



EUROPEAN PARLIAMENT

2009 - 2014

Committee on International Trade

2011/0307(COD)

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

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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 in its report:

Amendment 1

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) In order to provide for enhanced transparency of payments made to governments, issuers whose securities are admitted to trading on a regulated market ***and which have activities in the extractive or logging of primary forest industries***

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***

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.

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 Council¹. 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)² and the Timber Regulation³, which require traders in timber products to exercise due diligence in order to prevent illegal wood from entering the Union market.

¹ *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)*

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

³ *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23). Companies that*

import wood products under EU voluntary agreements will be exempt from this requirement.

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

Amendment

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

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

Title	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	
References	COM(2011)0683 – C7-0380/2011 – 2011/0307(COD)	
Committee responsible Date announced in plenary	JURI 15.11.2011	
Opinion by Date announced in plenary	INTA 15.12.2011	
Rapporteur Date appointed	Helmut Scholz 25.1.2012	
Discussed in committee	26.3.2012	29.5.2012
Date adopted	21.6.2012	
Result of final vote	+: 26	–: 2
	0: 1	
Members present for the final vote	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 Šťastný, Gianluca Susta, Iuliu Winkler, Paweł Zalewski	
Substitute(s) present for the final vote	Amelia Andersdotter, George Sabin Cutaș, Syed Kamall, Elisabeth Köstinger, Marietje Schaake, Konrad Szymański	
Substitute(s) under Rule 187(2) present for the final vote	Françoise Castex, Marielle Gallo, Lidia Joanna Geringer de Oedenberg	