

Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (Text with EEA relevance)

## CHAPTER 10

### REPORT ON PAYMENTS TO GOVERNMENTS

#### *Article 41*

#### **Definitions relating to reporting on payments to governments**

For the purpose of this Chapter, the following definitions shall apply:

- (1) ‘undertaking active in the extractive industry’ means an undertaking with any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the economic activities listed in Section B, Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2<sup>(1)</sup>;
- (2) ‘undertaking active in the logging of primary forests’ means an undertaking with activities as referred to in Section A, Division 02, Group 02.2 of Annex I to Regulation (EC) No 1893/2006, in primary forests;
- (3) ‘government’ means any national, regional or local authority of a Member State or of a third country. It includes a department, agency or undertaking controlled by that authority as laid down in Article 22(1) to (6) of this Directive;
- (4) ‘project’ means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. None the less, if multiple such agreements are substantially interconnected, this shall be considered a project;
- (5) ‘payment’ means an amount paid, whether in money or in kind, for activities, as described in points 1 and 2, of the following types:
  - (a) production entitlements;
  - (b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;
  - (c) royalties;
  - (d) dividends;
  - (e) signature, discovery and production bonuses;
  - (f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and

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- (g) payments for infrastructure improvements.

#### Article 42

### Undertakings required to report on payments to governments

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

2 That obligation shall not apply to any undertaking governed by the law of a Member State which is a subsidiary or parent undertaking, where both of the following conditions are fulfilled:

- a the parent undertaking is subject to the laws of a Member State; and
- b the payments to governments made by the undertaking are included in the consolidated report on payments to governments drawn up by that parent undertaking in accordance with Article 44.

#### Article 43

### Content of the report

1 Any payment, whether made as a single payment or as a series of related payments, need not be taken into account in the report if it is below EUR 100 000 within a financial year.

2 The report shall disclose the following information in relation to activities as described in points (1) and (2) of Article 41 in respect of the relevant financial year:

- a the total amount of payments made to each government;
- b the total amount per type of payment as specified in points (5)(a) to (g) of Article 41 made to each government;
- c where those payments have been attributed to a specific project, the total amount per type of payment as specified in point (5)(a) to (g) of Article 41, made for each such project and the total amount of payments for each such project.

Payments made by the undertaking in respect of obligations imposed at entity level may be disclosed at the entity level rather than at project level.

3 Where payments in kind are made to a government, they shall be reported in value and, where applicable, in volume. Supporting notes shall be provided to explain how their value has been determined.

4 The disclosure of the payments referred to in this Article shall reflect the substance, rather than the form, of the payment or activity concerned. Payments and activities may not be artificially split or aggregated to avoid the application of this Directive.

5 In the case of those Member States which have not adopted the euro, the euro threshold identified in paragraph 1 shall be converted into national currency by:

- a applying the exchange rate published in the *Official Journal of the European Union* as at the date of the entry into force of any Directive fixing that threshold, and
- b rounding to the nearest hundred.

## Article 44

### Consolidated report on payments to governments

1 A Member State shall require any large undertaking or any public-interest entity active in the extractive industry or the logging of primary forests and governed by its national law to draw up a consolidated report on payments to governments in accordance with Articles 42 and 43 if that parent undertaking is under the obligation to prepare consolidated financial statements as laid down in Article 22(1) to (6).

A parent undertaking is considered to be active in the extractive industry or the logging of primary forests if any of its subsidiary undertakings are active in the extractive industry or the logging of primary forests.

The consolidated report shall only include payments resulting from extractive operations and/or operations relating to the logging of primary forests.

2 The obligation to draw up the consolidated report referred to in paragraph 1 shall not apply to:

- a a parent undertaking of a small group, as defined in Article 3(5), except where any affiliated undertaking is a public-interest entity;
- b a parent undertaking of a medium-sized group, as defined in Article 3(6), except where any affiliated undertaking is a public-interest entity; and
- c a parent undertaking governed by the law of a Member State which is also a subsidiary undertaking, if its own parent undertaking is governed by the law of a Member State.

3 An undertaking, including a public-interest entity, need not be included in a consolidated report on payments to governments where at least one of the following conditions is fulfilled:

- a severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking;
- b extremely rare cases where the information necessary for the preparation of the consolidated report on payments to governments in accordance with this Directive cannot be obtained without disproportionate expense or undue delay;
- c the shares of that undertaking are held exclusively with a view to their subsequent resale.

The above exemptions shall apply only if they are also used for the purposes of the consolidated financial statements.

## Article 45

### Publication

1 The report referred to in Article 42 and the consolidated report referred to in Article 44 on payments to governments shall be published as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC.

2 Member States shall ensure that the members of the responsible bodies of an undertaking, acting within the competences assigned to them by national law, have responsibility for ensuring that, to the best of their knowledge and ability, the report on payments to governments is drawn up and published in accordance with the requirements of this Directive.

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## Article 46

### Equivalence criteria

1 Undertakings referred to in Articles 42 and 44 that prepare and make public a report complying with third-country reporting requirements assessed, in accordance with Article 47, as equivalent to the requirements of this Chapter are exempt from the requirements of this Chapter except for the obligation to publish this report as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC.

2 The Commission shall be empowered to adopt delegated acts in accordance with Article 49 identifying the criteria to be applied when assessing, for the purposes of paragraph 1 of this Article, the equivalence of third-country reporting requirements and the requirements of this Chapter.

3 The criteria identified by the Commission in accordance with paragraph 2 shall:

- a include the following:
  - (i) target undertakings,
  - (ii) target recipients of payments,
  - (iii) payments captured,
  - (iv) attribution of payments captured,
  - (v) breakdown of payments captured,
  - (vi) triggers for reporting on a consolidated basis,
  - (vii) reporting medium,
  - (viii) frequency of reporting, and
  - (ix) anti-evasion measures;
- b otherwise be limited to criteria which facilitate a direct comparison of third-country reporting requirements with the requirements of this Chapter.

## Article 47

### Application of equivalence criteria

The Commission shall be empowered to adopt implementing acts identifying those third-country reporting requirements which, after applying the equivalence criteria identified in accordance with Article 46, it considers equivalent to the requirements of this Chapter. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 50(2).

## Article 48

### Review

The Commission shall review and report on the implementation and effectiveness of this Chapter, in particular as regards the scope of, and compliance with, the reporting obligations and the modalities of the reporting on a project basis.

The review shall take into account international developments, in particular with regard to enhancing transparency of payments to governments, assess the impacts of other international regimes and consider the effects on competitiveness and security of energy supply. It shall be completed by 21 July 2018.

The report shall be submitted to the European Parliament and to the Council, together with a legislative proposal, if appropriate. That report shall consider the extension of the reporting requirements to additional industry sectors and whether the report on payments to governments should be audited. The report shall also consider the disclosure of additional information on the average number of employees, the use of subcontractors and any pecuniary penalties administered by a country.

[<sup>F1</sup>The report shall also consider, taking into account developments in the OECD and the results of related European initiatives, the possibility of introducing an obligation requiring large undertakings to produce on an annual basis a country-by-country report for each Member State and third country in which they operate, containing information on, as a minimum, profits made, taxes paid on profits and public subsidies received.]

In addition, the report shall analyse the feasibility of the introduction of an obligation for all Union issuers to carry out due diligence when sourcing minerals to ensure that supply chains have no connection to conflict parties and respect the EITI and OECD recommendations on responsible supply chain management.

#### Textual Amendments

- F1** Inserted by [Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups \(Text with EEA relevance\)](#).

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- (1) [OJ L 393, 30.12.2006, p. 1.](#)