

## EU Considers Extending Disclosure Obligations for Government Payments

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On 18 September 2012, the European Parliament approved a package of proposals that impose on loggers of primary forests, and large companies that extract oil, gas and minerals, a new obligation to provide full details on their payments to national governments. This proposal is similar to rules adopted by the **US Securities and Exchange Commission (SEC)** in August 2012 ([See SEC Shines light on Resource Extractor Payments](#)) but goes even further. The Parliament is seeking to extend the reporting obligation to additional sectors, including the telecommunications, construction and financial sectors. The reform is not yet final as the Parliament must now enter into negotiations with the European Council in order to adopt an agreed regulation that is expected to be implemented in early 2013.

### Background

It is useful to review the EU legislative process under the co-decision procedure in order to understand the next stage of this legislation. Proposed legislation is submitted originally by the European Commission but must be approved by the European Parliament and the European Council, which is comprised of all 27 EU Member State governments. . The Commission's proposed rules form an initial basis for discussion and negotiation. Based on these negotiations (in which the Commission also participates), the Council and Parliament will form their own proposals but must agree on the final text.

In this context, on 27 October 2011, the Commission submitted to the Council and the Parliament a proposal for a general reform of the Accounting and Transparency Directives (Directive 2003/38/EC of 13 May 2003 amending and Directive 2004/109/EC of 15 December 2004). The Commission proposed initially, among other things, to improve transparency regarding payments to governments by the extractive sector, through measures aimed at the extractive industry and loggers of primary forest.

The Commission's initial proposal was debated and negotiated in the Parliament and the Council. This led to the Council, on 21 June 2012, adopting a proposal reflecting its position on the disclosure of payments in the extractive industry. This was broadly similar to the approach set out in the Commission's proposal.

On 18 September 2012, the European Parliament adopted a proposal. The Parliament's proposal reaches further than those of the Commission or Council. This proposal followed—and arguably was inspired by—the SEC issuance on 22 August 2012 of final rules on Section 1504 of the **Dodd-Frank Act**. The SEC rules require resource extraction entities to disclose publicly payments made to the US and foreign governments that equal or exceed US\$100,000 per fiscal year.

Because the Parliament's proposal goes much further than the Commission or Council envisaged, it creates a real probability that companies in the relevant sectors may be subject in the European Union to more intensive reporting requirements, similar to those they face in the United States under the new SEC rules.

### The Parliament's Proposal



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## **Lower threshold**

The Parliament's proposal would require each payment exceeding €80,000 to be made public, aligning the proposal with the SEC rules. The Parliament's proposal sets a much lower threshold than the other EU institutions' proposals: the Council proposed a threshold of €500,000 per year.

## **Disclosure exemptions, extensions to other sectors and conditions**

The Commission's and the Council's proposals exclude reporting payments to a government where the relevant national criminal law prohibits such reporting. In contrast, the Parliament provides for no exemptions from the prohibition disclosure. In other words, the Parliament's proposal requires companies to act contrary to the laws of a host country with reporting restrictions. If enacted, it is likely there will be tension between EU law and local law.

The Parliament's proposal expands the disclosure obligation to additional sectors. The scope of the Commission's and the Council's proposals are essentially aligned with the SEC rules, as they cover entities active in the extractive industries or the logging of primary forests. In contrast, the Parliament has taken a harder line, widening the scope of the disclosure obligation to the construction, telecommunication and financial sectors.

Contrary to the Council's proposal, which recommended that resource extraction issuers be required to disclose payments to governments aggregated on a country level, the Parliament has proposed a measure similar to the SEC rules, which require the disclosure to be made on a country-by-country and project-by-project basis. It follows that this would lead to more extensive reporting requirements. This element may have political support, as a similar measure was included in the Commission's proposal, which suggests that it may have a prominent role in the final version.

Because the proposed legislation is a Directive, the practical details of implementing the actions proposed will be determined by the EU Member States. According to the Parliament, however, the new rules would entail stricter sanctions for companies that fail to respect the new information requirements. In other words, the Member States will be instructed to impose on companies that fail to report sanctions that are harsher than those proposed initially by the Commission and the Council.

## **Next Stage**

Under the co-decision procedure, the Council and the Parliament have to reach an agreement, as neither is able to adopt legislation without the other's assent. Negotiations are expected to begin very soon to cover the draft legislation, and final legislation is expected to be adopted in early 2013.

Regardless of the final outcome of these negotiations, it is clear that firms active in the extractive and logging industries will face enhanced reporting requirements in the near term, and these are likely to be similar to the rules implemented in the United States.

International companies active in these sectors are therefore well-advised to coordinate their reporting procedures with their anti-bribery and anti-corruption strategies on both sides of the Atlantic.

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