

COMMISSION IMPLEMENTING DECISION (EU) 2016/1910**of 28 October 2016****on the equivalence of the reporting requirements of certain third countries on payments to governments to the requirements of Chapter 10 of Directive 2013/34/EU of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC ⁽¹⁾, and in particular Article 47 thereof,

Having regard to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC ⁽²⁾, and in particular Article 6 thereof,

Whereas:

- (1) The purpose of the equivalence assessment set out in Article 46 of Directive 2013/34/EU is to reduce administrative burden and to avoid double reporting issues for large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests that prepare and make public reports on payments to governments referred to in Article 42 of Directive 2013/34/EU. Pursuant to Article 6 of Directive 2004/109/EC issuers active in the extractive or logging of primary forest industries have also to prepare on an annual basis a report on payments made to governments in accordance with Chapter 10 of that Directive.
- (2) Article 46 of Directive 2013/34/EU exempts undertakings active in the extractive industry and undertakings active in the logging of primary forestry industry to prepare and make public a report on payments to governments under the requirements of Chapter 10 of Directive 2013/34/EU to the extent that the payments concerned are made public by the undertakings as a result of a legal obligation under equivalent third country reporting requirements. Such a legal obligation may be de facto impinging on a parent undertaking due to subsidiaries. In that case, the undertakings would report for their payments subject to legal reporting requirements in certain third countries under those third countries' reporting requirements deemed equivalent. For all other remaining payments the undertakings would report under the relevant requirements established by the Union law. The concerned undertakings would have still to fulfil the obligation to publish the report as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC of the European Parliament and of the Council ⁽³⁾, including any time period set by Member States for the public availability of documents.
- (3) The equivalence of the reporting requirements of third countries should be assessed vis-à-vis the criteria set out in Article 46(3) of Directive 2013/34/EU. The criteria refer, in particular, to target undertakings, target recipients of payments, payments captured, attribution of payments captured, breakdown of payments captured, triggers for reporting on a consolidated basis, reporting medium, frequency of reporting, and anti-evasion measures.
- (4) Canada has adopted reporting requirements on payments to governments (Extractive Sector Transparency Measures Act of 22 June 2015 and its Technical Reporting Specifications). Having regard to the criteria listed in Article 46(3) of Directive 2013/34/EU, those reporting requirements deliver substantive outcomes equivalent to the provisions contained in Chapter 10 of Directive 2013/34/EU and in Article 6 of Directive 2004/109/EC.

⁽¹⁾ OJ L 182, 29.6.2013, p. 19.

⁽²⁾ OJ L 390, 31.12.2004, p. 38.

⁽³⁾ Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).

Those reporting requirements are addressed to undertakings and issuers active only in extractive industry. It should be therefore concluded that the reporting requirements of Canada to report on payments to governments made by undertakings and issuers should be considered as equivalent to requirements of Chapter 10 of Directive 2013/34/EU regarding only their activities in the extractive industry.

- (5) The regular review of the reporting requirements on payment to governments applicable in the third countries subject to this Decision is without prejudice to the possibility of the Commission to undertake a specific review, where relevant developments make it necessary for the Commission to re-assess the equivalence granted by this Decision. Such re-assessment could lead to the repeal of this Decision.
- (6) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 50(1) of Directive 2013/34/EU,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 47 of Directive 2013/34/EU and Article 6 of Directive 2004/109/EC, the reporting requirements of the third countries listed in the Annex to this Decision applicable to undertakings and issuers active in the extractive industry, as referred to in Article 41(1) of Directive 2013/34/EU, shall be considered as equivalent to the requirements of Chapter 10 of Directive 2013/34/EU on payments to governments.

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 28 October 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

LIST OF THIRD COUNTRIES FOR THE PURPOSES OF ARTICLE 1 (UNDERTAKINGS AND ISSUERS ACTIVE IN THE EXTRACTIVE INDUSTRY)

- (1) Canada
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