



Mr Richard Bruton
Minister
Ministry for Jobs, Enterprise and Innovation
32 Kildare Street
Dublin 2
Ireland

14 March 2013

Dear Minister, *Dear Mr. Bruton,*

I am writing to you in view of the next triologue negotiations meeting on the Transparency and Accounting Directives that will take place on 18 and 19 March in Brussels. In previous correspondence (see annex), we have expressed our serious concerns on the ramifications that certain technical aspects of the directives in question may have not only for the competitiveness of the European extractive sector but also for the security of supply of raw materials for the EU industry as a whole. This letter clarifies in further detail some specific points raised in our earlier letter. First, the definition of "project" under article 36.4 should be clarified to cover the target sector of the directive (extractives) and to capture the multiple contracts which may regulate a single project. Thus it should be drafted accordingly: "Project' means operational extractive activities that are (...) governed by a single contract licence, lease, concession or similar legal agreements. Nonetheless, if multiple agreements are substantially interconnected and form the basis for payment liabilities with a government, this shall be considered a project."

Second, we are very concerned that the article in the original proposal providing for exemptions in cases where legislation in the host country prohibits the disclosure of data on payments to governments may be removed from the final text of the directives. We are aware that the reasoning behind this is that the EU directive should not encourage the introduction of such restrictive legislation by third countries. At the same time companies need to have assurance that the directive will not lead to unnecessary conflict with or expropriation by host country governments. We believe that the Commission's proposal can be enhanced by including a Recital that makes clear that the Directive should be aligned with the OECD Guidelines for Multinational Enterprises. We therefore present for your consideration two recitals to be included in the Directives:

The stipulation of draft recital 33 that legal agreements can only be grouped to form a project if they consist of "substantially similar terms" would be problematic, because projects are subject to different types of legal agreements, which regulate different aspects of the operations on the ground and therefore necessarily contain substantially dissimilar terms. The recital recognises this implicitly by listing a number of different types of legal agreements.

In its current form, it would be impossible to interpret the recital in a meaningful sense, taking into account that the legislator intends to require payment reports about projects (understood as operationally and geographically connected operations on the ground), rather than payment reports relating to types of legal agreements in a given host country.

Should the recital result in businesses having to make disclosures at a contract rather than operation level, this would involve significantly greater administrative burden and cost, as well as unhelpful complexity in the information being reported. Consequently, the draft Recital 33 should **delete** the words "with substantially similar terms" and read as follows: "*Substantially interconnected legal agreements should be understood as a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements that are signed with the Government which gives rise to payment liabilities. Such agreements can be governed by a single contract, joint venture, production sharing agreement or other overarching legal agreement.*"

Additionally, we appreciate that the objective of the Directives is not to lead to unnecessary conflict with or expropriation by host country governments. We nevertheless believe that the Commission's proposal can be enhanced by including a Recital that makes this very clear and gives industry additional assurance during the implementation phase. For these reasons, we present for your consideration a Recital to be included in the Directives:

"This Directive is to be implemented with due regard for the OECD Guidelines for Multinational Enterprises that state that the entities of a multinational enterprise are subject to the laws of the countries in which they operate and that every state has the right to prescribe the conditions under which multinational enterprises operate within its national jurisdiction, subject to international law and to the international agreements to which it has subscribed. Accordingly, it is the belief and intent of Parliament and the Council that nothing in this legislation would expose company staff of MNE's to situations of harm or to expose companies to threat of termination of contracts when operating within the legal confinements of local country and international law."

We sincerely hope that you will take, dear Minister, our concerns into consideration.

Yours sincerely,

*it was a pleasure meeting you
at the Swissôtel Social Summit*

Markus J. Beyrer

