

EU ANNOUNCES NEW RULES ON DISCLOSURE REQUIREMENTS FOR EXTRACTIVE AND FORESTRY INDUSTRIES

BY BRUNO COVA, FRANCESCA PETRONIO, ANTEO PICELLO, & ROBERTO PERONI

I. New EU Disclosure Requirements

On Tuesday, April 9, 2013, EU Commissioner Mr. Barnier issued a statement announcing a proposed directive on **disclosure requirements for the extractive and forestry industries** filed as *IP/11/1238* and *MEMO/11/734* (the “**Directive**”). At this stage, it is expected that the final text should be approved by June 2013 and become binding by July 2014. From a formal standpoint, the new disclosure requirements will be incorporated in the proposals to revise the accounting directives (78/660/EEC and 83/349/EEC) and the transparency directive (2004/109/EC).

The key features of the Directive are the following:

- Listed and large non-listed companies with activities in the extractive industry (oil, gas and mining) and loggers of primary forests shall disclose all payments and contributions to governments above Euro 100,000;
- The disclosure should be made through an annual report, outlining the information on any payment and contribution made by the relevant companies to governments;
- Declarations are to be published on a country and project basis (the so-called country by country reporting).

After months of discussions on a number of issues, such as the applicable thresholds and the degree of information to be disclosed, the EU Parliament and Council reached a common position which, in the words of the Commissioner:

“will bring in a new era of transparency to an industry which is far too often shrouded in secrecy and help fight tax evasion and corruption as well as create the framework so both companies and governments can be held to account on the use of revenues from natural resources.”

The EU law innovations follow the introduction of similar statutes in other jurisdictions and advocated by the Extractive Industries Transparency Initiative (known as EITI) since 2002 and then introduced in the USA by the Dodd-Frank Act and the Securities Exchange Act.

Whilst the materiality threshold is similar to the one enacted in the U.S., the proposed Directive defines as “large company” one which exceeds two of the three following criteria: turnover €40 million; total assets €20 million; and 250 employees. In addition, whilst US provisions apply only to companies active in the extractive industry, EU proposals will also apply to the forestry sector.

II. Background

On October 25, 2011, the EU Commission presented to the EU Parliament and the EU Council the proposed legislation as a directive, which is a piece of legislation binding the EU Member States to issue implementing legislation.

The EU Parliament shall debate and approve the proposed Directive in plenary meeting. It is expected that the matter will go to the plenary meeting for final approval in June 2013.

If the Council will not approve the text resolved upon by the Parliament, the Directive will then be forwarded to the EU Parliament for a second reading, along with the Council's comments.

If the EU Parliament accepts the position of the Council, the Directive becomes final; in case of rejection, the procedure for adoption the Directive will be closed. However, if in the second reading the EU Parliament proposes further changes to the Directive, the Council will have to consider them. In case of rejection by the Council, a conciliation proceeding would be triggered, and the matter would be submitted to a special committee composed of selected members of the EU Parliament and of the Council in order to resolve it within 6 months.

The Directive, in its current language, sets forth that Member States shall implement it by July 1, 2014 at the latest.

III. Conclusion

Companies in the extractive industry (oil, gas and mining) and loggers of primary forests should already take the possibility of the adoption of the proposed Directive into account, in order to assess its impact on, *inter alia*, their accounting and internal control procedures and begin to consider appropriate measures to comply with the new disclosure requirements.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

Bruno Cova
39.02.30414.212
brunocova@paulhastings.com

Anteo Picello
39.02.30414.240
anteopicello@paulhastings.com

Francesca Petronio
39.02.30414.226
francescapetronio@paulhastings.com

Roberto Peroni
39.02.30414.254
robertoperoni@paulhastings.com

Paul Hastings LLP

www.paulhastings.com

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