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## REPORTING REQUIREMENTS FOR EXTRACTIVE AND FORESTRY SECTORS

### EUROPEAN INDUSTRY CONCERNS

#### Introduction

BUSINESSEUROPE recognises and supports European Union efforts to increase transparency in the raw materials sector. This will promote good governance practices – especially in taxation, help reduce fraud and corruption, as well as contribute to better governance and democratisation. Nevertheless, transparency requirements should not lead to competitive and commercial disadvantages for the European extractive and forestry sectors and, consequently, for the EU as a whole, as these measures could result in shortages or disruptions of supplies in the EU.

The Extractive Industries Transparency Initiative (EITI)<sup>1</sup> presents an excellent base for achieving enhanced revenue transparency in the raw materials sector. In its “Tackling the challenges in commodity markets and on raw materials” Communication of February 2011 the European Commission states that it will enhance European financial and political support for EITI as well as consider the adoption of country-by-country reporting requirements.

In contrast to the European Commission Communication, the reporting requirements put forward in the proposals to reform the Transparency and Accounting Directives go much further, notably by introducing project-by-project requirements. This will weaken the competitive position of European extractive and forestry industries and create multiple reporting requirements under equivalent disclosure regimes (EU, US, EITI). Moreover, the draft rules for the extractive and forestry sectors are likely to set a precedent for disclosure requirements in other sectors of the EU economy.

BUSINESSEUROPE is concerned about the ramifications of these requirements on the security of supply of raw materials and energy to the EU market. Indeed, the draft amendments tabled by the Economic and Monetary Affairs Committee (ECON) propose the immediate extension of the disclosure requirements to *all* sectors of the economy. In this context, it is important that the wider business perspective is taken into consideration. The significant risk of locking-in an untested approach to corporate disclosure under the revised Transparency and Accountancy Directives should be avoided.

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<sup>1</sup> The EITI provides a platform for companies, host governments, investors and civil society organisations to work together to improve transparency, with host governments taking the lead role. None of the EU Member States have joined the EITI.



### **On reporting requirements**

From an industry perspective, country level reporting leads to a robust, workable and consistent disclosure regime. It is clear that such an approach would meet the primary objective of the draft legislation – holding governments accountable for the revenues they receive from resources. Therefore, BUSINESSEUROPE calls for a cost-benefit analysis of the legislation to be conducted in order to examine the effectiveness of project-by-project reporting.

Two issues should be underscored:

- Competitiveness: There is a real risk that project disclosures could compromise the commercial competitiveness of EU firms. A number of major international companies in the targeted sectors would fall outside the scope of any EU (or US) transparency legislation. These firms could use project-level data acquired over two to three years to build up a picture of the royalties/licence fees paid by competitors for particular contracts. This data could then be used to gain a significant competitive advantage in future tenders/negotiations with host governments, at the expense of EU firms. The competitive risks, related to disclosures, will be amplified should the rules be extended to all industry.
- Uneven focus: Project-by-project reporting might result in a situation where the bulk of the data collected – and the effort involved in collecting such data – focused on OECD countries, where in general there is a greater multiplicity of contracts than in developing countries. This seems to create a disproportionate administrative burden and one which is not properly aligned with the policy aims of the legislation.

Another area of particular concern is the proposal to rely on delegated acts for the determination of materiality thresholds. The use of delegated acts raises particular issues regarding the certainty, clarity and complexity EU legislation. Therefore, it should be in the EUs interest to avoid the use of delegated acts where it is possible to provide clear rules by way of secondary legislation. Moreover, given the objective of establishing an international standard (as well as the precedential value of the legislation), it is important that any threshold is based on the thresholds adopted by companies in other audited external reporting. This would appear to point to an appropriate threshold of US\$1m (€765,000 approx.).

### **Securing energy supply**

Given that the legal framework of many host countries prohibit the disclosure of data related to extractive activities, project-by-project reporting requirements is not in conformity with the principle of full compliance with the laws of the country in which industries operate.



If efficient exemptions to this rule are not properly introduced and applied, apart from competitiveness issues that may arise (as described above), the supply of energy in the EU could be seriously affected. As both industrial and non-industrial consumers significantly depend on energy imports, of oil and natural gas especially, disruptions in energy supply could create a series of problems. This is particularly disconcerting at a time when electricity producers need to import more fossil fuels to offset the decision by the German government to phase out nuclear electricity production.

### **Concluding remarks**

BUSINESSEUROPE reiterates its support towards more transparent disclosures of extractive industries. The framework, however, in which these practices take place, should ensure and maintain the competitiveness of European businesses, while avoiding red tape and unjustified costs.

BUSINESSEUROPE is also concerned on the ramifications that an extension of these reporting practices to other sectors will have, and calls on the European Parliament to reconsider such proposals and focus the debate on extractive industries, as proposed by the European Commission.

A more global and balanced approach should be adopted towards reporting requirements, in order to also avoid unintended consequences, such as endangering energy supply of the EU.

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