



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

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Opinion

Title

DG MARKET- Impact Assessment on: Financial disclosures on a country by country basis

(draft version of 21 June 2011)

(A) Context

In recent years there have been regular calls for multinational companies (MNCs) to provide more financial information on a country by country basis (CBCR), especially as regards payments by the extractive and forestry industry to the governments of resource-rich countries. In July 2010 the US Congress adopted the Dodd-Frank Act requiring extractive companies listed on US stock-exchanges to publish payments made to governments on a country-by-country and project basis. The US rules build on the principles of payment transparency established by the Extractive Industries Transparency Initiative (EITI), which is a voluntary process driven by national governments of host countries. This impact assessment considers the case for a CBCR for European MNCs.

(B) Overall assessment

The report needs to be strengthened significantly in several regards. First, it should provide greater clarity on the key issues the initiative aims to address by setting them in a broader policy context, and should on that basis establish the core objective and the scope of action. The problem definition should also identify upfront which sectors should be targeted (e.g. extractive industries, forestry, fisheries). It should also provide a justification for including non-listed companies in the scope of the initiative and for the need for a project based approach. Second, the baseline scenario should more comprehensively reflect the existing transparency initiatives in the targeted sectors. Third, the report should provide a more coherent set of policy options focusing on different levels and types of disclosures. Fourth, the report should better reflect on the costs and benefits of the policy options, and on this basis better demonstrate the proportionality of the preferred option. Finally the report should provide more information on different stakeholders' views on the different elements of the policy options.

(C) Main recommendations for improvements

(1) Establish more clearly the scope and core objective of the initiative. The report should clarify the scope of this initiative and exclude upfront the issue of fighting tax avoidance from the objectives. It should place the key issues into a broader policy context of transparency and levelled playing field, while also considering implications on resource efficiency, security of supply and development cooperation. It should establish which sectors (e.g. extractive industries, forestry, fisheries) should be covered by the initiative and explain which criteria formed the basis for this choice. The report should also (a) provide arguments for including non-listed companies in the scope of the initiative (e.g. by indicating the share of non-listed companies in the cross border operations of relevant sectors) and (b) justify why in addition to a CBCR a project-based disclosure is also considered, given that the latter could significantly increase the burden of reporting.

(2) Provide a fuller baseline scenario, including the impact of existing transparency initiatives in all relevant sectors (e.g. FLEGT - Voluntary Partnership Agreements on Legal Timber Trade, Kimberly process - certifying the origin of rough diamonds). The report should be consistent about the possible occurrence of any national action in this domain (e.g. in the section on subsidiarity the report argues that coordinated EU action is necessary to avoid distortion in the internal market, while in the baseline it does not mention any upcoming national initiatives). The baseline should also discuss the current competitive position of EU MNCs vis-à-vis non-EU MNCs in the relevant sectors.

(3) Better present the options, by aligning them with the main objective of the initiative. The report should present policy options differentiated by the level (e.g. country-based versus project-based) and type (e.g. partial versus full CBCR) of disclosure. The materiality criterion and the company size thresholds should be included in the description of the options. The report should also discuss in more detail the relevance and effectiveness of the possible auditing requirement for ensuring reliability of disclosed information.

(4) Strengthen the proportionality analysis of the proposed measures. The report should clarify to what extent the estimates of the administrative costs of different options are robust. It should also present in more comparative terms the costs related to the essential elements of the policy options, such as the type of data disclosed, project-based approach, the materiality criterion, size threshold and auditing requirements. The report should make a further effort to be more specific about the benefits of the initiative (e.g. increased social responsibility in developing countries, more stable operational environment for MNCs) and on this basis demonstrate better the effectiveness and efficiency of the preferred option. In addition, the competitiveness discussion should be further refined. The report should assess to what extent the transparency measures planned in the US and EU would regulate the critical mass of MNCs needed to achieve the desired effects of this initiative, and how this would impact their competitive position vis-à-vis not affected industrial players from third countries.

(5) Strengthen the description of the stakeholder consultation process (including various bilateral meetings) and provide a more complete picture of the different views expressed by the different stakeholder groups on the key elements of the options, including (i) the range of targeted companies, (ii) the need for a project-based-approach and (iii) the coverage of non-listed companies. The report should state whether the consultation process complied with the Commission's minimum standards.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The executive summary should provide a more complete overview of the main expected benefits and costs.

(E) IAB scrutiny process

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External expertise used	No
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