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Committee on Foreign Affairs

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AMENDMENTS 4-15

Draft opinion

Franziska Katharina Brantner

(PE483.739v01-00)

on the proposal for a directive of the European Parliament and of Council amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC

Proposal for a directive

(COM(2011)0683 – C7-0380/2011 – 2011/0307(COD))

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Amendment 4
Helmut Scholz

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) In order to provide for enhanced transparency of payments made to governments, issuers whose securities are admitted to trading on a regulated market ***and which have activities in the extractive or logging of primary forest industries*** should disclose in a *separate* report on an annual basis payments made to governments in the countries in which they operate. ***The report should include types of payments comparable to those disclosed under the Extractive Industries Transparency Initiative (EITI) and provide civil society with information to hold governments of resource-rich countries to account for their receipts from the exploitation of natural resources. The initiative is also complementary to the EU FLEGT Action Plan (Forest Law Enforcement, Governance and Trade) and the Timber Regulation which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering into the EU market.*** The detailed requirements are defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council.

Amendment

(7) In order to provide for enhanced transparency of payments made to governments, issuers whose securities are admitted to trading on a regulated market should disclose in a report on an annual basis payments made to governments ***and local and regional public authorities*** in the countries in which they operate and ***certain contextual*** information. ***The disclosure of such data is intended to enable investors to make better-informed decisions, thereby improving corporate governance and accountability and contributing to good governance in relation to taxes and the reduction of tax evasion.*** The detailed requirements are defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council.

Or. en

Amendment 5
Helmut Scholz

Proposal for a directive
Recital 7 a (new)

(7a) For issuers active in the extractive industry, in agriculture, in fisheries, in large-scale energy production, in the construction sector, in the service industries or in logging of primary forests, the report on payments to governments and local and regional public authorities should include information, more detailed than that normally provided in relation to undertakings active in other sectors of the economy, on a project-by-project basis, provided the total amount of annual payments related to a project exceeds the materiality threshold as defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council¹. Such reports shall include certain contextual information as well as types of payments comparable to those disclosed under the Extractive Industries Transparency Initiative (EITI), and provide investors and civil society with information enabling them to hold company boards and governments to account for expenditures and receipts related to the exploitation of natural resources, including land and fish stocks, and for contracts and concessions awarded. The initiative is also complementary to the EU FLEGT Action Plan (Forest Law Enforcement, Governance and Trade)² and the Timber Regulation³, which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering the Union market.

¹ *OJ L ..., p..*

² *See Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (OJ L 347,*

30.12.2005. p. 1).

³ *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23). Companies that import wood products under EU voluntary agreements will be exempt from this requirement.*

Or. en

Amendment 6
Franziska Katharina Brantner

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Issuers active in the extractive industry or the logging of primary forests should disclose payments to governments on a project-by-project basis, provided the total amount of payments to governments attributed to a specific project within a given financial year exceeds EUR 100 000. Such reports should include data concerning types of payments comparable to those disclosed under the Extractive Industries Transparency Initiative (EITI) and should provide civil society with information enabling governments of resource-rich countries to be held to account for their receipts from the exploitation of natural resources. The initiative is also complementary to the EU FLEGT Action Plan (Forest Law Enforcement, Governance and Trade)¹ and the Timber Regulation², which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering the Union

market.

¹ *See Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (OJ L 347, 30.12.2005, p. 1).*

² *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23). Companies that import wood products under EU voluntary agreements will be exempt from this requirement.*

Or. en

Amendment 7
Helmut Scholz

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) In order to improve compliance with the requirements of Directive 2004/109/EC and following the Communication from the Commission of 9 December 2010 entitled ‘Reinforcing sanctioning regimes in the financial sector’, the sanctioning powers of competent authorities should be enhanced and should satisfy certain essential requirements. In particular, competent authorities should be able to suspend the exercise of voting rights for holders of shares and financial instruments who do not comply with the notification requirements and to impose pecuniary sanctions which are sufficiently high to be dissuasive. To ensure sanctions have a dissuasive effect on the public at large,

Amendment

(14) In order to improve compliance with the requirements of Directive 2004/109/EC and following the Communication from the Commission of 9 December 2010 entitled ‘Reinforcing sanctioning regimes in the financial sector’, the sanctioning powers of competent authorities should be enhanced and should satisfy certain essential requirements. In particular, competent authorities should be able to suspend the exercise of voting rights for holders of shares and financial instruments who do not comply with the notification requirements and to impose pecuniary sanctions which are sufficiently high to be dissuasive. To ensure sanctions have a dissuasive effect on the public at large,

sanctions should *normally* be published,
*except in certain well-defined
circumstances.*

sanctions should be published.

Or. en

Amendment 8
Helmut Scholz

Proposal for a directive
Article 1 – point 1 – point a
Directive 2004/109/EC
Article 2 – paragraph 1 – point d – subparagraph 1

Text proposed by the Commission

(d) “issuer” means a natural person or a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market.

Amendment

(d) “issuer” means a natural person or a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market *and includes all subsidiaries, associates, joint ventures, and other permanent establishments to the extent that they are consolidated in the annual financial statements of the undertaking in question or effectively controlled by it.*

Or. en

Amendment 9
Franziska Katharina Brantner

Proposal for a directive
Article 1 – point 5
Directive 2007/14/EC
Article 6

Text proposed by the Commission

Member States shall require issuers *active in the extractive or logging of primary forest industries, as defined in [...]* to *prepare*, in accordance with Chapter 9 of Directive 2011/.../EU of the European

Amendment

Member States shall require issuers to *disclose, as part of the annual financial report and in accordance with Article 6a of this Directive and* Chapter 9 of Directive 2011/.../EU of the European Parliament

Parliament and of the Council (*), ***a report on*** payments made to governments on an annual basis. ***The report shall be made public at the latest six months after the end of each financial year and shall remain publicly available for at least five years.*** Payments to governments shall be reported at consolidated level.

and of the Council (*), payments made to governments ***and certain contextual information*** on an annual basis. Payments to governments shall be reported at consolidated level.

Or. en

Amendment 10

Anneli Jäätteenmäki

Proposal for a directive

Article 1 – point 5

Directive 2004/109/EC

Article 6

Text proposed by the Commission

Member States shall require issuers ***active in the extractive or logging of primary forest industries, as defined in [...]*** to prepare, in accordance with Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council, a report on payments made to governments on an annual basis. The report shall be made public at the latest six months after the end of each financial year and shall remain publicly available for at least five years. Payments to governments shall be reported at consolidated level.

Amendment

Member States shall require ***all*** issuers to prepare, in accordance with Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council, a report on payments made to governments ***and additional information on their financial activities in third countries*** on an annual basis. The report shall be made public at the latest six months after the end of each financial year and shall remain publicly available for at least five years. Payments to governments shall be reported at consolidated level.

Or. fi

Amendment 11

Helmut Scholz

Proposal for a directive

Article 1 – point 5

Directive 2004/109/EC

Article 6

Text proposed by the Commission

Member States shall require issuers **active in the extractive or logging of primary forest industries, as defined in [...]** to prepare, in accordance with Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council (*), a report on payments made to governments on an annual basis. The report shall be made public at the latest **six** months after the end of each financial year and shall remain publicly available for at least **five** years. Payments to governments shall be reported at consolidated level.

Amendment

Member States shall require issuers to prepare, in accordance with Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council (*), a report on payments made to governments **and local and regional public authorities** on an annual basis. The report shall be made public at the latest **four** months after the end of each financial year and shall remain publicly available for at least **ten** years. Payments to governments shall be reported at consolidated level.

Or. en

Amendment 12

Kyriakos Mavronikolas, Ana Gomes

Proposal for a directive

Article 1 – point 5

Directive 2004/109/EC

Article 6

Text proposed by the Commission

Member States shall require issuers **active in the extractive or logging of primary forest industries, as defined in [...]** to prepare, in accordance with Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council (*), a report on payments made to governments on an annual basis. The report shall be made public at the latest six months after the end of each financial year and shall remain publicly available for at least five years. Payments to governments shall be reported at consolidated level.

Amendment

Member States shall require **all** issuers to prepare, in accordance with Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council (*), a report on payments made to governments on an annual basis. The report shall be made public at the latest six months after the end of each financial year and shall remain publicly available for at least five years. Payments to governments shall be reported at consolidated level.

Or. en

Amendment 13
Franziska Katharina Brantner

Proposal for a directive
Article 1 – point 5 a (new)
Directive 2004/109/EC
Article 6 a (new)

Text proposed by the Commission

Amendment

(5a) The following Article is inserted:

'Article 6a

Principles for reporting on payments to governments

For the purposes of transparency and investor protection, Member States shall require the following principles to apply to reporting on payments to governments:

(a) integrated reporting: the report on payments to governments and certain contextual information shall form part of the annual financial report, shall be audited and shall be in an easily accessible and comparable format;

(b) comprehensiveness: all relevant payments and revenues paid to governments as well as certain contextual information shall be reported; payments to be disclosed, including payments in kind, shall include production entitlements, taxes on profits and the effective tax rate applied, royalties, dividends, signature bonuses, discovery bonuses, production bonuses, licence fees, rental fees, entry fees, other considerations for licences and/or concessions, payments to state security forces for security services, and other direct benefits to the government concerned; the contextual information to be disclosed shall include data in respect of net turnover, production volumes, production cost, employee count, total cash cost of operations, fixed production assets and net profit and loss before tax;

(c) country-by-country reporting: for all industries, payments and contextual information not covered by point (d), disclosure shall be made on a country basis;

(d) project-by-project reporting for issuers active in the extractive industry or logging of primary forests: reporting on payments to governments by such issuers in these industries shall be done on a project basis, provided the total amount of payments to governments attributed to a specific project within a given financial year exceeds EUR 100 000; for this purpose, "project" shall be defined as equivalent to activities governed by a contract, licence, lease, concession or other legal agreement which gives rise to a company's tax and revenue liabilities in each country where it operates; where any payment liabilities are incurred on a basis other than such legal agreements, reporting shall be on that basis;

(e) universality: all issuers shall be subject to the reporting requirements; no exemptions, for instance for certain countries in which issuers operate, shall be made.'

Or. en

Amendment 14
Kyriakos Mavronikolas, Ana Gomes

Proposal for a directive
Article 1 – point 5 a (new)
Directive 2004/109/EC
Article 6 a (new)

Text proposed by the Commission

Amendment

(5a) The following Article is inserted:

'Article 6a

Principles for reporting on payments to

governments

For the purposes of transparency and investor protection, Member States shall require the following principles to apply for the reporting on payments to governments:

(a) integrated reporting: the report on payments to governments shall form part of the annual financial report and shall be in an easily accessible and comparable format; in particular, it shall allow payments to be linked to projects;

(b) materiality: any payment shall be reported which is deemed to have a significant impact on a country's economy or society on a local, regional or national level; any threshold shall reflect such impact; rules shall be put in place to ensure that thresholds cannot be circumvented;

(c) project-by-project reporting: reporting shall be done on a project-by-project basis, taking into account the local and regional impact for the purposes of defining a project; the project definition shall include criteria such as the existence of a licence, lease, concession or other similar legal agreement;

(d) universality: all issuers shall be subject to the reporting requirements; no exemptions shall be made which might have a distortive impact and allow issuers to exploit lax transparency requirements;

(e) comprehensiveness: all relevant payments and revenues paid to governments shall be reported, including payments in kind, operating costs and payments to significant suppliers of services, including the state provision of services;

(f) comparability: the reporting on all payments to governments shall be such as to enable data in respect of different countries to be compared easily.'.

Amendment 15
Kyriakos Mavronikolas, Ana Gomes

Proposal for a directive
Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

Review

The Commission shall by [2 years after the final date for transposition of this Directive] report on the operation of this Directive to the European Parliament and the Council, in particular as regards the following:

- the operation of the reporting of payments to governments and the implementation of the principles to be observed in that regard;***
- the operation of the exemptions from the reporting requirements applying to issuers that are States, regional or local authorities, public international bodies of which at least one Member State is a member, the European Central Bank, and Member States' national banks whether or not they issue shares or other securities;***
- the drafting of regulatory technical standards by ESMA;***
- any other rules necessary or appropriate in the public interest or for the protection of investors;***
- the application of sanctions.***

The report shall be submitted together with a legislative proposal, if appropriate.

