



22 May 2012

### **Accounting Directive Transparency Directive**

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE ANNUAL FINANCIAL STATEMENTS, CONSOLIDATED FINANCIAL STATEMENTS AND RELATED REPORTS OF CERTAIN TYPES OF UNDERTAKINGS [COM(2011) 684 final / 2011/0308 (COD)]

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 / 2011/0307(COD)]

#### *Country-by-Country reporting*

In summary, BUSINESSEUROPE advocates:

- revenue transparency reporting based on the Extractive Industries Transparency Initiative (EITI) framework. (We would encourage countries to join the EITI and note that none of the member states has yet done so.) The Directives should therefore require reporting at a country level and for extractive activities only;
- a common global format (or mutual recognition arrangements based on the EITI framework where an entity has to comply with different jurisdictional requirements, including from countries that have already implemented EITI);
- a separate reporting process, i.e. country-by-country reporting (CBCR) should not form part of the financial statements;
- an evaluation of the impact after 3 years to assess evidence about the use of the data, the costs and other effects. It is very important that stakeholders are informed as early as is practicable as to how the data has been used, whether or not the benefit outweighs the direct and indirect costs for companies, what other effects there have been and whether, as a result of the review, changes should be considered.

BUSINESSEUROPE fully supports the European Commission, the Council and the European Parliament in their efforts to improve accountability in resource-rich countries. Corruption is an obstacle to economic growth and therefore combating corruption is in the interests of both the local population and companies active in these countries.

BUSINESSEUROPE reiterates its support for revenue transparency as this has a role to play in improving accountability, but any requirements in this area should be targeted and smart. We believe that the various proposals currently under consideration by the Parliament and the Council extend beyond what is required to meet the objective set by the Commission, and indeed has the potential to reduce their effectiveness. For example, a level below country is proving very difficult to define in a way that can be meaningfully applied consistently across companies and countries, and in many



countries payments to governments are not determined at project level; the outcome would therefore be misleading.

The framework for disclosure should maintain the competitiveness of European business. It is extremely important, particularly in the current economic environment, that European companies are not at a competitive disadvantage, putting the growth and jobs at risk. We note that the EU disclosure obligations will not apply to companies based outside the EU, leading to an incomplete picture of government revenues and possible competitive advantages for companies from third countries. Several aspects of the proposed reporting requirements are unnecessarily cumbersome and ineffective, and the complexity will be increased for companies that may be subject to differing reporting requirements under future US legislation or existing EITI commitments.

A more global and balanced approach should be adopted towards reporting requirements, which would also avoid unintended consequences such as endangering the EU's energy supply.

The Commission's objective is to increase the transparency of payments made to governments by the extractive industry and make governments accountable for the use of these resources and promote good governance. BUSINESSEUROPE believes that reaching this objective should not be risked by extending the proposals beyond country level reporting which would provide a robust, workable and consistent disclosure regime meeting the need to hold governments accountable.

Extending the proposals would also lead to competitive and commercial disadvantages for European companies; the level of detailed information that would be required under the proposals (beyond payments to governments) could be commercially sensitive and there is a real risk that project-level disclosures could compromise the competitiveness of EU companies. A number of major companies would fall outside the scope of any EU (and/or US) transparency legislation and could use project-level data to determine the arrangements of competitors for specific 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 companies. The competitive risks will be amplified should the requirements be extended beyond the extractives sector.

OECD Guidelines for Multinational Enterprises clearly state how respect for local law should come first. The EU proposals do not include an exemption from disclosure in respect of countries where to do so would conflict with civil law. Apart from competitiveness issues that may arise from lack of market access, the supply of energy in the EU could be seriously affected as both industrial and non-industrial consumers significantly depend on imported oil and natural gas.

There would be an additional administrative burden in terms of changes to reporting systems and other consequential costs at a time when there is an urgent need to reduce such burdens. In this respect, it is important that an appropriate level of materiality is set in numerical terms (one million euros or dollars) for reporting purposes, rather than ask companies to judge materiality in relation to each country, and for this to be specified in the Directives rather than in a delegated act. Incorporating the information within the annual financial statements of companies would also increase the cost and risk delay to publication of the annual report to shareholders, which in itself would also be a competitive disadvantage.



In the appendix to this letter we set out (in the form of amendments to the Danish Presidency compromise proposal of 2 March 2012) requirements that we believe will meet the objective whilst mitigating the risks and concerns outlined above, together with more detailed comments where these are not included above. We urge the Parliament and the Council to focus their proposals on requiring a separate report on a country-by-country basis of payments to governments comparable to those disclosed by companies participating in the EITI. This should not be extended to (a) reporting below country level, (b) additional information such as net turnover, cost of sales, profit or loss, and (c) outside extractive activities (and therefore reporting would be required only in respect of their extractive activities for those companies which have both extractive and other activities).

#### *IFRS for SMEs*

One of the important aspects of the review of the accounting directives was to ensure a basis that both caters for international companies as well as companies with a more European focus. For BUSINESSEUROPE it is important that the Member States have flexible tools available to best cater for their companies.

In order to achieve this, BUSINESSEUROPE proposes to allow, as a Member State option, the use of IFRS for SMEs through an amendment of the IAS Regulation, in which an European endorsement process should be provided for. Companies that apply this option would at that time refer to IFRS for SMEs as endorsed by the EU.

With this solution we build on a well-known system already in place and at the same time ensure that businesses and Member States that find the IFRS for SMEs to be too cumbersome are not forced to use it. On the other hand, with the IFRS for SMEs there will be a common standard available in those Member States that opt for it.

When a Member State chooses to allow the IFRS for SME, then the standard should be available for all non-listed entities in that Member State, regardless of their size.

In the appendix we have suggested amendments to the proposal made by the Commission as well as the needed amendments to the IAS regulation.

#### *The General Accounting Regulation of European Undertakings*

As regards the Accounting Directive proposals BUSINESSEUROPE very much supports the goal to increase the proper functioning of the European internal market by simplifying the existing Directives in order to improve comparability of financial statements and to reduce administrative burden for companies, particularly for SMEs. However, the various proposals give rise to serious concerns as to whether these objectives will be achieved.

BUSINESSEUROPE expects that the proposal for the Accounting Directive and the tabled amendments, contrary to the intended objectives, will result in an administrative burden increase for the companies concerned. This is especially due to two fundamental approaches taken in the Member States:

- a) Some Member States have a direct link to taxation, while others have a reconciliation between the financial statements and the tax return.



- b) Some Member States adhere to the historical cost basis, while others favour a combination of historical cost and fair value.

To avoid these unintentional increases in the administrative burdens, BUSINESSEUROPE proposes to combine and consolidate the Directives as suggested by the Commission, but to broadly maintain the recognition and measurement principles in the existing Accounting Directives as most companies concerned only operate on a national level and therefore comparability is not an issue for those companies.

However, to further reduce the scope for administrative burdens the exceptions for the micro-entities should be complemented with a Member State option that the thresholds to determine whether a company is small, medium-sized or large could be substantially increased up to 50%.

In the appendix we have incorporated detailed comments on a number of suggested amendments. The comments should be seen in the scope of the above remarks and are to a certain extent only included to reduce the additional administrative burden envisaged by certain of the proposals.

\* \* \*



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*Appendix with detailed comments and suggested amendments*

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The document refers to the following proposals:

- Text proposed by the Commission refers to the proposals COM(2011) 684 (Accounting Directive), COM(2011) 683 (Transparency Directive) and the IAS Regulation 1606/2002 (and is marked in black).
- Text proposed by the Danish Presidency refers to the Danish Presidency compromise proposal as 2 March 2012 (and is marked with red)
- Text proposed in the Lehne report refers to the DRAFT REPORT dated 21 March 2012 on COM(2011) 684 proposal issued by Klaus-Heiner Lehne from the JURI Committee (and is marked with red)
- Text proposed in the Klinz report refers to the DRAFT OPINION dated 5 March 2012 on COM(2011) 684 proposal issued by Wolf Klinz from the ECON Committee (and is marked with red)
- Text proposed in the McCarthy report refers to the DRAFT REPORT dated 26 March 2012 on COM(2011) 683 proposal issued by Arlene McCarthy from the JURI Committee (and is marked with red)
- Text proposed in the Pietikäinen report refers to the DRAFT OPINION dated 29 February 2012 on COM(2011) 683 proposal issued by Sirpa Pietikäinen from the ECON Committee (and is marked with red)



## Accounting Directive

### Suggested changes to the proposal for a Directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings

#### Amendment 1.      CBCR RECITAL 32

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

(32) In order to provide for enhanced transparency of payments made to governments, ***large undertakings*** and public interest entities which are active in the extractive industry ***or logging of primary forests*** should disclose in a separate report on an annual basis material payments made to governments in the countries in which they operate. Such undertakings are active in countries rich in natural resources, in particular minerals, oil, natural gas ***as well as primary forests***. The report should include types of payments comparable to those disclosed by an undertaking participating in the Extractive Industries Transparency Initiative (EITI). ***The initiative is also complementary to the EU FLEGT Action Plan (Forest Law Enforcement, Governance and Trade)<sup>28</sup> and the Timber Regulation<sup>29</sup> which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering into the EU market.***

##### *BUSINESSEUROPE suggestion*

(32) In order to provide for enhanced transparency of payments made to governments, public interest entities which are active in the extractive industry should disclose in a separate report on an annual basis material payments ***related to extractive activities*** made to governments in the countries in which they operate. Such undertakings are active in countries rich in natural resources, in particular minerals, oil ***and*** natural gas. The report should include types of payments comparable to those disclosed by an undertaking participating in the Extractive Industries Transparency Initiative (EITI).

#### BUSINESSEUROPE Comments:

A key objective in the Directive is to support the EITI initiative to promote good governance and curbing misappropriation of significant public revenues. As stated in the position paper BUSINESSEUROPE supports this objective, but we urge the Parliament and the Council not to extend the requirements and risk both reducing their effectiveness and the competitiveness of European business. The proposals should be focused on requiring a separate report on a



country-by-country basis of payments to governments comparable to those disclosed by companies participating in the EITI.

BUSINESSEUROPE would like to caution against increasing the scope of the reporting over and above other, global initiatives. BUSINESSEUROPE believes that the scope should be focusing on the extractive activities of Public Interest Entities. This should not be extended to (a) reporting below country level, (b) additional information such as net turnover, cost of sales, profit or loss, and (c) outside extractive activities (and therefore reporting would be required only in respect of their extractive activities for those companies which have both extractive and other activities). The forestry industry should not be covered, as similar initiatives, especially EITI, does not cover forestry. As a consequence – and for the same reasons - we can not support the suggestion in the Klinz-report amendment 23 to extend the scope to joint ventures. BUSINESSEUROPE also have to stress that payments have to be material, and therefore BUSINESSEUROPE can not support the suggestion in the Lehne report amendment 15 on Recital 32 to remove the word « material »

-----OOO-----

Amendment 2.      **CBCR RECITAL 33 « SCOPE AND DETAIL »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

(33) The reports should serve to facilitate governments of resource-rich countries in implementing the EITI Principles and Criteria<sup>30</sup> and account to their citizens for payments such governments receive from undertakings active in the extractive industry ***or loggers of primary forests*** operating within their jurisdiction. The report should incorporate disclosures on a country ***and project*** basis, ***where a project is considered as the lowest level of operational reporting unit at which the undertaking prepares regular internal management reports, such as a concession, geographical basin, etc and where payments have been attributed to such projects.*** In the light of the overall objective of promoting good governance in these countries, the materiality of payments to be reported should be ***assessed in relation to the recipient government. Various criteria on materiality could be envisaged such as payments of an absolute amount, or a percentage***

(33) The reports should serve to facilitate governments of resource-rich countries in implementing the EITI Principles and Criteria<sup>30</sup> and account to their citizens for payments such governments receive from undertakings active in the extractive industry operating within their jurisdiction. The report should comprise disclosures on a country basis. ***It should not be necessary to prepare a report if equivalent reporting requirements are observed.*** In the light of the overall objective of promoting good governance in these countries, the materiality of payments to be reported should be ***set at a fixed level with a disclosure threshold of USD 1 million (or EUR equivalent) in order to increase transparency and set a level playing field.***  
...

*threshold (such as payments in excess of a percentage of a country's GDP) and these can be defined through a delegated act. ...*

**BUSINESSEUROPE Comments:**

The amendment aligns the Recital with the principles set out in our position paper, where BUSINESSEUROPE in relation to this Recital advocates for:

- revenue transparency reporting to be based on the Extractive Industries Transparency Initiative (EITI) framework. (We would encourage countries to join the EITI and note that none of the member states has yet done so.) The Directives should therefore require reporting at a country level and for extractive activities only;
- a common global format or mutual recognition arrangements based on the EITI framework
- an appropriate level of materiality, set in numerical terms (one million euros or dollars) for reporting purposes

For detailed comments regarding our concern if the scope is extended beyond reporting at a country level, please refer to our position paper.

For comments regarding the level of materiality, please refer to article 38.4.

BUSINESSEUROPE supports the proposal in the Lehne report on mutual recognition of other reporting schemes, and we refer to our suggestions for a new Article 37.3 below.

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**Amendment 3.      CBCR RECITAL 33 « REVIEW PERIOD »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

(33) ... The reporting regime should be subject to a review and a report by the Commission within **five years** of the entry into force of the Directive. The review should consider the effectiveness of the regime and take into account international developments including issues of competitiveness and energy security. The review should also take into account the experience of preparers and users of the payments information and consider whether it would be appropriate to **include additional payment information such as effective tax rates and recipient details, such as bank account information**

(33) ... The reporting regime should be subject to a review and a report by the Commission within **three years** of the entry into force of the Directive. The review should consider the effectiveness of the regime and take into account international developments including issues of competitiveness and energy security and supply. The review should also take into account the experience of preparers and users of the payments information and consider whether it would be appropriate to **reduce or extend disclosure requirements, or strengthen supporting measures, such as capacity-**



*building in third countries.*

BUSINESSEUROPE Comments:

We refer to our comments under Article 41.

-----OOO-----

Amendment 4.      **CBCR RECITAL 34 « REFERENCE TO IFRS »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

(34) In line with the conclusions of the G8 Summit in Deauville of May 2011 and in order to promote an international level-playing-field, the Commission should continue to encourage all the international partners to introduce similar requirements. ***The pursuit of the work on the relevant international accounting standard is particularly important in this context.***

(34) In line with the conclusions of the G8 Summit in Deauville of May 2011 and in order to promote an international level-playing-field, the Commission should continue to encourage all the international partners to introduce similar requirements.

BUSINESSEUROPE Comments:

Country-by-country reporting is not to be seen as an integrated part of the financial statements. The information is not essential to users of all-purpose financial statements, and would further distort the already very extensive financial statements. IASB must focus their efforts on disclosures that meet the requirements of the main users of financial statements as defined in the Conceptual Framework, and country-by-country reporting does not do so.

-----OOO-----

Amendment 5.      **CBCR ARTICLE 36.3 « DEFINITION OF GOVERNMENT »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

36.3. "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 23 (1) to (6) of this Directive.

36.3. "Government" ***means the national authority of a third country and comprises*** any national, regional or local authority of a third country. It includes a department, agency or undertaking controlled by that authority as laid down in Article 23 (1) to (6) of this Directive.



**BUSINESSEUROPE Comments:**

The amendment aligns the Directive with the principles set out in our position paper. One of the principles BUSINESSEUROPE advocates is to require reporting at a country level only.

Therefore, the definition of government should only specify what is included or understood to be part of a national authority, but should not be defined so that any local authority, specific department or agency would be considered as a separate government and would thus need an individual report.

It should not be necessary to include EU Member States in the reporting, as this is considered to be the internal market.

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**Amendment 6.      CBCR ARTICLE 36.4 « PROJECT »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

***36.4. "Project" is equivalent to a specific operational reporting unit at the lowest level within the undertaking at which regular internal management reports are prepared to monitor its business.***

***Deleted***

**BUSINESSEUROPE Comments:**

For detailed comments regarding our concern if the scope is extended beyond reporting at a country level, please refer to our position paper.

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**Amendment 7.      CBCR ARTICLE 37.1 « PUBLICATION »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

**37.1. 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.**

**37.1. Member States shall require all public interest entities active in the extractive industry to prepare and make public a *separate* report on payments made to governments *related to extractive activities* on an annual basis.**



**BUSINESSEUROPE Comments:**

The amendment aligns the Article with the principles set out in our position paper, where BUSINESSEUROPE urges the Parliament and the Council to focus the proposals on requiring a separate report on a country-by-country basis of payments to governments comparable to those disclosed by companies participating in the EITI. This should not be extended to reporting outside extractive activities (and therefore reporting would be required only in respect of their extractive activities for those companies which have both extractive and other activities).

For comments relating to the scope, please refer to the position paper and comments under Recital 32.

Therefore, the report has to be a separate report due to the fact that the report serves a different purpose compared to the financial statements and the reporting operates with a different level of materiality compared to the rest of the financial statements. Already today businesses are struggling to reduce and focus the financial reporting in order to make the reporting as relevant as possible for users, including investors. With a separate report focus can be maintained on the specific purpose of country-by-country reporting. Incorporating the information within the annual financial statements of companies would also increase the cost and risk delay to publication of the annual report to shareholders, which in itself would also be a competitive disadvantage.

Further, BUSINESSEUROPE would like to highlight that the report should only contain payments related to extractive activities. Some companies may have more than one activity, for instance a retail business, and those non-extractive activities should not be treated differently from similar activities in other companies. Therefore, payments related to non-extractive activities should be scoped out. This would also be in line with the principles of EITI.

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**Amendment 8. CBCR ARTICLE 37.3 « MUTUAL RECOGNITION AGREEMENTS »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

***New paragraph***

***37.3 To ensure that undertakings which are required to prepare reports on payments to governments under Chapter 9 of this Directive are not subject to multiple, equivalent reporting obligations, the following shall apply:***

- a) The Commission shall propose measures to facilitate the conclusion of mutual recognition agreements or similar exemption mechanisms with third countries that require undertakings active in the extractive industry to publish***



*reports, which are comparable to those required under Chapter 9 of this Directive.*

- b) Where an undertaking is required to report payments to governments in a country compliant with the Extractive Industry Transparency Initiative (EITI), the undertaking shall be entitled to include in the report required under Article 37 the payment information included in its EITI disclosure, and this will be regarded as fulfilling the undertaking’s reporting obligation for this country under this Directive.*

**BUSINESSEUROPE Comments:**

The amendment aligns the Article with the principles set out in our position paper, where BUSINESSEUROPE advocates a common global format (or mutual recognition arrangements based on the EITI framework where an entity has to comply with different jurisdictional requirements, including from countries that have already implemented EITI). We refer to the position paper for further detailed comments in this respect.

A regime of “mutual recognition” or “foreign issuer exemptions” between similar reporting systems would support transatlantic and international regulatory cooperation and push for consistent transparency standards at a global level. The risk of regulatory arbitrage is curbed through the equivalence test. The recognition of EITI data will mitigate the risk that EU disclosures “crowd out” this valuable initiative, which provides an inclusive platform for dialogue between governments, civil society and industry and which requires disclosures from all companies active in a country, irrespective of where they are from.

-----OOO-----

**Amendment 9. CBCR ARTICLE 38.1 « SPECIFICATION OF REPORT »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

38. 1 The report shall specify the following when material ***to the recipient government:***

38.1 The report shall specify the following when material :

- a) the total amount of payments, including payments in kind, made

- a) the total amount of payments, including payments in kind, made to government , ***as defined in***



to each government within a financial year;

- b) the total amount per type of payment, including payments in kind, made to each government within a financial year;
- c) *where those payments have been attributed to a specific project the amount per type of payment, including payments in kind, made for each such project within a financial year, and the total amount of payments for each such project.*

*Article 36 of this Directive*, within a financial year;

- b) the total amount per type of payment, including payments in kind, made to government, *as defined in Article 36 of this Directive*, within a financial year
- c) *deleted*

**BUSINESSEUROPE Comments:**

The amendment is aligned with the amendments suggested under Articles 36.3 and 36.4.

For detailed comments regarding our concern to extend the scope beyond reporting at a country level, please refer to our position paper.

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**Amendment 10. CBCR ARTICLE 38.2,A-G « TYPES OF PAYMENTS »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

38.2. The following types of payments shall be reported:

38.2. The following types of payments shall be reported:

- a) production entitlements;
- b) taxes on profits;
- 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;
- g) other *direct benefits to the*

- a) production entitlements;
- b) taxes on profits;
- 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;
- g) other *payments to* governments,



government *concerned*.

*which are related to the commercial development of minerals, oil and natural gas.*

**BUSINESSEUROPE Comments:**

This amendment aims at maintaining consistency of language across the text and clarifies that the general category of ‘other payments’ under point g) is to cover payments that are of a like nature to the specific categories listed under a) through f). It thereby ensures that reporting requirements focus on payments to governments related to extractive activities and do not include such items as VAT or payments for services which are government owned (such as water, electricity).

This approach aligns with the Extractive Industry Transparency Initiative as well as the U.S. Dodd-Frank Act.

-----OOO-----

**Amendment 11. CBCR ARTICLE 38.4 « MATERIALITY »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

***38.4. The Commission shall be empowered to adopt delegated acts in accordance with Article 42 in order to specify the concept of materiality of payments.***

***38.4. For the purposes of Chapter 9 of this Directive, a disclosure threshold of USD 1 million (or EUR equivalent) shall apply.***

**BUSINESSEUROPE Comments:**

Disclosure thresholds must be defined in a way that allow citizens to hold governments to account for their income streams from extractive activities and can be applied consistently on a global scale using an entity’s existing group reporting systems. The approach proposed in the Directives risks creating inconsistencies and complexities. A disclosure threshold of USD 1 million (or EUR equivalent) would meet the objectives. Given that only publicly listed companies should, according to the view of BUSINESSEUROPE, fall under EU reporting requirements, this would also be a reasonable threshold in relation to typical tax payments made by such companies. It would allow the majority of entities to report payments by modifying existing systems. If thresholds were set too low, or at a variable level, (particularly in conjunction with project level reporting), then this would almost certainly require completely new systems to be built, at very significant cost.

We would therefore support the principle introduced in Article 38,2a in the Danish Presidency compromise proposal, but BUSINESSEUROPE believe that the level of materiality should be USD 1 million.

As the extractive industry largely reports in USD, the relevant assessment for the disclosure threshold should be made in USD.



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Amendment 12. **CBCR ARTICLE 38.5 « PROHIBITIONS »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

38.5. The report shall exclude any type of payments made to a government in a country where the public disclosure of this type of payment is **clearly** prohibited by the **criminal** legislation of that country. In such cases the undertaking shall state that it has not reported payments in accordance with paragraphs 1 to 3, and shall disclose the name of the government concerned.

38.5. The report shall exclude any type of payments made to a government in a country where the public disclosure of this type of payment is prohibited by the legislation, **regulation or contracts with entities** of that country. In such cases the undertaking shall state that it has not reported payments in accordance with paragraphs 1 to 3, and shall disclose the name of the government concerned.

**BUSINESSEUROPE Comments:**

The amendment aligns the Article with the principles set out in our position paper, where BUSINESSEUROPE notes that the OECD Guidelines for Multinational Enterprises clearly state how respect for local law should come first.

The EU proposals do not include an exemption from disclosure in respect of countries where to do so would conflict with civil law. Sovereign states remain free to regulate the disclosure of data on extractive activities undertaken in their jurisdiction, independently of this EU Directive. In order to protect EU-based companies and their employees from legal risks abroad, and ultimately for market access reasons, disclosure requirements should be implemented in compliance with the norms of the host country and waived where disclosures are prohibited. As significant sanctions, fines or other penalties can result from other than criminal legislation, and as state secret laws or confidentiality clauses are not necessarily limited or specifically dedicated to the types of disclosures requested by this Directive, Article 38.5 should be broadened to cover all relevant legal obligations which apply to EU-based companies in a specific country.

Apart from competitiveness issues that may arise from lack of market access, the supply of energy in the EU could be seriously affected as both industrial and non-industrial consumers significantly depend on imported oil and natural gas.

-----OOO-----

Amendment 13. **CBCR ARTICLE 39.1 « SCOPE »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

39.1 A Member State shall require **any large undertaking or** any public interest

39.1 A Member State shall require any public interest entity active in the



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 37 and 38 if that parent undertaking is under the obligation to prepare consolidated financial statements as laid down in Article 23(1) to 23(6) of this Directive.

extractive industry and governed by its national law to draw up a consolidated report on payments to governments *by such public interest entity and entities under the control of such public interest entity* in accordance with Articles 37 and 38 if that parent undertaking is under the obligation to prepare consolidated financial statements as laid down in Article 23(1) to 23(6) of this Directive.

**BUSINESSEUROPE Comments:**

Some amendments are consequence of earlier amendments proposed.

In addition public interest entities that are required to prepare a consolidated report on payments to governments should include all relevant entities which are under the control of that parent company in the consolidated report. The consolidated report shall not include equity accounted investments of that company, i.e. investments in companies which are controlled by a third party. This clarification aligns the text with stipulations of the U.S. Dodd-Frank Act, Section 1504.

-----OOO-----

**Amendment 14. CBCR ARTICLE 41 « REVIEW PERIOD »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion and partly Klinz report*

41. The Commission shall review and report on the implementation and effectiveness of this Chapter, in particular as regards the scope of the reporting obligations *and the modalities of the reporting on a project basis*. The review should also take into account international developments and consider the effects on competitiveness and security of *energy* supply. It should be completed at the latest *five* years after the date of entry into force of this Directive. The report shall be submitted to the European Parliament and the Council, together with a legislative

41. The Commission shall review and report on the implementation and effectiveness of this Chapter, in particular as regards *the benefits that transparency has brought as well as the costs and* the scope of the reporting obligations. The review should also take into account international developments and consider the effects on competitiveness and security of energy supply. It should be completed at the latest *three* years after the date of entry into force of this Directive. The report shall be submitted to the European Parliament and the Council, together with a legislative

proposal, if appropriate.

proposal, if appropriate.

**BUSINESSEUROPE Comments:**

The amendment aligns the Article with the principles set out in our position paper, where BUSINESSEUROPE advocates for an evaluation of the impact after 3 years to assess evidence about the use of the data, the costs and other effects. It is very important that stakeholders are informed as early as is practicable as to how the data has been used, whether or not the benefit outweighs the direct and indirect costs for companies, what other effects there have been and whether, as a result of the review, changes should be considered.

We note that the Klinz report also suggests to shorten the review period to three years.

-----OOO-----

**Amendment 15. IFRS FOR SME RECITAL 14A (NEW)**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

*New text*

***(14A) Unlisted entities have no common set of accounting standards, as the proposed accounting directive allows Member States the freedom to adapt their national legislation when setting the accounting legislation for unlisted companies.***

***Mandatory use of the IFRS for SMEs will not serve the objectives of simplification in general. However, for a number of companies, the burdens of living up to the extra requirements under IFRS for SMEs are outweighed by the savings in maintain the same set of accounting standards across their activities. In order to cater for these entities, Member States should be allowed to introduce the use of IFRS for SMEs on a voluntary basis. Therefore, the IFRS for SMEs should be introduced as a member state option in the IAS regulation, subject to an endorsement mechanism as we know it from full IFRS***  
  
***The EU-Commission should report back to the Council and the European***



*Parliament after 5 years on the uptake and the experience with the use of IFRS for SMEs in EU.*

**BUSINESSEUROPE Comments:**

One of the important aspects of the review of the accounting directives was to ensure a basis that both caters for international companies as well as companies with a more European focus. For BUSINESSEUROPE it is important that the Member States have flexible tools available to best cater for their companies.

In order to achieve this, BUSINESSEUROPE proposes to allow, as a Member State option, the use of IFRS for SMEs through an amendment of the IAS Regulation, in which an European endorsement process should be provided for. Companies that apply this option would at that time refer to IFRS for SMEs as endorsed by the EU. When a Member State chooses to allow the IFRS for SME, then the standard should be available for all non-listed entities in that Member State, regardless of their size.

With this solution we build on a well known system already in place and at the same time ensure that businesses and Member States that find the IFRS for SMEs to be too cumbersome are not forced to use it. On the other hand, with the IFRS for SMEs there will be a common standard available in those member states that opt for it.

Therefore we disagree with the Commission and also the Klinz report regarding the introduction of the IFRS for SMEs.

-----OOO-----

**Amendment 16. GENERAL RECITAL 3A (NEW) (LEHNE REPORT) « APPROPRIATE BALANCE »**

*Text proposed in the Lehne report*

*BUSINESSEUROPE suggestion*

***(3a) European accounting rules need to strike an appropriate balance between the interests of the addressees of financial statements and the interest of a company in not being unduly burdened with reporting requirements. Annual financial statements prepared on a prudent basis should give an account of the company's financial situation and not merely provide information for capital markets.***

***Supports the proposal in the Lehne report***



**BUSINESSEUROPE Comments:**

BUSINESSEUROPE supports highlighting the need to strike a balance between the users and the companies.

-----OOO-----

Amendment 17. **GENERAL RECITAL 8A (DANISH PRESIDENCY) « MATERIALITY »**

*Text proposed by the Danish Presidency*

*BUSINESSEUROPE suggestion*

(8a) **The principle of materiality should govern recognition, measurement, presentation, disclosure and consolidation in the financial statements. *According to the principle of materiality, information that is considered immaterial may for instance be aggregated in the financial statements. However even if a single transaction might be considered to be immaterial, immaterial transactions of a similar nature as a whole might be considered altogether material.*** The principle of materiality shall not affect any national obligation to keep complete records showing the business transactions and financial position.

(8a) The principle of materiality should govern recognition, measurement, presentation, disclosure and consolidation in the financial statements. The principle of materiality shall not affect any national obligation to keep complete records showing the business transactions and financial position.

**BUSINESSEUROPE Comments:**

A definition of materiality is inserted in Article 2(16) in the presidency proposal. BUSINESSEUROPE supports the insertion of this definition into the directive. The definition states that:

*« material means the status of information where its omission or mis-statement could influence the decisions that users make on the basis of the financial statements of the undertaking. »*

BUSINESSEUROPE believes that Recital 8a and Article 5(1)(j) explains the content of the principle in a way that might lead to confusion when compared to the definition in Article 2(16), since it is not clear how the assessment of individual transactions relates to the definition (decision-making by users). We therefore suggest that the last sentence should be deleted in Article 5(1)(j) and a corresponding amendment be made in Recital 8a.

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Amendment 18. **GENERAL ARTICLE 2.1(C) (DANISH PRESIDENCY)**

*Text proposed by the Danish Presidency*

*BUSINESSEUROPE suggestion*

***2.1(c). undertakings designated by Member States as public-interest entities, for instance undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees***

***Delete***

**BUSINESSEUROPE Comments:**

There is no need to specify this in the Directive as Member States are able to impose stricter rules on certain companies if they deem this is necessary. However, by including the suggested Article in the directive it is already indicated that the Member States should broaden the definition, which BUSINESSEUROPE cannot support. The compliance requirements for PIE's are significant and this scope should not be broadened.

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Amendment 19. **GENERAL ARTICLE 2.7 (LEHNE REPORT) « PRODUCTION COST »**

*Text proposed in the Lehne report*

*BUSINESSEUROPE suggestion*

2. 7 'Production cost' means the purchase price of raw materials, consumables and other costs directly attributable to the item in question. A reasonable proportion of other costs indirectly attributable to the item in question ***shall*** be included to the extent that they relate to the period of production. Distribution costs shall not be included

2. 7 'Production cost' means the purchase price of raw materials, consumables and other costs directly attributable to the item in question. A reasonable proportion of other costs indirectly attributable to the item in question ***may*** be included to the extent that they relate to the period of production. Distribution costs shall not be included

**BUSINESSEUROPE Comments:**

As BUSINESSEUROPE pointed out in the introduction, an abolishment of alternatives will impose more administrative burdens. BUSINESSEUROPE therefore suggests to maintain the original text proposed by the Commission due to the fact that small entities currently benefit from the exemption in a number of Member States.

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Amendment 20. **GENERAL ARTICLE 3.1 « THRESHOLDS »**

Text proposed by the Commission	BUSINESSEUROPE suggestion
<p>3.1 Small undertakings shall be undertakings which on their balance sheet dates do not exceed the limits of two of the three following criteria:</p> <p>(a) balance sheet total: <b>EUR 5 000 000</b>;</p> <p>(b) net turnover: <b>EUR 10 000 000</b>;</p> <p>(c) average number of employees during the financial year: <b>50</b>.</p>	<p>3.1 Small undertakings shall be undertakings which on their balance sheet dates do not exceed the limits of two of the three following criteria:</p> <p>(a) balance sheet total: <b>EUR 7 500 000</b>;</p> <p>(b) net turnover: <b>EUR 15 000 000</b>;</p> <p>(c) average number of employees during the financial year: <b>75</b>.</p>

**BUSINESSEUROPE Comments:**

To ensure that administrative burdens are achieved while still maintaining the ability to adapt local legislation, BUSINESSEUROPE suggests an increase in the threshold by 50 percent.

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Amendment 21. **GENERAL ARTICLE 3.2 « THRESHOLDS »**

Text proposed by the Commission	BUSINESSEUROPE suggestion
<p>3.2 Medium-sized undertakings shall be undertakings which are not small undertakings and on their balance sheet dates do not exceed the limits of two of the three following criteria:</p> <p>(a) balance sheet total: <b>EUR 20 000 000</b>;</p> <p>(b) net turnover: <b>EUR 40 000 000</b>;</p> <p>(c) average number of employees during the financial year: <b>250</b>.</p>	<p>3.2 Medium-sized undertakings shall be undertakings which are not small undertakings and on their balance sheet dates do not exceed the limits of two of the three following criteria:</p> <p>(a) balance sheet total: <b>EUR 30 000 000</b>;</p> <p>(b) net turnover: <b>EUR 60 000 000</b>;</p> <p>(c) average number of employees during the financial year: <b>375</b>.</p>

**BUSINESSEUROPE Comments:**

To ensure that administrative burdens are achieved while still maintaining the ability to adapt local legislation, BUSINESSEUROPE suggests an increase in the threshold by 50 percent.



-----OOO-----  
 Amendment 22. **GENERAL ARTICLE 3.3 « THRESHOLDS »**

Text proposed by the Commission	BUSINESSEUROPE suggestion
<p>3.3 Large undertakings shall be undertakings which on their balance sheet dates exceed two of the three following criteria:</p> <p>(a) balance sheet total: <b>EUR 20 000 000</b>;</p> <p>(b) net turnover: <b>EUR 40 000 000</b>;</p> <p>(c) average number of employees during the financial year: <b>250</b>.</p>	<p>3.3 Large undertakings shall be undertakings which on their balance sheet dates exceed two of the three following criteria:</p> <p>(a) balance sheet total: <b>EUR 30 000 000</b>;</p> <p>(b) net turnover: <b>EUR 60 000 000</b>;</p> <p>(c) average number of employees during the financial year: <b>375</b>.</p>

**BUSINESSEUROPE Comments:**

To ensure that administrative burdens are achieved while still maintaining the ability to adapt local legislation, BUSINESSEUROPE suggests an increase in the threshold by 50 percent.

-----OOO-----  
 Amendment 23. **GENERAL ARTICLE 3.4 (DANISH PRESIDENCY) « THRESHOLDS »**

Text proposed by the Danish Presidency	BUSINESSEUROPE suggestion
<p>3,4 Small groups shall be parent and subsidiary undertakings <b>to be included in a consolidation</b> which on a consolidated basis do not exceed the limits of two of the three following criteria on the balance sheet date of the parent undertaking:</p> <p>(a) balance sheet total: <b>EUR 5 000 000</b>;</p> <p>(b) net turnover: <b>EUR 10 000 000</b>;</p> <p>(c) average number of employees during the financial year: <b>50</b>.</p>	<p>3,4 Small groups shall be parent and subsidiary undertakings to be included in a consolidation which on a consolidated basis do not exceed the limits of two of the three following criteria on the balance sheet date of the parent undertaking:</p> <p>(a) balance sheet total: <b>EUR 7 500 000</b>;</p> <p>(b) net turnover: <b>EUR 15 000 000</b>;</p> <p>(c) average number of employees during the financial year: <b>75</b>.</p>



**BUSINESSEUROPE Comments:**

To ensure that administrative burdens are achieved while still maintaining the ability to adapt local legislation, BUSINESSEUROPE suggests an increase in the threshold by 50 percent.

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**Amendment 24. GENERAL ARTICLE 3.5 (DANISH PRESIDENCY) « THRESHOLDS »**

*Text proposed by the Danish Presidency*

*BUSINESSEUROPE suggestion*

3,5 Medium-sized groups shall be parent and subsidiary undertakings **to be included in a consolidation** which are not small groups and on a consolidated basis do not exceed the limits of two of the three following criteria on the balance sheet date of the parent undertaking:

3,5 Medium-sized groups shall be parent and subsidiary undertakings to be included in a consolidation which are not small groups and on a consolidated basis do not exceed the limits of two of the three following criteria on the balance sheet date of the parent undertaking:

- (a) balance sheet total: **EUR 20 000 000;**
- (b) net turnover: **EUR 40 000 000;**
- (c) average number of employees during the financial year: **250.**

- (d) balance sheet total: **EUR 30 000 000;**
- (e) net turnover: **EUR 60 000 000;**
- (d) average number of employees during the financial year: **375.**

**BUSINESSEUROPE Comments:**

To ensure that administrative burdens are achieved while still maintaining the ability to adapt local legislation, BUSINESSEUROPE suggests an increase in the threshold by 50 percent.

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**Amendment 25. GENERAL ARTICLE 3.5A(DANISH PRESIDENCY) « THRESHOLDS »**

*Text proposed by the Danish Presidency*

*BUSINESSEUROPE suggestion*

**3,5a. Member States may increase the thresholds in paragraph 1 and 4 by up to 10%. Member States may decrease the thresholds in paragraph 1 and 4 by up to 10%.**

**3,5a. Member States may increase the thresholds in paragraph 1 and 4 by up to 20%. Member States may decrease the thresholds in paragraph 1 and 4 by up to 20%.**



**BUSINESSEUROPE Comments:**

To allow Member States a little more flexibility in how to set the levels nationally, it is suggested to broaden the belt to 20 percent.

-----OOO-----

**Amendment 26. GENERAL ARTICLE 3.7 (DANISH PRESIDENCY) « THRESHOLDS / INFLATION »**

*Text proposed by the Danish Presidency*

*BUSINESSEUROPE suggestion*

*3,7. In the case of those Member States which have not adopted the euro, the amount in national currency equivalent to the amounts set out in paragraphs 0a to 5 shall be that obtained by applying the exchange rate published in the Official Journal of the European Union on the date of the entry into force of any Directive setting those amounts.*

*3,7. In the case of those Member States which have not adopted the euro, the amount in national currency equivalent to the amounts set out in paragraphs 0a to 5 shall be that obtained by applying the exchange rate published in the Official Journal of the European Union on the date of the entry into force of any Directive setting those amounts. **The thresholds in national currency can be recalculated in case of significant, lasting shifts in the exchange rate. The Commission should issue guidance on what is to be considered a significant, lasting shift and how the thresholds should be calculated in a volatile currency environment.***

**BUSINESSEUROPE Comments:**

The suggested Article works in stable exchange rate environments. National currency exchange rates with the Euro may change significantly. It should be possible to recalculate the thresholds. The amendment suggest a way that caters for the problem without the need for continuous recalculations.

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**Amendment 27. GENERAL ARTICLE 4.1.1 (KLINZ REPORT) « CASH FLOW STATEMENTS »**

*Text proposed in the Klinz report*

*BUSINESSEUROPE suggestion*

*4,1,1. The annual financial statements*

*4,1,1. The annual financial statements*



*shall constitute a composite whole and shall for all undertakings comprise, as a minimum, the balance sheet, the profit and loss account, the notes to the financial statements **and a cash-flow statement.***

*shall constitute a composite whole and shall for all undertakings comprise, as a minimum, the balance sheet, the profit and loss account **and** the notes to the financial statements.*

**BUSINESSEUROPE Comments:**

BUSINESSEUROPE does not support making the cash flow statement mandatory for small entities as it will increase the administrative burdens. Therefore, BUSINESSEUROPE to retain the wording in the proposal made by the Commission. Our suggestion reflects this.

This would not preclude cash-flow statements for Medium and Large entities.

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**Amendment 28. GENERAL ARTICLE 5.1(1J) (DANISH PRESIDENCY) « MATERIALITY »**

*Text proposed by the Danish Presidency*

*BUSINESSEUROPE suggestion*

*5,1(j). the requirements set out in this Directive regarding recognition, measurement, presentation, disclosure and consolidation need not be applied when the effect of applying them is immaterial. **The materiality of individual transaction shall be assessed in the context of other similar transactions.***

*5,1(j). the requirements set out in this Directive regarding recognition, measurement, presentation, disclosure and consolidation need not be applied when the effect of applying them is immaterial.*

**BUSINESSEUROPE Comments:**

See text under Recital 8a.

As a consequence of our proposal, we do not support the proposal presented in the Klinz report and in the Lehne report.

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**Amendment 29. GENERAL ARTICLE 5.1A (DANISH PRESIDENCY) « SUBSTANCE OVER FORM »**

*Text proposed by the Danish Presidency*

*BUSINESSEUROPE suggestion*

**5.1a. Member States may exempt micro**

*5.1a(1). Member States may exempt micro*



undertakings from *and may limit* the use for *small undertakings* of paragraph 1(h). *The limitation for small undertakings should be restricted to specific areas.*

undertakings from the use of paragraph 1(h).

*5.1a(2). Member States may permit or require the presentation of amounts within items in the profit and loss account and balance sheet to have regard to the substance of the reported transaction or arrangement.*

**BUSINESSEUROPE Comments:**

The compromise from the Danish presidency does not address the problems raised by Member States and other interested parties regarding the alignment between tax and accounting. The exception for small entities is inadequate from this perspective. For those Member States that have an alignment between tax and accounting, the introduction of a mandatory principle of substance over form would effectively increase the regulatory burden on all entities and force those Member States to change their tax laws.

BUSINESSEUROPE therefore proposes to delete part of the the text in Article 5(1a) and replace it with the current option regarding substance over form in the Fourth Directive.

-----OOO-----

Amendment 30. **GENERAL ARTICLE 6 AND 7 (LEHNE REPORT) « ALTERNATIVE MEASUREMENT »**

*Text proposed in the Lehne report*

*BUSINESSEUROPE suggestion*

*6 deleted*

*Retain text proposed by the Commission*

*7 deleted*

**BUSINESSEUROPE Comments:**

As BUSINESSEUROPE pointed out in the introduction, a number of Member States are using the alternative measurement basis provided in the proposal. For companies in these jurisdiction, an abolishment of these alternatives will impose more administrative burdens. BUSINESSEUROPE therefore suggests to maintain the original text proposed by the Commission.

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Amendment 31. **GENERAL ARTICLE 9 (ASSETS B.I.1) « RESEARCH »**

*Text proposed by the Danish Presidency*

*BUSINESSEUROPE suggestion*

9 (“Assets” B.I.1) Costs of ~~research and~~ development, in so far as national law permits their being shown as assets.

9 (“Assets” B.I.1) Costs of **research and** development, in so far as national law permits their being shown as assets.

**BUSINESSEUROPE Comments:**

BUSINESSEUROPE fails to see the reason for deleting « research », except when costs of research cannot be recognised as an asset in a Member State.

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Amendment 32. **GENERAL ARTICLE 11.9 « RESEARCH »**

*Text proposed by the Danish Presidency*

*BUSINESSEUROPE suggestion*

11.9. Where national law authorizes the inclusion of costs of ~~research and~~ development under ‘Assets’, they shall be written off within a maximum period of five years. In so far as the costs of ~~research and~~ development have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the costs not written off.

11.9. Where national law authorizes the inclusion of costs of **research and** development under ‘Assets’, they shall be written off within a maximum period of five years. In so far as the costs of **research and** development have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the costs not written off.

**BUSINESSEUROPE Comments:**

Refer to comment above on Article 9.

-----OOO-----

Amendment 33. **GENERAL ARTICLE 11.8 (KLINZ AND LEHNE REPORTS) « LIFO »**

*Text proposed by in the Klinz and Lehne reports*

*BUSINESSEUROPE suggestion*

11.8. Member States may permit the purchase price or production cost of stocks

*Supports the proposal in the Klinz and*



*of goods of the same category and all fungible items including investments to be calculated either on the basis of weighted average prices or on the basis of the 'first in, first out' (FIFO) method, the 'last in, first out' (LIFO) method, or a similar method.*

*Lehne reports*

**BUSINESSEUROPE Comments:**

BUSINESSEUROPE supports retaining the LIFO principle

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**Amendment 34. GENERAL ARTICLE 11.10 « GOODWILL »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

*11.10 Goodwill shall be written off systematically over its useful life. Where its useful life cannot be reliably estimated it shall be written off within a maximum period of 5 years. An explanation of the period(s) over which goodwill is written off shall be provided within the notes to the financial statements.*

*11.10 Goodwill shall be written off systematically over its useful life. Where its useful life cannot be reliably estimated it shall be written off within a maximum period of 5 years. An explanation of the period(s) over which goodwill is written off shall be provided within the notes to the financial statements. **However, Member States may permit a positive consolidation difference to be immediately deducted from reserves; the amount shall be disclosed in the notes to the financial statements.***

**BUSINESSEUROPE Comments:**

The option to permit the immediate write-off of goodwill to reserves is frequently used in some Member States. It is considered to be a prudent way of registration and it aligns with the view of banks when providing credit. Recognising goodwill and writing it off (systematically) will create an administrative burden for those companies that use this option. Furthermore, comparability is already non-existent with companies that are (growing by) doing take-overs or companies that grow independently. Also, the goal of comparability between non-listed companies is on balance less important compared to the comparability of listed companies. True comparability of internationally operating non-listed European entities would be reached by applying IFRS for SMEs.



-----OOO-----

Amendment 35. **GENERAL ARTICLE 16 (DANISH PRESIDENCY) « ABRIDGED REPORTING »**

*Text proposed by the Commission and Danish Presidency*

*BUSINESSEUROPE suggestion*

16.1. Member States ~~may~~**shall** permit small undertakings to draw up abridged balance sheets showing only those items preceded by letters and roman numerals in Article 9, disclosing separately the information required in brackets in C (II) under ‘Assets’ and C under ‘Capital, reserves and liabilities’, but in total for each.

16.1. Member States **shall** permit small undertakings to draw up abridged balance sheets showing only those items preceded by letters and roman numerals in Article 9, disclosing separately the information required in brackets in C (II) under ‘Assets’ and C under ‘Capital, reserves and liabilities’, but in total for each.

(16.2) Member States ~~may~~**shall** permit small and medium-sized undertakings to draw up abridged profit and loss accounts within the following limits:

(16.2) Member States **shall** permit small and medium-sized undertakings to draw up abridged profit and loss accounts within the following limits:

- (a) in Article 13, items 1 to 5 may be combined under one item called ‘Gross profit or loss’;
- (b) in Article 14, items 1, 2, 3 and 6 may be combined under one item called ‘Gross profit or loss’.

- (a) in Article 13, items 1 to 5 may be combined under one item called ‘Gross profit or loss’;
- (b) in Article 14, items 1, 2, 3 and 6 may be combined under one item called ‘Gross profit or loss’.

**BUSINESSEUROPE Comments:**

BUSINESSEUROPE supports the original wording as it ensures a simplification for small and medium-sized entities by giving the companies the right to choose.

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Amendment 36. **GENERAL ARTICLE 17.1.(D1) (DANISH PRESIDENCY) « DISCLOSURE »**

*Text proposed by the Danish Presidency*

*BUSINESSEUROPE suggestion*

*17.1(d1). the amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies, with indications of the*

*Delete as Article 17.1(d1) and keep the Article as Article 18.e (Original proposal by the Commission)*



*interest rates, main conditions and any amounts repaid or written off or waived, as well as commitments entered into on their behalf by way of guarantees of any kind, with an indication of the total for each category;*

**BUSINESSEUROPE Comments:**

BUSINESSEUROPE does not see the need to make this disclosure mandatory for all small entities, but supports the original proposal by the Commission, where the above disclosure is only mandatory for medium-sized and large undertakings.

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**Amendment 37. GENERAL ARTICLE 17.1.(H) « DISCLOSURE »**

*Text proposed by the Commission*

*BUSINESSEUROPE and Danish  
Presidency suggestion*

*17.1(h). transactions which have been entered into with related parties by the undertaking, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the undertaking, if such transactions have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the undertaking.*

*Delete as Article 17.1(h) and insert as  
Article 18.1.(t)*

**BUSINESSEUROPE Comments:**

BUSINESSEUROPE finds the disclosure requirement to be disproportionate for small entities and suggests to move the disclosure requirement to Article 18 (making it mandatory for medium-sized and large undertakings only).

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**Amendment 38. GENERAL ARTICLE 17.2 « MAXIMUM DISCLOSURE REQUIREMENT»**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

*17. 2. Member States shall not require further disclosure for small undertakings beyond what is required or permitted by this Article.*

*Delete*

**BUSINESSEUROPE Comments:**

BUSINESSEUROPE finds that the interdiction for any addition to the notes would represent a significant rigidity for Member States, which might have an unintentional negative impact on the administrative burdens. When a new treatment has to be developed in local GAAP, for instance for a new legal system on a specific topic, the addition of a note may represent an easier alternative to a recognition in the Profit & Loss or Balance Sheet. For instance, it may consist in giving a figure in volume instead of a complete valuation in the P/L or B/S. For a small entity, it may represent the adequate balance between quality of the financial statement information and administrative burden. To suppress any possibility to do so does not contribute to reduce administrative burdens.

-----OOO-----

**Amendment 39. GENERAL ARTICLE 25A (DANISH PRESIDENCY) «USE OF POOLING METHOD»**

*Text proposed by the Danish Presidency*

*BUSINESSEUROPE suggestion*

*25a.1. A Member State may require or permit the book values of shares held in the capital of an undertaking included in the consolidation to be set off against the corresponding percentage of capital only, provided that the undertakings concerned are under common control.*

*Clarification needed – see below*

*25a.2. Common control exists when all of the undertakings in a business combination are ultimately controlled by the same party both before and after the business combination, and that control is not transitory.*

*25a.3. Any difference arising under paragraph (1) shall be added to or*

*deducted from consolidated reserves, as appropriate.*

*25a.4. The application of the method described in paragraph (1), the resulting movement in reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes to the consolidated financial statements.*

**BUSINESSEUROPE Comments:**

BUSINESSEUROPE supports the proposed Article 25a regarding common control transactions but we believe that there is a need for clarification of the scope of the Article. Our interpretation is that the Article only covers common control transactions in consolidated accounts and if this is the intention it would be helpful to express this in the Article.

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**Amendment 40. GENERAL ARTICLE 26.1 « PROPORTIONAL CONSOLIDATION»**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

*26.1. Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, Member States may permit **or require** the inclusion of that other undertaking in the consolidated financial statements in proportion to the rights in its capital held by the undertaking included in the consolidation.*

*26.1. Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, Member States may permit the inclusion of that other undertaking in the consolidated financial statements in proportion to the rights in its capital held by the undertaking included in the consolidation.*

**BUSINESSEUROPE Comments:**

The term “proportional consolidation” will no longer exist in IFRS when IFRS 11 is adopted. However, it may continue in national GAAPs. BUSINESSEUROPE therefore recommends that “or require” is removed in order to avoid any potential conflicts.

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Amendment 41. **GENERAL ARTICLE 49.1 « TRANSPOSITION»**

*Text proposed by the Commission*

*49.1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2014 at the latest. **They** shall forthwith communicate to the Commission the text of those provisions ~~and a correlation table between those provisions and this Directive.~~*

*When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.*

*BUSINESSEUROPE suggestion*

*49.1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2014 at the latest. **Laws, regulations and administrative provisions shall be adopted at least 6 months in advance of the effective date and Member States** shall forthwith communicate to the Commission the text of those provisions.*

*When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.*

**BUSINESSEUROPE Comments:**

In order to ensure sufficient lead time for businesses to change their reporting systems etc., BUSINESSEUROPE suggests to require the Member States to adopt the necessary legislation 6 months in advance of the effective date. This will also ensure that the Commission receives the adopted legislation in advance of the effective date and can take the necessary steps to ensure that the legislation will be in place on time in the Member States.



## IAS Regulation

### **Suggested changes to the Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards**

#### **Amendment 42. IFRS FOR SME ARTICLE 2.1 AND 2.2**

*Current text in the IAS regulation*

*BUSINESSEUROPE suggestion*

#### Definitions

2.1 For the purpose of this Regulation, "international accounting standards" shall mean International Accounting Standards (IAS), International Financial Reporting Standards (IFRS) and related Interpretations (SIC-IFRIC interpretations), subsequent amendments to those standards and related interpretations, future standards and related interpretations issued or adopted by the International Accounting Standards Board (IASB).

2.2 New text

...

2.2 For the purpose of this Regulation, "IFRS for SMEs " shall mean International financial Reporting Standards for Small and Medium Sized entities and related interpretations issued or adopted by the International Accounting Standards Board (IASB).

#### **BUSINESSEUROPE Comments:**

As a consequence of the suggested introduction, IFRS for SMEs needs to be defined in the IAS regulation.

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Amendment 43. **IFRS FOR SME ARTICLE 5.2**

*Current text in the IAS regulation*

*BUSINESSEUROPE suggestion*

5.1 Options in respect of annual accounts and of non publicly-traded companies

Member States may permit or require:

(a) the companies referred to in Article 4 to prepare their annual accounts,

(b) companies other than those referred to in Article 4 to prepare their consolidated accounts and/or their annual accounts,

in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2).

5.2 New text

...

***5.2 Member States may permit or require companies other than those referred to in Article 4 to prepare their consolidated accounts and/or their annual accounts in conformity with the IFRS for SMEs.***

**BUSINESSEUROPE Comments:**

One of the important aspects of the review of the accounting directives was to ensure a basis that both caters for international companies as well as companies with a more European focus. For BUSINESSEUROPE it is important that the Member States have flexible tools available to best cater for their companies.

In order to best achieve this, BUSINESSEUROPE proposes to allow, as a Member State option, the use of IFRS for SMEs through an amendment of the IAS Regulation, in which an European endorsement process should be provide for. Companies that apply this option would at that time refer to IFRS for SMEs as endorsed by the EU.

With this solution we build on a well known system already in place and at the same time ensure that businesses and Member States that find the IFRS for SME to be too cumbersome are not forced to use it. On the other hand, with the IFRS for SME there will be a common standard available in those Member States that opt for it.

When a Member State chooses to allow the IFRS for SMEs, the standard should be available for all unlisted entities in that Member State, regardless of their size.

This amendment will provide that Member State option.

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## Transparency Directive

### **Suggested changes to 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**

Amendment 44. **CBCR 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.

#### *BUSINESSEUROPE suggestion*

(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 industry 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 detailed requirements are defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council.

#### **BUSINESSEUROPE Comments:**

A key objective in the Directive is to support the EITI initiative to promote good governance and curbing misappropriation of significant public revenues. As stated in the position paper



BUSINESSEUROPE supports this objective, but we urge the Parliament and the Council not to extend the requirements and risk both reducing their effectiveness and the competitiveness of European business. The proposals should be focused on requiring a separate report on a country-by-country basis of payments to governments comparable to those disclosed by companies participating in the EITI.

BUSINESSEUROPE would like to caution against increasing the scope of the reporting over and above other, global initiatives. BUSINESSEUROPE believes that the scope should be narrowed and focusing on the extractive activities of Public Interest Entities. This should not be extended to (a) reporting below country level, (b) additional information such as net turnover, cost of sales, profit or loss, and (c) outside extractive activities (and therefore reporting would be required only in respect of their extractive activities for those companies which have both extractive and other activities). The forestry industry should not be covered, as similar initiatives, especially EITI, does not cover forestry. As a consequence – and for the same reasons - we can not support the suggestions in the Pietikäinen and McCarthy reports.

-----OOO-----

Amendment 45.    **CBCR RECITAL 7**

*Text proposed by the Pietikäinen report*

*BUSINESSEUROPE suggestion*

(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 ***as part of their annual financial statements*** payments made to governments in the countries in which they operate. ***Disclosures should be made on a country-by-country basis. In the case of issuers engaged in activities related to extractive or forest industries, disclosures should*** include types of payments comparable to those disclosed under the Extractive Industries Transparency Initiative (EITI) and ***should be on a country-by-country and 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 country-by-country basis, quantities produced, profit before tax, effective tax rates, total number of people employed and their aggregate remuneration and expenditure***

(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 industry*** should disclose ***in a separate report on an annual basis*** payments ***related to extractive activities*** made to governments in the countries in which they operate. Disclosures should be made on a country-by-country basis. ***The report*** should include types of payments comparable to those disclosed under the Extractive Industries Transparency Initiative (EITI). The detailed requirements are defined in Chapter 9 of Directive 2011/.../EU of the European Parliament and of the Council.



*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.

**BUSINESSEUROPE Comments:**

The proposed amendment in the Pietikäinen draft report is disproportional and is not targeted to the Directive's objectives. Instead, it is justified by shifting the objective to tackle international tax avoidance. According to the Impact assessment part II p. 28 – country-by-country reporting is not fit for this purpose : *«A majority of the respondents to the Commission consultation expressed the view that CBCR would not be useful to improve tax governance at a global level. To tackle tax avoidance more effective and proportionate measures should be deployed, involving capacity building in developing countries' tax administrations, greater worldwide cooperation on tax rules and information sharing by national governments. »*

On the arguments about increasing transparency and creating a level playing field, the Impact assessment states the following on page 25-26 : *«Some NGOs support this approach which would provide a greater insight into precisely where a MNC operates, its profitability in different countries and the assets deployed there as well as the impact of its activities on local employment, output and taxes paid to host governments. For capital providers, this would allow a better assessment of geo-political risk, and relative performance and return on capital within the MNC." This being said, investors and capital providers have not expressed strong support for the disclosure of such detailed information. Responses to the IASB's consultation on IFRS 8 demonstrated that they did not consider CbyC reporting useful in the financial statements of companies. The IASB therefore decided that only segmental reporting would be required (and not country by country reporting).*

*It has also been argued that the publication of a potentially enormous amount of data may make it harder to analyse a MNC's financial report whilst many claim that annual financial statements should be shorter, not longer. Additionally, respondents to the EFRAG study on the costs of implementing CBCR raised a concern that a requirement to provide information about all countries could result in overly detailed and voluminous reports where a MNC operates in numerous countries, which would obscure rather than provide any useful information to users.»*

By broadening the scope to include all listed entities, extending the content to include detailed and commercially sensitive information and to require this to be included in the financial statements, the amendment will severely damage European industry without ensuring that the objectives are met.

Further, looking at the Impact assessment, the costs were already high. This impact of the suggested amendment should be measured as it would create administrative burdens to the tune of billions of EUR. The Impact assessment shows figures of 2.0 billion EUR just for the listed entities within the extractive industry in year one compliance costs for a full scale CBCR as suggested by the draft report. If we estimate that the extractive industry accounts for 5 % of the listed entities, then the suggestion would result in a bill amounting to 40 billion EUR in year one. If the extractives only account for 1 %, then the administrative costs would amount to 200 billion EUR. On top of this one would have to put audit fees, if the information has to be audited. The Impact assessment estimates these cost to be around 90 million EUR, if the information is material (i.e. material under the current definition). However, the proposal operates with a significantly lower threshold, which would increase the audit fees.



Further, the Impact assessment estimates the recurring compliance costs just for the listed entities within the extractive industry to amount to 0.6 billion EUR for full scale CBCR (excluding audit fees as above). If we gross up the costs, it would amount to between 12 billion EUR and 60 billion EUR in extra compliance costs (same assumption on number of entities as above). These costs are significant and would put European companies at a significant competitive disadvantage before even considering the sensitive information to be published.

BUSINESSEUROPE would therefore strongly oppose the suggested amendments. They are disproportional, not fit for the purpose and would cost jobs and growth in Europe.

BUSINESSEUROPE also opposes the draft amendment suggested in the McCarthy reports for the reasons above.

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**Amendment 46. CBCR ARTICLE 1.1(5) «SCOPE AND DETAIL »**

*Text proposed by the Commission*

*BUSINESSEUROPE suggestion*

1.1(5). 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.

1.1(5). Member States shall require issuers active in the extractive industry, 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 related to extractive activities 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.

**BUSINESSEUROPE Comments:**

Se above under Recital 7.

BUSINESSEUROPE opposes the draft amendment suggested in the Pietikäinen and McCarthy reports for the reasons above.

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**Amendment 47. CBCR ARTICLE 1.5A (MCCARTHY REPORT) «PRINCIPLES FOR REPORTING »**

*Text proposed in the McCarthy report*

*BUSINESSEUROPE suggestion*

***1.5a The following Article 6a is inserted:***

***Delete***



**'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: ...;***
- (b) materiality: ...;***
- (c) project-by-project reporting: ...;***
- (d) universality: ...;***
- (e) comprehensiveness: ...;***
- (f) comparability: ...;***

**BUSINESSEUROPE Comments:**

Se above under recital 7.

\* \* \*