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EU Parliamentary Committee backs tough disclosure rules for extractive companies

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Introduction

On 18 September, 2012, the European Parliament's Committee on Legal Affairs (the "**Committee**") voted in favour of proposed EU legislation to impose disclosure obligations aimed at deterring corruption by large companies involved in extracting oil, gas and minerals and logging¹. The draft legislation, proposed by the European Commission in October 2011 as a new accounting directive and amendments to existing transparency legislation,² would require companies active in the exploration, discovery, development and extraction of oil, natural gas and minerals and in the logging of primary forests to publish on an annual basis full information on their payments to national governments on both a project-by-project and country-by-country basis. The Committee has significantly strengthened the Commission's proposal.

Why the proposals have been put forward

Campaigners have long recognised the problems associated with payments made to governments in resource-rich developing countries which lack political and economic stability. Arlene McCarthy MEP,³ who is a leading proponent of the changes, explained "Project-level disclosure is the only way in which local communities in resource-rich countries are able to expose corruption and hold their governments accountable for using revenues towards development".

The proposed legislation is also part of a global move towards greater levels of transparency. Disclosure obligations for resource extraction issuers have recently been introduced in the United States, pursuant to Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010; in 2010, Hong Kong implemented new reporting regulations which established country-by-country reporting for petroleum and mineral companies listed on its stock exchange; and the authorities in Australia and Canada are also considering similar proposals.

Key proposal points

- **Relevant sectors** - the legislation would apply to certain companies and other entities (see below) active in the extractive industry (exploration, prospecting, discovery, development and extraction of oil, natural gas and minerals), logging of primary forests, banking, construction and telecommunications.
- **Relevant companies** - the legislation would apply to all EU large⁴ companies (whether public or private), to all companies and EU public-interest entities (national public enterprises) whose securities are admitted to trading on a regulated EU market and to all banks and insurance undertakings.

¹ JURI/7/07694 and JURI/7/07698.

² COM(2011) 683 and COM(2011) 684, adopted by the Commission on 25 October 2011.

³ Member of the European Parliament.

⁴ Exceeding at their balance sheet two of the following criteria: (i) balance sheet total €20m; net turnover €40m; average of 250 employees during the financial year.

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- **Relevant payments** - the legislation would require disclosure of payments to any government (including any federal, regional or local authority), including any Member State government.
- **€80,000 materiality threshold** - payments need not be disclosed if a single payment or multiple related payments do not exceed €80,000.
- **Environmental fines** - any fines for violations of environmental and remediation laws must also be disclosed, by country.
- **No exemptions** - the Committee deleted a provision in the proposals which would have excluded from the reporting obligation payments made in a country where public disclosure is clearly prohibited by criminal legislation; it also deleted an exemption from reporting information not material to the recipient government.
- **Principles for reporting** - the amount of each individual payment made to each level of government must be disclosed. Project-by-project reporting is also required for companies active in the extractive or logging of primary forest industries. Payments in kind must be reported in value and volume.
- **Sanctions for non-compliance** - as is usual with EU legislation, Member States are required to provide effective, proportionate and dissuasive sanctions for infringement. In the case of infringements by EU listed companies, the legislation specifies that the penalties must include at least: a public statement indicating the company or individual (this might be the case if national law provided for liability for directors, for example) in breach and the nature of the breach; an order requiring the conduct to cease; a fine of up to 10% of annual turnover for companies or € million for individuals.

Next steps

The draft legislation will now be negotiated between the Committee and the Council of the EU, comprising representatives of all 27 Member States. Assuming these two arms of the EU legislature agree a final version of the legislation, it will be submitted to all MEPs for a European Parliament plenary vote later this year and in parallel adopted by the Council. The Committee regards the approved version as giving it a strong negotiating mandate. However, given the difference in approach between the Parliament and the Council (in particular regarding the inclusion of the logging sector, project-by-project reporting and payments to Member State governments and the derogation where publication would be a criminal offence in the country concerned), agreement on a version including all the above amendments may prove unattainable.

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