



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Foreign Affairs

2011/0307(COD)

4.4.2012

DRAFT OPINION

of the Committee on Foreign Affairs

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the 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
(COM(2011)0683 – C7-0380/2011 – 2011/0307(COD))

Rapporteur: Franziska Katharina Brantner

PA_Legam

SHORT JUSTIFICATION

While the draft directive touches on a number of issues related to the obligations of issuers of securities admitted to trading on regulated markets, this opinion focuses on the proposed requirements for EU-listed companies to disclose their payments to governments.

The European Commission proposes to require issuers active in the extractive industry and logging of primary forests to report on a country and project-basis on the payments they make to local, regional and national governments around the globe. Your rapporteur strongly welcomes this initiative. Such disclosure requirements will help investors make better-informed decisions and enable local civil society actors to better hold their governments to account when it comes to the use of the proceeds from their respective country's natural resources.

The improved transparency will contribute to better governance and reduce the risk of corruption, thereby improving the development prospects of the countries concerned. The disclosure requirements will also strengthen the existing, voluntary Extractive Industry Transparency Initiative. While your rapporteur therefore strongly supports the general line of the Commission proposal, she proposes some changes to certain provisions, in particular the project definition, materiality threshold and exemptions.

In addition to these changes to individual provisions of the Commission proposal, your rapporteur also proposes to broaden the text in terms of industries covered and data to be disclosed. In fact, the new directive should not only improve state governance in third countries, but also corporate governance of EU-listed corporations operating in these countries. Your rapporteur therefore proposes to include, on a country-basis (rather than on a project-basis), certain contextual data in the disclosure requirements, such as production volume, turnover and employee count.

This information is necessary to compare issuers' tax payments with their economic activity, which will enable the general public and tax authorities to better evaluate the issuers' tax payments across different jurisdictions. As a result, corporate accountability will be strengthened and the risk of transfer mispricing and tax avoidance and tax evasion will be reduced. By reducing the amount of tax payments avoided the revenue base of developing countries would be strengthened, thereby contributing to their economic development and reducing their dependency on foreign development aid. At the same time, such measures would also contribute to reducing tax avoidance and tax evasion in the European Union and would provide investors with better information to judge companies' exposure to different country contexts.

Such considerations of corporate governance and tax avoidance and tax evasion are not limited to any specific sector. Your rapporteur therefore proposes to extend the disclosure requirements (on a country-basis) to all industries.

The disclosure requirements proposed by your rapporteur would not impose any excessive administrative burden on issuers since they would not have to collect any new data they do not already possess for internal management or other purposes. Moreover, no sensitive commercial data would be disclosed to competitors since the data concerned, or close

estimates thereof, are already available to competitors. Therefore, the effect of the law would primarily be that this information is also available to investors and the general public.

Most of the detailed modifications proposed by your rapporteur are contained in the draft opinion on the accounting directive¹, which the transparency directive, the subject of the opinion at hand, refers to.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

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

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 in the countries in which they operate **and certain contextual information. The disclosure of these data is aimed at enabling investors to make better-informed decisions, improving corporate governance and accountability and contributing to the containment of tax evasion.** The detailed requirements are defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council.

¹ Opinion on the proposal for a directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings 2011/0308(COD)

requirements are defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council.

Or. en

Amendment 2

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) For issuers active in the extractive industry or logging of primary forests, the report on payments to governments should include more detailed information, provided the payments are material to the recipient government as defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council¹. 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)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 347/1,

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 3

Proposal for a directive Article 1 – paragraph 5

Text proposed by the Commission

(5) 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

(5) 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 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

Justification

The publication of payments made to governments and certain contextual information should not be limited to the extractive and logging industries because the effects of enhanced transparency would be beneficial in any sector.