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**A7-0292/2012**

27.9.2012

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

on the proposal for a directive of the European Parliament and of the Council amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC (COM(2011)0683 – C7-0380/2011 – 2011/0307(COD))

Committee on Legal Affairs

Rapporteur: Arlene McCarthy

Rapporteur for the opinion (\*):  
Sirpa Pietikäinen, Committee on Economic and Monetary Affairs

(\* ) Associated committee – Rule 50 of the Rules of Procedure

### ***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: [...].

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(\*) Associated committee – Rule 50 of the Rules of Procedure



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC (COM(2011)0683 – C7-0380/2011 – 2011/0307(COD))**

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

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0683),
  - having regard to Article 294(2) and Articles 50 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0380/2011),
  - 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 22 February 2012<sup>1</sup>,
  - having regard to the opinion of the European Central Bank of 10 February 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 Economic and Monetary Affairs, the Committee on Development and the Committee on International Trade (A7-0292/2012),
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 4**

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<sup>1</sup> OJ C 143, 22.5.2012, p. 78.

<sup>2</sup> OJ C 93, 30.3.2012, p. 2

*Text proposed by the Commission*

(4) According to the Commission report and to the Commission Communication, the administrative burden associated with obligations linked to admission to trading on regulated markets should be reduced for small and medium-sized issuers in order to improve their access to capital. The obligations to publish interim management statements or quarterly financial reports represent an important burden for issuers whose securities are admitted to trading on regulated markets, without being necessary for investor protection. They also encourage short-term performance and discourage long-term investment. In order to encourage sustainable value creation and long-term oriented investment strategy it is essential to reduce short-term pressure on issuers and to give investors incentive to adopt a longer term vision. The requirement to publish interim management statements should therefore be abolished.

*Amendment*

(4) According to the Commission report and to the Commission Communication, the administrative burden associated with obligations linked to admission to trading on regulated markets should be reduced for small and medium-sized issuers in order to improve their access to capital. The obligations to publish interim management statements or quarterly financial reports represent an important burden for ***small and medium-sized*** issuers whose securities are admitted to trading on regulated markets, without being necessary for investor protection. They also encourage short-term performance and discourage long-term investment. In order to encourage sustainable value creation and long-term oriented investment strategy it is essential to reduce short-term pressure on issuers and to give investors incentive to adopt a longer term vision. The requirement to publish interim management statements should therefore be abolished ***for small and medium-sized issuers***.

**Amendment 2**

**Proposal for a directive**

**Recital 6**

*Text proposed by the Commission*

***(6) To further reduce the administrative burden for small and medium-sized issuers and to ensure the comparability of information, the European Supervisory Authority (European Securities and Markets Authority, hereinafter 'ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council, should issue guidelines, including standard forms or templates, to specify which information***

*Amendment*

***deleted***

*should be included in the management report.*

### Amendment 3

#### Proposal for a directive Recital 7

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

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

##### *Amendment*

(7) In order to provide for enhanced transparency of payments made to governments, issuers **active in the extractive industry, logging of primary forests, banking, construction and telecommunications sectors and** whose securities are admitted to trading on a regulated market should disclose on an annual basis payments made to governments in the countries in which they operate **and certain other contextual information. The disclosure on these data is aimed at enabling investors to make better-informed decisions and improving corporate governance, and may contribute to the containment of tax evasion. In the case of issuers which have activities in the extractive or logging of primary forest industries, the disclosure** should include types of payments **building on** those disclosed under the Extractive Industries Transparency Initiative (EITI), **amongst other reporting standards. The disclosure of payments to governments should** provide civil society, **including investors,** with information to hold governments of resource-rich countries to account for their receipts from the exploitation of natural resources. The initiative is also complementary to the EU FLEGT Action Plan (Forest Law Enforcement, Governance and Trade) and the Timber Regulation which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering into the EU market. **For the issuers, disclosures should be on a country-by-**

*country and, for all issuers active in the extractive and logging industries, on a project-by-project basis, where a 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, if any payment or multiple related payments of the same type amount to more than EUR 80 000 and rules shall be put in place to ensure that the threshold cannot be circumvented. For the purposes of transparency and investor protection, the principles regarding the reporting of payments made to governments, such as integrated reporting, materiality, project-by-project reporting, universality, comprehensiveness and comparability, are laid down in this Directive. 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. The detailed requirements are defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council.*

#### **Amendment 4**

##### **Proposal for a directive Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

*(7a) 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 that link would help to reduce the incidence and intensity of conflicts. One solution could be to oblige European Union issuers 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 recommendations of the Organisation for Economic Co-operation and Development 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 be further investigated in the Union context.*

## Amendment 5

### Proposal for a directive Recital 10

#### *Text proposed by the Commission*

(10) A harmonised regime for notification of major holdings of voting rights, especially regarding aggregation of holdings of shares with holdings of financial instruments, should improve legal certainty, enhance transparency and reduce administrative burden for cross-border investors. Member States should therefore not be allowed to adopt stricter *or divergent* rules in that area than those provided in Directive 2004/109/EC. However, taking into account the existing differences in ownership concentration in the Union, Member States should continue to be allowed to set lower thresholds for notification of holdings of voting rights.

#### *Amendment*

(10) A harmonised regime for notification of major holdings of voting rights, especially regarding aggregation of holdings of shares with holdings of financial instruments, should improve legal certainty, enhance transparency and reduce administrative burden for cross-border investors. Member States should therefore not be allowed to adopt stricter rules in that area than those provided in Directive 2004/109/EC. However, taking into account the existing differences in ownership concentration in the Union, Member States should continue to be allowed to set lower thresholds for notification of holdings of voting rights; *nevertheless, measures to incentivise long term investment should be considered and also a requirement for full transparency of voting for any borrowed shares. Member States should also be able to continue to apply laws, regulations or administrative provisions adopted in relation to take-over bids, merger transactions and other transactions*

*affecting the ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids<sup>1</sup> that impose disclosure requirements more stringent than those in Directive 2004/109/EC.*

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<sup>1</sup> OJ L 142, 30.4.2004, p. 12.

## Amendment 6

### Proposal for a directive Recital 12

*Text proposed by the Commission*

(12) In order to take account of technical developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission ***to modify the method to calculate the number of voting rights relating to financial instruments, to specify the types of financial instruments subject to notification requirements and*** to specify the contents of notification of major holdings of financial instruments. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and *drafting* up of delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

*Amendment*

(12) In order to take account of technical developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to specify the contents of notification of major holdings of financial instruments. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and *drawing* up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

## Amendment 7

### Proposal for a directive Recital 14

*Text proposed by the Commission*

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

*Amendment*

(14) In order to improve compliance with the requirements of Directive 2004/109/EC and following the Communication from the Commission of 9 December 2010 entitled ‘Reinforcing sanctioning regimes in the financial sector’, the sanctioning powers of competent authorities should be enhanced and should satisfy certain essential requirements. In particular, ***in case of most serious and non-negligent breaches*** competent authorities should be able to suspend the exercise of voting rights for holders of shares and financial instruments who do not comply with the notification requirements, ***insofar as those voting rights exceed the notification threshold*** and to impose pecuniary sanctions which are sufficiently high to be dissuasive. To ensure sanctions have a dissuasive effect on the public at large, sanctions should normally be published, except ***if this is contrary to existing national laws or if the publication would seriously jeopardise ongoing official investigations***.

**Amendment 8**

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

*Text proposed by the Commission*

*Amendment*

***(21a) A harmonised electronic format for reporting would be very beneficial for issuers 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 a single electronic reporting format should be mandatory with effect from 1 January 2018, after an appropriate period has elapsed for preparation and testing. ESMA should develop draft regulatory***

*standards for adoption by the Commission, to specify the electronic reporting format, with due reference to current and future technological options, such as eXtensible Business Reporting Language (XBRL). Before adopting those regulatory standards, the Commission should, together with ESMA, carry out an adequate assessment of possible electronic reporting formats and conduct appropriate tests in all Member States.*

## **Amendment 9**

### **Proposal for a directive**

#### **Article 1 – point 1 – point a**

Directive 2004/109/EC

Article 2 – paragraph 1 – point d – subparagraph 2

#### *Text proposed by the Commission*

In case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented, whether those securities are admitted to trading on a regulated market or not;

#### *Amendment*

In case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented, whether those securities are admitted to trading on a regulated market or not. ***By 31 December 2012, the Commission shall submit a report to the European Parliament and the Council analysing different options for a definition of European small and medium-sized issuers;***

## **Amendment 10**

### **Proposal for a directive**

#### **Article 1 – point 2**

Directive 2004/109/EC

Article 3 – paragraph 1

#### *Text proposed by the Commission*

1. The home Member State may make an issuer subject to requirements more stringent than those laid down in this Directive, except requiring issuers to

#### *Amendment*

1. The home Member State may make an issuer subject to requirements more stringent than those laid down in this Directive, except requiring ***small and***

publish periodic information other than annual financial reports referred to in Article 4 and half-yearly financial reports referred to in Article 5.

The home Member State may not make a holder of shares, or a natural person or legal entity referred to in Articles 10 or 13, subject to requirements more stringent than those laid down in this Directive, except setting lower notification thresholds than those laid down in Article 9(1).

*medium-sized* issuers to publish periodic information other than annual financial reports referred to in Article 4 and half-yearly financial reports referred to in Article 5.

The home Member State may not make a holder of shares, or a natural person or legal entity referred to in Articles 10 or 13, subject to requirements more stringent than those laid down in this Directive, except **when:**

(a) setting lower notification thresholds than those laid down in Article 9(1);

(b) *applying laws, regulations or administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies, regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC.*

## **Amendment 11**

### **Proposal for a directive Article 1 – point 3 – introductory wording**

*Text proposed by the Commission*

(3) *In* Article 4, *the following paragraph 7 is added:*

*Amendment*

(3) Article 4 *is amended as follows:*

## **Amendment 12**

### **Proposal for a directive Article 1 – point 3 – point a (new) Directive 2004/109/EC Article 4 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***(a) Paragraph 1 is replaced by the following:***

**'1. The issuer shall make public its annual financial report at the latest four months after the end of each financial year and shall ensure that it remains publicly available [...].';**

### **Amendment 13**

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

#### **Article 1 – point 3 – point b (new)**

Directive 2004/109/EC

Article 4 – paragraph 7

*Text proposed by the Commission*

'7. The European Securities and Markets Authority (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council, shall issue guidelines, including standard forms or templates, to specify the information to be included in the management report.

*Amendment*

***(b) The following paragraph is added:***

'7. The European Securities and Markets Authority (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council, shall issue guidelines, including standard forms or templates, to specify the information to be included in the management report. ***These guidelines shall be proportionate and take into account the relative size of the issuers in order to submit small and medium-sized issuers to a simpler regime.***';

### **Amendment 14**

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

#### **Article 1 – point 3 – point c (new)**

Directive 2004/109/EC

Article 4 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

***(c) The following paragraph is added:***

*'7a. With effect from 1 January 2018 all financial annual reports shall be prepared in a single electronic reporting format.*

*ESMA shall develop draft regulatory technical standards to specify the electronic reporting format, with due reference to current and future technological options, such as eXtensible Business Reporting Language (XBRL) ESMA shall submit those draft regulatory technical standards to the Commission by 31 December 2015.*

*Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.*

*Before the adoption of the regulatory technical standards the Commission, together with ESMA, shall carry out an adequate assessment of possible electronic reporting formats and conduct appropriate tests in all Member States.'*

## **Amendment 15**

### **Proposal for a directive**

#### **Article 1 – point 4**

Directive 2004/109/EC

Article 5 – paragraph 7

*Text proposed by the Commission*

*Amendment*

*(4) In Article 5, the following paragraph 7 is added:*

*deleted*

*'7. ESMA shall issue guidelines, including standard forms or templates, to specify the information to be included in the interim management report.'*

## Amendment 16

### Proposal for a directive

#### Article 1 – point 5

Directive 2004/109/EC

Article 6

#### *Text proposed by the Commission*

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

#### *Amendment*

Member States shall require issuers active in the extractive **industry, the** logging of primary **forests, banking, construction or telecommunications** to **disclose and** prepare, in accordance with **Article 6a of this Directive and** Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council, a report on payments made to governments on an annual basis. The report shall be made public at the latest six months after the end of each financial year and shall remain publicly available. Payments to governments shall be reported at consolidated level.

## Amendment 17

### Proposal for a directive

#### Article 1 – point 5 a (new)

Directive 2004/109/EC

Article 6 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**(5a) The following article is inserted:**

**'Article 6a**

**Principles for reporting on payments to governments**

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

**(a) integrated reporting: the report on payments to governments and certain other contextual information shall be in an easily accessible and comparable**



*format;*

*(b) materiality: payments or multiple related payments shall only be disclosed if they exceed EUR 80 000;*

*(c) project-by-project reporting for issuers active in the extractive or logging of primary forest industries: reporting on payments to governments in these industries shall also be done on a project-by-project basis; the project definition shall be in line with Chapter 9 of Directive 2012/.../EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings;*

*(d) universality: no exemptions, for instance for certain countries in which issuers are active, shall be made which have a distortive impact and allow issuers to exploit lax transparency requirements;*

*(e) comprehensiveness: all relevant payments and revenues paid to governments shall be reported, in line with Chapter 9 of Directive 2012/.../EU [Accounting Directive];*

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

## **Amendment 18**

### **Proposal for a directive**

#### **Article 1 – point 5 b (new)**

Directive 2004/109/EC

Article 6 b (new)

*Text proposed by the Commission*

*Amendment*

*(5b) The following article is inserted:*

*'Article 6b*

*Transparency commitment*

*Member States shall encourage issuers to*

*cooperate with host state governments towards transparency agreements.';*

## **Amendment 19**

### **Proposal for a directive**

#### **Article 1 – point 6 – point a**

Directive 2004/109/EC

Article 8 – paragraph 1

*Text proposed by the Commission*

1. Articles 4, 5 **and 6** shall not apply to an issuer that is a State, a regional or local authority of a State, a public international body of which at least one Member State is a member, the ECB, and Member States' national central banks whether or not they issue shares or other securities.

*Amendment*

1. Articles 4 **and 5** shall not apply to an issuer that is a State, a regional or local authority of a State, a public international body of which at least one Member State is a member, the ECB, and Member States' national central banks whether or not they issue shares or other securities.

## **Amendment 20**

### **Proposal for a directive**

#### **Article 1 – point 7 – point b**

Directive 2004/109/EC

Article 9 – paragraph 6 – subparagraph 3

*Text proposed by the Commission*

*ESMA shall develop draft regulatory technical standards to specify the method of calculation of the 5 % threshold referred to in point (a) of that subparagraph in case of a group of companies, taking into account Article 12(4) and (5).*

*Amendment*

*deleted*

## **Amendment 21**

### **Proposal for a directive**

#### **Article 1 – point 7 – point b**

Directive 2004/109/EC

Article 9 – paragraph 6 – subparagraph 4

*Text proposed by the Commission*

*Amendment*

**ESMA shall submit those draft regulatory technical standards to the Commission by 31 December 2013.**

**deleted**

## **Amendment 22**

### **Proposal for a directive**

#### **Article 1 – point 7 – point b**

Directive 2004/109/EC

Article 9 – paragraph 6 – subparagraph 5

*Text proposed by the Commission*

*Amendment*

**Power is delegated to the Commission to adopt the regulatory technical standards referred to in the third subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.**

**The Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures to specify the method of calculation of the 5 % threshold referred to in point (a) of that subparagraph in case of a group of companies, taking into account Article 12(4) and (5).**

## **Amendment 23**

### **Proposal for a directive**

#### **Article 1 – point 7 a (new)**

Directive 2004/109/EC

Article 12

*Text proposed by the Commission*

*Amendment*

**(7a) Article 12 is amended as follows:**

**(a) In paragraph 2, the introductory wording is replaced by the following:**

**'The notification to the issuer shall be effected as soon as possible, but not later than two trading days [...] after the date on which the shareholder, or the natural person or legal person referred to in Article 10,';**

*(b) Paragraph 6 is replaced by the following:*

**'6. Upon receipt of the notification under paragraph 1, but no later than *two trading days* thereafter, the issuer shall make public all the information contained in the notification.'**

## **Amendment 24**

### **Proposal for a directive**

#### **Article 1 – point 8 – point a**

Directive 2004/109/EC

Article 13 – paragraph 1 – subparagraph 1 – point a

#### *Text proposed by the Commission*

(a) financial instruments that, *on maturity*, give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market;

#### *Amendment*

(a) financial instruments that give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached, *whether* already issued *or to be issued*, of an issuer whose shares are admitted to trading on a regulated market;

#### *Justification*

*This provision should be extended to include instruments that are linked or referenced to shares not yet in issue, such as convertibles. Such instruments have a similar economic effect to holding an instrument with the right to acquire the underlying shares. Such instruments result in the ability of the holder to gain an interest in the issuer and therefore in order to gain full knowledge of the voting structure these holdings should be included.*

## **Amendment 25**

### **Proposal for a directive**

#### **Article 1 – point 8 – point a**

Directive 2004/109/EC

Article 13 – paragraph 1 – subparagraph 1 – point b

#### *Text proposed by the Commission*

(b) financial instruments with economic *effects* similar to *those* referred to in point (a), whether they give right to a physical

#### *Amendment*

(b) financial instruments *which are not included in point (a) but which are referenced to shares referred to in that*

settlement or not.

*point and* with economic *effect* similar to *financial instruments* referred to in *that* point, whether they give right to a physical settlement or not.

#### *Justification*

*This helps to ensure that financial instruments of similar economic effect that are referenced to shares referred to in point 13(1)(a) are captured.*

## **Amendment 26**

### **Proposal for a directive**

#### **Article 1 – point 8 – point b**

Directive 2004/109/EC

Article 13 – paragraph 1 a

#### *Text proposed by the Commission*

1a. The number of voting rights shall be calculated by reference to the full notional amount of shares underlying the financial instrument. For this purpose, the holder shall aggregate and notify all financial instruments relating to the same underlying issuer. Only long positions shall be taken into account for the calculation of voting rights. Long positions shall not be netted with short positions relating to the same underlying issuer.

ESMA shall develop draft regulatory technical standards to specify the method to calculate the number of voting rights referred to in the first subparagraph in case of financial instruments referenced to a basket of shares or an index.

#### *Amendment*

1a. The number of voting rights shall be calculated by reference to the full notional amount of shares underlying the financial instrument, *except for the financial instruments referred to in the second subparagraph*. For this purpose, the holder shall aggregate and notify all financial instruments relating to the same underlying issuer. Only long positions shall be taken into account for the calculation of voting rights. Long positions shall not be netted with short positions relating to the same underlying issuer.

*For non-physically settled financial instruments the number of voting rights shall be calculated on a delta adjusted basis. Therefore, underlying shares referenced in the financial instrument shall be calculated in the proportion which is equal to the delta of the instrument at any particular point in time.*

ESMA shall develop draft regulatory technical standards to specify

(a) the method to calculate the number of voting rights referred to in the first subparagraph in case of financial instruments referenced to a basket of shares or an index;

***(b) the methods of determination of delta for the purposes of calculation of voting rights relating to non-physically settled financial instruments as required by the second subparagraph.***

ESMA shall submit those draft regulatory technical standards to the Commission by 31 December 2013.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

ESMA shall submit those draft regulatory technical standards to the Commission by 31 December 2013.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

## **Amendment 27**

### **Proposal for a directive**

#### **Article 1 – point 8 – point c**

Directive 2004/109/EC

Article 13 – paragraph 2

*Text proposed by the Commission*

*Amendment*

***2. The Commission shall be empowered to adopt by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures to:***

***2. ESMA shall develop draft regulatory technical standards to specify the contents of the notification to be made, the notification period and to whom the notification is to be made as referred to in paragraph 1.***

***(a) modify the method to calculate the number of voting rights relating to the financial instruments referred to in paragraph 1a;***

***ESMA shall submit those draft regulatory technical standards to the Commission by 31 December 2013.***

***(b) specify the types of instruments to be considered as financial instruments within the meaning of paragraph 1b;***

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first sub-paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

***(c) specify the contents of the notification to be made, the notification period and to whom the notification is to be made, as referred to in paragraph 1.***

*(Point (c) in the Commission text has partly become subparagraph 1 in Parliament's amendment.)*

#### *Justification*

*It would be more appropriate for ESMA to specify the contents of the notification to be made. Having a closed list of instruments (which would be the result of Article 13(2)(b)) would not allow for market innovation and could impact the effectiveness of this new regime. If a list is considered necessary we believe ESMA's indicative list provided for in Article 13(1b) is sufficient.*

### **Amendment 28**

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

##### **Article 1 – point 12**

Directive 2004/109/EC

Article 21 – paragraph 4 – point c

#### *Text proposed by the Commission*

(c) rules **concerning** the interoperability of the information and communication technologies used by the national officially appointed mechanisms and the access to regulated information at the Union level, as referred to in paragraph 2.

#### *Amendment*

(c) rules **to ensure** the interoperability of the information and communication technologies used by the national officially appointed mechanisms and the access to regulated information at the Union level, as referred to in paragraph 2.

### **Amendment 29**

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

##### **Article 1 – point 12 a (new)**

Directive 2004/109/EC

Article 21 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***The following article is inserted:***

##### ***'Article 21a***

***1. A European electronic access point ("the access point") shall be established.***

**2. The system of interconnection of central storage mechanism shall be composed of:**

**– the central storage mechanisms of Member States,**

**– the portal serving as the European electronic access point.**

**3. The Member States shall ensure the interoperability of their central storage mechanisms within the system via the access point.'**

### **Amendment 30**

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

#### **Article 1 – point 15**

Directive 2004/109/EC

Article 28 – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall provide that their respective competent authorities may take appropriate administrative sanctions and measures where the national provisions adopted in the implementation of this Directive have not been complied with, and shall ensure that they are applied. **Those** sanctions and measures shall be effective, proportionate and dissuasive.

#### *Amendment*

1. **Without prejudice to the powers of competent authorities in accordance with Article 24 and the right of Member States to impose criminal sanctions, Member States** shall provide that their respective competent authorities may take appropriate administrative sanctions and measures where the national provisions adopted in the implementation of this Directive have not been complied with and shall ensure that they are applied. **All** sanctions and measures shall be effective, proportionate and dissuasive.



## Amendment 31

### Proposal for a directive

#### Article 1 – point 16

Directive 2004/109/EC

Article 28 a – paragraphs 2 and 2 a (new)

#### *Text proposed by the Commission*

2. Without prejudice to the supervisory powers of competent authorities in accordance with Article 24, Member States shall ensure that in the cases referred to in paragraph 1 of this Article, the administrative sanctions and measures that can be applied include at least the following:

(a) a public statement which indicates the natural or the legal person and the nature of the breach;

(b) an order requiring the natural or the legal person to cease the conduct and to desist from a repetition of that conduct;

(c) the power to suspend the exercise of voting rights attached to shares admitted to trading on a regulated market if the competent authority finds that the provisions of this Directive, concerning notification of major holdings have been infringed by the holder of shares or other financial instruments, or a person or entity referred to in Articles 10 or 13;

(d) in case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual turnover of that legal person in the preceding business year;

(e) in case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000;

***(f) administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the***

#### *Amendment*

2. Without prejudice to the supervisory powers of competent authorities in accordance with Article 24, Member States shall ensure that in the cases referred to in paragraph 1 of this Article, the administrative sanctions and measures that can be applied include at least the following:

(a) a public statement which indicates the natural or the legal person and the nature of the breach ***in accordance with Article 28b***;

(b) an order requiring the natural or the legal person to cease the conduct and to desist from a repetition of that conduct;

(c) ***in case of most serious and non-negligent breaches*** the power to suspend the exercise of voting rights attached to shares admitted to trading on a regulated market if the competent authority finds that the provisions of this Directive, concerning notification of major holdings have been infringed by the holder of shares or other financial instruments, or a person or entity referred to in Articles 10 or 13, ***insofar as these voting rights exceed the notification thresholds***;

(d) in case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual turnover of that legal person in the preceding business year;

(e) in case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000;

***breach where those can be determined.***

For the purposes of point (d) of the first subparagraph, where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

For the purposes of point (e) of the first subparagraph, in the Member States where the Euro is not the official currency, the corresponding value to EUR 5 000 000 in the national currency shall be calculated taking into account the official exchange rate on [the date of entry into force of this Directive – insert date].

For the purposes of point (d) of the first subparagraph, where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

For the purposes of point (e) of the first subparagraph, in the Member States where the Euro is not the official currency, the corresponding value to EUR 5 000 000 in the national currency shall be calculated taking into account the official exchange rate on [the date of entry into force of this Directive – insert date].

***2a. Member States may provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than those provided for in this Directive.***

**Amendment 32**

**Proposal for a directive**

**Article 1 – point 16**

Directive 2004/109/EC

Article 28 b

*Text proposed by the Commission*

Member States shall ensure that the competent authorities publish any sanction or measure imposed for breach of the national provisions adopted in the implementation of this Directive without undue delay, including information on the type and nature of the breach and the identity of persons responsible for it, unless such publication ***would seriously jeopardise the stability of financial markets. Where publication would cause a disproportionate damage to the parties involved, competent authorities shall publish the sanctions on an anonymous***

*Amendment*

Member States shall ensure that the competent authorities publish any sanction or measure imposed for breach of the national provisions adopted in the implementation of this Directive without undue delay, including information on the type and nature of the breach, unless such publication ***is not in conformity with existing national laws or if the publication would seriously jeopardise ongoing official investigations.***

*basis.*

*Justification*

*Alignment with Article 28 paragraph 2 of the Directive 2004/109/EC.*

**Amendment 33**

**Proposal for a directive**

**Article 1 – point 16**

Directive 2004/109/EC

Article 28 c – paragraph -1 (new)

*Text proposed by the Commission*

*Amendment*

***-1. Member States shall leave the choice between the types of administrative sanctions or measures and the level of administrative pecuniary sanctions to the discretion of the competent authorities on a case-by-case basis, taking into account the need for measures and sanctions to be effective, proportionate and dissuasive.***

**Amendment 34**

**Proposal for a directive**

**Article 1 – point 16**

Directive 2004/109/EC

Article 28 c – paragraph 1 – introductory wording

*Text proposed by the Commission*

*Amendment*

1. Member States shall ***ensure that*** when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, ***the competent authorities shall*** take into account all relevant circumstances, including:

1. Member States shall ***require their competent authorities,*** when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, ***to*** take into account all relevant circumstances, including:

## Amendment 35

### Proposal for a directive Article 2 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 2a*

##### *Review*

*The Commission shall by [three years after the date of the publication of this Directive in the Official Journal of the European Union] report on the operation of this Directive to the European Parliament and the Council, in particular as regards the following elements:*

*– the operation of the reporting of payments to governments, in particular as regards the scope of the reporting obligations, the thresholds and the modalities of reporting on a project basis, and the implementation of the principles to be observed in that regard;*

*– the operation of the exemptions from the reporting requirements applying to issuers that are States, regional or local authorities, public international bodies of which at least one Member State is a member;*

*– the functioning of the system of interconnection of central storage mechanism;*

*– any other rules necessary or appropriate in the public interest or for the protection of investors;*

*– the application of sanctions.*

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

## EXPLANATORY STATEMENT

### Background

With growing volatility in global financial markets, investors are increasingly demanding more information about companies' practices. It is clear that investors want improved transparency to gain a comprehensive economic picture of investment and risk. In addition, transparency in terms of disclosure is an important indicator of strong corporate governance.

Companies are increasingly adopting corporate governance standards, including transparency by signing up to global reporting schemes such as the Extractives Industries Transparency Initiative (EITI), in addition to voluntary guidelines for multinational companies, such as the OECD Guidelines for Multinational Enterprises and the Global Reporting Initiative, which are setting the transparency agenda.

Given all of these initiatives, there is currently a risk of a fragmented response to transparency. It is therefore important to establish a framework for strong global standards in this area. The proposal to amend the 2004 Transparency Directive puts such rules in place for EU companies, reflecting standards put forward in the Dodd-Frank Act in the US. This provides a strong starting point for achieving the ultimate goal of global rules in these areas.

This legislative proposal comes as part of the EU's Responsible Business Initiative and follows on from work that has been undertaken on reform of the financial sector, which has as its core objective the promotion of transparency and openness of financial markets and higher standards of corporate governance.

In 2011, the European Parliament adopted its position<sup>1</sup> regarding country-by-country reporting stating that *'country by country reporting is of the utmost importance for extractive industries, but recalls that it would be equally beneficial for investors in all sectors, thereby contributing to good governance globally'*<sup>2</sup>.

### Reducing the administrative burden, simplification and harnessing transparency

This report proposes a number of amendments essential to promoting transparency across the board and to ensuring a level playing field for EU companies and their investors. The abolishment of the requirement of quarterly reporting reduces the administrative burden for small and medium sized issuers but equally acts to redirect shareholder and company attention away from short-term goals, and refocus it on longer-term missions which will help to re-stabilise financial markets following the crisis.

The introduction of a harmonised regime for information on major holding of voting rights is designed to improve legal certainty and enhance transparency. Financial innovation has lead

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<sup>1</sup> European Parliament resolution of 8 March 2011 on tax and development - cooperating with developing countries on promoting good governance in tax matters, (2011/2102(INI)), P7\_TA(2011)0082.

<sup>2</sup> European Parliament resolution of 8 March 2011 on tax and development - cooperating with developing countries on promoting good governance in tax matters, (2011/2102(INI)), P7\_TA(2011)0082, para. 49.

to the creation of new types of financial instruments that lead to economic exposure of investors, disclosure of which was not provided for in the 2004 Transparency Directive. Those instruments can be used to acquire secret stocks in companies and could potentially result in market abuse and give a false picture of ownership of publically listed companies. Investors should have full knowledge of the structure of corporate ownership and this will also help in situations of so called 'snap' capital increases.

Reporting requirements are essential for transparency and it is vital that this legislation strikes a balance between reducing the administrative burden for smaller issuers and transparency for investors and civil society. Therefore, the rules regarding the reporting of bi-annual and annual financial statements must be clearly set out, and appropriate sanctions should be in place for failure to comply.

### **Reporting on payments to governments**

The concept of country-by-country reporting builds on existing principles in the EITI, amongst others, and requirements laid down in the Dodd-Frank Act. These rules require companies operating in the extractive industries to publish payments to governments, by category and at project level, in an interactive data format as part of their annual report. It is important that the rules leave scope to require further information that is deemed necessary, appropriate in the public interest or for the protection of investors.

The European Parliament's established position<sup>1</sup> stated that '*country by country reporting is of the utmost importance for extractive industries, but recalls that it would be equally beneficial for investors in all sectors, thereby contributing to good governance globally*'. It is important to establish a level playing field in countries where multi national companies are operating and transparency in country-by-country reporting should not be limited to a single sector in order to ensure that investors have access to information regarding payments. It may be necessary to apply proportionality to other sectors and to consider criteria that take into account their impact on the countries they are operating in.

Developing countries need to maximise their revenue from these finite natural resources and the sale of rights of access to them is a onetime opportunity to benefit from them. In 2010, Africa's oil, gas and mineral exports were worth roughly 7 times the value of international aid to the continent. Publish What You Pay estimates these figures at 333 billion USD and 48 billion USD respectively<sup>3</sup>. It is also essential that civil society have access to country-by-country reporting information in order to hold their governments to account.

Shareholders have the right to monitor and judge a company's actions within and responses to the markets, and this information should be clearly presented to investors in the annual financial report. The audited information of an annual report provides shareholders looking for financial returns with reliable data, so that they can make calculated judgements about

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<sup>1</sup> European Parliament resolution of 8 March 2011 on tax and development - cooperating with developing countries on promoting good governance in tax matters, (2011/2102(INI)), P7\_TA(2011)0082.

<sup>2</sup> European Parliament resolution of 8 March 2011 on tax and development - cooperating with developing countries on promoting good governance in tax matters, (2011/2102(INI)), P7\_TA(2011)0082, para. 49.

<sup>3</sup> The European Commission's Proposals on Extractive Sector Transparency: A Civil Society View, Publish What You Pay, 1.12.2011, p. 1.

their investments. Annual reports should be available for an unlimited period of time so that potential investors are able to analyse a company's behaviour during a period, throughout the economic cycle or an economic downturn which may be longer than 5 years.

While the Directive does not lay down the detail of requirements for the audited accounts report it is important to establish some guiding transparency principles. Audited data relating to country-by-country reporting should be included in the annual financial report, so that potential investors and shareholders can make better informed judgements.

## **Sanctions**

The Commission's proposal to amend the 2004 Transparency Directive details a "toolbox" for the provision of sanctions in cases where the Directive has not been implemented properly. These include the Commission's recommendation on the maximum levels for either a natural person, or a legal entity. The High-Level Group on Financial Supervision in the EU<sup>1</sup> does not recommend thresholds but instead advocates a *'sound prudential and conduct of business framework for the financial sector must rest on strong supervisory and sanctioning regimes'*. Supervisory authorities must therefore be equipped with sufficient powers to act and should be able to rely on *'equal, strong and deterrent sanctions regimes against all financial crimes, sanctions which should be enforced effectively'*.

Given the competitive advantage that could be gained and the removal of shareholders' fundamental right to information that would occur from not applying the measures in this Directive, supervisory authorities should be able to use their expertise in administering effective, proportionate and dissuasive sanctions to companies in breach of the rules. The publication of any such sanctions, including details of the type and nature of the breach of the rules, is also necessary to inform potential investors about the actions of a company.

## **Review clause**

The Directive does not include a review clause. It is important to be able to monitor whether both the transposition and the functioning of the rules laid out in the directive and therefore a review clause has been added.

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<sup>1</sup> Report of the High-Level Group on Financial Supervision in the EU, Brussels, 25.2.2009, p. 23.

25.6.2012

## **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 amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC (COM(2011)0683– C7- 0380/2011 – 2011/0307(COD))

Rapporteur: Sirpa Pietikäinen (\*)

(\*) Associated committee – Rule 50 of the Rules of Procedure

### **SHORT JUSTIFICATION**

*Increasing harmonisation and reducing administrative burdens for better functioning of the single market area*

The rapporteur sees that the revision of the Transparency Directive is a necessary step in ensuring the functioning of the single market area. Increasing harmonisation and reducing disproportionate administrative burden are thus welcome proposals. The rapporteur welcomes the enhanced powers of the Commission to facilitate investors' access to regulated information by setting standards for a central storage mechanism as well as by developing technical criteria for access to regulated information and in particular the establishment of a central access point for the search of information.

The rapporteur considers reporting requirements to be essential for greater transparency. This transparency is for the benefit of investors but also of companies.

However, reporting requirements should not impose disproportionate burdens on companies, especially for small- and medium-sized enterprises (SMEs). Thus, the rapporteur welcomes the Commission proposal to remove the requirement of quarterly reporting. In its impact assessment, the Commission estimated the savings to arise at up to EUR 60 000 for each SME through the removal of the quarterly reporting requirement.

Removing the requirement of quarterly reporting together with enhancing access to



information are prerequisites for an enabling environment for SMEs and for encouraging long-term investments in the real economy. They also encourage companies to reduce short-termism and to plan activities more sustainably in the long term, something which has a stabilising effect on the economy.

#### *Notification of major holdings and aggregation of financial instruments*

When defining which types of holdings are to be notified, the existing Directive leaves out some financial instruments that can be used to acquire economic interest in listed companies without acquiring shares. An example is cash-settled derivatives. To fill in the existing gap in the notification of holdings, the Commission proposes to extend the scope and to require disclosure of major holdings of financial instruments of similar economic effect to the holding of shares. The rapporteur supports this proposal as it is vital to treat equally shares and holdings that have similar effects.

As an addition to proposed text, the rapporteur suggests the introduction of the definition of financial instruments that is better in line with the definitions in the proposed Markets in Financial Instruments Regulation (MiFIR).

The rapporteur welcomes the harmonisation of the notification thresholds. On notification timelines, the rapporteur acknowledges the need for further harmonisation of Member States' legislation. However, the rapporteur suggests a shorter notification timeline to replace the timeline set in the current Directive.

#### *Reporting on payments to government*

Companies are currently not required to disclose their financial performance on a country-by-country basis. Corrupt practices, transfer mispricing activities and illicit financial flows are difficult to discover and supervise. This non-transparency distorts markets, enables tax avoidance and deprives investors from information of companies' long-term sustainability. The rapporteur welcomes the Commission proposal on the requirement for country-by-country reporting for listed and large non-listed companies operating in extractive industries and the forestry sector. This proposal improves transparency and level playing field between companies acting solely in the EU markets and those having third country activities. The proposal is compatible with the initiatives currently going on in other big economic areas such as the United States and Hong Kong. A requirement for country-by country reporting is also in line with the recommendations of EITI (*Extractives Industries Transparency Initiative*). The most visible problems with transparency currently lie in these sectors, but also prevail across other sectors. Thus, in order to avoid regulatory arbitrage and regulation avoidance, there should be no distinction between extractive and non-extractive industries in this matter. The reporting requirements are proposed to be clearer and more generally applicable and still include the content of the Commission's original proposal without references to different codes of conduct.

#### *Sanctions*

The Commission proposal aims to harmonise existing sanction mechanisms by enhancing the

sanctioning powers of competent authorities. Also, the publication of sanctions is one of the key elements of this part of the proposal. Revision of the legislation concerning sanctions in the Transparency Directive takes into account the legislative developments of the other financial legislation under review, such as Market Abuse Directive and CRD4. The rapporteur sees that it is important to use common criteria on sanctions within the EU financial market regulatory field.

## AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments into its report:

### Amendment 1

#### Proposal for a directive

##### Recital 4

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

(4) According to the Commission report and to the Commission Communication, the administrative burden associated with obligations linked to admission to trading on regulated markets should be reduced for small and medium-sized issuers in order to improve their access to capital. The obligations to publish interim management statements or quarterly financial reports represent an important burden for issuers whose securities are admitted to trading on regulated markets, without being necessary for investor protection. They also encourage short-term performance and discourage long-term investment. In order to encourage sustainable value creation and long-term oriented investment strategy it is essential to reduce short-term pressure on issuers and to give investors incentive to adopt a longer term vision. The requirement to publish interim management statements should therefore be abolished.

###### *Amendment*

(4) According to the Commission report and to the Commission Communication, the administrative burden associated with obligations linked to admission to trading on regulated markets should be reduced for small and medium-sized issuers in order to improve their access to capital. The obligations to publish interim management statements or quarterly financial reports represent an important burden for ***small and medium-sized*** issuers whose securities are admitted to trading on regulated markets, without being necessary for investor protection. They also encourage short-term performance and discourage long-term investment. In order to encourage sustainable value creation and long-term oriented investment strategy it is essential to reduce short-term pressure on issuers and to give investors incentive to adopt a longer term vision. The requirement to publish interim management statements should therefore be abolished ***for small and medium-sized issuers***.

### Amendment 2

#### Proposal for a directive

##### Recital 5

*Text proposed by the Commission*

(5) In order to ensure that the administrative burden is effectively reduced across the Union, Member States should not be allowed to continue to impose the requirement to publish interim management statements in their national legislation.

*Amendment*

(5) In order to ensure that the administrative burden is effectively reduced across the Union, Member States should not be allowed to continue to impose ***on small and medium-sized issuers*** the requirement to publish interim management statements in their national legislation.

**Amendment 3**

**Proposal for a directive**

**Recital 6**

*Text proposed by the Commission*

(6) To further reduce the administrative burden for small and medium-sized issuers and to ensure the comparability of information, the European Supervisory Authority (European Securities and Markets Authority, hereinafter 'ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council, should issue guidelines, including standard forms or templates, to specify which information should be included in the management report.

*Amendment*

(6) To further reduce the administrative burden for small and medium-sized issuers and to ensure the comparability of information, the European Supervisory Authority (European Securities and Markets Authority, hereinafter 'ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council, should issue guidelines, including standard forms or templates, to specify which information should be included in the management report. ***ESMA should provide proportionate guidelines for small and medium-sized issuers to have them submitted to a simpler regime.***

***European Commission should submit a report before the 31 December 2012 to the European Parliament and the Council analysing the different options for a definition of the European small and medium-sized issuers.***

**Amendment 4**

**Proposal for a directive**

**Recital 7**

*Text proposed by the Commission*

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

*Amendment*

(7) In order to provide for enhanced transparency of payments made to governments, **large** issuers whose securities are admitted to trading on a regulated market should disclose **activities in each country in which they operate, including** annual payments made to governments in the countries in which they operate. **The threshold for considering issuers to be large should be based on double the threshold for SMEs in the standard EU definition. The disclosure of these data aims at enabling investors to make better-informed decisions, improving corporate governance and accountability, contributing to containing tax evasion and providing civil society with information to hold governments of resource-rich countries to account for their receipts from the exploitation of natural resources. Disclosures should be incorporated on a country-by-country basis. Disclosures should be part of the annual financial statement and** include types of payments comparable to those disclosed under the Extractive Industries Transparency Initiative (EITI) and **should be on a country-by-country and in the case of issuers engaged in activities related to extractive or forest industries on a project-by-project basis, where a project means a contract, licence, lease or other legal agreement under which an issuer operates, and which gives rise to specific revenue liabilities. For all issuers, disclosures should include turnover (including third party and intragroup turnover) of the constituent entities of the undertaking that might give rise to payments and, on a per-country basis, quantities produced, purchases and sales, profit before tax, actual tax payments, effective tax rates, deferred taxation liabilities for the country at the start and close of each accounting period, total**

*number of people employed and their aggregate remuneration and expenditure on fixed asset investment during the course of the reporting period.* The detailed requirements are defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council.

#### *Justification*

*Equivalent rules for all companies create a level playing field where investors and companies have clear, general rules and thus more certainty. Enhanced reporting requirements are also prerequisite for hindering tax avoidance that prevail in all sectors.*

### **Amendment 5**

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

##### **Recital 10**

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

(10) A harmonised regime for notification of major holdings of voting rights, especially regarding aggregation of holdings of shares with holdings of financial instruments, should improve legal certainty, enhance transparency and reduce administrative burden for cross-border investors. Member States should therefore not be allowed to adopt stricter or divergent rules in that area than those provided in Directive 2004/109/EC. However, taking into account the existing differences in ownership concentration in the Union, Member States should continue to be allowed to set lower thresholds for notification of holdings of voting rights.

###### *Amendment*

(10) A harmonised regime for notification of major holdings of voting rights, especially regarding aggregation of holdings of shares with holdings of financial instruments, should improve legal certainty, enhance transparency and reduce administrative burden for cross-border investors. Member States should therefore not be allowed to adopt stricter or divergent rules in that area than those provided in Directive 2004/109/EC. However, taking into account the existing differences in ownership concentration in the Union, Member States should continue to be allowed to set lower thresholds for notification of holdings of voting rights; ***nevertheless, measures to incentivise long term investment should be considered and also a requirement for full transparency of voting for any borrowed shares.***

### **Amendment 6**

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

##### **Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

***(21a) A harmonised electronic format for reporting would be very beneficial for issuers 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. The experience of the International Accounting Standards Board (IASB) should be used for assessment of possible XBRL format.***

## **Amendment 7**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 1 – point a**

Directive 2004/109/EC

#### **Article 2 – paragraph 1 – point d – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

In case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented, whether those securities are admitted to trading on a regulated market or not;

In case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented, whether those securities are admitted to trading on a regulated market or not. ***By 31 December 2012, the Commission shall submit a report to the European Parliament and the Council analysing different options for a definition of European small and medium-sized issuers;***

## **Amendment 8**

### **Proposal for a directive**

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

Directive 2004/109/EC

#### **Article 3 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

The home Member State may make an issuer subject to requirements more stringent than those laid down in this Directive, except requiring issuers to publish periodic information other than annual financial reports referred to in Article 4 and half-yearly financial reports referred to in Article 5.

*Amendment*

The home Member State may make an issuer subject to requirements more stringent than those laid down in this Directive, except requiring ***small and medium-sized*** issuers to publish periodic information other than annual financial reports referred to in Article 4 and half-yearly financial reports referred to in Article 5.

**Amendment 9**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 2**

Directive 2004/109/EC

Article 3 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

The home Member State may not make a holder of shares, or a natural person or legal entity referred to in Articles 10 or 13, subject to requirements more stringent than those laid down in this Directive, except setting lower notification thresholds than those laid down in Article 9(1).

*Amendment*

The home Member State may not make a holder of shares, or a natural person or legal entity referred to in Articles 10 or 13, subject to requirements more stringent than those laid down in this Directive, except setting lower notification thresholds than those laid down in Article 9(1). ***The home Member State shall ensure that issuers are not allowed to set additional notification thresholds in their articles of association.***

*Justification*

*Additional notification thresholds set by individual issuers should be avoided in order to reduce the costs and administrative burden on investors.*

**Amendment 10**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive 2004/109/EC

Article 4 – paragraph 7



*Text proposed by the Commission*

7. The European Securities and Markets Authority (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council, shall issue guidelines, including standard forms or templates, to specify the information to be included in the management report.

*Amendment*

7. The European Securities and Markets Authority (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council, shall issue guidelines, including standard forms or templates, to specify the information to be included in the management report. ***These guidelines shall be proportionate and take into account the relative size of the issuers in order to submit small and medium-sized issuers to a simpler regime.***

**Amendment 11**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3 a (new)**

Directive 2004/109/EC

Article 4 – paragraph 8 (new)

*Text proposed by the Commission*

*Amendment*

***In Article 4, the following paragraph 8 is added:***

***'8. With effect from 1 January 2018 all financial annual reports shall be prepared in eXtensible Business Reporting Language (XBRL).***

***ESMA shall develop draft regulatory technical standards to specify the XBRL format and the manner in which this provision is to be implemented in the Member States. ESMA shall submit those draft regulatory technical standards to the Commission by 31 December 2013.***

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

***Before the adoption of the regulatory technical standards the Commission,***

*together with ESMA, shall carry out an adequate assessment of possible XBRL formats and conduct appropriate tests in all Member States.'*

## Amendment 12

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4

Directive 2004/109/EC

Article 5 – paragraph 7

#### *Text proposed by the Commission*

7. ESMA shall issue guidelines, including standard forms or templates, to specify the information to be included in the interim management report.

#### *Amendment*

7. ESMA shall issue guidelines, including standard forms or templates, to specify the information to be included in the interim management report. ***These guidelines shall be proportionate and take into account the relative size of the issuers in order to submit small and medium-sized issuers to a simpler regime.***

## Amendment 13

### Proposal for a directive

#### Article 1 – paragraph 1 – point 5

Directive 2004/109/EC

Article 6

#### *Text proposed by the Commission*

'Article 6

#### ***Report on payments to governments***

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

#### *Amendment*

'Article 6

#### ***Country by country reporting***

Member States shall require issuers to prepare, in accordance with Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council, a report on ***activities in each country in which they operate, including of payments exceeding EUR 30 000 in total*** made to governments, on an annual basis ***where those issuers meet or exceed two of the following criteria:***

*reported at consolidated level.*

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

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

*c) employment on balance sheet date of 500 people or more.*

*For issuers active in the extractive or logging of primary forest industries, the report shall include the reporting of all projects specified in [Article 38(1)(c) of the Accounting Directive], where a project means a contract, licence, lease or other legal agreement under which an issuer operates, and from which its specific revenue liabilities arise.*

*The report shall be subject to statutory audit.*

*The report shall be made public at the latest six months after the end of each financial year and shall remain publicly available for at least five years. The report shall be prepared at consolidated level.*

*For all issuers, disclosures should include turnover (including third party and intragroup turnover) of the constituent entities of the undertaking that might give rise to payments and, on a per-country basis, quantities produced, purchases and sales, profit before tax, actual tax payments, effective tax rates, deferred taxation liabilities for the country at the start and close of each accounting period, total number of people employed and their aggregate remuneration and expenditure on fixed asset investment during the course of the reporting period.*

#### *Justification*

*Equivalent rules for all companies create a level playing field where investors and companies have clear, general rules and thus more certainty. Enhanced reporting requirements are also prerequisite for hindering tax avoidance that prevail in all sectors.*

#### **Amendment 14**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 7 – point b**

Directive 2004/109/EC

Article 9 – paragraph 6 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

***ESMA shall develop draft regulatory technical standards to specify the method of calculation of the 5 % threshold referred to in point (a) of that subparagraph in case of a group of companies, taking into account Article 12(4) and (5).***

***deleted***

**Amendment 15**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 7 – point b**

Directive 2004/109/EC

Article 9 – paragraph 6 – subparagraph 4

*Text proposed by the Commission*

*Amendment*

***ESMA shall submit those draft regulatory technical standards to the Commission by 31 December 2013.***

***deleted***

**Amendment 16**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 7 – point b**

Directive 2004/109/EC

Article 9 – paragraph 6 – subparagraph 5

*Text proposed by the Commission*

*Amendment*

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the third subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

***The Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures to specify the method of calculation of the 5 % threshold referred to in point (a) of that subparagraph in case of a group of companies, taking into account Article***

12(4) and (5).

## Amendment 17

### Proposal for a directive

#### Article 1 – paragraph 1 – point 7 a (new)

Directive 2004/109/EC

Article 12 – paragraph 2 and paragraph 6

*Text proposed by the Commission*

*Amendment*

*(7a) Article 12 is amended as follows:*

*(a) The introductory wording of paragraph 2 is replaced by the following:*

**'The notification to the issuer shall be effected as soon as possible, but not later than *two trading days* [...] after the date on which the shareholder, or the natural person or legal person referred to in Article 10,';**

*(b) Paragraph 6 is replaced by the following:*

**'6. Upon receipt of the notification under paragraph 1, but no later than *two trading days* thereafter, the issuer shall make public all the information contained in the notification.'**

## Amendment 18

### Proposal for a directive

#### Article 1 – paragraph 1 – point 8 – point a

Directive 2004/109/EC

Article 13 – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

(a) financial instruments that, ***on maturity***, give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated

(a) financial instruments that give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached, ***whether*** already issued ***or to be issued***, of an issuer whose shares are admitted to

market;

trading on a regulated market;

*Justification*

*This provision should be extended to include instruments that are linked or referenced to shares not yet in issue, such as convertibles. Such instruments have a similar economic effect to holding an instrument with the right to acquire the underlying shares. Such instruments result in the ability of the holder to gain an interest in the issuer and therefore in order to gain full knowledge of the voting structure these holdings should be included.*

**Amendment 19**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 8 – point a**

Directive 2004/109/EC

Article 13 – paragraph 1 – point b

*Text proposed by the Commission*

*Amendment*

(b) financial instruments with economic **effects** similar to **those** referred to in point (a), whether they give right to a physical settlement or not.

(b) financial instruments **which are not included in point (a) but which are referred to shares referred to in that point and** with economic **effect** similar to **financial instruments** referred to in **that** point, whether they give right to a physical settlement or not.

*Justification*

*This helps to ensure that financial instruments of similar economic effect that are referenced to shares referred to in point 13(1)(a) are captured.*

**Amendment 20**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 8 – point b**

Directive 2004/109/EC

Article 13 – paragraph 1a – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**For non-physically settled financial instruments the number of voting rights must be calculated on a delta adjusted basis. Therefore, underlying shares referenced in the financial instrument**

*must be calculated in the proportion which is equal to the delta of the instrument at any particular point in time.*

## **Amendment 21**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 8 – point b**

Directive 2004/109/EC

Article 13 – paragraph 1 a – subparagraph 2

#### *Text proposed by the Commission*

ESMA shall develop draft regulatory technical standards to specify the method to calculate the number of voting rights referred to in the first subparagraph *in case of financial instruments referenced to a basket of shares or an index.*

#### *Amendment*

ESMA shall develop draft regulatory technical standards to specify the method to calculate the number of voting rights referred to in the first subparagraph.

## **Amendment 22**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 12**

Directive 2004/109/EC

Article 21 – paragraph 4 – point c

#### *Text proposed by the Commission*

(c) rules *concerning* the interoperability of the information and communication technologies used by the national officially appointed mechanisms and the access to regulated information at the Union level, as referred to in paragraph 2.

#### *Amendment*

(c) rules *to ensure* the interoperability of the information and communication technologies used by the national officially appointed mechanisms and the access to regulated information at the Union level, as referred to in paragraph 2.

## **Amendment 23**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 12 a (new)**

Directive 2004/109/EC

Article 21a (new)

*Text proposed by the Commission*

*Amendment*

*The following Article shall be inserted:*

*'Article 21a*

*1. A European electronic access point ("the access point") shall be established.*

*2. The system of interconnection of central storage mechanism shall be composed of:*

*– the central storage mechanisms of Member States,*

*– the portal serving as the European electronic access point.*

*3. The Member States shall ensure the interoperability of their central storage mechanisms within the system via the access point.'*

#### **Amendment 24**

**Proposal for a directive**

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

Directive 2004/109/EC

Article 33

*Text proposed by the Commission*

*Amendment*

*Article 33 is replaced by the following:*

*'Article 33*

**Review**

**The Commission shall by [3 years after the date of transposition of this Directive] report on the operation of this Directive to the European Parliament and the Council, in particular as regards the following elements:**

*– the operation of the requirement of country-by-country reporting as regards the scope of the reporting obligations, the thresholds and the modalities of reporting on a project basis;*



*– the operation of the exemptions to the reporting requirements for issuers that are States, regional or local authorities, public international bodies of which at least one Member State is a member, the ECB, and Member States' national banks whether or not they issue shares or other securities;*

*– the drafting of regulatory technical standards by ESMA;*

*– the functioning of the system of interconnection of central storage mechanism;*

*– any other rules necessary or appropriate in the public interest or for the protection of investors;*

*– the application of sanctions.*

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

## PROCEDURE

|                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |           |
|------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>Title</b>                                               | Amendment of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC                                                                                                                                                                                                                                                                                                                                                 |           |
| <b>References</b>                                          | COM(2011)0683 – C7-0380/2011 – 2011/0307(COD)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |           |
| <b>Committee responsible</b><br>Date announced in plenary  | JURI<br>15.11.2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |           |
| <b>Opinion by</b><br>Date announced in plenary             | ECON<br>15.11.2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |           |
| <b>Associated committee(s) - date announced in plenary</b> | 24.5.2012                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |           |
| <b>Rapporteur</b><br>Date appointed                        | Sirpa Pietikäinen<br>10.5.2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |           |
| <b>Discussed in committee</b>                              | 20.3.2012                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 30.5.2012 |
| <b>Date adopted</b>                                        | 19.6.2012                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |           |
| <b>Result of final vote</b>                                | +: 34                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | –: 1      |
|                                                            | 0: 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |           |
| <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 Lambert, Astrid Lulling, Hans-Peter Martin, Arlene McCarthy, Sławomir Witold Nitras, Ivari Padar, 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                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |           |

6.6.2012

## **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 amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC (COM(2011)0683 – C7-0380/2011 – 2011/0307(COD))

Rapporteur: Fiona Hall

### **SHORT JUSTIFICATION**

The area of particular interest to the Development committee in the Transparency Directive is Article 6 however the details of the proposed amendments by the rapporteur are included in the draft opinion on the Accounting Directive as the Transparency Directive refers to the Accounting Directive.

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 into its report:

### Amendment 1

#### Proposal for a directive Recital 7

*Text proposed by the Commission*

(7) In order to provide for enhanced transparency of payments made to governments, issuers whose securities are admitted to trading on a regulated market ***and which have activities in the extractive or logging of primary forest industries*** should disclose ***in a separate report on an annual basis*** payments made to governments in the countries in which they operate. The report should ***include types of payments comparable to those disclosed under*** the Extractive Industries

*Amendment*

(7) In order to provide for enhanced transparency of ***financial activities in third countries, in particular*** payments made to governments, issuers whose securities are admitted to trading on a regulated market should disclose ***as part of the annual report of financial statements***, payments made to governments in the countries in which they operate ***on a per-country basis***. The ***disclosure of such data is intended to enable investors to make better-informed decisions, thereby improving corporate***

Transparency Initiative (EITI) *and* provide civil society with information *to hold* governments of resource-rich countries to account for their receipts from the exploitation of natural resources. The initiative is also complementary to the EU FLEGT Action Plan (Forest Law Enforcement, Governance and Trade) and the Timber Regulation which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering into the *EU* market. The detailed requirements are defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council.

*governance and accountability and contributing to the containment of tax evasion. The report should incorporate disclosures on a country basis. For issuers active in the extractive industry or the logging of primary forests, the report should also specify the specific project or projects to which those payments have been attributed, building on the disclosure requirements of the Extractive Industries Transparency Initiative (EITI) to provide civil society with information whereby governments of resource-rich countries can be held* to account for their receipts from the exploitation of natural resources. The initiative is also complementary to the EU FLEGT Action Plan (Forest Law Enforcement, Governance and Trade) and the Timber Regulation which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering into the *Union* market. The detailed requirements are defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council.

## Amendment 2

### Proposal for a directive Recital 7 a (new)

*Text proposed by the Commission*

*Amendment*

*(7a) 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 that link would help to reduce the incidence and intensity of conflicts. One solution could be to oblige European Union issuers 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 recommendations of the Organisation for Economic Co-operation and Development 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 be further investigated in the Union context.*

### Amendment 3

#### Proposal for a directive

##### Article 1 – point 5

Directive 2004/109/EC

Article 6

*Text proposed by the Commission*

Article 6

Report on payments to governments

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

### Amendment 4

#### Proposal for a directive

##### Article 1 – point 5 a (new)

Directive 2004/109/EC

Article 6 a (new)

*Amendment*

Article 6

Report on payments to governments

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

**(5a) The following Article 6a is inserted:**

**'Article 6a**

**Principles for reporting on payments to governments**

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

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

**(b) materiality: payments shall be considered material if any one payment or set of payments of the same type amounts to more than EUR 15 000;**

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

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

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

**(f) comparability: the reporting on all payments to governments shall be such as**

*to enable data in respect of different countries to be compared easily.'.*



## PROCEDURE

|                                                                   |                                                                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Title</b>                                                      | Amendment of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC                                                |
| <b>References</b>                                                 | COM(2011)0683 – C7-0380/2011 – 2011/0307(COD)                                                                                                                                                                                                                                   |
| <b>Committee responsible</b><br>Date announced in plenary         | JURI<br>15.11.2011                                                                                                                                                                                                                                                              |
| <b>Opinion by</b><br>Date announced in plenary                    | DEVE<br>1.12.2011                                                                                                                                                                                                                                                               |
| <b>Rapporteur</b><br>Date appointed                               | Fiona Hall<br>14.2.2012                                                                                                                                                                                                                                                         |
| <b>Discussed in committee</b>                                     | 14.5.2012                                                                                                                                                                                                                                                                       |
| <b>Date adopted</b>                                               | 4.6.2012                                                                                                                                                                                                                                                                        |
| <b>Result of final vote</b>                                       | +: 24<br>–: 0<br>0: 1                                                                                                                                                                                                                                                           |
| <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                                                                                                                                                                                                                                                                   |

21.6.2012

## **OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE**

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC (COM(2011)0683 – C7-0380/2011 – 2011/0307(COD))

Rapporteur: Helmut Scholz

### **SHORT JUSTIFICATION**

This proposal for a review of the transparency directive (COM(683)2011) has a general purpose: "to ensure a high level of investor confidence through equivalent transparency for securities issuers and investors throughout the European Union".

The rapporteur wishes to express its support for one major aspect of this legislative proposal, the introduction of the principle of additional requirements regarding the payments made by the EU extractive industries and logging industry companies to governments, including in third countries, when they issue securities on the EU trading markets. However, the rapporteur does not want to limit the new requirement to these two sectors, as this information is of high relevance for investors across all sectors.

Already, at the EU level, recital 14 of the Transparency Directive (2004/109/EC) recommended Member States to encourage listed companies whose principal activities lie in the extractive industry to disclose payments to governments in their annual financial reports. But, currently, this directive does not make it a mandatory requirement. Therefore such payments made to governments in a specific country are normally not disclosed. But these figures are a pre-requisite for any successful approach regarding good governance in taxes, as well as for the ability of investors and civil society to hold company boards and governments accountable.

The "publish what you pay" is a principle which is indispensable to foster transparency and corporate social responsibility, to make governments accountable for the use of their resources and to improve good governance in taxes in third countries and to help the development of these countries. The rapporteur for the Committee on International Trade wishes that EU investors take the lead regarding transparency and corporate social

responsibility when operating in other countries. Transparency regarding payments to governments will contribute to a better management of the revenues generated by the exploitation of these countries' resources, thanks to public scrutiny. Without public scrutiny, governance can easily turn loose and such resource revenues may result in poverty, corruption and conflict. Such payments can also seriously interfere with the principles of rules based trade to the disadvantage of fair playing companies, in particular those listed in the US as well.

The industry itself has recognized, through the EITI (Extractive Industries Transparency Initiative), that improving transparency and accountability contributes to good governance and fair competition. The EITI is a global host-country driven project that promotes revenue transparency, at the country level. 35 countries are already well underway in implementing the EITI and 60 of the largest oil, gas and mining companies are committed to supporting the EITI. This initiative has also won the support of over 80 global investment institutions that collectively manage over US \$16 trillion. A number of governments, including the European Commission and international organisations also support the EITI. The US is about to join the initiative.

There is currently no governmental action in response to the EITI in the EU. The EC's proposal is, according to its explanatory statement, "comparable to the US Dodd-Frank Act", adopted in July 2010 in the United States. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (in its bipartisan Section 1504, also known as the Cardin-Lugar provision) directed the US Securities and Exchange Commission (SEC) to adopt rules for the extractive industry companies (involved in oil, gas and minerals) registered with the SEC to publicly report payments to governments. Unfortunately, the final stage of setting up these rules has not been concluded yet. A similar pledge was made in the concluding Declaration of the G8 Summit in Deauville of May 2011. But this has not yet materialised in the domestic laws of the G8 countries.

By taking a leading stance on that issue, the European Union will encourage our main partners in the G8 and elsewhere to follow and to adopt similar measures. It would give EU companies a huge image advantage when operating abroad. As of June 2010, Hong Kong has already enforced new reporting regulations establishing country-by-country reporting for petroleum and mineral companies listed with the Hong Kong Stock Exchange.

In this debate, the European Parliament, in various resolutions, has shown decisiveness in supporting mandatory reporting requirements for the extractive sectors. Such an enhanced disclosure of requirements is, moreover, complementary to expanding EITI in fighting corruption without impacting on EU relations with third countries, including in trade and investments related to the extractive industries. The initiative is also complementary to the European Union's FLEGT action plan to combat illegal logging of primary forests.

In this opinion, the changes proposed by the rapporteur aim therefore at increasing the disclosure requirements, compared to the proposal by the Commission. Whereas the current proposal gives 6 months after the end of each financial year to issuers to disclose such payments, the US gives 2 to 3 months to US issuers and 4 months to non-US issuers. This should be aligned.

## AMENDMENTS

The Committee on International Trade calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments into its report:

### Amendment 1

#### Proposal for a directive

#### Recital 7

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

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

##### *Amendment*

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

##### *Justification*

*In order to be effective, requirements for payments reporting must include payments made to authorities on the local or regional level. Reporting shall satisfy investors' demands regarding accountability. They shall also supply the figures needed to support good governance in the tax area and for the prevention of tax evasion. They shall also support civil*

*society in holding their respective government accountable. The new obligation would be of high value for investors across all sectors and should hence not be limited to extractive industries and logging companies.*

## **Amendment 2**

### **Proposal for a directive Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***(7a) For issuers active in the extractive industry, in agriculture, in fisheries, in large-scale energy production, in the construction sector or in logging of primary forest industries, the report on payments to governments and local and regional public authorities should include information, more detailed in nature than that normally provided in relation to undertakings active in other sectors of the economy, on a project-by-project basis provided the total annual payments related to a project exceeds the materiality threshold as defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council<sup>1</sup>. Such reports should include certain contextual information as well as types of payments comparable to those disclosed under the Extractive Industries Transparency Initiative (EITI), and provide investors and civil society with information enabling them to hold company boards and governments to account for expenditures and receipts related to the exploitation of natural resources, including land and fish stocks, and for contracts and concessions awarded. The initiative is also complementary to the Union FLEGT Action Plan (Forest Law Enforcement, Governance and Trade)<sup>2</sup> and the Timber Regulation<sup>3</sup>, which require traders in timber products to exercise due diligence in order to prevent illegal wood from entering the Union market.***

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<sup>1</sup> *Not yet published in the Official Journal; proposal for a directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related report of certain types of undertakings (COM(2011)684 final)*

<sup>2</sup> *As established by Council Regulation (EC) No 2173/2005 of 20 December 2005 (OJ L 347, 30.12.2005 p. 1).*

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

#### *Justification*

*In order to be effective, requirements for payments reporting must include payments made to authorities on the local or regional level. Reporting shall satisfy investors' demands regarding accountability. They shall also supply the figures needed to support good governance in the tax area and for the prevention of tax evasion and support civil society in holding their respective governments accountable. While the Commission proposal addresses the specific sectors of extractive industry and logging as the sectors historically involving the most controversial projects, the scope has been updated to include current day problems such as land grabbing in the agriculture sector and payments related to fisheries, to large scale energy production projects and to contracts in the construction sector.*

### **Amendment 3**

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

#### **Article 1 – point 5**

Directive 2004/109/EC

Article 6

#### *Text proposed by the Commission*

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

#### *Amendment*

Member States shall require issuers to prepare, in accordance with Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council, a report on

Directive 2011/.../EU of the European Parliament and of the Council, a report on payments made to governments on an annual basis. The report shall be made public at the latest *six* months after the end of each financial year and shall remain publicly available for at least *five* years. Payments to governments shall be reported at consolidated level.

payments made to governments *and local and regional public authorities* on an annual basis. The report shall be made public at the latest *four* months after the end of each financial year and shall remain publicly available for at least *ten* years. Payments to governments shall be reported at consolidated level.

#### *Justification*

*The obligation to publish payments made to governments and related additional information should not be limited to the extractive and logging industries, as this information is relevant for investors in any sector. Reporting should include also payments below the central government level. The report should be made public at the latest four months after the end of each financial year, in line with the respective US legislation. Information should remain available for the usual duration of ten years.*

#### **Amendment 4**

##### **Proposal for a directive Article 2 a (new)**

*Text proposed by the Commission*

*Amendment*

##### *Article 2 a*

##### *Review*

*The Commission [2 years after the date of entry into force of this Directive] shall assess the implementation and effectiveness of this Directive and report to the European Parliament and the Council, particularly with regard to the following points:*

- the implementation of the system of disclosing payments to governments;*
- the possibility of extending these provisions to all issuers whose securities are admitted to trading, regardless of their sector of activity;*
- the imposition of penalties.*

*The report shall be accompanied, where*

*appropriate, by a legislative proposal.*



## PROCEDURE

|                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                    |           |
|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>Title</b>                                                      | Amendment of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC                                                                                                                                                                                                   |           |
| <b>References</b>                                                 | COM(2011)0683 – C7-0380/2011 – 2011/0307(COD)                                                                                                                                                                                                                                                                                                                                                                                      |           |
| <b>Committee responsible</b><br>Date announced in plenary         | JURI<br>15.11.2011                                                                                                                                                                                                                                                                                                                                                                                                                 |           |
| <b>Opinion by</b><br>Date announced in plenary                    | INTA<br>15.12.2011                                                                                                                                                                                                                                                                                                                                                                                                                 |           |
| <b>Rapporteur</b><br>Date appointed                               | Helmut Scholz<br>25.1.2012                                                                                                                                                                                                                                                                                                                                                                                                         |           |
| <b>Discussed in committee</b>                                     | 26.3.2012                                                                                                                                                                                                                                                                                                                                                                                                                          | 29.5.2012 |
| <b>Date adopted</b>                                               | 21.6.2012                                                                                                                                                                                                                                                                                                                                                                                                                          |           |
| <b>Result of final vote</b>                                       | +: 26                                                                                                                                                                                                                                                                                                                                                                                                                              | –: 2      |
|                                                                   | 0: 1                                                                                                                                                                                                                                                                                                                                                                                                                               |           |
| <b>Members present for the final vote</b>                         | William (The Earl of) Dartmouth, Laima Liucija Andrikienė, John Attard-Montalto, Maria Badia i Cutchet, Daniel Caspary, María Auxiliadora Correa Zamora, Marielle de Sarnez, Yannick Jadot, Metin Kazak, Franziska Keller, Bernd Lange, David Martin, Paul Murphy, Cristiana Muscardini, Franck Proust, Godelieve Quisthoudt-Rowohl, Niccolò Rinaldi, Helmut Scholz, Peter Št'astný, Gianluca Susta, Iuliu Winkler, Paweł Zalewski |           |
| <b>Substitute(s) present for the final vote</b>                   | Amelia Andersdotter, George Sabin Cutaș, Syed Kamall, Elisabeth Köstinger, Marietje Schaake, Konrad Szymański                                                                                                                                                                                                                                                                                                                      |           |
| <b>Substitute(s) under Rule 187(2) present for the final vote</b> | Françoise Castex, Marielle Gallo, Lidia Joanna Geringer de Oedenberg                                                                                                                                                                                                                                                                                                                                                               |           |

## PROCEDURE

|                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                      |                   |                    |                    |
|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|--------------------|--------------------|
| <b>Title</b>                                                          | Amendment of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC                                                                                                                                                                                                     |                   |                    |                    |
| <b>References</b>                                                     | COM(2011)0683 – C7-0380/2011 – 2011/0307(COD)                                                                                                                                                                                                                                                                                                                                                                                        |                   |                    |                    |
| <b>Date submitted to Parliament</b>                                   | 25.10.2011                                                                                                                                                                                                                                                                                                                                                                                                                           |                   |                    |                    |
| <b>Committee responsible</b><br>Date announced in plenary             | JURI<br>15.11.2011                                                                                                                                                                                                                                                                                                                                                                                                                   |                   |                    |                    |
| <b>Committee(s) asked for opinion(s)</b><br>Date announced in plenary | AFET<br>15.11.2011                                                                                                                                                                                                                                                                                                                                                                                                                   | DEVE<br>1.12.2011 | INTA<br>15.12.2011 | ECON<br>15.11.2011 |
|                                                                       | EMPL<br>15.11.2011                                                                                                                                                                                                                                                                                                                                                                                                                   |                   |                    |                    |
| <b>Not delivering opinions</b><br>Date of decision                    | EMPL<br>15.12.2011                                                                                                                                                                                                                                                                                                                                                                                                                   |                   |                    |                    |
| <b>Associated committee(s)</b><br>Date announced in plenary           | ECON<br>24.5.2012                                                                                                                                                                                                                                                                                                                                                                                                                    |                   |                    |                    |
| <b>Rapporteur(s)</b><br>Date appointed                                | Arlene<br>McCarthy<br>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>                                           | +:<br>–:<br>0:                                                                                                                                                                                                                                                                                                                                                                                                                       | 24<br>0<br>1      |                    |                    |
| <b>Members present for the final vote</b>                             | Raffaele 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, 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>                                                    | 27.9.2012                                                                                                                                                                                                                                                                                                                                                                                                                            |                   |                    |                    |