

## CHAPTER 9

### Report on payments to governments

#### *Article 36*

#### **Definitions**

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

1. "Undertaking active in the extractive industry" means an undertaking with any activity involving the exploration, discovery, development, and extraction of minerals, oil and natural gas deposits, as referred to in Section B-Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council<sup>34</sup>.
2. "Undertaking active in the logging of primary forests" means an undertaking with activities as referred to in Section A-Division 2.2 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council<sup>35</sup>, in primary forests.
3. "Government" means any national, regional or local authority of a Member State or of a third country. It includes a department, agency or undertaking controlled by that authority as laid down in Article 23 (1) to (6) of this Directive.
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.

#### *Article 37*

#### **Undertakings required to report on payments to governments**

1. Member States shall require large undertakings and all public interest entities active in the extractive industry or the logging of primary forests to prepare and make public a report on payments made to governments on an annual basis.
2. This obligation shall not apply to any undertaking governed by the law of a Member State which is a subsidiary or parent undertaking, where both of the following conditions are fulfilled:
  - (a) the parent undertaking is subject to the laws of a Member State;

---

<sup>34</sup> OJ L 393, 30.12.2006, p. 1.

<sup>35</sup> OJ L 393, 30.12.2006, p. 1.

- (b) the payments to governments of such an undertaking are included in the consolidated report on payment to governments drawn up by the parent undertaking in accordance with Article 39.

### *Article 38*

#### **Content of the report**

1. The report shall specify the following when material to the recipient government:
  - (a) the total amount of payments, including payments in kind, made 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.
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 government concerned.
3. Where payments in kind are made to a government, they shall be reported in value or in volume. Where they are reported in terms of value, supporting notes shall be provided to explain how their value has been determined.
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.
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.

## *Article 39*

### **Consolidated report on payments to governments**

1. A Member State shall require any large undertaking or any public interest entity active in the extractive industry or the logging of primary forests and governed by its national law to draw up a consolidated report on payments to governments in accordance with Articles 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.
2. The obligation to draw up the consolidated report referred to in paragraph 1 shall not apply to:
  - (a) a parent undertaking of a small group as defined in Article 3(4) except where any affiliated undertaking is a public interest entity;
  - (b) a parent undertaking of a medium-sized group as defined in Article 3(5) except where any affiliated undertaking is a public interest entity;
  - (c) a parent undertaking governed by the law of a Member State which is also a subsidiary undertaking, if its own parent undertaking is governed by the law of a Member State.
3. An undertaking need not be included in a consolidated report on payments to government where at least one of the following conditions is fulfilled:
  - (a) severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking;
  - (b) the information necessary for the preparation of the consolidated report on payments to government in accordance with this Directive cannot be obtained without disproportionate expense or undue delay.

## *Article 40*

### **Publication**

The report referred to in Article 37 and the consolidated report referred to in Article 39 on payments to governments shall be published as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC.

## *Article 41*

### **Review**

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 proposal, if appropriate.

## CHAPTER 10

### FINAL PROVISIONS

#### *Article 42*

##### **Exercise of delegated powers**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 1(2), Article 3(10) and Article 38(4) shall be conferred on the Commission for an indetermined period of time from the date referred to in Article 50.
3. The delegation of power referred to in Article 1(2), Article 3(10) and Article 38(4) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 1(2), Article 3(10) and Article 38(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

#### *Article 43*

##### **Exemption for subsidiary undertakings**

Notwithstanding the provisions of Directives 2009/101/EC and 77/91/EEC, a Member State shall not be required to apply the provisions of this Directive concerning the content, auditing and publication of the annual financial statements and the management report to undertakings