

What the draft EU Accounting Directive says on country-...

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I have just referred to the fact that I have seen a copy of the [draft EU Transparency Directive](#) and I have published its suggested changes relating to country-by-country reporting. I have also seen the draft new Accounting Directive. The relevant content from the preamble and discussion on this says:

2.2.2. Country by country reporting

The lack of transparency in country by country financial data (such as payments to governments) may stand in the way of greater government accountability in some resource-rich countries for the income received from exploiting natural resources (such as oil, gas, mining, and forestry).

The Impact Assessment analysed five broad policy options starting from the baseline scenario (policy option 0), next examining possible schemes that would result in a global agreement for country by country reporting for EU and non-EU MNCs (policy option 1), and finally assessing several policy options that would oblige only EU companies to disclose country by country information (policy options 2 to 4). Whilst policy option 2 requires the disclosure of payments to governments on a country basis from the extractive and forestry sectors, policy option 3 requires the disclosure of such information on a country- and project- basis. In addition to a report on payments to government, policy option 4 would require a complete set of country by country accounts to be prepared by companies active in the extractive and forestry sectors. The option of requiring country by country reporting (CBCR) of payments to government on a country-and-project basis by EU Multinational Companies (MNCs) in the extractive and forestry industries (policy option 3) was retained. The extractive industry covers all companies with activities which involve exploring for and findings minerals, oil and natural gas deposits, and extracting them. The forestry industry covers all companies with activities which involve the logging of timber from primary forests.

The disclosure of payments to government on a country-and project- basis would better satisfy the demands of stakeholders calling for enhanced disclosures whilst the costs of such policy option would remain acceptable if an appropriate materiality threshold is

introduced. This approach would strike a balance between more transparency without overburdening companies, and without excessively putting EU companies at a competitive disadvantage. Furthermore, it would not compromise future efforts by the EU to obtain international agreement, and could assist in negotiations if international partners agree that there should be a worldwide level playing field.

3.4. Country by country reporting

In order to promote governments' accountability and good governance, the proposal introduces new reporting requirements for companies active in the extractive or forestry industries. It is proposed that companies shall disclose the payments they make to governments in each country where they operate and for each project. In line with the overall objective and in order to limit the additional administrative burden, the new requirement is limited to large companies and public interest entities.

4.9. Chapter 9 – Report on payments to governments

New reporting requirements are introduced for large companies and public interest entities active in the extractive or forestry industries. For each country where they operate, they shall, where the total amount is material to the recipient government, annually disclose the payments they make to governments in the financial year, for each project. Where appropriate, reports shall be prepared at a consolidated level. If a consolidated report is prepared, the subsidiaries and the parent company preparing the report are exempted. The report shall be published in the same conditions as those provided by this Directive.

In order to provide for enhanced transparency of financial contributions made to governments, large undertakings and public interest entities which are active in the extractive or forestry industries should disclose annually in a separate report material payments made to governments in the countries in which they operate. Such undertakings are active in countries rich in natural resources, in particular minerals, oil, natural gas as well as natural or primary forests. The report should include types of payments comparable to those disclosed by an undertaking participating in the Extractive Industries Transparency Initiative (EITI).

Such a report should serve to facilitate governments of resource-rich countries in implementing the EITI Principles and Criteria and account to their citizens for payments such governments receive from undertakings active in the extractive or forestry industries operating within their jurisdiction. The report should incorporate disclosures on a country and project basis, where a project is considered as the lowest level of operation at which the undertaking prepares regular internal management reports, such as a concession, geographical basin, etc. In the light of the overall objective of promoting good governance in these countries, the materiality of payments to be reported should be assessed in relation to the recipient government.

In order to take account of technical developments in the operations of the extractive and forestry industries and to ensure uniform application of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission with the view to specify the concept of materiality of payments.

The detailed resulting rules are as follows:

CHAPTER 9

Report on payments to governments

Article 36

Definitions

For the purpose of this chapter, the following definitions should apply:

- * "Undertaking active in the extractive industry" means an undertaking with activities in exploring for, finding and extracting minerals, oil and natural gas deposits, and developing those (section B-Divisions 05 to 08 of Annex I of Regulation (EC) No 2006/1893 of the European Parliament and of the Council^[1]).
- * **"Undertaking active in the forestry industry" means an undertaking with activities in the logging of primary forests (section A-Division 02.2 of annex I of the Regulation 2006/1893 of the European Parliament and of the Council).**
- * **"Government" means any national, regional or local authority of a Member State or of a third country. It includes a department, agency or other undertaking controlled by this government in comparable situations to those outlined in Article 23.**
- * **"Project" means the lowest level of operations at which the undertaking prepares regular internal management reports to run and monitor its activities.**

Article 37

Scope

Large undertakings and public interest entities active in the extractive or forestry industries shall prepare and make public annually a report on payments made to governments where those payments made in the financial year are, in aggregate, material to the recipient government.

Article 38

Content of the report

* The report referred to in article 37 shall identify the following:

- (a) the type and total amount of payments, including payments in kind, made to each government in the financial year;
- (b) where those payments can be attributed to a specific project the type and total amount of payments, including payments in kind, made for each such project in the financial year.

* The following types of payments shall be reported:

- (a) Production entitlements;
 - (b) Taxes on profits;
 - (c) Royalties;
 - (d) Dividends;
 - (e) Signature, discovery and production bonuses;
- (a) Licence fees, rental fees, entry fees and other considerations for licences and/or concessions;
 - (b) Other direct benefits to the government concerned.

* Where payments in kind are made to a government, they may be reported in value or in volume. Where they are reported in terms of value, supporting notes shall be provided to explain how their value has been determined.

* In order to take account of technical developments in the operations of the extractive and forestry industries and to ensure uniform application of this Directive, the Commission shall be empowered to adopt, by means of delegated acts, in accordance with Article 42 and subject to the conditions laid down in Article 43, measures to specify the concept of materiality of payments.

Article 39

Consolidated report

* A Member State shall require any undertaking referred to in Article 37 and governed by its national law to draw up a consolidated report on payments to governments if that undertaking (a parent undertaking) is in any of the situations laid down in Article 23(1) to 23(6) of this Directive.

* The obligation to draw up the consolidated report referred to in paragraph 1 shall not

apply to:

- (a) a parent undertaking of a small group as defined in Article 3(4) except where any affiliated undertaking is a public interest entity;
- (b) a parent undertaking of a medium-sized group as defined in Article 3(5) except where any affiliated undertaking is a public interest entity;
- (c) a parent undertaking governed by the law of a Member State which is also a subsidiary undertaking, if its own parent undertaking is governed by the law of a Member State

* An undertaking need not be included in a consolidated report on payments to government where at least one of the following conditions is fulfilled:

- (a) severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking; or
- (b) the information necessary for the preparation of the consolidated report on payments to government in accordance with this Directive cannot be obtained without disproportionate expense or undue delay;

Article 40

Publication

The report referred to in Article 37 and the consolidated report referred to in Article 39 shall be published as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC.

Article 41

Exemptions

The obligation to report laid down in article 36 shall not apply to any undertaking governed by the law of a Member State which is a subsidiary or parent undertaking, as defined in Article 2, where all of the following conditions are fulfilled:

- (a) the parent undertaking is subject to the laws of a Member State;
- (b) the payments to governments of such an undertaking are included in the consolidated report on payment to governments drawn up by the parent undertaking in accordance with this Directive;

CHAPTER 10

Final provisions

Article 42

Delegating power

- (a) 1. (relates to other issues)
- (b) 2. The Commission shall also be empowered to adopt delegated acts in accordance with Article 43 concerning the definition of the concept of materiality of payments for the purposes of Chapter 9.

I will discuss these suggestions and what they mean very soon.