



EUROPEAN PARLIAMENT

2009 - 2014

---

*Plenary sitting*

---

**A7-0278/2012**

25.9.2012

**\*\*\*I**  
**REPORT**

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))

Committee on Legal Affairs

Rapporteur: Klaus-Heiner Lehne

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS .....	65
OPINION OF THE COMMITTEE ON DEVELOPMENT .....	75
OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS .....	92
PROCEDURE .....	119



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0684),
  - having regard to Article 294(2) and Article 50(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0393/2011),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 29 March 2012<sup>1</sup>,
  - having regard to the opinion of the Committee of Regions of 19 July 2012<sup>2</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Foreign Affairs, the Committee on Development and the Committee on Economic and Monetary Affairs (A7-0278/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**Amendment 1**  
**Proposal for a directive**  
**Recital 3**

---

<sup>1</sup> OJ C 181, 21.6.2012, p. 84.

<sup>2</sup> OJ C 277, 13.9.2012, p. 171.

*Text proposed by the Commission*

(3) The coordination of national provisions concerning the presentation and content of annual financial statements and management reports, the measurement bases, used therein and their publication in respect of certain undertakings with limited liability is of special importance for the protection of shareholders, members and third parties. Simultaneous coordination is necessary in those fields for such forms of undertaking because, on the one hand, some undertakings operate in more than one Member State and, on the other hand, they *offer no safeguards to* third parties beyond the amounts of their net assets.

*Amendment*

(3) The coordination of national provisions concerning the presentation and content of annual financial statements and management reports, the measurement bases, used therein and their publication in respect of certain undertakings with limited liability is of special importance for the protection of shareholders, members and third parties, ***in particular with regard to the rules on capital maintenance and limitations on profit distributions laid down in the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent***<sup>1</sup>. Simultaneous coordination is necessary in those fields for such forms of undertaking because, on the one hand, some undertakings operate in more than one Member State and, on the other hand, they ***could affect*** third parties beyond the amounts of their net assets.

---

<sup>1</sup> *OJ L 26, 31.1.1977, p. 1.*

**Amendment 2**  
**Proposal for a directive**  
**Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) Annual financial statements prepared on a prudent basis should give a true and fair view of the undertaking's financial situation. Annual financial statements pursue different objectives and***

*do not merely provide information for investors in capital markets but give account of former transactions and serve corporate governance. European accounting rules need to strike an appropriate balance between the interests of the addressees of financial statements and the interest of a company in not being unduly burdened with reporting requirements.*

**Amendment 3**  
**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 4**  
**Proposal for a directive**  
**Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

*(7a) Micro-entities have limited resources with which to comply with demanding regulatory requirements. However, they are often subject to the same financial reporting rules as larger companies. Those rules place on them a burden which is not in proportion to their size and is therefore disproportionate for the smallest enterprises as compared to larger ones. Therefore, it should be possible to exempt micro-entities from certain obligations that may impose on them an unnecessarily onerous administrative burden. However, micro-entities should*

*still be subject to any national obligation to keep records showing their business transactions and financial position.*

**Amendment 5**  
**Proposal for a directive**  
**Recital 8**

*Text proposed by the Commission*

(8) To ensure the disclosure of comparable and equivalent information, recognition and measurement principles should include the going concern, the prudence, and the accrual bases. Set-offs between asset and liability items and income and expenditure items should **not** be permitted, and components of assets and liabilities should be valued separately. The presentation of items in financial statements should have regard to the economic reality or commercial substance of the underlying transaction or arrangement. The principle of materiality should govern **recognition, measurement, presentation and disclosure** in the financial statements.

*Amendment*

(8) To ensure the disclosure of comparable and equivalent information, recognition and measurement principles should include the going concern, the prudence, and the accrual bases. Set-offs between asset and liability items and income and expenditure items should be permitted **only in exceptional and narrowly defined cases**, and components of assets and liabilities should be valued separately. The presentation of items in financial statements should have regard **not only** to the economic reality or commercial substance of the underlying transaction or arrangement **but also to the legal form**. The principle of materiality should govern presentation and disclosure in the financial statements.

**Amendment 6**  
**Proposal for a directive**  
**Recital 10**

*Text proposed by the Commission*

***(10) The need for comparability of financial information throughout the Union makes it necessary to require Member States to allow a system of fair value accounting for certain financial instruments. Furthermore systems of fair value accounting provide information that can be of more relevance to the users of financial statements than purchase price / production cost based information.***

*Amendment*

***deleted***



*Accordingly, the Member States should permit the adoption of a fair value system of accounting by all undertakings or any classes of undertaking in respect of both the annual and consolidated financial statements or in respect of consolidated financial statements only. Furthermore, Member States should be allowed to permit or require fair value accounting for assets, other than financial instruments.*

**Amendment 7**  
**Proposal for a directive**  
**Recital 11**

*Text proposed by the Commission*

*Amendment*

*(11) A single layout for the balance sheet is necessary to allow users of financial statements to compare the financial position of undertakings within the Union. However, Member States should be able to permit or require undertakings to modify the layout and present a balance sheet distinguishing between current and non-current items. A profit and loss account layout showing the nature of expenses and a profit and loss account layout showing the function of expenses should be permitted. Member States should prescribe the use of one or both of those layouts. Member States should also be entitled to allow undertakings to present a statement of performance instead of a profit and loss account prepared in accordance with one of the permitted layouts. Simplifications from the required layouts should be made available for small and medium-sized undertakings.*

*deleted*

**Amendment 8**  
**Proposal for a directive**  
**Recital 13**

*Text proposed by the Commission*

(13) The information presented in the balance sheet and profit and loss account should be supplemented by disclosures by way of notes to the financial statements. Users of financial statements typically have a limited need for supplementary information from small undertakings, and it can be costly to small undertakings to collate the supplementary information that needs to be disclosed. A limited disclosure regime for small undertakings is therefore justified. However where a small undertaking considers that it is beneficial to provide additional disclosures of the types required by medium-sized and large undertakings it shall not be prevented from doing so.

*Amendment*

(13) The information presented in the balance sheet and profit and loss account should be supplemented by disclosures by way of notes to the financial statements. Users of financial statements typically have a limited need for supplementary information from **micro and** small undertakings, and it can be costly to **micro and** small undertakings to collate the supplementary information that needs to be disclosed. A limited disclosure regime for **micro and** small undertakings is therefore justified. However where a **micro and** small undertaking considers that it is beneficial to provide additional disclosures of the types required by medium-sized and large undertakings it shall not be prevented from doing so.

**Amendment 9**  
**Proposal for a directive**  
**Recital 15**

*Text proposed by the Commission*

(15) The management report and the consolidated management report are important elements of financial reporting. A fair review of the development of the business and of its position should be provided, in a manner consistent with the size and complexity of the business. The information should not be restricted to the financial aspects of the undertaking's business, and there should be an analysis of environmental and social aspects of the business necessary for an understanding of the undertaking's development, performance or position. In the cases where the consolidated management report and the parent undertaking management report are presented in a single report, it may be appropriate to give greater emphasis to those matters which are significant to the

*Amendment*

(15) The management report and the consolidated management report are important elements of financial reporting. A fair review of the development of the business and of its position should be provided, in a manner consistent with the size and complexity of the business. The information should not be restricted to the financial aspects of the undertaking's business, and there should be an analysis of environmental and social aspects of the business necessary for an understanding of the undertaking's development, performance or position. In the cases where the consolidated management report and the parent undertaking management report are presented in a single report, it may be appropriate to give greater emphasis to those matters which are significant to the

undertakings included in the consolidation taken as a whole. However, having regard to the potential burden placed on medium-sized undertakings, it is appropriate to provide that Member States may choose to waive the obligation to provide non-financial information in the case of the management report of such undertakings.

undertakings included in the consolidation taken as a whole. However, having regard to the potential burden placed on **small and** medium-sized undertakings, it is appropriate to provide that Member States may choose to waive the obligation to provide non-financial information in the case of the management report of such undertakings.

**Amendment 10**  
**Proposal for a directive**  
**Recital 16**

*Text proposed by the Commission*

(16) Member States should have the possibility of exempting small undertakings from the obligation to draw up a management report provided that they include, in the notes to the financial statements, the data concerning the acquisition of own shares referred to in Article 22(2) of the Second Council Directive 77/91/EEC **of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.**

*Amendment*

(16) Member States should have the possibility of exempting small undertakings from the obligation to draw up a management report provided that they include, in the notes to the financial statements, the data concerning the acquisition of own shares referred to in Article 22(2) of the Second Council Directive 77/91/EEC.

**Amendment 11**

**Proposal for a directive**  
**Recital 17**

*Text proposed by the Commission*

(17) Given that public interest entities can have a prominent role in the economies in which they operate, the provisions of this Directive concerning the corporate

*Amendment*

(17) Given that public interest entities can have a prominent role in the economies in which they operate, the provisions of this Directive concerning the corporate

governance statement should apply to all public interest entities.

governance statement should apply to all public interest entities. ***The Commission should assess further steps towards a transparent and comprehensive description of the diversity strategy that forms part of the corporate governance framework.***

**Amendment 12**  
**Proposal for a directive**  
**Recital 18**

*Text proposed by the Commission*

(18) Many undertakings are members of bodies of undertakings. Consolidated financial statements should be drawn up so that financial information concerning such bodies of undertakings may be conveyed to members and third parties. National law governing consolidated financial statements should therefore be coordinated in order to achieve the objectives of comparability and equivalence in the information which undertakings should publish within the Union.

*Amendment*

(18) Many undertakings are members of bodies of undertakings ***and the aim of coordinating the legislation governing consolidated accounts is to protect the interests subsisting in companies with a share capital.*** Consolidated financial statements should be drawn up so that financial information concerning such bodies of undertakings may be conveyed to members and third parties. National law governing consolidated financial statements should therefore be coordinated in order to achieve the objectives of comparability and equivalence in the information which undertakings should publish within the Union.

**Amendment 13**  
**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 14**  
**Proposal for a directive**  
**Recital 26**

*Text proposed by the Commission*

(26) The annual financial statements of all undertakings to which this Directive applies should be published in accordance with Directive 2009/101/EC. It is however appropriate to provide that certain derogations may be granted also in this area for small and medium-sized undertakings.

*Amendment*

(26) The annual financial statements of all undertakings to which this Directive applies should be published in accordance with Directive 2009/101/EC ***of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent***<sup>1</sup>. It is however appropriate to provide that certain derogations may be granted also in this area for small and medium-sized undertakings.

---

<sup>1</sup> *OJ L 259. 1.10.2009, p. 11.*

**Amendment 15**  
**Proposal for a directive**  
**Recital 26 a (new)**

*Text proposed by the Commission*

*Amendment*

***(26a) Publication of annual accounts can be burdensome. At the same time, Member States need to ensure compliance with this Directive. Accordingly, Member States should be permitted to exempt micro and small entities from a general publication requirement, provided that balance sheet information is duly filed, in accordance with national law, with at least one designated competent authority and that the information is transmitted to***

*the business register, so that a copy should be obtainable upon application. In such cases, the obligation laid down in Article 30 of this Directive to publish any accounting document in accordance with Article 3(5) of Directive 2009/101/EC would not apply.*

## **Amendment 16**

### **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) 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. ***The Commission is encouraged to explore means for a harmonised electronic format for reporting, such as preparing financial statements in eXtensible Business Reporting Language (XBRL).*** Such systems should, however, not be burdensome to small and medium-sized undertakings.

## **Amendment 17**

### **Proposal for a directive**

#### **Recital 31**

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

(31) The annual financial statements and consolidated financial statements should be audited. The requirement that an audit opinion should state whether the annual or consolidated financial statements give a true and fair view in accordance with the relevant financial reporting framework does not represent a restriction of the scope of that opinion but clarifies the context in

##### *Amendment*

(31) The annual financial statements and consolidated financial statements should be audited. The requirement that an audit opinion should state whether the annual or consolidated financial statements give a true and fair view in accordance with the relevant financial reporting framework does not represent a restriction of the scope of that opinion but clarifies the context in

which it is expressed. The annual financial statements of small undertakings should not be covered by this audit obligation, as audit can be a significant administrative burden for this category of undertaking, whilst for many small undertakings the same persons are both shareholders and management and therefore have limited need for third party assurance on the financial statements.

which it is expressed. The annual financial statements of *micro and* small undertakings should not be covered by this audit obligation, as audit can be a significant administrative burden for this category of undertaking, whilst for many *micro and* small undertakings the same persons are both shareholders and management and therefore have limited need for third party assurance on the financial statements.

**Amendment 18**  
**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 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.

*Amendment*

(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 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 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. ***Payments made to governments shall also be disclosed by large undertakings and public interest entities which are active in the banking, construction or telecommunications industry. Company boards must accept***

*the report as being prepared with due care and attention and to the best of the writer's knowledge and ability.*

**Amendment 19**  
**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 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

*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 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 *equivalent to a single legal agreement*, such as a *contract, licence, lease or concession*, geographical basin, etc and where payments have been attributed to such projects. *The Commission should, through delegated acts, evaluate whether it should be necessary to prepare a report if equivalent reporting requirements are observed, or if in that case the equivalent report can be published in the EU. Payments should not need to be disclosed if a single payment or multiple related payments for a project do not exceed EUR 80,000.* 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, *progress towards global standards in this area and report on the impacts of this legislation on third countries, in particular in achieving the objectives of enhanced transparency of payments to governments*. 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.

payments information and consider whether it would be appropriate to *extend the scope of this Directive to additional industry sectors and to* include additional *financial* information such as recipient details, such as bank account information. *That review should also consider to include the report on payments to governments within the financial statements.*

**Amendment 20**  
**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) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. In order to ensure that payments to governments by the extractive industry, loggers of primary forests, banking, construction and telecommunications need not be reported if equivalent reporting requirements are observed, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect of establishing which mandatory reporting requirements should be considered equivalent to the reporting requirements laid down in this Directive. The Commission should facilitate the conclusion of mutual recognition agreements or exemption mechanisms with those third countries which require their industries to publish reports that are equivalent to those required under Chapter 9 of this Directive.*

**Amendment 21**  
**Proposal for a directive**  
**Recital 36 a (new)**

*Text proposed by the Commission*

*Amendment*

***(36a) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.***

**Amendment 22**  
**Proposal for a directive**  
**Article 1 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***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 23**  
**Proposal for a directive**  
**Article 1 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The provisions of Directive 91/674/EEC, Directive 2006/46/EC, Directive 2009/65/EC and Directive 2011/61/EC are not affected by this Directive.***

**Amendment 24**  
**Proposal for a directive**  
**Article 2 – point 1**

*Text proposed by the Commission*

(1) ‘Public interest entities’ means entities ***governed by the law of a Member State as defined in point (13) of Article 2 of Directive 2006/43/EC;***

*Amendment*

(1) ‘Public interest entities’ means entities ***within the scope of Article 1;***

**Amendment 25**  
**Proposal for a directive**  
**Article 2 – point 1 – point a (new)**

*Text proposed by the Commission*

*Amendment*

***(a) governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>1</sup>,***

---

<sup>1</sup> OJ L 145, 30.4.2004, p. 1.

**Amendment 26**  
**Proposal for a directive**  
**Article 2 – point 1 – point b (new)**

*Text proposed by the Commission*

*Amendment*

***(b) credit institutions as defined in point 1 of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>1</sup> and insurance undertakings within the meaning of Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of***

*insurance undertakings*<sup>2</sup>,

---

<sup>1</sup> *OJ L 177, 30.6.2006, p. 1.*

<sup>2</sup> *OJ L 374, 31.12.1991, p. 7.*

**Amendment 27**  
**Proposal for a directive**  
**Article 2 – point 1 – point c (new)**

*Text proposed by the Commission*

*Amendment*

*(c) other entities designated by Member States as public-interest entities, for instance entities that are of significant public relevance because of the nature of their business, their size or the number of their employees.*

**Amendment 28**  
**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 29**  
**Proposal for a directive**  
**Article 2 – point 11**

*Text proposed by the Commission*

*Amendment*

(11) *A group*' means a parent undertaking and all its subsidiary undertakings included in a consolidation;

(11) '*Group*' means a parent undertaking and all its subsidiary undertakings included in a consolidation;

## **Amendment 30**

### **Proposal for a directive Article 2 – point 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) Capital shall be defined with regard to the rules on capital maintenance and limitations to profit distribution as laid down in the Directive 77/91/EEC.***

*Justification*

*The term ‘capital and reserves’ is used in the Directive without being properly defined. It should therefore also be geared to the term ‘capital and reserves’ of company law, based on Directive 77/91/EEC of 13 December 1976 and adapted to capital maintenance and creditor protection.*

## **Amendment 31**

### **Proposal for a directive Article 3 – paragraph -1 (new)**

*Text proposed by the Commission*

*Amendment*

***-1. Member States may provide for exemptions from certain obligations under this Directive in accordance with Article 42a in respect of undertakings which on their balance sheet dates do not exceed the limits of two of the three following criteria (micro-entities):***

***(a) balance sheet total: EUR 350 000;***

***(b) net turnover: EUR 700 000;***

***(c) average number of employees during the financial year: 10.***

## Amendment 32

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

#### *Text proposed by the Commission*

1. Small undertakings shall be undertakings which on their balance sheet dates do not exceed the limits of two of the three following criteria:

- (a) balance sheet total: EUR **5 000 000**;
- (b) net turnover: EUR **10 000 000**;
- (c) average number of employees during the financial year: 50

#### *Amendment*

1. Small undertakings shall be undertakings which on their balance sheet dates do not exceed the limits of two of the three following criteria:

- (a) balance sheet total: EUR **4 000 000**;
- (b) net turnover: EUR **8 000 000**;
- (c) average number of employees during the financial year: 50

***Member States may define thresholds exceeding the thresholds in points (a) and (b) of this paragraph. However, those thresholds shall not exceed EUR 6 000 000 for the balance sheet total and EUR 12 000 000 for the net turnover.***

## Amendment 33

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

#### *Text proposed by the Commission*

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.

#### *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.

## Amendment 34

### Proposal for a directive Article 3 – paragraph 8

*Text proposed by the Commission*

8. Where on its balance sheet date, an undertaking exceeds or ceases to exceed the limits of two of the three criteria set out in paragraphs 1 to 5, that fact shall affect the application of the derogations provided for in this Directive only if it occurs in two consecutive financial years.

**Amendment 35**  
**Proposal for a directive**  
**Article 3 – paragraph 10**

*Text proposed by the Commission*

10. In order to adjust for the effects of inflation, the Commission shall examine periodically and, where necessary, amend, ***by means of delegated acts in accordance with Article 42***, the definitions referred to in paragraphs 1 to 5 of this Article, taking into account measures of inflation as published in the Official Journal of the European Union.

**Amendment 36**  
**Proposal for a directive**  
**Article 4 – paragraph 4**

*Text proposed by the Commission*

4. Where in exceptional cases the application of a provision of this Directive is incompatible with the obligation laid down in paragraph 3, that provision shall be departed from in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. Any such departure shall be disclosed in the notes to the financial statements together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and

*Amendment*

8. Where on its balance sheet date, an undertaking exceeds or ceases to exceed the limits of two of the three criteria set out in paragraphs -1 to 5, that fact shall affect the application of the derogations provided for in this Directive only if it occurs in two consecutive financial years.

*Amendment*

10. In order to adjust for the effects of inflation, the Commission shall examine periodically and, where necessary, amend, the definitions referred to in paragraphs -1 to 5 of this Article, taking into account measures of inflation as published in the Official Journal of the European Union.

*Amendment*

4. Where in exceptional cases the application of a provision of this Directive is incompatible with the obligation laid down in paragraph 3, that provision shall be departed from in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. Any such departure shall be disclosed in the notes to the financial statements together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. ***The Member States may***

profit or loss.

*define the exceptional cases in question and lay down the relevant special rules.*

**Amendment 37**  
**Proposal for a directive**  
**Article 5 – paragraph 1 – point g**

*Text proposed by the Commission*

(g) any set-off between asset and liability items, or between income and expenditure items, shall be prohibited;

*Amendment*

(g) any set-off between asset and liability items, or between income and expenditure items, shall be prohibited ***unless a Member State acknowledges in specific cases the legal right to set off claims and debts by virtue of the law or of a contractual arrangement;***

**Amendment 38**  
**Proposal for a directive**  
**Article 5 – paragraph 1 – point h**

*Text proposed by the Commission*

(h) items in the profit and loss account and balance sheet ***shall*** be presented having regard to the substance of the reported transaction or arrangement;

*Amendment*

(h) items in the profit and loss account and balance sheet ***may be accounted for and*** presented having regard to the substance ***or the form*** of the reported transaction or arrangement;

**Amendment 39**  
**Proposal for a directive**  
**Article 5 – paragraph 1 – point j**

*Text proposed by the Commission*

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

*Amendment*

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



**Amendment 40**  
**Proposal for a directive**  
**Article 5 – paragraph 3**

*Text proposed by the Commission*

3. Departures from these general principles shall be permitted in exceptional cases ***in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss***. Any such departures shall be disclosed in the notes to the financial statements and the reasons for them shall be given together with an assessment of their effect on the assets, liabilities, financial position, and profit or loss.

*Amendment*

3. Departures from these general principles shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes to the financial statements and the reasons for them shall be given together with an assessment of their effect on the assets, liabilities, financial position, and profit or loss.

**Amendment 41**  
**Proposal for a directive**  
**Article 6**

*Text proposed by the Commission*

***Article 6***

***Alternative measurement basis of fixed assets at revalued amounts***

***1. By way of derogation from Article 5(1)(i), Member States may permit or require in respect of all undertakings or any classes of undertaking measurement of fixed assets at revalued amounts.***

***Where national law provides for such measurement, it shall define its content and limits and the rules for its application.***

***2. Where paragraph 1 is applied, the amount of the difference between measurement on a purchase price or production cost basis and measurement on a revaluation basis shall be entered in the revaluation reserve under 'Capital and reserves'.***

***The revaluation reserve may be capitalized in whole or in part at any time.***

*Amendment*

***deleted***

*The revaluation reserve shall be reduced where the amounts transferred thereto are no longer necessary for the implementation of the revaluation basis of accounting. The Member States may lay down rules governing the application of the revaluation reserve, provided that transfers to the profit and loss account from the revaluation reserve may be made only where the amounts transferred have been entered as an expense in the profit and loss account or reflect increases in value which have actually been realised. No part of the revaluation reserve may be distributed, either directly or indirectly, unless it represents a gain actually realised.*

*Save as provided under the second and third sub-paragraphs of this paragraph the revaluation reserve may not be reduced.*

*3. Value adjustments shall be calculated each year on the basis of the revalued amount. However, by way of derogation from Articles 8 and 12, Member States may permit or require that only the amount of the value adjustments arising as a result of the purchase price or production cost measurement basis be shown under the relevant items in the layouts prescribed in Articles 13 and 14 and that the difference arising as a result of the measurement on a revaluation basis under this Article be shown separately in the layouts.*

**Amendment 42**  
**Proposal for a directive**  
**Article 7**

*Text proposed by the Commission*

Article 7

Alternative measurement basis of fair value

*Amendment*

Article 7

Alternative measurement basis of fair value

1. By way of derogation from Article 5(1)(i) and subject to the conditions set out in this Article:

(a) Member States shall permit or require in respect of all undertakings or any classes of undertaking measurement of financial instruments, including derivative financial instruments, at fair value.

***(b) Member States may permit or require in respect of all undertakings or any classes of undertaking measurement of specified categories of assets other than financial instruments at amounts determined by reference to fair value.***

Such permission or requirement may be restricted to consolidated financial statements.

2. For the purpose of this Directive, commodity-based contracts that give either contracting party the right to settle in cash or some other financial instrument shall be considered to be derivative financial instruments, except when the following conditions are complied with:

(a) they were entered into and continue to meet the undertaking's expected purchase, sale or usage requirements;

(b) they were designated as commodity-based contracts at their inception;

(c) they are expected to be settled by delivery of the commodity.

3. Paragraph 1(a) shall apply only to the following liabilities:

(a) liabilities held as part of a trading portfolio;

(b) derivative financial instruments.

4. Measurement according to paragraph 1(a) shall not apply to the following:

(a) non-derivative financial instruments held to maturity;

(b) loans and receivables originated by the undertaking and not held for trading

1. By way of derogation from Article 5(1)(i) and subject to the conditions set out in this Article:

(a) Member States shall permit or require in respect of all undertakings or any classes of undertaking measurement of financial instruments, including derivative financial instruments, at fair value.

Such permission or requirement may be restricted to consolidated financial statements.

2. For the purpose of this Directive, commodity-based contracts that give either contracting party the right to settle in cash or some other financial instrument shall be considered to be derivative financial instruments, except when the following conditions are complied with:

(a) they were entered into and continue to meet the undertaking's expected purchase, sale or usage requirements;

(b) they were designated as commodity-based contracts at their inception;

(c) they are expected to be settled by delivery of the commodity.

3. Paragraph 1(a) shall apply only to the following liabilities:

(a) liabilities held as part of a trading portfolio;

(b) derivative financial instruments.

4. Measurement according to paragraph 1(a) shall not apply to the following:

(a) non-derivative financial instruments held to maturity;

(b) loans and receivables originated by the undertaking and not held for trading

purposes;

(c) interests in subsidiaries, associated undertakings and joint ventures, equity instruments issued by the undertaking, contracts for contingent consideration in a business combination as well as other financial instruments with such special characteristics that the instruments, according to what is generally accepted, shall be accounted for differently from other financial instruments.

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.

***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.***

7. The fair value within the meaning of this Article shall be determined by reference to one of the following values:

(a) a market value, for those financial instruments for which a reliable market can readily be identified. Where a market value is not readily identifiable for an instrument but can be identified for its components or for a similar instrument, the market value may be derived from that of its components or of the similar instrument;

(b) a value resulting from generally accepted valuation models and techniques, for those instruments for which a reliable market cannot be readily identified. Such valuation models and techniques shall ensure a reasonable approximation of the market value.

purposes;

(c) interests in subsidiaries, associated undertakings and joint ventures, equity instruments issued by the undertaking, contracts for contingent consideration in a business combination as well as other financial instruments with such special characteristics that the instruments, according to what is generally accepted, shall be accounted for differently from other financial instruments.

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.

7. The fair value within the meaning of this Article shall be determined by reference to one of the following values:

(a) a market value, for those financial instruments for which a reliable market can readily be identified. Where a market value is not readily identifiable for an instrument but can be identified for its components or for a similar instrument, the market value may be derived from that of its components or of the similar instrument;

(b) a value resulting from generally accepted valuation models and techniques, for those instruments for which a reliable market cannot be readily identified. Such valuation models and techniques shall ensure a reasonable approximation of the market value.

Financial instruments that cannot be measured reliably by any of the methods described in points (a) and (b), shall be measured in accordance with the principle of purchase price or production cost.

8. Notwithstanding Article 5(1)(c), where a financial instrument is measured at fair value, a change in value shall be included in the profit and loss account. However, such a change shall be included directly in a fair value reserve, where:

(a) the instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the change in value not to be shown in the profit and loss account; or

(b) the change in value relates to an exchange difference arising on a monetary item that forms part of an undertaking's net investment in a foreign entity.

Member States may permit or require a change in the value of an available for sale financial asset, other than a derivative financial instrument, to be included directly in the fair value reserve. The fair value reserve shall be adjusted when amounts shown therein are no longer necessary for the implementation of points (a) and (b).

***9. Notwithstanding Article 5(1)(c), Member States may permit or require in respect of all undertakings or any classes of undertaking that, where assets other than financial instruments are measured at fair value, a change in the value shall be included in the profit and loss account.***

Financial instruments that cannot be measured reliably by any of the methods described in points (a) and (b), shall be measured in accordance with the principle of purchase price or production cost.

8. Notwithstanding Article 5(1)(c), where a financial instrument is measured at fair value, a change in value shall be included in the profit and loss account. However, such a change shall be included directly in a fair value reserve, where:

(a) the instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the change in value not to be shown in the profit and loss account; or

(b) the change in value relates to an exchange difference arising on a monetary item that forms part of an undertaking's net investment in a foreign entity.

Member States may permit or require a change in the value of an available for sale financial asset, other than a derivative financial instrument, to be included directly in the fair value reserve. The fair value reserve shall be adjusted when amounts shown therein are no longer necessary for the implementation of points (a) and (b).

**Amendment 43**  
**Proposal for a directive**  
**Article 8 – paragraph 6 – introductory wording**

*Text proposed by the Commission*

*Amendment*

6. In respect of ***an associated undertaking***:

6. In respect of ***a participating interest***:

**Amendment 44**  
**Proposal for a directive**  
**Article 8 – paragraph 6 – point a**

*Text proposed by the Commission*

*Amendment*

(a) Member States may permit or require ***an associated undertaking*** to be accounted for in annual financial statements using the equity method as provided for in Article 27(2) to (8), taking account of the essential adjustments resulting from the particular characteristics of annual financial statements as compared to consolidated financial statements.

(a) Member States may permit or require ***a participating interest*** to be accounted for in annual financial statements using the equity method as provided for in Article 27(2) to (8), taking account of the essential adjustments resulting from the particular characteristics of annual financial statements as compared to consolidated financial statements.

**Amendment 45**  
**Proposal for a directive**  
**Article 8 – paragraph 6 – point b**

*Text proposed by the Commission*

*Amendment*

(b) Member States may permit or require that the proportion of the profit or loss attributable to the ***associated undertaking*** be recognised in the profit and loss account only to the extent of the amount corresponding to dividends already received or the payment of which can be claimed.

(b) Member States may permit or require that the proportion of the profit or loss attributable to the ***participating interest*** be recognised in the profit and loss account only to the extent of the amount corresponding to dividends already received or the payment of which can be claimed.

**Amendment 46**  
**Proposal for a directive**  
**Article 8 – paragraph 6 – point c**

*Text proposed by the Commission*

*Amendment*

(c) Where the profit or loss attributable to the ***associated undertaking*** recognised in

(c) Where the profit or loss attributable to the ***participating interest*** recognised in the

the profit and loss account exceeds the amount of dividends already received or the payment of which can be claimed, the amount of the difference shall be placed in a reserve which cannot be distributed to shareholders.

profit and loss account exceeds the amount of dividends already received or the payment of which can be claimed, the amount of the difference shall be placed in a reserve which cannot be distributed to shareholders.

#### **Amendment 47**

##### **Proposal for a directive Article 8 a (new)**

*Text proposed by the Commission*

*Amendment*

##### **Article 8a**

##### ***Layout of the balance sheet***

***For the presentation of the balance sheet, Member States must require one or both of the layouts set out in Articles 9 and 9a. If a Member State permits both layouts, it must allow undertakings to choose which of the prescribed layouts to adopt.***

#### **Amendment 48**

##### **Proposal for a directive Article 9 – Assets – point B– point I– point 1**

*Text proposed by the Commission*

*Amendment*

1. Costs of ***research and*** development, in so far as national law permits their being shown as assets.

1. Costs of development, in so far as national law permits their being shown as assets.

#### **Amendment 49**

##### **Proposal for a directive Article 9 – Assets – point B – point III– point 7**

*Text proposed by the Commission*

*Amendment*

***7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance***

***deleted***

*sheet.*

## **Amendment 50**

### **Proposal for a directive Article 9 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 9a**

##### **Layout of balance sheet**

##### **A. Subscribed capital unpaid**

*of which there has been called*

*(unless national law provides for called-up capital to be shown under L, in which case the part of the capital called but not yet paid must appear either under A or under D (II) (5)).*

##### **B. Formation expenses**

*as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under 'Intangible assets'.*

##### **C. Fixed assets**

##### **I. Intangible assets**

**1. Costs of development, in so far as national law permits their being shown as assets.**

**2. Concessions, patents, licences, trade marks and similar rights and assets, if they were:**

**(a) acquired for valuable consideration and need not be shown under C (I) (3); or**

**(b) created by the undertaking itself, in so far as national law permits their being shown as assets.**

**3. Goodwill, to the extent that it was acquired for valuable consideration.**

**4. Payments on account.**



## ***II. Tangible assets***

- 1. Land and buildings.***
- 2. Plant and machinery.***
- 3. Other fixtures and fittings, tools and equipment.***
- 4. Payments on account and tangible assets in course of construction.***

## ***III. Financial assets***

- 1. Shares in affiliated undertakings.***
- 2. Loans to affiliated undertakings.***
- 3. Participating interests.***
- 4. Loans to undertakings with which the company is linked by virtue of participating interests.***
- 5. Investments held as fixed assets.***
- 6. Other loans.***

## ***D. Current assets***

### ***I. Stocks***

- 1. Raw materials and consumables.***
- 2. Work in progress.***
- 3. Finished goods and goods for resale.***
- 4. Payments on account.***

### ***II. Debtors***

***(Amounts becoming due and payable after more than one year must be shown separately for each item.)***

- 1. Trade debtors.***
- 2. Amounts owed by affiliated undertakings.***
- 3. Amounts owed by undertakings with which the company is linked by virtue of participating interests.***
- 4. Other debtors.***
- 5. Subscribed capital called but not paid (unless national law provides that called-up capital be shown under A).***
- 6. Prepayments and accrued income***

*(unless national law provides that such items be shown under E).*

**III. Investments**

- 1. Shares in affiliated undertakings.**
- 2. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.**

- 3. Other investments.**

**IV. Cash at bank and in hand**

**E. Prepayments and accrued income**

*(unless national law provides for such items to be shown under D(II) (6)).*

**F. Creditors: amounts be coming due and payable within one year**

- 1. Debenture loans, showing convertible loans separately.**
- 2. Amounts owed to credit institutions.**
- 3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.**
- 4. Trade creditors.**
- 5. Bills of exchange payable.**
- 6. Amounts owed to affiliated undertakings.**
- 7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.**
- 8. Other creditors including tax and social security.**
- 9. Accruals and deferred income (unless national law provides for such items to be shown under K).**

**G. Net current assets/liabilities (taking into account prepayments and accrued income when shown under E and accruals and deferred income when shown under K).**

***H. Total assets less current liabilities***

***I. Creditors: amounts becoming due and payable after more than one year***

***1. Debenture loans, showing convertible loans separately.***

***2. Amounts owed to credit institutions.***

***3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.***

***4. Trade creditors.***

***5. Bills of exchange payable.***

***6. Amounts owed to affiliated undertakings.***

***7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.***

***8. Other creditors including tax and social security.***

***9. Accruals and deferred income (unless national law provides for such items to be shown under K).***

***J. Provisions***

***1. Provisions for pensions and similar obligations.***

***2. Provisions for taxation.***

***3. Other provisions.***

***K. Accruals and deferred income (unless national law provides for such items to be shown under F (9) or I (9) or both).***

***L. Capital and reserves***

***I. Subscribed capital***

***(unless national law provides for called-up capital to be shown under this item, in which case the amounts of subscribed capital and paid-up capital must be shown separately).***

***II. Share premium account***

***III. Revaluation reserve***

***IV. Reserves***

***1. Legal reserve, in so far as national law requires such a reserve.***

***2. Reserve for own shares, in so far as national law requires such a reserve, without prejudice to Article 22 (1) (b) of Directive 77/91/EEC.***

***3. Reserves provided for by the articles of association.***

***4. Other reserves.***

***V. Profit or loss brought forward***

***VI. Profit or loss for the financial year***

**Amendment 51  
Proposal for a directive  
Article 10**

*Text proposed by the Commission*

Article 10

Alternative presentation of the balance sheet

Member States may permit or require undertakings, or certain classes of undertaking, to present items on the basis of a distinction between current and non-current items in a different layout than that prescribed in Article 9, provided that the information given is at least equivalent to that otherwise required by Article 9.

*Amendment*

Article 10

Alternative presentation of the balance sheet

Member States may permit or require undertakings, or certain classes of undertaking, to present items on the basis of a distinction between current and non-current items in a different layout than that prescribed in Article 9 ***and Article 9a***, provided that the information given is at least equivalent to that otherwise required by Article 9 ***and Article 9a***.

**Amendment 52  
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

*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, or a similar method.

either on the basis of weighted average prices, on the basis of the ‘first in, first out’ (FIFO) method, *or on the basis of the 'last in, first out' (LIFO) method*, or a similar method *that reflects current best practice*.

**Amendment 53**  
**Proposal for a directive**  
**Article 11 – paragraph 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***8a. Where the amount repayable on account of any debt is greater than the amount received, the difference may be shown as an asset. It shall be shown separately in the balance sheet or in the notes on the accounts. The amount of that difference shall be written off by a reasonable amount each year and completely written off no later than at the time of repayment of the debt.***

**Amendment 54**  
**Proposal for a directive**  
**Article 11 – paragraph 9 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

Where national law authorizes the inclusion of costs of ***research and*** development under ‘Assets’, they shall be written off within a maximum period of five years. In so far as the costs of ***research and*** development have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the costs not written off.

Where national law authorizes the inclusion of costs of development under ‘Assets’, they shall be written off within a maximum period of five years. In so far as the costs of development have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the costs not written off.

**Amendment 55**

**Proposal for a directive**  
**Article 11 – paragraph 10**

*Text proposed by the Commission*

10. Goodwill shall be written off systematically over its useful life. **Where** its useful life cannot be reliably estimated it shall be written off within a maximum period of 5 years. An explanation of the period(s) over which goodwill is written off shall be provided within the notes to the financial statements.

*Amendment*

10. Goodwill shall be written off systematically over its useful life. **In exceptional cases as defined by Member States, where** its useful life cannot be reliably estimated it shall be written off within a maximum period **set by the Member State that shall not be shorter than 5 years and shall not exceed 10 years**. An explanation of the period(s) over which goodwill is written off shall be provided within the notes to the financial statements.

**Amendment 56**  
**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 amount required to settle it at the balance sheet date.

*Amendment*

**Provisions** shall **be measured at the reasonable amount calculated on an objective basis to settle the amount payable**, or in the case of a liability, **at** the amount required to settle it at the balance sheet date.

**Amendment 57**  
**Proposal for a directive**  
**Article 11 – paragraph 11 – subparagraph 3 a (new)**

*Text proposed by the Commission*

**Provisions may not be used to adjust the values of assets.**

*Amendment*

**Amendment 58**  
**Proposal for a directive**  
**Article 15**

*Text proposed by the Commission*

*Amendment*

**Article 15**

*deleted*

**Special provision relating to the profit and loss account**

*Where individual items of income or expense are of exceptional size or incidence, an undertaking shall disclose them separately in the profit and loss account and shall provide explanations of their amount and nature in the notes to the financial statements.*

**Amendment 59**

**Proposal for a directive**  
**Article 16 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall permit small undertakings to draw up abridged balance sheets showing only those items preceded by letters and roman numerals in **Article 9**, disclosing separately the information required in brackets in C (II) under 'Assets' and C under 'Capital, reserves and liabilities', but in **total** for each.

1. Member States shall permit small undertakings to draw up abridged balance sheets showing only those items preceded by letters and roman numerals in **Articles 9 and 9a**, disclosing separately:

*(a) the information required in **Article 9** in brackets in C (II) under 'Assets' and C under 'Capital, reserves and liabilities', but in **aggregate** for each; or*

*(b) the information required in **Article 9a** in brackets in **D(II)**.*

**Amendment 60**  
**Proposal for a directive**  
**Article 17 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) the total amount of any financial commitments, guarantees or contingencies that are not included in the balance sheet, and an indication of the nature and form of any valuable security which has been provided; any commitments concerning pensions and affiliated or associated undertakings shall be disclosed separately;

*Amendment*

(d) the total amount of any financial commitments, guarantees or contingencies that are not included in the balance sheet, and an indication of the nature and form of any valuable security which has been provided; any commitments concerning pensions and affiliated or associated undertakings shall be disclosed separately ***or at the foot of the balance sheet;***

**Amendment 61**  
**Proposal for a directive**  
**Article 17 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) the amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies, with indications of the interest rates, main conditions and any amounts repaid or written off or waived, as well as commitments entered into on their behalf by way of guarantees of any kind, with an indication of the total for each category at the foot of the balance sheet;***

**Amendment 62**  
**Proposal for a directive**  
**Article 17 – paragraph 1 – point d b (new)**

*Text proposed by the Commission*

*Amendment*

***(db) the amount and nature of individual items of income or expenditure which are of exceptional size or incidence;***

**Amendment 63**  
**Proposal for a directive**  
**Article 17 – paragraph 1 – point e**



*Text proposed by the Commission*

*Amendment*

***(e) the nature and business purpose of the undertaking's arrangements that are not included in the balance sheet and the financial impact on the undertaking of those arrangements;*** *deleted*

**Amendment 64  
Proposal for a directive  
Article 17 – paragraph 1 – point f**

*Text proposed by the Commission*

*Amendment*

***(f) the nature of material events arising after the end of the year which are not reflected in the profit and loss account or balance sheet, and the financial effect of those events.*** *deleted*

**Amendment 65  
Proposal for a directive  
Article 17 – paragraph 1 – point h**

*Text proposed by the Commission*

*Amendment*

***(h) transactions which have been entered into with related parties by the undertaking, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the undertaking, if such transactions have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the undertaking.*** *deleted*

**Amendment 66**

**Proposal for a directive**

**Article 17 – paragraph 1 – point h a (new)**

*Text proposed by the Commission*

*Amendment*

***(ha) the average number of employees during the financial year, including subcontractors' staff;***

**Amendment 67**

**Proposal for a directive**

**Article 18 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) the nature and business purpose of the undertaking's arrangements that are not included in the balance sheet, provided that the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for the purposes of assessing the financial position of the undertaking;***

**Amendment 68**

**Proposal for a directive**

**Article 18 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

***(e) the amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies, with indications of the interest rates, main conditions and any amounts repaid or written off or waived, as well as commitments entered into on their behalf by way of guarantees of any kind, with an indication of the total for each category;***

***deleted***

**Amendment 69**  
**Proposal for a directive**  
**Article 19 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

*(ba) transactions which have been entered into with related parties by the undertaking, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the undertaking, if such transactions are material and have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the undertaking.*

**Amendment 70**  
**Proposal for a directive**  
**Article 19 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. Member States may provide that paragraph 1(b) shall not apply where the company is included within the consolidated accounts required to be drawn up under Article 23, provided that such information is given in the notes to the consolidated accounts.*

**Amendment 71**  
**Proposal for a directive**  
**Article 19 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*2b. Member States may exempt transactions referred to in point (ba) of*

*paragraph 1 entered into between two or more members of a group, provided that subsidiaries which are party to the transaction in question are wholly owned by such a member.*

**Amendment 72**  
**Proposal for a directive**  
**Article 20 – paragraph 4**

*Text proposed by the Commission*

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.

*Amendment*

4. Member States may exempt ***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 73**  
**Proposal for a directive**  
**Article 22**

*Text proposed by the Commission*

For the purposes of this Chapter, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated where ***either*** the parent undertaking ***or one or more subsidiary undertakings is established as one of the types of undertaking listed in Annex I or Annex II.***

*Amendment*

For the purposes of this Chapter, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated where the parent undertaking ***complies with the provisions laid down in Article 1(1).***

**Amendment 74**  
**Proposal for a directive**  
**Article 23 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. A Member State shall require any undertaking governed by its national law to draw up consolidated financial statements and a consolidated management report if

*Amendment*

1. A Member State shall require any undertaking governed by its national law to draw up consolidated financial statements and a consolidated management report if

that undertaking (a parent undertaking) ***controls one or more other undertakings (subsidiary undertaking(s)) in any of the following situations:***

that undertaking (a parent undertaking):

#### **Amendment 75**

##### **Proposal for a directive Article 23 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) ***it*** has a majority of the shareholders' or members' voting rights in ***the*** other undertaking(s);

*Amendment*

(a) has a majority of the shareholders' or members' voting rights in other undertaking(s) ***(subsidiary undertaking(s))***;

#### **Amendment 76**

##### **Proposal for a directive Article 23 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) ***it*** has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of ***the*** other undertaking(s) and is at the same time a shareholder in or ***a*** member thereof;

*Amendment*

(b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of other undertaking(s) and is at the same time a shareholder in or member thereof;

#### **Amendment 77**

##### **Proposal for a directive Article 23 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) ***it*** has the right to exercise a dominant influence over ***the*** other undertaking(s) of which it is a shareholder or ***a*** member, pursuant to a contract entered into with the undertaking(s) or to a provision in its memorandum or articles of association, where the law governing the other

*Amendment*

(c) has the right to exercise a dominant influence over other undertaking(s) of which it is a shareholder or member, pursuant to a contract entered into with the undertaking(s) or to a provision in its memorandum or articles of association, where the law governing the other

undertaking(s) permits such contracts or provisions.

undertaking(s) permits such contracts or provisions. ***A Member State need not prescribe that a parent undertaking must be a shareholder in or member of its subsidiary undertaking(s). Those Member States the laws of which do not provide for each contracts or clauses shall not be required to apply this provision;***

## Amendment 78

### Proposal for a directive

#### Article 23 – paragraph 1 – point d

*Text proposed by the Commission*

*Amendment*

***(d) it has the power to exercise, or actually exercises, dominant influence or control over the other undertaking(s);***

***deleted***

## Amendment 79

### Proposal for a directive

#### Article 23 – paragraph 1 – point e

*Text proposed by the Commission*

*Amendment*

***(e) it and the other undertaking(s) are managed on a unified basis by the parent undertaking;***

***deleted***

## Amendment 80

### Proposal for a directive

#### Article 23 – paragraph 1 – point f – subpoint ii

*Text proposed by the Commission*

*Amendment*

(ii) controls alone, pursuant to an agreement with other shareholders in or members of the other undertaking(s), a majority of shareholders' or members' voting rights.

(ii) controls alone, pursuant to an agreement with other shareholders in or members of the other undertaking (s), a majority of shareholders' or members' voting rights. ***Member States may introduce more detailed provisions concerning the form and contents of such***

*agreements.*

## **Amendment 81**

### **Proposal for a directive**

#### **Article 23 – paragraph 1 – point f – subparagraph -1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall prescribe at least the arrangements referred to in point (ii) above.***

***They may make the application of point (i) above dependent upon the holding's representing 20 % or more of the shareholders' or members' voting rights.***

## **Amendment 82**

### **Proposal for a directive**

#### **Article 23 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Apart from the cases mentioned in paragraph 1 the Member States may require any undertaking governed by their national law to draw up consolidated financial statements and a consolidated management report if:***

***(a) that undertaking has the power to exercise, or actually exercises, dominant influence or control over the other undertaking(s);***

***(b) that undertaking and the other undertaking(s) are managed on a unified basis by the parent undertaking.***

## **Amendment 83**

### **Proposal for a directive**

#### **Article 24 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. Member States may grant an exemption from the obligation to draw up consolidated financial statements and a consolidated management report where the parent undertaking is not constituted as one of the types of undertaking listed in Annex I or Annex II.**

*deleted*

#### **Amendment 84**

##### **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 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.

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

***(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 85**

### **Proposal for a directive Article 30 – paragraph 1**

#### *Text proposed by the Commission*

1. Member States shall ensure that undertakings publish the duly approved annual financial statements and the management report, together with the opinion submitted by the statutory auditor referred to in Article 34, as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC.

Member States may, however, exempt undertakings from the obligation to publish the management report. ***In such a case it shall be possible to obtain*** a copy of all or

#### *Amendment*

1. Member States shall ensure that undertakings ***within a reasonable period of time which shall not exceed 12 months*** publish the duly approved annual financial statements and the management report, together with the opinion submitted by the statutory auditor referred to in Article 34, as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC.

Member States may, however, exempt undertakings from the obligation to publish the management report, ***where*** a copy of all or part of any such report ***can be easily***

part of any such report upon request. *The* price of such a copy *shall* not exceed its administrative cost.

*obtained* upon request *and the* price of such a copy *does* not exceed its administrative cost.

#### **Amendment 86**

##### **Proposal for a directive Article 31 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) abridged balance sheets showing only those items preceded by letters and roman numerals in *Article 9* disclosing separately, either in the balance sheet or in the notes to the financial statements:

*Amendment*

(a) abridged balance sheets showing only those items preceded by letters and roman numerals in *Articles 9 and Article 9a* disclosing separately, either in the balance sheet or in the notes to the financial statements:

#### **Amendment 87**

##### **Proposal for a directive Article 34 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

The statutory auditor shall also express an opinion *concerning the consistency of the management report with the financial statements for the same financial year.*

*Amendment*

The statutory auditor shall also express an opinion *on:*

#### **Amendment 88**

##### **Proposal for a directive Article 34 – paragraph 1 – subparagraph 2 – point a (new)**

*Text proposed by the Commission*

*Amendment*

*(a) the consistency of the management report with the financial statements for the same financial year,*

#### **Amendment 89**

##### **Proposal for a directive Article 34 – paragraph 1 – subparagraph 2 – point b (new)**

*Text proposed by the Commission*

*Amendment*

***(b) whether the management report has been prepared in accordance with the applicable legal requirements, and***

## **Amendment 90**

### **Proposal for a directive**

#### **Article 34 – paragraph 1 – subparagraph 2 – point c (new)**

*Text proposed by the Commission*

*Amendment*

***(c) whether according to the auditor's knowledge and understanding of the undertaking and its environment obtained during the course of the audit, the management report as a whole suitably presents the undertaking's position, the opportunities and principal risks and uncertainties of its likely future development.***

## **Amendment 91**

### **Proposal for a directive**

#### **Article 35**

*Text proposed by the Commission*

*Amendment*

Content of the audit report

Content of the audit report

***Article 28 of Directive 2006/43/EC of the European Parliament and of the Council is hereby amended as follows:***

***Paragraphs (1) and (2) are replaced by the following:***

1. The report ***of the statutory auditor*** shall include:

1. The ***audit*** report shall include:

(a) an introduction which shall at ***least*** identify the financial statements that are the subject of the statutory audit, together with the financial reporting framework that

(a) an introduction which shall, at ***a minimum***, identify the financial statements that are the subject of the statutory audit, together with the financial reporting

has been applied in their preparation;

(b) a description of the scope of the statutory audit which shall at *least* identify the auditing standards in accordance with which the statutory audit was conducted;

(c) an audit opinion which shall state clearly the opinion of the statutory auditor as to whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the annual financial statements comply with statutory requirements; *the audit opinion shall be either unqualified, qualified, an adverse opinion or, if* the statutory auditor is unable to express an audit opinion, a disclaimer of opinion;

(d) a reference to any matters to which the statutory auditor draws attention by way of emphasis without qualifying the audit opinion;

(e) *an opinion concerning the consistency of the management report with the annual financial statements for the same financial year.*

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

framework that has been applied in their preparation;

(b) a description of the scope of the statutory audit which shall, at *a minimum*, identify the auditing standards in accordance with which the statutory audit was conducted;

(c) an audit opinion, which shall *be either unqualified, qualified or an adverse opinion and shall* state clearly the opinion of the statutory auditor as to:

(i) whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework, and,

(ii) where appropriate, whether the annual financial statements comply with statutory requirements,

*If* the statutory auditor is unable to express an audit opinion, the report shall contain a disclaimer of opinion;

(d) a reference to any matters to which the statutory auditor draws attention by way of emphasis without qualifying the audit opinion;

(e) *the opinion referred to in the second subparagraph of Article 34 (1) of Directive (.../.../EC).*

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 bear the signature of at least the statutory auditor(s) carrying out the statutory audit on behalf of the audit firm.*

*In exceptional circumstances Member States may provide that such signature(s) need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person. In any case the name(s) of the person(s) involved shall be known to the relevant competent authorities.*

3. The report of the statutory auditor on the consolidated financial statements shall comply with the requirements set out in of paragraphs 1 and 2. In reporting on the consistency of the management report and the financial statements as required by paragraph 1(e), the statutory auditor shall consider the consolidated financial statements and the consolidated management report. Where the annual financial statements of the parent undertaking are attached to the consolidated financial statements, the reports of the statutory auditors required by this Article may be combined.

3. The report of the statutory auditor *or audit firm* on the consolidated financial statements shall comply with the requirements set out in of paragraphs 1 and 2. In reporting on the consistency of the management report and the financial statements as required by paragraph 1(e), the statutory auditor or audit firm shall consider the consolidated financial statements and the consolidated management report. Where the annual financial statements of the parent undertaking are attached to the consolidated financial statements, the reports of the statutory auditors or audit firms required by this Article may be combined.

## **Amendment 92**

### **Proposal for a directive**

#### **Article 36 – point 1**

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

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.

##### *Amendment*

1. Undertaking active in the extractive industry" means an undertaking with any activity involving the exploration, **prospection**, 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

**Amendment 93**  
**Proposal for a directive**  
**Article 36 – point 3**

*Text proposed by the Commission*

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.

*Amendment*

3. ‘Government’ means any ***federal or*** 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.

**Amendment 94**

**Proposal for a directive**  
**Article 36 – 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 ***activities governed by a single contract, license, lease, concession or similar legal agreements with a government upon which payment liabilities arise. Where any payment liabilities are incurred on a different basis, reporting shall be on that basis.***

**Amendment 95**  
**Proposal for a directive**  
**Article 36 – point 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. ‘Payments’ mean all production entitlements, taxes on profits, royalties, dividends, signature, discovery and production bonuses, licence fees, rental fees, pipeline transit fees, infrastructure improvements, entry fees, and other direct benefits, including payments in kind, as well as payments to government security forces relating to the specific industry***

*activities .*

**Amendment 96**  
**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 governments on an annual basis.

*Amendment*

1. Member States shall require large undertakings and all public interest entities active in the extractive industry, the logging of primary forests, **banking, construction or telecommunications** to prepare and make public a report on payments made to governments on an annual basis. **Company boards must accept the report as being prepared with due care and attention and to the best of the writer's knowledge and ability.**

**Amendment 97**  
**Proposal for a directive**  
**Article 38 – paragraph 1 – introductory wording**

*Text proposed by the Commission*

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

*Amendment*

1. The report **referred to in Article 37** shall specify the following:

**Amendment 98**  
**Proposal for a directive**  
**Article 38 – paragraph 1 – point a**

*Text proposed by the Commission*

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

*Amendment*

(a) the **amount per type and the amount of each individual payment** made to each **level of** government within a financial year;

**Amendment 99**  
**Proposal for a directive**  
**Article 38 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

**Amendment 100**  
**Proposal for a directive**  
**Article 38 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

***(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.***

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

**Amendment 101**

**Proposal for a directive**  
**Article 38 – paragraph 1 – subparagraph 1a (new)**

*Text proposed by the Commission*

*Amendment*

***Point (c) shall only apply to undertakings active in the extractive industry and in the logging of primary forests.***

**Amendment 102**  
**Proposal for a directive**  
**Article 38 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. The following types of payments shall be reported:***

***deleted***

***(a) production entitlements;***



- (b) taxes on profits;*
- (c) royalties;*
- (d) dividends;*
- (e) signature, discovery and production bonuses;*
- (f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions;*
- (g) other direct benefits to the government concerned.*

#### **Amendment 103**

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

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

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.

###### *Amendment*

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 104**

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

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

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.*

###### *Amendment*

4. *Payments need not be disclosed if a single payment or multiple related payments do not exceed EUR 80 000.*

**Amendment 105**

**Proposal for a directive  
Article 38 - paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. The report shall also include additional information on the total number of people employed by country, including subcontractors' staff, and the total amount of pecuniary sanctions for violations for environmental and remediation laws by country.***

**Amendment 106**

**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 107**

**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**

**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.

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.

***That consolidated report shall include payments made by undertakings active in the extractive, the logging industry, banking, construction or telecommunication that are subsidiaries or branches.***

## **Amendment 108**

### **Proposal for a directive Article 40**

#### *Text proposed by the Commission*

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

#### *Amendment*

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

***The Commission shall be empowered to adopt delegated acts in accordance with Article 42 in order to take the necessary decisions whether other mandatory reporting requirements can be considered equivalent, with due regard to the definitions in Article 36 and to compliance measures.***

## **Amendment 109**

### **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

#### *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 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.

modalities of the reporting on a project basis. The review should also take into account international developments, *in particular with regard to enhancing transparency of payments to governments*, 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, *possibly extending the reporting requirements to additional industry sectors and ensuring that the report is audited*, if appropriate.

**Amendment 110**  
**Proposal for a directive**  
**Article 42 – paragraph 2**

*Text proposed by the Commission*

2. The delegation of power referred to in Article **1(2)**, **Article 3(10)** and **Article 38(4)** shall be conferred on the Commission for an indetermined period of time from the date referred to in Article 50.

*Amendment*

2. The delegation of power referred to in Article **40** shall be conferred on the Commission for an indetermined period of time from the date referred to in Article 50.

**Amendment 111**  
**Proposal for a directive**  
**Article 42 – paragraph 3**

*Text proposed by the Commission*

3. The delegation of power referred to in Article **1(2)**, **Article 3(10)** and **Article 38(4)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall

*Amendment*

3. The delegation of power referred to in Article **40** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts

not affect the validity of any delegated acts already in force.

already in force.

**Amendment 112**  
**Proposal for a directive**  
**Article 42 – paragraph 5**

*Text proposed by the Commission*

5. A delegated act adopted pursuant to Article **1(2)**, **Article 3(10)** and **Article 38(4)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **two** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **two** months at the initiative of the European Parliament or the Council.

*Amendment*

5. A delegated act adopted pursuant to Article **40** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **three** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **three** months at the initiative of the European Parliament or the Council.

**Amendment 113**  
**Proposal for a directive**  
**Article 42 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 42a**

***Exemptions for micro undertakings***

***1. Member States may exempt undertakings referred to in Article 3(-1) from any or all of the following obligations:***

***(a) the obligation to present 'Prepayments and accrued income' and 'Accruals and deferred income';***

***(b) where a Member State makes use of the option in point (a) of this paragraph, it may permit those undertakings, only in respect of other charges as referred to in point (b)(vi) of paragraph 2, to depart***

*from point (d) of Article 5(1) with regard to the recognition of 'Prepayments and accrued income' and 'Accruals and deferred income', provided that this fact is disclosed in the notes to the financial statements or, in accordance with point (c) of this paragraph, at the foot of the balance sheet;*

*(c) the obligation to draw up notes to the financial statements in accordance with Article 17, provided that the information required by point (d) of Article 17(1) of this Directive and Article 22(2) of Directive 77/91/EEC is disclosed at the foot of the balance sheet;*

*(d) the obligation to prepare a management report in accordance with Chapter 5, provided that the information required by Article 22(2) of Directive 77/91/EEC is disclosed in the notes to the financial statements or, in accordance with point (c) of this paragraph, at the foot of the balance sheet;*

*(e) the obligation to publish annual financial statements in accordance with Chapter 7, provided that the balance sheet information contained therein is duly filed, in accordance with national law, with at least one competent authority designated by the Member State concerned. Whenever the competent authority is not the central register, commercial register or companies register, as referred to in Article 3(1) of Directive 2009/101/EC, the competent authority is required to provide the register with the information filed.*

*2. Member States may permit undertakings referred to in Article 3(-1):*

*(a) to draw up only an abridged balance sheet showing separately at least those items preceded by letters in Article 9, where applicable. In cases where point (a) of paragraph 1 applies, items D under 'Assets' and D under 'Capital, reserves and liabilities' in Article 9 shall be*

*excluded from the balance sheet;*

*(b) to draw up only an abridged profit and loss account showing separately at least the following items, where applicable:*

*(i) net turnover;*

*(ii) other income;*

*(iii) cost of raw materials and consumables;*

*(iv) staff costs;*

*(v) value adjustments;*

*(vi) other charges;*

*(vii) tax;*

*(viii) profit or loss.*

*3. Member States shall not permit or require the application of Article 7 to any micro undertaking making use of any of the exemptions provided for in paragraphs 1 and 2.*

*4. In respect of undertakings referred to in Article 3(-1), annual financial statements drawn up in accordance with paragraphs 1, 2 and 3 shall be regarded as giving the true and fair view required by Article 4(3), and consequently Article 4(4) shall not apply to such financial statements.*

*5. The balance sheet total referred to in point (a) of Article 3(-1) shall consist of the assets referred to in items A to D under 'Assets' in Article 9. If point (a) of paragraph 1 applies, the balance sheet total referred to in point (a) of Article 3(-1) shall consist of the assets referred to in items A to C under 'Assets' in Article 9.*

*6. Member States shall not make available the derogations provided for in paragraphs 1, 2 and 3 in respect of investment undertakings or financial holding undertakings.*

*7. Not later than ... \* the Commission shall submit to the European Parliament, the Council and the European Economic and*

*Social Committee a report on the situation of micro undertakings taking account in particular of the situation at national level regarding the number of undertakings covered by the size criteria and the reduction of administrative burdens resulting from the exemption from the publication requirement.*

*8. Member States may apply point (e) of paragraph 1 to small undertakings.*

---

*\* OJ: Please insert date: five years after the entry into force of this Directive.*

**Amendment 114**  
**Proposal for a directive**  
**Article 46**

*Text proposed by the Commission*

Unless expressly provided for in this Directive, the Member States shall not make the simplifications and exemptions set out in this Directive available to public interest entities.

*Amendment*

Unless expressly provided for in this Directive, the Member States shall not make the simplifications and exemptions set out in this Directive available to public interest entities. ***A public-interest entity shall be treated as a large undertaking regardless of its net turnover, balance sheet total or average number of employees during the financial year.***



25.6.2012

## 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 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: Franziska Katharina Brantner

### 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 3**

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

(3) The coordination of national provisions concerning the presentation and content of annual financial statements and management reports, the measurement bases, used therein and their publication in respect of certain undertakings with limited liability is of special importance for the protection of shareholders, members and third parties. Simultaneous coordination is necessary in those fields for such forms of undertaking because, on the one hand, some undertakings operate in more than

###### *Amendment*

(3) The coordination of national provisions concerning the presentation and content of annual financial statements and management reports, the measurement bases, used therein and their publication in respect of certain undertakings with limited liability is of special importance for the protection of shareholders, members and third parties. Simultaneous coordination is necessary in those fields for such forms of undertaking because, on the one hand, some undertakings operate in more than

one Member State and, on the other hand, they *offer no safeguards to* third parties beyond the amounts of their net assets.

one Member State and, on the other hand, they *could affect* third parties beyond the amounts of their net assets.

## **Amendment 2**

### **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 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.

##### *Amendment*

(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 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 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.

## **Amendment 3**

### **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

##### *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 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 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.

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. ***It should not be necessary to prepare a report if equivalent reporting requirements are observed. Payments should not need to be disclosed if the total amount paid to a government does not exceed EUR 1 000 000 or if the total amount of payments for a project does not exceed EUR 200 000.*** 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 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.

#### **Amendment 4**

##### **Proposal for a directive Recital 33 a (new)**

*Text proposed by the Commission*

*Amendment*

***(33a) The reporting regime on payments to governments should be subject to a review and a report by the Commission within four years of the entry into force of this Directive. The review should consider the effectiveness of the regime and take into account international developments including issues of competitiveness and energy security.***

## **Amendment 5**

### **Proposal for a directive Article 3 – paragraph 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***10a. Member States may lay down limits lower than those set in paragraphs 1 to 5 of this Article. The reduction of these values shall maintain the existing proportion.***

#### *Justification*

*In various EU Member States the limits laid down do not correspond to economic circumstances, as the values referred to in paragraph 1 of this article would mean that, in absolute terms, the majority of all undertakings in the Member States concerned would be regarded as 'small' for the purposes of this directive. This would damage these countries' tax collection systems.*

## **Amendment 6**

### **Proposal for a directive Article 36 – 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

1. "Undertaking active in the extractive industry" means ***the highest-level parent company publishing accounts within the Union, where the group of companies for***

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.

***which that parent company prepares consolidated financial statements includes subsidiary companies, branches, permanent establishments, joint ventures and associate undertakings engaging in any activity involving the exploration, discovery, development, extraction, processing, export or transportation of, or any significant activity related to, 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.***

### **Amendment 7**

#### **Proposal for a directive Article 36 – paragraph 3**

*Text proposed by the Commission*

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.

*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, ***or any government entity that receives any payment of the type referred to in Article 38 from any constituent entity of an undertaking.***

### **Amendment 8**

#### **Proposal for a directive Article 36 – paragraph 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 specific operational reporting unit at the lowest level within the undertaking at which regular internal management reports are prepared to monitor its business. ***It includes any contract, licence, lease or***

*other legal agreement under which a company operates and from which its fiscal liabilities arise.*

## Amendment 9

### 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 governments on an annual basis.

*Amendment*

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, ***including payments in kind***, made to governments ***in respect of the extractive industry and forestry activities defined in Article 36***, on an annual basis.

## Amendment 10

### Proposal for a directive Article 38 – paragraph 1 – point a

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 11

### Proposal for a directive Article 38 – paragraph 1 – point b

*Text proposed by the Commission*

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

*Amendment*

***deleted***

## Amendment 12

### Proposal for a directive

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

*Text proposed by the Commission*

(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*

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

## Amendment 13

### Proposal for a directive

#### Article 38 – paragraph 2 – point f

*Text proposed by the Commission*

(f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions;

*Amendment*

(f) licence fees, rental fees, ***pipeline transit fees***, entry fees and other considerations for licences and/or concessions;

## Amendment 14

### Proposal for a directive

#### Article 38 – paragraph 2 – point g

*Text proposed by the Commission*

(g) other ***direct benefits*** to the ***government concerned***.

*Amendment*

(g) other ***payments*** to ***governments which are part of the commonly recognised revenue stream for the commercial development of oil, natural gas, minerals or primary forests***.

## Amendment 15

### Proposal for a directive

#### Article 38 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a. Payments referred to in points (a) and (c) of paragraph 1 need not be disclosed if the total annual amount of payments to a government in a specific country does not exceed EUR 1 000 000. Payments referred to in point (c) of paragraph 1 need not be disclosed if the total amount of payments for a project does not exceed EUR 200 000.**

## **Amendment 16**

### **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 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 **by such undertaking or public-interest entity and/or by subsidiaries or entities controlled by such undertaking or public-interest entity** 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.

## **Amendment 17**

### **Proposal for a directive Article 41**

*Text proposed by the Commission*

*Amendment*

The Commission shall review and report on the implementation and effectiveness of this Chapter, in particular as regards the

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.

scope of the reporting obligations and the modalities of the reporting on a project basis. The review *shall* also take into account international developments, *in particular in the United States*, consider the effects on competitiveness and security of energy supply *and consider the possible impact of national legislation baring the disclosure of payments to governments. It should also consider whether the reporting obligations for undertakings which are active in the extractive industry or logging of primary forests should be extended to certain other industries, including in particular fisheries, large-scale energy production and construction.* *The review* should be completed at the latest *four* 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	AFET 15.11.2011
<b>Rapporteur</b> Date appointed	Franziska Katharina Brantner 14.11.2011
<b>Date adopted</b>	19.6.2012
<b>Result of final vote</b>	+ : 27 - : 26 0 : 0
<b>Members present for the final vote</b>	Bastiaan Belder, Franziska Katharina Brantner, Elmar Brok, Jerzy Buzek, Tarja Cronberg, Michael Gahler, Ana Gomes, Andrzej Grzyb, Takis Hadjigeorgiou, Anna Ibrisagic, Liisa Jaakonsaari, Anneli Jäätteenmäki, Tunne Kelam, Nicole Kiil-Nielsen, Maria Eleni Koppa, Andrey Kovatchev, Paweł Robert Kowal, Wolfgang Kreissl-Dörfler, Eduard Kukan, Vytautas Landsbergis, Ryszard Antoni Legutko, Sabine Lösing, Mario Mauro, Francisco José Millán Mon, Alexander Mirsky, María Muñoz De Urquiza, Annemie Neyts-Uyttebroeck, Norica Nicolai, Raimon Obiols, Kristiina Ojuland, Justas Vincas Paleckis, Ioan Mircea Pașcu, Bernd Posselt, Tokia Saïfi, José Ignacio Salafranca Sánchez-Neyra, Nikolaos Salavrakos, Jacek Saryusz-Wolski, György Schöpflin, Werner Schulz, Charles Tannock, Inese Vaidere, Sir Graham Watson, Boris Zala
<b>Substitute(s) present for the final vote</b>	Marije Cornelissen, Kinga Gál, Barbara Lochbihler, Helmut Scholz, Traian Ungureanu, Ivo Vajgl, Alejo Vidal-Quadras, Janusz Władysław Zemke
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Jolanta Emilia Hibner, Horst Schnellhardt

20.6.2012

## **OPINION OF THE COMMITTEE ON DEVELOPMENT**

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: Fiona Hall

### **SHORT JUSTIFICATION**

The Accounting Directive deals with a range of issues concerning the annual and consolidated financial statements of limited liability companies in Europe.

The area of particular interest to the Development committee is Chapter 9, concerning the reporting of payments to governments. EU legislation does not currently require companies to report payments made to governments in countries where they operate, even though such payments, particularly in the extractive industry or logging sectors, can represent a significant proportion of a country's revenues, particularly in resource-rich countries. Since 2007, the European Parliament has been calling for proposals for broad-based and comprehensive disclosure of such information.

Through revisions of both the Transparency and Accounting Directive, in October 2011 the Commission proposed that companies active in the extractive industry or in the logging of primary forests, disclose on an annual basis the payments they make to governments in each country, where the payment has been attributed to a certain project and when material to the recipient government. This requirement would be limited to large companies and all public interest entities.

The proposals from the Commission follow the Dodd Frank Act in the US that was adopted in July 2010 requiring extractive industry companies (oil, gas and mining companies) registered with the Securities and Exchange Commission (SEC) to publicly report payments to governments on a country and project-specific basis- The proposal will also build upon the existing voluntary Extractive Industry Transparency Initiative.

The disclosure of such payments to governments could provide key information about the flow of revenues to enable civil society actors and citizens, often in resource-rich but poor countries, to better hold their governments to account. Improved transparency could promote

better governance, deter corruption, improve company accountability while also allowing investors to make better-informed decisions.

Your rapporteur very much welcomes the Commission's proposal as a major step forward for transparency and accountability but considers certain points to be of particular importance in the context of development. Therefore, the rapporteur proposes amendments to change the definition of project, remove exemptions and include a materiality threshold.

Furthermore, while the rapporteur recognises the crucial importance of transparency in the extractive industry and the logging of primary forests, she believes the scope of the directive should be widened as better accountability is needed in all sectors. She therefore proposed that all industry sectors should report on payments, on a country by country basis, and that additional financial data is disclosed to help both EU member states and developing countries to reduce tax evasion and tax avoidance in all sectors. This is consistent with the position adopted by the Parliament in March 2011 in Eva Joly's report on Cooperating with Developing Countries on Promoting Good Governance in Tax Matters, which stated that country-by-country reporting should be broad based, include pre- and post- tax profits and should cover all sectors. In the case of the extractive industries and the logging sector, reporting on payments from undertakings in these sectors should be on a project by project basis.

## AMENDMENTS

The Committee on Development 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 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***

##### *Amendment*

(32) In order to provide for enhanced transparency of payments made to governments, ***all*** large undertakings and public interest entities should disclose ***as part of the annual report of financial statements a report on*** material payments made to governments in the countries in which they operate, ***as well as additional financial information regarding their activities in third countries. The disclosure of these data aims at enabling investors to make better-informed decisions, improving corporate governance and accountability and***

*by an undertaking participating in* the Extractive Industries Transparency Initiative (EITI). 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.

*contributing to containing tax evasion. The report should incorporate disclosures on a country basis. Furthermore, where such undertakings are active in the extraction of* natural resources, in particular minerals, oil, natural gas as well as primary forests, *reporting should also specify the specific project or projects to which those payments have been attributed.* The report should *accordingly build upon the disclosure requirements of* the Extractive Industries Transparency Initiative (EITI). 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.

## Amendment 2

### 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*

#### *Amendment*

(33) The reports should serve to facilitate governments' *accountability* to their citizens for payments *they* receive from undertakings operating within their jurisdiction. The report should incorporate disclosures on a country *basis* and *in the case of undertakings active in the extractive industries or the logging of primary forests, the report should also specify the specific project or projects to which those payments have been attributed,* a project *being* considered *equivalent to the 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 different basis,* *reporting should be on that basis.* In the

*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 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.*

light of the overall objective of promoting good governance in these countries, *payments should be considered material if any one payment or set of payments of the same type amounts to more than EUR 15 000.* The reporting regime should be subject to a review and a report by the Commission within **four** years of the entry into force of the Directive. The review should consider the effectiveness of the regime and take into account international developments, *progress towards global standards in this area and report on the impacts of this legislation on third countries, in particular in achieving the objectives of enhanced transparency of payments to governments.* The review should also take into account *issues of competitiveness and energy security as well as* the experience of preparers and users of the payments information and consider whether it would be appropriate to include additional payment information.

### Amendment 3

#### Proposal for a directive Recital 34 a (new)

*Text proposed by the Commission*

*Amendment*

*(34a) In several places across the globe, for example in the Democratic Republic of Congo, armed conflicts are closely linked to revenues from the illegal exploitation of minerals. Breaking this link would contribute to reducing the incidence and intensity of conflicts. One solution could be to oblige Union undertakings which source minerals from areas plagued by or at risk of conflict to carry out due diligence in order to ensure that their supply chains have no connections to the conflicting parties. While an initiative along those lines would have to fully respect the interests of local stakeholders, the EITI as well as the*

*OECD's recommendations on due diligence and responsible supply chain management could serve as useful points of reference. In order to get a better picture of this potential solution, it is important that the feasibility and expected impact of introducing such an obligation is further investigated in the Union context.*

#### **Amendment 4**

##### **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 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.

#### **Amendment 5**

**Proposal for a directive**  
**Recital 38**

*Text proposed by the Commission*

(38) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union,

*Amendment*

(38) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union **and Article 208 TFEU**,

**Amendment 6**

**Proposal for a directive**  
**Article 36 – paragraph 1 – point 1**

*Text proposed by the Commission*

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.

*Amendment*

1. Undertaking means the **highest level parent company publishing accounts within the 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 7**

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

*Text proposed by the Commission*

*Amendment*

**1a. ‘Undertaking active in the extractive industry’ means the highest level parent company publishing accounts within the Union where the group of companies for**



*which that parent company prepares consolidated financial statements, includes subsidiarity companies, branches, permanent establishments, joint ventures and associates undertaking with any activity involving the exploration, discovery, development, extraction, processing, export, transportation of, or any significant activity related to 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.*

## Amendment 8

### Proposal for a directive Article 36 – paragraph 1 – point 3

*Text proposed by the Commission*

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.

*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, ***or any government entity or state undertaking or company belonging to government members that receives any payment of the type noted in Article 38 from any constituent member of an undertaking.***

## Amendment 9

### Proposal for a directive Article 36 – 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***

*Amendment*

4. "Project" is equivalent to ***the contract, licence, lease, concession or other legal agreement which gives rise to a company's tax and revenue liabilities in***

*prepared to monitor its business.*

*each country where it operates. Where any payment liabilities are incurred on a different basis, reporting shall be on that basis.*

*Justification*

*The drawback of the Commission's definition is that it could allow companies to draw up different definitions of project, based on their own specific management structures, producing results that are not comparable as companies may not be reporting on a common basis. The proposed wording reflects the fact that the extractive industries and logging companies typically acquire rights to natural resource exploitation within a defined geographical area of a country.*

**Amendment 10**  
**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 11**

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

*Text proposed by the Commission*

*Amendment*

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 governments on an annual basis.

1. Member States shall require large undertakings, ***including joint-venture undertakings***, and all public interest entities to prepare and make public a report on payments, ***including payments in kind***, made to governments on an annual basis ***as***

*part of the annual report of financial statements. In this report, the undertaking shall also publish additional financial information regarding their activities in third countries. In particular, the report shall include activities of subsidiaries, associates, joint ventures, permanent establishments and other trading arrangements to the extent that they are consolidated in the annual financial statements of the undertaking or entity in question. The report shall be part of the notes to the financial statements.*

## **Amendment 12**

### **Proposal for a directive Article 38 – paragraph 1 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

1. The report shall specify the following:

## **Amendment 13**

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

*Text proposed by the Commission*

*Amendment*

***(ba) additional financial information regarding activities in third countries on a country-by-country basis as defined in paragraph 3b;***

## Amendment 14

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

*Text proposed by the Commission*

*Amendment*

***1a. In the case of large undertakings and all public interest entities active in the extractive industry or the logging of primary forests, the report shall, where those payments have been attributed to a specific project, also specify 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.***

*Justification*

*Although a lack of transparency in payments to governments is a problem across all sectors, it is most visible in the sectors of extractives and logging of primary forests in developing countries, so undertakings involved in these industries should report on a project by project basis so local communities can hold local and national governments to account.*

## Amendment 15

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

*Text proposed by the Commission*

*Amendment*

(b) taxes on profits;

(b) taxes on profits, ***and the effective tax rate applied;***

## Amendment 16

### Proposal for a directive Article 38 – paragraph 2 – point c

*Text proposed by the Commission*

*Amendment*

(c) royalties;

(c) royalties, ***and the effective tax rate applied;***

## Amendment 17

### Proposal for a directive Article 38 – paragraph 2 – point f

*Text proposed by the Commission*

(f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions;

*Amendment*

(f) licence fees, rental fees, ***pipeline transit fees***, entry fees and other considerations for licences and/or concessions;

## Amendment 18

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

*Text proposed by the Commission*

*Amendment*

***(fa) payments to State security forces for security services;***

## Amendment 19

### Proposal for a directive Article 38 – paragraph 2 – point f b (new)

*Text proposed by the Commission*

*Amendment*

***(fb) taxes on lands and buildings;***

## Amendment 20

### Proposal for a directive Article 38 – paragraph 2 – point f c (new)

*Text proposed by the Commission*

*Amendment*

***(fc) withholding taxes;***

## Amendment 21

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

*Text proposed by the Commission*

*Amendment*

***(fd) import and export levies and taxes;***

## Amendment 22

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

*Text proposed by the Commission*

*Amendment*

***(fe) consumption-based taxes;***

## Amendment 23

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

*Text proposed by the Commission*

*Amendment*

***(ff) payments for having broken the law, such as environmental and remediation liabilities;***

## Amendment 24

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

*Text proposed by the Commission*

*Amendment*

(g) other ***direct*** benefits to the government concerned.

(g) other benefits to the government concerned.

## Amendment 25

**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 26**

### **Proposal for a directive**

#### **Article 38 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Payments shall be disclosed if any one payment or set of payments of the same type amount to more than EUR 15 000.***

#### *Justification*

*Rather than being a delegated act, the rapporteur feels that the materiality threshold should be specified as an absolute figure in the directive. Payments that are relatively small for a multinational company may be a significant amount for a poor developing country, especially at regional or local government level.*

## **Amendment 27**

### **Proposal for a directive**

#### **Article 38 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3b. The report shall also specify the following additional financial information on a country-by-country basis:***

***(a) net turnover broken down by main categories of activity;***

***(b) quantities produced, sale or exchange;***

***(c) profit or loss before taxation;***

***(d) total number of people employed and***

*their aggregate remuneration;*  
*(e) expenditure on fixed asset investment during the course of the period.*

## **Amendment 28**

### **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*

#### *Justification*

*The rapporteur believes that the materiality threshold should be specified as an absolute figure in the directive, rather than through a delegated act.*

## **Amendment 29**

### **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*

#### *Justification*

*The exemption clause should be deleted as there is no evidence that any country currently prohibits such reporting and an exemption may incentivise some governments to pass secrecy laws, undermining the legislation. The US's comparable Dodd Frank Act does not include any such exemption clause.*



## Amendment 30

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

*Text proposed by the Commission*

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.

*Amendment*

1. A Member State shall require any large undertaking or any public interest entity 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.

## Amendment 31

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

*Text proposed by the Commission*

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

***(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.***

*Amendment*

***deleted***

## Amendment 32

### Proposal for a directive Article 41 – paragraph 1

#### *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 and the modalities of the reporting on a project basis. The review should also take into account international developments, **progress towards global standards in this area and report on the impact of this legislation on third countries, in particular in achieving the objectives of enhanced transparency of payments to governments. The review should also consider the effects on competitiveness and security of energy supply**. It should be completed at the latest **four** 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	DEVE 15.3.2012
<b>Rapporteur</b> Date appointed	Fiona Hall 5.12.2011
<b>Discussed in committee</b>	14.5.2012
<b>Date adopted</b>	4.6.2012
<b>Result of final vote</b>	+: 25 -: 0 0: 0
<b>Members present for the final vote</b>	Thijs Berman, Ricardo Cortés Lastra, Corina Crețu, Véronique De Keyser, Nirj Deva, Leonidas Donskis, Charles Goerens, Eva Joly, Filip Kaczmarek, Gay Mitchell, Norbert Neuser, Birgit Schnieber-Jastram, Michèle Striffler, Alf Svensson, Keith Taylor, Ivo Vajgl, Iva Zanicchi
<b>Substitute(s) present for the final vote</b>	Emer Costello, Enrique Guerrero Salom, Fiona Hall, Edvard Kožušník, Judith Sargentini, Horst Schnellhardt, Patrizia Toia
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Marisa Matias

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

### 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 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.

##### *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. **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.

---

<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 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.

*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 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***

*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***

*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 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.

*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 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*

#### *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

*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.***

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

(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;

included;

### **Amendment 11**

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

*Text proposed by the Commission*

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

*Amendment*

(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*

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

*Amendment*

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

### **Amendment 13**

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

*Text proposed by the Commission*

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.

*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. ***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 suggests 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*

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.

##### *Amendment*

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, 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*

(h) items in the profit and loss account and balance sheet shall be presented having regard to the substance of the reported transaction or arrangement;

*Amendment*

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

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

*Amendment*

(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*

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

*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.

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

*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, or a similar method.

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 amount required to settle it at the balance sheet date.

*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.

## **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*

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.

*Amendment*

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*

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.**

*Amendment*

**deleted**

**Amendment 28**

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

*Text proposed by the Commission*

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

*Amendment*

7. Consolidated financial statements shall show the assets, liabilities, financial positions, **cash flows**, profits or losses of the undertakings included in a

if there were a single undertaking.

consolidation as if there were a single undertaking.

## Amendment 29

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

#### *Text proposed by the Commission*

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 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.

#### *Amendment*

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

***(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

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***

Parliament and of the Council.

***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*

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.

*Amendment*

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*

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.

*Amendment*

*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**

PE485.920v05-00

110/119

RR/913758EN.doc

*Text proposed by the Commission*

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.

*Amendment*

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 governments on an annual basis.

##### *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 **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;

##### *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 **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.

(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*

2. The following types of payments shall be reported:

*Amendment*

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*

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.

*Amendment*

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

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

consolidated financial statements as laid down in Article 23(1) to 23(6) of this Directive.

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 a consolidated report on payments to government where at least one of the following conditions is fulfilled:

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, *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*

*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 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.

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

## 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>Date submitted to Parliament</b>	25.10.2011			
<b>Committee responsible</b> Date announced in plenary	JURI 15.11.2011			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	AFET 15.11.2011	DEVE 15.3.2012	INTA 15.3.2012	ECON 15.11.2011
	EMPL 15.11.2011			
<b>Not delivering opinions</b> Date of decision	EMPL 15.12.2011			
<b>Rapporteur(s)</b> Date appointed	Klaus-Heiner Lehne 21.11.2011			
<b>Discussed in committee</b>	19.12.2011	27.3.2012	18.6.2012	10.7.2012
<b>Date adopted</b>	18.9.2012			
<b>Result of final vote</b>	+ : 25 - : 0 0 : 0			
<b>Members present for the final vote</b>	Raffaële Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka			
<b>Substitute(s) present for the final vote</b>	Piotr Borys, Eva Lichtenberger, Arlene McCarthy, Angelika Niebler, Dagmar Roth-Behrendt, József Szájer			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Jacek Włosowicz			
<b>Date tabled</b>	25.9.2012			