

# CLIENT ALERT: MINING

## DIGGING DEEPER: EU ACTION MEANS MINING COMPANIES NEED TO GET INVOLVED

Mining companies based in, active in or that supply the EU should be aware of the European Commission's (EC) policy initiatives in the field. There are currently two principal initiatives to note:

- the **Raw Materials Initiative** (RMI), which concerns supply and sustainability issues relating to “non-energy raw materials.” This includes, and indeed focuses on, non-energy minerals, including metallic minerals (such as antimony, cobalt, molybdenum, niobium, platinum, rare earth minerals, iron ore and copper), industrial minerals (such as graphite, barite, boron and phosphate) and construction minerals (in particular, aggregates, gypsum and natural stone); and
- a legislative proposal on **country-by-country reporting** (CBCR) for EU-based businesses, intended to increase the transparency of payments made by the extractive (including mining) and logging industries generally to governments worldwide.

### Raw Materials Initiative

**Background:** The EC adopted the RMI in 2008. It sets out an EU-wide policy aimed at ensuring that the EU has sufficient access to non-energy raw materials (including, particularly, non-energy minerals) at fair and undistorted prices and is based on three pillars (with supporting policy actions):

- ensuring access to non-energy raw materials from international markets under the same conditions as other industrial competitors;
- setting the right framework conditions within the EU in order to foster sustainable supply of non-energy raw materials from European sources; and
- boosting overall resource efficiency and promoting recycling to reduce the EU's consumption of primary non-energy raw materials and to decrease its import dependence.

**Latest development:** The latest development in this area was the publication in February 2011 by the EC of a communication on commodity markets and raw materials. This covers raw materials of all types (therefore including natural resources such as natural gas, bauxite and wood) as well as non-energy raw materials (including non-energy minerals). It recognized the link between financial and physical markets and set out further actions to be taken by the EC in relation to raw materials, as foreshadowed by the RMI (but extending beyond it), as well as in relation to the financial markets. Proposed actions in relation to raw materials included: monitoring the development of access to 14 critical non-energy minerals (such as antimony, cobalt, indium, magnesium and tantalum) with a view to identifying priority actions; strengthening the EU's trade strategy in relation to raw materials and pursuing “raw material diplomacy” to address raw materials priorities in bilateral and multilateral frameworks and dialogues; developing a bilateral co-operation with African countries in the area of raw materials; and working closely with EU member states and other stakeholders to improve the regulatory framework for sustainable extraction within the EU itself.

**Next steps:** The EC will push forward with its proposals. At the same time the European Parliament has become involved, and in September 2011 it published its own non-binding resolution on a raw materials strategy for Europe. It is clear that there is much at stake in this area and mining companies with an interest should be involved.

## Country-by-Country Reporting (CBCR) for EU-based Businesses

**The proposal:** On 25 October 2011, the EC published various proposals “to improve transparency and promote sustainable business among multinationals.” This includes the CBCR proposal, which would apply to certain EU-based companies that are active in the extractive and forestry industries worldwide. This includes mining companies. So far as concerns listed companies, it would cover all companies that are listed on an EU regulated market even if registered in a third country. In relation to private companies, it would cover any limited liability company incorporated under the law of an EEA (European Economic Area, which includes the EU) member state.

The proposal would amend EU legislation on accounting requirements and on information provided by listed companies to require relevant businesses to report all material payments to governments broken down by country and by project. Payments for production entitlements, taxes on profits, royalties and dividends, amongst other types of payment, would be included.

**International background:** The proposal would complement the voluntary Extractive Industries Transparency Initiative (EITI), with the ultimate objective of strengthening the EITI and extending its scope to all resource-rich countries. The EC has also indicated that it is responding to international developments along similar lines, in particular the inclusion of a requirement to report payments to governments in the United States Dodd-Frank Act and a pledge made by the G8 at its 2011 Deauville summit “to [set] in place transparency laws and regulations or to [promote] voluntary standards that require or encourage oil, gas and mining companies to disclose the payments they make to governments.” The EU proposals are broadly similar to the Dodd-Frank Act requirements but go further in two respects: in addition to the oil, gas and mining sectors (as in the United States), the EU logging industry is within the scope of the proposed reporting requirement; and as well as applying to listed companies (as in the United States), they would apply to large unlisted companies.

**Next steps:** The CBCR proposal will now go to the next stage of the legislative process. Intensive lobbying will however continue in relation to it and again mining companies with an interest should be involved.

December 2, 2011

### More Information

Hubert André-Dumont, Partner  
handredumont@mcguirewoods.com

Matthew Hall, Partner  
mhall@mcguirewoods.com

rue des Colonies 56 (bte 3)  
1000 Brussels, Belgium  
+ 32 (0)2 629 42 11

*We take the opportunity of this note to wish  
you a good year end and an excellent 2012!*