.

We agree with the principle, but we also believe that if a director represents a significant shareholder, he/she should be entitled to vote the way most aligned with his/her principal, provided it is compatible with the company's own interest, and in spite of not being necessarily aligned with other shareholders' opinion on a particular issue. This is in line with the latest legislative developments in Europe (SRD II), which have been implemented in local laws (e.g., art 529 duovicies, section 2 of the Spanish Companies Act which, in the context of the analysis of related party transactions in a public company which is a subsidiary in a group, expressly recognizes the right to vote of the board members representing the controlling company). We suggest amending the text as follows:

A key underlying principle for board members who are working within the structure of a group of companies is that, even though a company might be controlled by another company, the duty of loyalty of fiduciary duties for a board member is should be related to the company and all of its shareholders and not to the controlling company of the group. Notwithstanding this, a board member should be entitled to vote the way most aligned with his/her principal, provided it is compatible with the company's best interest.

II. F. 1

Given that 74% of jurisdictions require explicit board approval of certain types of related party transactions (OECD Corporate Governance Factbook, 2021), we suggest adding back “and board approval,” which was deleted in the latest draft.

In most many jurisdictions, great emphasis is placed on audit committee review and board approval, ..

II. F. 1

It is necessary to be noted that the definition of related party shall not include persons that are too far from the concerned board member, which might lead to an unnecessary administrative burden.

Regarding the relationship between the board members and the company, it could be worth specifying that it is advisable to have a different treatment for executive and non-executive board members, and more specifically, when the non-executive board members are part of a collegial body. On a risk-based approach, it is not possible to ask for the same constraint for both categories.

III. Institutional investors, stock markets, and other intermediaries

Some of our members raised concerns that the OBO/NOBO system in place in the United States and Canada creates barriers between issuers and their shareholders.

III. D

It would be beneficial to clarify more about what state of “transparent” is being referred to here and the methods that should be taken to ensure such a state.

The methodologies used by ESG rating providers, credit rating agencies, index providers and proxy advisors should be transparent and publicly available.

III. D.

We share the importance given to the requirements aimed at ensuring the integrity of different providers of advice, analysis, and rating.

Nevertheless: (i) we would suggest the OECD consider some guidelines about the definition and the application of the methodology used by such service providers, that shall adequately consider the legal features of the jurisdiction in which the company has the legal seat, taking into account both binding and non-binding rules that necessarily influence its governance; (ii) we are concerned with the annotations to supporting principle III.D., where the disclosure of the methodology used by rating and index providers is considered particularly relevant when these ratings and indexes are “also referenced as metrics for regulatory purposes”: although the annotations underline that “exclusive reliance on ratings in regulation may raise questions,” it also recognizes that “the process for deciding which ratings are eligible for use for regulatory purposes should be transparent and could be subject to evaluation at various levels of frequency”. On the one hand, the transparency of the methodology is key for market participants, with likely positive effects on the competition and the quality of the ratings, while their use for regulatory purposes could lack of an appropriate justification. On the other hand, any regulatory reliance on rating providers can introduce uncertainty (especially in case of very diversified ESG ratings) and new costs for companies and investors, with significant effects on smaller ones. These additional burdens appear particularly difficult to explain, especially in jurisdictions with relevant regulations on the same issues covered by such providers.

We, therefore, would suggest the following amendments to the annotations to support principle III.D:

Considering the importance of – and sometimes dependence on – various services in corporate governance, the corporate governance framework should promote the integrity of regulated entities and professionals that provide analysis or advice relevant to decisions by investors, such as proxy advisors, analysts, brokers, ESG rating providers, credit rating agencies, and index providers. These service providers, particularly ESG rating and index providers, can have significant impact on companies’ governance and sustainability policies and practices given their rating methodologies and index inclusion criterion. Therefore, the methodologies used by service providers that produce ratings and indices should be transparent and publicly available to clients and market participants, and shall find application having due regard to the specific rules of the jurisdiction of the individual company. This is particularly important when they are also referenced as metrics for regulatory purposes. Exclusive reliance on ratings in regulation may raise questions, while the process for deciding which ratings are eligible for use for regulatory purposes should be transparent and could be subject to evaluation at various levels of frequency.

III. D.

We suggest mentioning some jurisdictions' requirements to provide information about the dialogue between proxy advisors and companies, as this interaction is important for enhancing their mutual understanding and the accountability and accuracy of the proxy service provider activity. We, therefore, suggest mentioning it in the last paragraph of the annotations to support principle III.D:

Many jurisdictions require or recommend that proxy advisors disclose publicly and/or to investor clients the research and methodology that underpin their recommendations, and the criteria for their voting policies relevant for their clients. Some jurisdictions require that proxy advisors apply and disclose a code of conduct, and disclose information on their research, advice and voting recommendations, whether they have dialogues with the companies which are the object of their research, whether they provide advice or voting recommendations to the companies and with the stakeholders of the company, and, if so, the extent and nature thereof, and any conflict of interest or business relationships that may influence their research, advice or voting recommendations and the actions they have undertaken to eliminate, mitigate or manage the actual or potential conflicts of interests. In some cases, requirements for proxy advisors include developing appropriate human and operational resources to effectively perform their functions.

IV. Disclosure and transparency

IV. Preamble

Regarding disclosure recommendations, we suggest further alignment work to ensure the Principles continue to refer to the MNE Guidelines.

IV. A. 4

We suggest emphasizing the full disclosure of group ownership, which is crucial to deal correctly with conflict of interest.

IV. A. 6

D&O liability insurance is not an element included in the “Say on Pay”. Furthermore, there is no specific demonstration of how insurance policies can change managerial incentives. Therefore, we suggest deleting the following sentence:

Directors’ and officers’ liability insurance policies may also change managerial incentives, thus warranting shareholder approval or disclosure.

IV. A. 8

We suggest the deletion of “reasonably foreseeable” to identify and address risk factors.

*The Principles envision the disclosure of sufficient and comprehensive information to fully inform investors and other users of **reasonably foreseeable** material risks of the company.*

IV. A. 9

It would be beneficial if a definition of “significant subsidiaries” is provided.

IV. A. 10

This principle should be assessed in the light of another fundamental principle: business secrecy principle.

IV. B.

We propose the following amendment to include sustainability disclosures here:

IV.B. Information should be prepared and disclosed in accordance with internationally recognised accounting and disclosure financial reporting standards as well as internationally recognised requirements for reporting on sustainability information.

Also, we suggest maintaining the sentence below, though it is deleted in the latest draft, with possible consideration of the term usage of “non-financial information.”

.. Disclosure of non-financial information should also be understandable, enforceable and consistent and compatible with high quality disclosure standards.

IV. C.

We support the inclusion of ethical standards as well as some reference to examples of such standards.

IV. C.

We suggest the following amendment:

.. Examples of other provisions designed to promote auditor independence include, a ~~total~~ ban or ~~severe~~ .. (not necessary for qualitative wording)

Further, a system of audit oversight and audit regulation plays an important role to ~~improve~~ enhance auditor independence and audit quality.

(To avoid the nuance that there is a problem by using “improve”)

IV. D.

Principle IV.D now includes the possibility of shareholders “to communicate directly with the audit committee on the findings of the annual audit” instead of communicating directly with the external auditor, as contemplated in the previous draft. We suggest adding that this is to be done through the mechanisms established by national laws. For instance, in Spain, there is the right of shareholders to be informed on audit-related matters through the audit committee (art. 529. Quaterdecies of the Spanish Companies Act) or the right to request information/clarifications on the audit report/annual accounts to the company/management through the exercise of their right of information before/at the GSM (Art 520) of the Spanish Companies Act).

IV. D.

The reference to a more detailed auditor’s report is not clear and could introduce uncertainties. The reference to a “detailed auditor’s report” could be misleading and induce a reference to the “additional report” regulated in EU by at. 11 of the Regulation 573/2014, which clearly establishes that such an additional report shall be submitted to the audit committee of the audited entity and, upon national decision, to the administrative or supervisory body of the audited entity, while this report is neither published nor submitted to the shareholders. We, therefore, suggest the following amendment to the last sentence of annotations to support principle IV.D.:

“To enhance accountability to shareholders, shareholders should also have the possibility to communicate directly with the audit committee on the findings of the annual report, which may be supported by ~~a more detailed auditor’s report or~~ participation of the external auditor in shareholder meetings.”

IV. E.

We propose that the Principles explicitly encourage authorities to build a centralized system (such as SEC EDGAR in the US), which holds all types of filings made by all listed companies in their jurisdiction. Ideally, the database should be freely available to the public, easily searchable, and retrievable.

V. The responsibilities of the board

V. A. Header

We suggest the following amendment to take a balanced approach to shareholder rights while recognizing the critical importance of other stakeholders to the long-term value of companies and, therefore, their shareholders.

V. A. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders, while recognizing the interests of other stakeholders such as employees, customers, suppliers, and broader society are also important to a company's long-term success. ~~taking into account the interests of stakeholders.~~

V. B.

We suggest mentioning there is also a so-called hybrid system in some jurisdictions:

- with either a board of directors and a general management where the board of directors has supervisory powers and also determines the strategy of the company (such as in France), or
- with a board of directors (composed of non-executive and executive members) and a management committee (composed of executive members) where the board has supervisory powers and also determines the strategy of the company (such as in Belgium).

V. D. 1

This annotation refers to directors owing a fiduciary duty to the corporation and its shareholders. This concept occurs in other places also. Some of our members pointed the director's fiduciary duty to the shareholders is irrelevant in some jurisdictions, e.g., Canada. The Supreme Court of Canada has been clear that directors owe a fiduciary only to the corporation. They do not owe a duty to stakeholders, including shareholders.

V. D. 4

With regard to the amendments on the role of the nomination committee, we have some concerns regarding its role in the definition of the profile of key executives, who are usually understood as the top managers of the company that are not members of the board of directors. In some European countries, the tasks of the nomination committee are limited to the definition of the profile of directors, including the CEO, but are not extended to top management. In this light, we believe that the revision of the policies related to the selection of key executives – already considered in the proposed text – better reflects a balanced approach toward different governance practices across OECD countries. Accordingly, we suggest the following amendment to the first sentence of annotations to support principle V.D.4:

“In exercising this fundamental function, the board may be assisted by a nomination committee, which may be tasked with defining the profiles of the CEO and other board members and key executives and making recommendations to the board on their appointment.”

V. D. 5

We have some concerns with regard to the amendment to the last sentence of annotations to supporting principle V.D.5. While we agree with the importance of having clear, predetermined, and measurable performance target for directors' remuneration, we also believe that the strong negative considerations regarding possible changes to the remuneration policy due to significant economic downturns shall be better balanced with the existing regulatory framework.

Namely in EU, art. 9a of Directive 828/2017 (so called SRD II) states that *“Member States may allow companies, in exceptional circumstances, to temporarily derogate from the remuneration policy, provided that the policy includes the procedural conditions under which the derogation can be applied and specifies the elements of the policy from which a derogation is possible. Exceptional circumstances as referred to in the first subparagraph shall cover only situations in which the derogation from the remuneration policy is necessary to serve the long-term interests and sustainability of the company as a whole or to assure its viability.”*

This provision is now implemented in all EU countries, and the decision to derogate from the policy under exceptional circumstances should go through a specific procedure– e.g., the same procedure as for related party transactions – and it shall be explained in the report. We believe that this specific feature of the EU framework could be better acknowledged in the principles; moreover, better consideration of the legal framework would also ensure consistency within the OECD Principles (e.g., with the annotation to supporting principle IV.A.6. regarding the information on material changes to the remuneration policy).

V. E. 2

We support the proper flexibility envisaged in the sub-principle V.E.2. regarding the possible establishment of board committees. For this purpose, we suggest minor amendments that may ensure better clarity.

New third paragraph: *“According to company’s size and stage of development, the tasks of the nomination and the remuneration committee can be entrusted to the whole board, provided that it has an adequate number of independent directors and that the board dedicates specific sessions to the fulfilment of those tasks”*.

The first sentence of the second-last paragraph could be rephrased as follows: *“It remains at the discretion of the board to establish additional committees on specific issues.”*

These changes require the deletion of the first sentence of the last paragraph (*“The establishment of additional committees remains at the discretion of the company and should be flexible according to the needs of the board.”*), which would be incorporated in the above-mentioned amendment proposed to the second-last paragraph.

V. E. 4

It could be helpful to provide more detailed guidance in the annotations to this sub-principle, for instance, by providing a discussion of the different forms of board diversity considered in the various jurisdictions which have already adopted a broader view on diversity. It is suggested that *“international experience”* be added to the list of possible diversity dimensions mentioned in the text.

V. F.

.. In cases when a publicly traded company is a part of a group, the regulatory framework should also ensure board members' access to key information about the activities of its subsidiaries to manage group-wide risks and implement group-wide objectives. At the same time, the regulatory framework should maintain safeguards to ensure that insiders will not use such information for their personal gain or of others.

We suggest specifying that the board of directors should have access to key information about its subsidiaries' activities only if it is not in violation of any cross-border or national regulations and is necessary in accordance with the board of directors' powers.

VI. Sustainability and resilience

We observe that sustainable governance shall represent an important part of the new Chapter VI, but its key elements, such as the definition of fiduciary duties as well as the clear definition of the boundaries of the business judgment rule, are found in different parts of the Principles (namely in Chapter V). Considering the importance of this new Chapter, we believe that recalling the concept of the “enlightened shareholder value,” even at the principle level, in the new Chapter VI would enhance the clarity and consistency of the OECD approach toward this issue.

VI. Intro Para -1

Considering the distinction between policy commitments and (business) voluntary commitments, we suggest adjusting the usage of “and investors” as follows:

*.. Many jurisdictions **and investors** have made commitments to transition to a net-zero/low-carbon economy in line with the Paris Agreement, .. In addition, many companies **and investors** are making voluntary commitments or ..*

VI. A

Transparency is crucial to achieving the transformation to better sustainability for the coming generations. We suggest more guidance and clarity on sustainability disclosures and the use of more directive language. A move towards internationally accepted sustainability disclosure standards may be stated and encouraged here as the medium-term goal.

VI. A.

The reference to the different approaches adopted across jurisdictions both at the beginning and at the end of the paragraph may put too much emphasis on this subject. We, therefore, suggest considering the deletion as follows:

*While stakeholders may not typically be the primary users of corporate sustainability disclosure, **in jurisdictions that allow or require the consideration of stakeholder interests,** disclosures may benefit such stakeholders. For instance, disclosure on collective bargaining coverage and mechanisms for workforce representation may be both material for an investor’s assessment of a company’s value and relevant to its workforce and other stakeholders. However, while some jurisdictions allow or require the consideration of stakeholders’ interests by companies in their disclosure, others are more restrictive in this respect and regulators cannot regulate outside their statutory authority.*

VI. A. 3

We suggest amendments as follows:

*It follows that **material sustainability-related information understood as material in sustainability report should also be considered and assessed in the preparation and presentation of** may be appropriate for*

consideration to be included in the financial statements. *To improve enhance the credibility and reliability of sustainability information, effective governance and internal controls are needed. ..*

VI. B

Dialogue that is referenced in principle VI. B. should be carried out according to the existing mechanisms provided in corporate law and governance legislation without the need to add additional mechanisms that would (it would be difficult to justify the existence of specific mechanisms for one topic and not for the others).

VI. B. 1

The sub-principle VI.B.1. and the related annotations provide for a vague consideration of legal frameworks envisaging companies' possibility to pursue profit and non-profit objectives. We propose the deletion of this sub-principle and the related annotations, considering that this issue does not seem to fit with this part of the Chapter, dedicated to the dialogue with shareholders and stakeholders, and that examples of such legal institutes and arrangements are diversified and connected to the characteristics of each jurisdiction, where dissenting shareholders and their right of withdrawal is ensured where substantial conditions are met. We may have concern that this clause indeed runs the risk of adversely affecting the dissemination of sustainability practices which is the opposite of its intentions. The risk of losing shareholders may hinder publicly traded companies from creating established not-for-profit programs that may support the community they are operating in.

VI.B.1. When corporate governance frameworks allow for existing companies to adopt both for-profit and public benefit objectives, such frameworks should provide for due consideration of dissenting shareholder rights.

A number of jurisdictions have frameworks that enable companies to incorporate both for-profit and public benefit objectives, which allow them to pursue explicit objectives related to environmental and social matters. In cases where an existing for-profit company adopts public benefit objectives, it is important to provide mechanisms providing for the due consideration of dissenting shareholder rights. Possible solutions to protect the interests of dissenting shareholders could include requiring the consent of minority shareholders or a supermajority shareholders' approval for a company to add non-financial goals to its articles of association, or by providing the right for dissenting shareholders to sell their shares back to the company at a fair price.

VI. D

We interpret this section to acknowledge the potential importance of stakeholders to the long-term success of companies, which also benefits shareholders. We do not interpret this section as co-mingling or equating the importance of stakeholders with shareholder rights/interests.

VI. D. 7

Compared to how the Principles address bondholder rights, Sub-principle VI.D.7, which deals with creditor rights in general, remains undetailed and less prescriptive. We suggest including more detailed guidance on how to protect and enforce creditor rights in general. Properly addressing creditor rights is especially relevant for many countries, where loans and other various types of debt financing other than bonds form a significant percentage of debt financing.