

	
EUROPEAN PARLIAMENT	2009 - 2014

*Committee on Economic and Monetary Affairs*

**2011/0308(COD)**

16.7.2012

## **OPINION**

of the Committee on Economic and Monetary Affairs

for the Committee on Legal Affairs

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 (COM(2011)0684– C7-0393/2011 – 2011/0308(COD))

Rapporteur: Wolf Klinz

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## SHORT JUSTIFICATION

### Background

On 25 October 2011 the Commission published a proposal replacing and amending Accounting Directives (78/660/EEC and 83/349/EEC) with the particular aim to reduce the administrative burden for small companies.

Both Accounting Directives have been in place for the past 30 years and provide a complete set of rules for the preparation and content of statutory financial statements. Since listed companies became subject to the IAS regulation in 2005, SMEs have become de facto the main users of the Accounting Directives.

The Commission proposes to replace these two Directives by a single Directive that is better adapted to the present and future needs of preparers and users of financial statements. The current proposal is complementary to the 2009 proposal on the financial statements of micro-entities, which was adopted by the European Parliament on 13 December 2011.

Following the impact assessment carried out in 2009-2011, the Commission aims at reducing the administrative burden by 25% by 2012 and foresees potential savings of €1.5 billion per year for all companies falling under the scope of the Directive.

The rapporteur considers the following points to be of particular importance:

### Considerations

First of all, as regards the *scope* of the proposal, the rapporteur considers that the increased and EU-wide harmonised thresholds for *small companies* (Article 3) will help them to benefit from a level playing field across the EU. The rapporteur is in favour of the limitation of the accounting areas in annexes and no requirement for a statutory audit.

Regarding *medium-sized and large companies* the rapporteur supports the proposed thresholds, however is of the opinion that medium-sized and large companies shall furthermore be required to prepare a mandatory *cash flow statement*, which would ensure sufficient and timely information about the situation of companies on the one hand and better liquidity management of banks funding those companies on the other. Especially a mandatory, regularly audited cash flow statement could potentially be a link to the assessment of the banks' inflows under the new Liquidity Coverage Requirement under Basel III / CRR.

The rapporteur is strongly in favour of proposals of the Commission to *cut red-tape*; he believes that further simplification is still possible. Some of the Commission's current proposals removing national discretion would be burdensome for industry in Member States. Therefore the rapporteur suggests preserving national discretion as removal does not appear to add value to the process and to the companies' statements themselves.

Regarding the *IFRS for SMEs* the rapporteur supports the decision of the Commission not to introduce it. The harmonised Accounting Directive will ensure that a well-proven standard for SMEs in Europe is in place, which also will reflect the specificity of European company law.

The rapporteur is in favour of introducing the mandatory preparation of financial statements under an electronic, multi purpose format: *eXtensible Business Reporting Language (XBRL)*, which was already requested by the European Parliament in the past in the "Lamfalussy follow-up - Future Structure of Supervision (2008/2148 (INI))" and "Small Business Act (2008/2237(INI)) resolutions. He believes that a number of benefits brought by one harmonised electronic format could contribute to the creation of a one-stop shop reporting system used in other fields, for example taxation. However, mandating XBRL could be quite burdensome for many small companies, therefore the rapporteur suggests introducing it after appropriate preparation (including involvement of ESMA) from 2018.

The Commission proposes new country-based and project-based reporting requirements for large companies and public interest entities active in the extractive industries or in the logging of primary forests (*Reporting payments to governments*). The rapporteur generally supports the Commission's objectives of more transparency of exploitation of natural resources; however, he believes that a balanced approach has to be chosen. Therefore he suggests limiting the scope of this provision to large companies and entities defined by a threshold based on double the normal thresholds for SMEs. Besides legislative proposals the rapporteur would like to point to the international Extractive Industries Transparency Initiative (EITI) gathering currently 35 countries, none of which is a EU Member State and would like to draw the attention of the Commission and Member States to a possible common EU-approach towards this initiative.

Aiming to enhance the transparency of the largest companies and their cross-border operations in non-extractive fields the rapporteur suggests to introduce a special *Country-by-country reporting (CBCR)* with crucial financial data for countries, where companies operate without own subsidiaries (or separate legal entities) or in joint-ventures. The scope should be limited in the same way as for the extractive industries.

## AMENDMENTS

The Committee on Economic and Monetary 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 6

*Text proposed by the Commission*

(6) Annual financial statements should give a true and fair view of an undertaking's assets and liabilities, financial position and

*Amendment*

(6) Annual financial statements should give a true and fair view of an undertaking's assets and liabilities, financial position and

profit or loss. ***To this end*** a mandatory layout should be prescribed for the balance sheet and the profit and loss account and the minimum content of the notes to the financial statements and the management report should be laid down. According to the ‘think-small-first’ principle the mandatory requirements for small undertakings should be fully harmonised in legislation. In order to avoid disproportionate burdens on these entities, Member States should not be entitled to require the presentation of further information. Member States may however impose further requirements on medium-sized and large undertakings.

profit or loss. ***The true and fair view is the minimum standard of presenting the accounts in order to discharge the duties of the directors to the company, which includes, that the company is capable of being a going concern by virtue of the net assets in its balance sheet being sufficient to support the creditor interest<sup>1</sup>. That test requires that assets are not stated at above their realisable amounts and that prospective liability and prospective contingent liabilities are included.*** Also a mandatory layout should be prescribed for the balance sheet and the profit and loss account and the minimum content of the notes to the financial statements and the management report should be laid down. According to the ‘think-small-first’ principle the mandatory requirements for small undertakings should be fully harmonised in legislation. In order to avoid disproportionate burdens on these entities, Member States should not be entitled to require the presentation of further information. Member States may however impose further requirements on medium-sized and large undertakings.

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<sup>1</sup> ***European Court of Justice, Tomberger Case C-234/94 27th June 1996, and DE + ES Bauunternehmung Case C-275/97 14th September 1999. Also see Article 15 of the 2nd Directive 2006/68/EC, which also sets a net assets test for determining whether a dividend can be paid.***

#### *Justification*

*Clarification is required with regard to what the true and fair view means in law as there has been confusion introduced in various places that are inconsistent with its current meaning in law. These inconsistencies are then superfluous to the true and fair view requirement and frustrate the functional requirements of accounts dependent on it. The Commission wrongly assuming that true and fair view is a product of following standards when it is actually a fundamental standard in its own right.*

#### **Amendment 2**

**Proposal for a directive**

**Recital 7**

*Text proposed by the Commission*

(7) Small, medium-sized and large undertakings should be defined and distinguished by reference to total assets, turnover and the average number of employees, as these items typically provide objective evidence as to the size of an enterprise.

*Amendment*

(7) **Micro-**, small, medium-sized and large undertakings should be defined and distinguished by reference to total assets, turnover and the average number of employees, as these items typically provide objective evidence as to the size of an enterprise.

**Amendment 3**

**Proposal for a directive**

**Recital 12a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) Medium-sized and large undertakings should be required to prepare a cash-flow statement, which would ensure the provision of sufficient and timely information about the situation of companies and better liquidity management for banks funding those companies.***

**Amendment 4**

**Proposal for a directive**

**Recital 24**

*Text proposed by the Commission*

(24) Associated undertakings should be included in consolidated accounts by means of the equity method. Member States should be entitled permit or require that a jointly managed undertaking be proportionately consolidated within consolidated financial statements.

*Amendment*

(24) Associated undertakings should be included in consolidated accounts ***either*** by means of the equity method ***or by means of the book value method***. Member States should be entitled ***to*** permit or require that a jointly managed undertaking be proportionately consolidated within consolidated financial statements.

## Amendment 5

### Proposal for a directive Recital 27

*Text proposed by the Commission*

(27) *The Member States are strongly encouraged to develop electronic publication systems that allow undertakings to file accounting data, including statutory financial statements, only once and in a form that allows multiple users to access and use the data easily. Such systems should, however, not be burdensome to small and medium-sized undertakings.*

*Amendment*

(27) *A harmonised electronic format for reporting would be very beneficial for undertakings established in the Union, since it would facilitate the creation of a one-stop-shop reporting system which could also be used in other fields. Therefore, preparation of financial statements in eXtensible Business Reporting Language (XBRL) should be mandatory with effect from 1 January 2018, after an appropriate period has elapsed for preparation and testing. Creation of such a system should not, however, be burdensome to small and medium sized undertakings.*

## Amendment 6

### Proposal for a directive Recital 32

*Text proposed by the Commission*

(32) In order to provide for enhanced transparency of payments made to governments, large undertakings and public interest entities *which are active in the extractive industry or logging of primary forests* should *disclose in a separate* report on an annual basis *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 primary forests. The report should include types of payments comparable to those disclosed by an undertaking participating in the Extractive Industries Transparency Initiative (EITI). The initiative is also

*Amendment*

(32) In order to provide for enhanced transparency of payments made to governments, large undertakings and public interest entities should report on an annual basis *activities in each country in which they operate, including* payments made to governments. *The threshold for considering undertakings and public interest entities to be large should be based on double the threshold for SMEs in the standard EU definition.* The report *should be subject to statutory audit and* should include types of payments comparable to those disclosed by an undertaking participating in the Extractive Industries Transparency Initiative (EITI). The initiative is also complementary to the

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.

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.

## Amendment 7

### Proposal for a directive

#### Recital 33

##### *Text proposed by the Commission*

(33) The reports 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 industry or loggers of primary forests*** 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 operational reporting unit at which the undertaking prepares regular internal management reports, such as a concession, geographical basin, etc*** and where payments have been attributed to such projects. 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. Various criteria on materiality could be envisaged such as payments of an absolute amount, or a percentage threshold (such as payments in excess of a percentage of a country's GDP) and these can be defined through a delegated act.*** The reporting regime should be subject to a review and a report by the Commission within ***five*** years of the entry into force of the Directive. The review should consider the effectiveness of the

##### *Amendment*

(33) The reports 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 operating within their jurisdiction. ***In the case of undertakings active in the extractive industry or loggers of primary forests the report should incorporate disclosures on a country and project basis, where a project is considered as contract, licence, lease or other legal agreement under which an undertaking operates, and from which its specific liabilities to government arise*** and where payments have been attributed to such projects. In the light of the overall objective of promoting good governance in these countries, ***payments to each government should be reported where the total amount of payments, including payments in kind, made within a financial year, exceeds EUR 30 000.*** The reporting regime should be subject to a review and a report by the Commission within ***three*** years of the entry into force of the Directive. The review should consider the effectiveness of the regime and take into account international developments including issues of competitiveness and energy security. The review should also take into account the experience of



regime and take into account international developments including issues of competitiveness and energy security. The review should also take into account the experience of preparers and users of the **payments** information and consider whether it would be appropriate to include additional **payment** information such as **effective tax rates and recipient** details, such as bank account information.

preparers and users of the information and consider whether it would be appropriate to include additional information such as recipient details **of payment recipients**, such as bank account information.

## Amendment 8

### Proposal for a directive Recital 35

#### *Text proposed by the Commission*

(35) In order to take account of future changes to the laws of the Member States and in the legislation of the Union concerning company types, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect of **updating the lists of undertakings contained in Annexes I and II. The use of delegated acts is also necessary to** adapt the undertaking size criteria, as with the passage of time inflation will erode their real value. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. **In order to ensure a relevant and appropriate level of disclosure of payments to governments by the extractive industry and loggers of primary forests and to ensure uniform application of this Directive, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect of the specification of the concept of materiality of payments.**

#### *Amendment*

(35) In order to take account of future changes to the laws of the Member States and in the legislation of the Union concerning company types, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect of **adapting** the undertaking size criteria, as with the passage of time inflation will erode their real value. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

## Amendment 9

### Proposal for a directive Article 1 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**2. The Commission shall be empowered to adapt, by means of delegated acts in accordance with Article 42, the lists of undertakings contained in Annexes I and II referred to in paragraph 1.**

*deleted*

## Amendment 10

### Proposal for a directive Article 2 – point 7

*Text proposed by the Commission*

*Amendment*

(7) 'Production cost' means the purchase price of raw materials, consumables and other costs directly attributable to the item in question. A reasonable proportion of other costs indirectly attributable to the item in question **may** be included to the extent that they relate to the period of production. Distribution costs shall not be included;

(7) 'Production cost' means the purchase price of raw materials, consumables and other costs directly attributable to the item in question. A reasonable proportion of other costs indirectly attributable to the item in question **shall** be included to the extent that they relate to the period of production. Distribution costs shall not be included;

## Amendment 11

### Proposal for a directive Article 3 – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

(a) balance sheet total: EUR **5 000** 000;

(a) balance sheet total: EUR **4 500** 000;

## Amendment 12

### Proposal for a directive Article 3 – paragraph 1 – point b

*Text proposed by the Commission*

*Amendment*

(b) net turnover: EUR **10** 000 000;

(b) net turnover: EUR **9** 000 000;

### **Amendment 13**

#### **Proposal for a directive Article 3 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

7. In the case of those Member States which have not adopted the euro, the amount in national currency equivalent to the amounts set out in paragraphs 1 to 5 shall be that obtained by applying the exchange rate published in the Official Journal of the European Union on the date of the entry into force of any Directive setting those amounts.

7. In the case of those Member States which have not adopted the euro, the amount in national currency equivalent to the amounts set out in paragraphs 1 to 5 shall be that obtained by applying the exchange rate published in the Official Journal of the European Union on the date of the entry into force of any Directive setting those amounts. ***The thresholds in national currency can be recalculated in case of significant, lasting shifts in the exchange rate. The Commission should issue guidance on what is to be considered a significant, lasting shift and how the thresholds should be calculated in a volatile currency environment.***

#### *Justification*

*The suggested article works in stable exchange rate environments. National currency exchange rates with the Euro may change significantly either due to policy choices in the member states or due to external pressure from the marketplace in case of imbalances. It should be possible to recalculate the thresholds. The amendment suggest a way that caters for the problem without opening for continuous recalculations.*

### **Amendment 14**

#### **Proposal for a directive Article 4 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

1. The annual financial statements shall constitute a composite whole and shall for

1. The annual financial statements shall constitute a composite whole and shall for

all undertakings comprise, as a minimum, the balance sheet, the profit and loss account **and** the notes to the financial statements.

all undertakings comprise, as a minimum, the balance sheet, the profit and loss account, the notes to the financial statements **and a cash-flow statement**.

## Amendment 15

### Proposal for a directive Article 4 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 4a*

#### *eXtensible Business Reporting Language*

- 1. With effect from 1 January 2018 all financial statements shall be prepared in eXtensible Business Reporting Language (XBRL).*
- 2. The Commission shall be empowered to adopt delegated acts in accordance with Article 42 in order to specify the XBRL format and the manner in which this provision is to be implemented in the Member States. Prior to the adoption of the delegated act, the European Securities and Markets Authority ("ESMA") shall issue to the Commission an opinion on the specification of the format.*
- 3. Before the adoption of the delegated acts referred to in paragraph 2, the Commission, together with ESMA, shall carry out an adequate assessment of possible XBRL formats and conduct appropriate tests in all Member States.*

## Amendment 16

### Proposal for a directive Article 5 – paragraph 1 – point h

*Text proposed by the Commission*

*Amendment*

(h) items in the profit and loss account and balance sheet shall be presented having

(h) items in the profit and loss account and balance sheet shall be **classified and**

regard to the substance of the reported transaction or arrangement;

presented having regard *not only to the legal form but also* to the *economic* substance of the reported transaction or arrangement;

## Amendment 17

### Proposal for a directive Article 5 – paragraph 1 – point j

*Text proposed by the Commission*

*Amendment*

(j) **recognition, measurement,** presentation, and disclosure in annual financial statements shall have regard to the materiality of the relevant items.

(j) presentation and disclosure in annual financial statements shall have regard to the materiality of the relevant items.

## Amendment 18

### Proposal for a directive Article 7 – paragraph 5

*Text proposed by the Commission*

*Amendment*

5. By way of derogation from Article 5(1)(i), Member States may in respect of any assets and liabilities which qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, permit measurement at the specific amount required under that system.

5. By way of derogation from Article 5(1)(i), Member States may in respect of any assets and liabilities which qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, permit measurement at the specific amount required under that system, **subject to that being consistent with the true and fair view principle.**

### *Justification*

*Given that the true and fair view is the minimum standard to discharge the duties of the directors in matters of going concern and the lawfulness of distributions some aspects of fair value accounting may be contrary to that. The ECJ has held that the requirements of the accounting directive can only be applied in a way that is consistent with the true and fair view principle, rather than the other way round.*

## Amendment 19

**Proposal for a directive**  
**Article 7 – paragraph 6**

*Text proposed by the Commission*

6. By way of derogation from paragraphs 3 and 4 of this Article, Member States may permit or require the recognition, measurement and disclosure of financial instruments in conformity with international accounting standards adopted in accordance with Regulation (EC) No 1606/2002.

*Amendment*

6. By way of derogation from paragraphs 3 and 4 of this Article, Member States may permit or require the recognition, measurement and disclosure of financial instruments in conformity with international accounting standards adopted in accordance with Regulation (EC) No 1606/2002, ***subject to that being consistent with the true and fair view principle.***

*Justification*

*This amendment is required for the same reasons set out in our amendment to Article 7, paragraph 5.*

**Amendment 20**

**Proposal for a directive**  
**Article 11 – paragraph 8**

*Text proposed by the Commission*

8. Member States may permit the purchase price or production cost of stocks of goods of the same category and all fungible items including investments to be calculated either on the basis of weighted average prices or on the basis of the ‘first in, first out’ (FIFO) method, or a similar method.

*Amendment*

8. Member States may permit the purchase price or production cost of stocks of goods of the same category and all fungible items including investments to be calculated either on the basis of weighted average prices or on the basis of the ‘first in, first out’ (FIFO) method, ***the ‘last in, first out’ (LIFO) method,*** or a similar method.

**Amendment 21**

**Proposal for a directive**  
**Article 11 – paragraph 11 – subparagraph 3**

*Text proposed by the Commission*

A provision shall represent the best estimate of the expenses likely to be incurred, or in the case of a liability, the

*Amendment*

A provision shall represent the best ***objective*** estimate of the expenses likely to be incurred, or in the case of a liability, the

amount required to settle it at the balance sheet date.

amount required to settle it at the balance sheet date.

## **Amendment 22**

### **Proposal for a directive Article 15 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 15a**

##### **Cash-flow statement**

**1. Financial statements shall include the statement of cash flows.**

**2. The cash-flow statement shall provide information about the changes in cash and cash equivalents of an entity for a reporting period, showing separately changes from operating activities, investment activities and financial activities. The statement shall not be older than six months.**

**3. Paragraph 1 shall not apply to small undertakings and groups as respectively defined in Article 3(1) and Article 3(4).**

## **Amendment 23**

### **Proposal for a directive Article 18 – paragraph 1 – point f**

*Text proposed by the Commission*

*Amendment*

**(f) the average number of persons employed during the financial year, broken down by categories and, if they are not disclosed separately in the profit and loss account, the staff costs relating to the financial year, broken down between wages and salaries, social security costs and pension costs;**

**deleted**

## Amendment 24

### Proposal for a directive Article 20 – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

*(a) any important events that have occurred since the end of the financial year;*

*deleted*

*Justification*

*Duplicate provision with Art 17 Para 1 (f).*

## Amendment 25

### Proposal for a directive Article 20 – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. Member States may exempt medium-sized undertakings from the obligation set out in the third subparagraph of paragraph 1 in so far as it relates to non-financial information.

4. Member States may exempt **micro-, small and** medium-sized undertakings from the obligation set out in the third subparagraph of paragraph 1 in so far as it relates to non-financial information.

## Amendment 26

### Proposal for a directive Article 24 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. **Small** groups **shall be exempt** from the obligation to draw up consolidated financial statements and a consolidated management report, except where any affiliated undertaking is a public interest entity.

1. **Member States may provide for an exemption for small** groups from the obligation to draw up consolidated financial statements and a consolidated management report, except where any affiliated undertaking is a public interest entity.

*Justification*

*As the proportion of enterprises that fall under the category of "small" as defined by Article*



3.1. varies from Member State to Member State, the directive should leave some flexibility for the Member States themselves to decide upon a potentially lower threshold for exemptions from the obligation to draw up consolidated financial statements.

#### **Amendment 27**

##### **Proposal for a directive Article 24 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Member States may provide for an exemption for medium-sized groups from the obligation to draw up consolidated financial statements and a consolidated management report, except where any affiliated undertaking is a public interest entity.**

**deleted**

#### **Amendment 28**

##### **Proposal for a directive Article 25 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

7. Consolidated financial statements shall show the assets, liabilities, financial positions, profits or losses of the undertakings included in a consolidation as if there were a single undertaking.

7. Consolidated financial statements shall show the assets, liabilities, financial positions, **cash flows**, profits or losses of the undertakings included in a consolidation as if there were a single undertaking.

#### **Amendment 29**

##### **Proposal for a directive Article 27 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. When this Article is applied for the first time, the associated undertaking shall be shown in the consolidated balance sheet at an amount corresponding to the proportion of the associated undertaking's capital and

2. When this Article is applied for the first time, the associated undertaking shall be shown in the consolidated balance sheet **either:**

reserves represented by the participating interest. The difference between that amount and the book value calculated in accordance Chapters 2 and 3 shall be disclosed separately in the consolidated balance sheet or in the notes to the consolidated financial statements. That difference shall be calculated as at the date as at which that method is used for the first time.

***(a) at its book value calculated in accordance with Chapters 2 and 3. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by the participating interest shall be disclosed separately in the consolidated balance sheet or in the notes to the consolidated financial statements. That difference shall be calculated as at the date as at which that method is used for the first time; or***

***(b) at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by the participating interest. The difference between that amount and the book value calculated in accordance with Chapters 2 and 3 shall be disclosed separately in the consolidated balance sheet or in the notes to the consolidated financial statements. That difference shall be calculated as at the date as at which that method is used for the first time.***

***A Member State may prescribe the application of one or other of (a) and (b) above. The consolidated balance sheet or the notes to the accounts must indicate whether (a) or (b) has been used.***

In addition, Member States may permit or require the calculation of the difference as at the date of acquisition of the shares or, where the shares were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.

In addition, ***for the purposes of (a) and (b) above***, Member States may permit or require the calculation of the difference as at the date of acquisition of the shares or, where the shares were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.

## Amendment 30

### Proposal for a directive

#### Article 28 – paragraph 1 – subparagraph 2 – point b

*Text proposed by the Commission*

*Amendment*

***(b) In disclosing the average number of employees employed during the financial year there shall be separate disclosure of the average number of employees employed by undertakings that are proportionately consolidated;***

***deleted***

## Amendment 31

### Proposal for a directive

#### Article 34 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that the financial statements of public interest entities, medium-sized and large undertakings are audited by one or more persons approved by Member States to carry out statutory audits on the basis of Directive 2006/43/EC of the European Parliament and of the Council.

Member States shall ensure that the financial statements of public interest entities, ***small***, medium-sized and large undertakings are audited by one or more persons approved by Member States to carry out statutory audits on the basis of Directive 2006/43/EC of the European Parliament and of the Council. ***A Member State may exempt some or all small undertakings from this requirement.***

## Amendment 32

### Proposal for a directive

#### Article 35 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. The report shall be signed and dated by the statutory auditor.

2. The report shall be signed and dated by the statutory auditor. ***Where an audit firm carries out the statutory audit, the audit report shall be signed by at least the statutory auditor(s) carrying out the***

*statutory audit on behalf of the audit firm.*

*Justification*

*To clarify the situation when it is a question of an audit firm.*

**Amendment 33**

**Proposal for a directive**

**Article 36 – paragraph 1 – point 1**

*Text proposed by the Commission*

*Amendment*

**1. ‘Undertaking active in the extractive industry’ means an undertaking with any activity involving the exploration, discovery, development, and extraction of minerals, oil and natural gas deposits, as referred to in Section B-Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council.**

**deleted**

*Justification*

*Should not be limited to a particular sector, (asa) a level playing field should be maintained) the transparency requirements subject to this chapter are needed for all sectors*

**Amendment 34**

**Proposal for a directive**

**Article 36 – paragraph 1 – point 1**

*Text proposed by the Commission*

*Amendment*

**1. ‘Undertaking active in the extractive industry’ means an undertaking with any activity involving the exploration, discovery, development, and extraction of minerals, oil and natural gas deposits, as referred to in Section B-Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council.**

**1. ‘Undertaking’ means the highest level parent company publishing accounts within the European Union where the group of companies for which that parent company prepares consolidated financial statements includes subsidiary companies, branches, permanent establishments, joint ventures and associate undertakings.**

### *Justification*

*to make clear that the disclosure embraces more than the individual company but also embraces permanent establishments trading in places other than those in which they are incorporated and joint ventures and associates even when their results are not for other purposes fully consolidated within the parent company accounts.*

### **Amendment 35**

#### **Proposal for a directive**

#### **Article 36 – paragraph 1 – point 2**

*Text proposed by the Commission*

*Amendment*

**2. ‘Undertaking active in the logging of primary forests’ means an undertaking with activities as referred to in Section A-Division 2.2 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council, in primary forests.**

**deleted**

### *Justification*

*Should not be limited to a particular sector, (asa) a level playing field should be maintained) the transparency requirements subject to this chapter are needed for all sectors*

### **Amendment 36**

#### **Proposal for a directive**

#### **Article 36 – paragraph 1 – point 3**

*Text proposed by the Commission*

*Amendment*

**3. ‘Government’ means any national, regional or local authority of a Member State or of a third country. It includes a department, agency or undertaking controlled by that authority as laid down in Article 23 (1) to (6) of this Directive.**

**3. ‘Government’ means any *international administration or any* national, regional or local authority of a Member State or of a third country. It includes a department, agency or undertaking controlled by that authority as laid down in Article 23 (1) to (6) of this Directive, *or any government entity that receives any payment of the type noted in Article 38 from any constituent entity of an undertaking.***

## Amendment 37

### Proposal for a directive Article 36 – paragraph 1 – point 4

*Text proposed by the Commission*

4. ‘Project’ is equivalent to a **specific operational reporting unit at the lowest level within the undertaking at which regular internal management reports are prepared to monitor its business.**

*Amendment*

4. ‘Project’ is equivalent to a **contract, licence, lease or other legal agreement under which an undertaking operates, and from which its specific revenue liabilities arise.**

## Amendment 38

### Proposal for a directive Article 36 – paragraph 1 – point 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a. ‘Constituent entities’ means those subsidiaries, associates, joint ventures, permanent establishments and other trading arrangements that shall in whole or in part be considered members of the Undertaking to the extent that they are consolidated in the annual financial statements of that Undertaking.**

### *Justification*

*To ensure that disclosure is made for joint ventures and associates in the proportion to which they are enjoyed by the reporting Undertaking.*

## Amendment 39

### Proposal for a directive Article 37 – paragraph 1

*Text proposed by the Commission*

1. Member States shall require large undertakings and all public interest entities **active in the extractive industry or the logging of primary forests** to prepare and make public **a report on** payments made to

*Amendment*

1. Member States shall require undertakings and public interest entities to prepare and make public a report on **activities in each country in which they operate, including of** payments made to

governments on an annual basis.

governments, on an annual basis *where those undertakings or entities meet or exceed two of the following criteria:*

*(a) balance sheet total: EUR 100 000 000;*

*(b) net turnover: EUR 100 000 000;*

*(c) on their balance sheet dates employ 500 people or more.*

*The report must also be prepared where the undertaking operates in a country in the form of a joint-venture undertaking.*

*The report shall be subject to statutory audit*

#### Amendment 40

##### Proposal for a directive

##### Article 38 – paragraph 1 – point c

###### *Text proposed by the Commission*

1. The report shall specify the following *when material to the recipient government:*

(a) the total amount of payments, including payments in kind, made to each government within a financial year;

(b) the *total* amount per type of payment, including payments in kind, *made to each government within a financial year;*

(c) where those payments have been attributed to a specific project the amount per type of payment, including payments in kind, made for each such project within a financial year, and the total amount of payments for each such project.

###### *Amendment*

1. The report shall specify the following :

(a) the total amount of payments, including payments in kind, made to each government within a financial year, *where this total exceeds EUR 30 000;*

(b) the amount *reported under (a) broken down* per type of payment, including payments in kind;

(c) *for undertakings active in the extractive industry and the logging of primary forests,* where those payments have been attributed to a specific project, the amount *reported under (a) broken down* per type of payment, including payments in kind, made for each such project within a financial year, and the total amount of payments for each such project.

## Amendment 41

### Proposal for a directive Article 38 – paragraph 1 – point ca (new)

*Text proposed by the Commission*

*Amendment*

***(d) for each country in which the undertaking operates:***

- net turnover;***
- cost of sales (including value adjustments);***
- gross profit or loss;***
- production;***
- distribution costs (including value adjustments);***
- administrative expenses (including value adjustments and aggregated remuneration);***
- other operating income;***
- value adjustments in respect of financial assets and of investments held as current assets;***
- profit or loss before taxation;***
- profit or loss for the financial year.***

## Amendment 42

### Proposal for a directive Article 38 – paragraph 2 – introductory part

*Text proposed by the Commission*

*Amendment*

2. The following types of payments shall be reported:

2. The following types of payments ***to Governments and information*** shall be reported:

## Amendment 43



**Proposal for a directive**  
**Article 38 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) taxes on profits;

*Amendment*

(b) taxes on profits; ***the report shall mention the effective tax rate;***

**Amendment 44**

**Proposal for a directive**  
**Article 38 – paragraph 2 – point f e (new)**

*Text proposed by the Commission*

*Amendment*

***(fa) payments for violations of law such as environmental and remediation liabilities;***

**Amendment 45**

**Proposal for a directive**  
**Article 38 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. Where payments in kind are made to a government, they shall 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.

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

**Amendment 46**

**Proposal for a directive**  
**Article 38 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. The Commission shall be empowered to adopt delegated acts in accordance with Article 42 in order to specify the concept of materiality of payments.***

***deleted***

## Amendment 47

### Proposal for a directive Article 38 – paragraph 5

*Text proposed by the Commission*

*Amendment*

**5. The report shall exclude any type of payments made to a government in a country where the public disclosure of this type of payment is clearly prohibited by the criminal legislation of that country. In such cases the undertaking shall state that it has not reported payments in accordance with paragraphs 1 to 3, and shall disclose the name of the government concerned.**

*deleted*

## Amendment 48

### Proposal for a directive Article 39 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. A Member State shall require any large undertaking or any public interest entity active **in the extractive industry or the logging of primary forests and** governed by its national law to draw up a consolidated report **on payments to governments** in accordance with Articles 37 and 38 if that parent undertaking is under the obligation to prepare consolidated financial statements as laid down in Article 23(1) to 23(6) of this Directive.

1. A Member State shall require any large undertaking or any public interest entity active governed by its national law to draw up a consolidated report on payments to governments in accordance with Articles 37 and 38 if that parent undertaking is under the obligation to prepare consolidated financial statements as laid down in Article 23(1) to 23(6) of this Directive **and if the parent undertaking on a consolidated basis meets or exceeds the thresholds in Article 37 paragraph 1.**

## Amendment 49

### Proposal for a directive Article 39 – paragraph 3 – introductory part

*Text proposed by the Commission*

*Amendment*

3. An undertaking need not be included in

3. 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 consolidated report on payments to government where at least one of the following conditions is fulfilled, ***provided that the financial statements of the constituent entity making the payment are also excluded from the consolidated financial statements for the period to which the report relates, but not otherwise:***

*Justification*

*prevents dual standards applying with a payment being included in the accounts but not in this report.*

**Amendment 50**

**Proposal for a directive  
Article 39 – paragraph 3 – point a**

*Text proposed by the Commission*

*Amendment*

***(a) severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking;***

***deleted***

**Amendment 51**

**Proposal for a directive  
Article 39 – paragraph 3 – point b**

*Text proposed by the Commission*

*Amendment*

***(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.***

***deleted***

## Amendment 52

### Proposal for a directive Article 41

#### *Text proposed by the Commission*

The Commission shall review and report on the implementation and effectiveness of this Chapter, in particular as regards the scope of the reporting obligations and the modalities of the reporting on a project basis. The review should also take into account international developments and consider the effects on competitiveness and security of energy supply. It should be completed at the latest **five** years after the date of entry into force of this Directive. The report shall be submitted to the European Parliament and the Council, together with a legislative proposal, if appropriate.

#### *Amendment*

The Commission shall review and report on the implementation and effectiveness of this Chapter, in particular as regards the scope of the reporting obligations ***the thresholds in Article 37 paragraph 1 and Article 38 paragraph 1, point (a)*** and the modalities of the reporting on a project basis. The review should also take into account international developments and consider the effects on competitiveness and security of energy supply. It should be completed at the latest ***three*** years after the date of entry into force of this Directive. The report shall be submitted to the European Parliament and the Council, together with a legislative proposal, if appropriate.

## PROCEDURE

<b>Title</b>	Annual financial statements, consolidated financial statements and related reports of certain types of undertakings
<b>References</b>	COM(2011)0684 – C7-0393/2011 – 2011/0308(COD)
<b>Committee responsible</b> Date announced in plenary	JURI 15.11.2011
<b>Opinion by</b> Date announced in plenary	ECON 15.11.2011
<b>Rapporteur</b> Date appointed	Wolf Klinz 25.10.2011
<b>Discussed in committee</b>	20.3.2012                      30.5.2012
<b>Date adopted</b>	19.6.2012
<b>Result of final vote</b>	+:                      35 -:                      0 0:                      4
<b>Members present for the final vote</b>	Burkhard Balz, Elena Băsescu, Sharon Bowles, Udo Bullmann, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Markus Ferber, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Gunnar Hökmark, Syed Kamall, Othmar Karas, Wolf Klinz, Jürgen Klute, Rodi Kratsa-Tsagaropoulou, Philippe Lamberts, Astrid Lulling, Hans-Peter Martin, Arlene McCarthy, Sławomir Witold Nitras, Ivari Padar, Alfredo Pallone, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Peter Simon, Theodor Dumitru Stolojan, Kay Swinburne, Sampo Terho, Marianne Thyssen, Ramon Tremosa i Balcells, Pablo Zalba Bidegain
<b>Substitute(s) present for the final vote</b>	Sari Essayah, Olle Ludvigsson, Marisa Matias, Sirpa Pietikäinen, Emilie Turunen