



**global witness**

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May 16, 2014

**By E-Mail:**

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Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20459-1090

**Re: Dodd-Frank Section 1504 and the Transposition of the EU Accounting and Transparency Directives**

Dear Chair and Commissioners:

We support the Commission's efforts to swiftly reissue a strong rule implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. § 78m(q), "Section 1504"). In the interests of all stakeholders (companies, investors and citizens), such a rule should be equivalent to the European payment disclosure requirements which unequivocally mandate that extractive (oil, gas and mining) and logging companies must publicly disclose the payments they make to governments on a country-by-country and project-by-project basis, without any exemptions. These laws govern all large extractive companies registered in the European Economic Area (pursuant to the "Accounting Directive") and issuers of securities on regulated markets in the European Union (the "Transparency Directive").<sup>1</sup> This letter provides an update on the ongoing process of transposition of these directives into the national laws of the Member States of the European Union, in particular the United Kingdom. It

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<sup>1</sup> 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, [http://new.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=oj:JOL\\_2013\\_182\\_R\\_0019\\_01&from=EN](http://new.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=oj:JOL_2013_182_R_0019_01&from=EN).

Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market,

[http://new.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=oj:JOL\\_2013\\_294\\_R\\_0013\\_01&from=EN](http://new.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=oj:JOL_2013_294_R_0013_01&from=EN).

is only by paralleling and supporting these international processes that the Commission will fulfill the Congressional mandate to “support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.”<sup>2</sup> We take this opportunity to clarify: (1) that this European process is advancing as scheduled and in some cases, well ahead of schedule, and (2) that the Directives leave no leeway for the Member States to depart from the agreed standard of payment reporting. Recent suggestions to the contrary by other commentators are completely misguided and without any legal basis: the EU legal requirements are firmly set in stone. The SEC process can make a crucial contribution to the emerging global standard of payment reporting by ensuring the consistency which is in the interests of industry, government and civil society alike but, as a legal matter, it cannot have any impact whatsoever on the EU Member States’ duty to implement the Directive standard of reporting, nor on the obligation of companies based or listed in the EU to report under it.<sup>3</sup>

## About Global Witness

Global Witness is a non-profit organization dedicated to preventing natural resource-related conflict and corruption and associated environmental and human rights abuses. Our mission is to expose and end the brutality and injustice resulting from fights to access and control natural resource wealth. Using first hand documentary evidence from field investigations, we seek accountability for those who exploit government failure and disorder. Global Witness strives to break the links between natural resource exploitation, human rights abuses, and corruption. We have played a leading role in developing and implementing international transparency and natural resource governance mechanisms, including the Kimberley Process rough diamond certification scheme, the Extractive Industries Transparency Initiative (“EITI”), on which we serve as a board member, and the Publish What You Pay (“PWYP”) campaign, which we conceived and co-launched in 2002, now a global coalition of over 800 civil society organizations in more than 60 countries.

### I. Timing of Transposition

The two Directives have been in force since the twentieth day following their publication in the *Official Journal of the European Union*.<sup>4</sup> They are now in the process of being transposed into national laws of the Member States, which must be completed **by July 20, 2015** for the

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<sup>2</sup> 15 U.S.C 78m(q)(2)(E).

<sup>3</sup> In particular, the following statement made by Shell rests on a complete misunderstanding of the EU and UK legal process: “If the SEC were able to indicate their willingness to consider the proposed new rules under 1504 before the U.K. legislation is finalized, the U.K. government could take the SEC approach into account in implementing its own transparency legislation.” Comment submitted by Simon Henry, Chief Financial Officer, Royal Dutch Shell plc, and Patrick T. Mulva, Vice President and Controller, Exxon Mobil Corporation (May 1, 2014), available at <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-37.pdf>.

<sup>4</sup> The Accounting Directive 2013/34/EU was published in the *Official Journal of the European Union* on June 29, 2013, and the Transparency Directive 2013/50/EU was published in the *Official Journal of the European Union* on November 6, 2013.

Accounting Directive, and by November 27, 2015, which is 24 months from the date of the entry into force of the Transparency Directive.<sup>5</sup> Failure to meet these deadlines would be an infringement of EU law, and the European Commission could ultimately refer the case to the European Court of Justice.<sup>6</sup>

The United Kingdom and other EU members of the G8 (France, Germany and Italy) have committed at the Lough Erne summit to “quickly” implement the Directives, and Denmark, Finland and Sweden have separately made the same commitment.<sup>7</sup> Moreover, the United Kingdom has announced that it will complete transposition of the Accounting Directive in 2014 as part of its Open Government Partnership (OGP) National Action Plan.<sup>8</sup> As a result of this commitment, the UK government expects that in 2015, “UK legislation comes into force requiring UK-listed and UK registered extractive companies to publish data under the EU Accounting and Transparency Directives” and in 2016, “UK listed and UK registered extractive companies will start to publish data under the EU Directives in an open and accessible format.”<sup>9</sup>

The UK government is currently on track to meet that timeline, and transposition in other EU Member States is also progressing well.<sup>10</sup> On March 28, the UK Department for Business, Innovation and Skills (BIS), which is responsible for transposing the Accounting Directive, issued a consultation on the draft implementing regulations and is soliciting responses until May 16, 2014. The accompanying impact assessment makes it clear that early transposition is the preferred policy option.<sup>11</sup> Consistent with the UK OGP commitments, these regulations are

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<sup>5</sup> Article 53.1 of the Accounting Directive and Article 4.1 of the Transparency Directive.

<sup>6</sup> See the website of the European Commission website:  
[http://ec.europa.eu/eu\\_law/infringements/infringements\\_en.htm](http://ec.europa.eu/eu_law/infringements/infringements_en.htm)

<sup>7</sup> 2013 Lough Erne G8 Leaders’ Communiqué (June 18, 2013), p. 9, paragraph 38:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/207771/Lough\\_Erne\\_2013\\_G8\\_Leaders\\_Communique.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207771/Lough_Erne_2013_G8_Leaders_Communique.pdf) and Joint Statement by Kingdom of Denmark, Republic of Finland, Republic of Iceland, Kingdom of Norway, Kingdom of Sweden, and the United States of America (September 4, 2013): <http://www.whitehouse.gov/the-press-office/2013/09/04/joint-statement-kingdom-denmark-republic-finland-republic-iceland-kingdo>.

<sup>8</sup> The UK Government made its commitment at the Open Government Partnership meeting in London, October 31, 2013 in “Open Government Partnership UK National Action Plan 2013 to 2015,” p. 49, Commitment 21:  
[http://data.gov.uk/sites/default/files/library/20131031\\_ogp\\_uknationalactionplan.pdf](http://data.gov.uk/sites/default/files/library/20131031_ogp_uknationalactionplan.pdf). Global Witness, *UK lead on oil and mining transparency law sends strong signal to U.S.* (October 31, 2013), <http://www.globalwitness.org/library/uk-lead-oil-and-mining-transparency-law-sends-strong-signal-us>.

<sup>9</sup> “Open Government Partnership UK National Action Plan 2013 to 2015” (October 31, 2013), p. 49, Commitment 21,  
[http://data.gov.uk/sites/default/files/library/20131031\\_ogp\\_uknationalactionplan.pdf](http://data.gov.uk/sites/default/files/library/20131031_ogp_uknationalactionplan.pdf).

<sup>10</sup> From discussions with ministry officials and local CSOs, we understand that draft implementing laws are expected to be prepared in France and Netherlands by the summer, while a draft law is expected in Italy by the end of 2014.

<sup>11</sup> “UK implementation of the EU Accounting Directive: Chapter 10: extractive industries reporting - impact assessment” (March 2014),

slated to come into force on October 1, 2014 and to apply in relation to financial years beginning on or after January 1, 2015, with first reports due by November 31, 2016.<sup>12</sup> As part of the consultation, the UK government has made unequivocally clear that any delay in the US implementation of its reporting rules will make no difference to the UK process: “The case in the USA does not have any legal effect on the European Directive. There is no question about the European Union’s authority to set its own requirements in this area. The UK must implement within the transposition deadlines.”<sup>13</sup>

## II. No Discretion to Alter Directives

The language of the Directives leaves absolutely no leeway for Member States on any of the key questions that the SEC is considering, including the public nature of the payments to governments reports, contract-based definition of “project” and denial of exemptions. This is evident from the wording of the Directives (the usage of the verb “shall”), and is further confirmed in a legal opinion from a UK barrister obtained by Global Witness.<sup>14</sup>

The UK government has repeatedly made clear that “[t]he UK does not have the discretion to amend the requirements set out in the Directive” in the written consultation (see Appendix) as well as during in-person meetings.<sup>15</sup> BIS have also emphasized that “[t]he content of the report is fixed by the Directive. As such, the areas where the UK can define requirements are limited. These areas include the first reporting period, when the report is produced and how it is filed, and the enforcement regime surrounding the requirements.”<sup>16</sup> This means that the UK government has no scope to make any changes to project-level reporting, scope of payments,<sup>17</sup> the fact that reports must be made public, nor to exempt companies’ subsidiaries based on the country where they are operating – all of these questions are fixed in the text of the Directives

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/298603/bis-14-669-impact-assessment-consultation-on-the-uk-implementation-of-the-eu-accounting-directive.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298603/bis-14-669-impact-assessment-consultation-on-the-uk-implementation-of-the-eu-accounting-directive.pdf).

<sup>12</sup> Id. at p. 23.

<sup>13</sup> “Chapter 10: Extractive industries reporting - supplementary information” (2014), question 7, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/307982/bis-14-786-uk-implementation-eu-accounting-directive\\_-supplementary-information.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307982/bis-14-786-uk-implementation-eu-accounting-directive_-supplementary-information.pdf).

<sup>14</sup> K.P.E. Lasok QC of Monckton Chambers, “Opinion in the matter of Directive 2013/34/EU and in the matter of project-by-project payment reporting obligations affecting EU subsidiaries of US companies” (September 13, 2013), available upon request.

<sup>15</sup> Presentation by Vickie Wood, Assistant Director, Accounting Policy, UK Department of Business, Innovation and Skills, London (May 2, 2014).

<sup>16</sup> See Appendix, para. 1.7, p. 7. See also UK Impact Assessment, para. 26, p. 9.

<sup>17</sup> See Articles 43.2(c), 41.4, 41.5 and 45.1 of the Accounting Directive respectively. The Accounting Directive explicitly defines “payment” and “project” for these purposes, as well as the publication requirement, leaving Member States no flexibility as to the stipulations which go to the heart of the reporting standard. Companies will also of course be identifiable from their reports.

and cannot be altered by Member States (which are certainly not at liberty to adapt their reporting standard to that of the SEC or the United States as a non-Member State).

In conjunction with the transposition process, the UK is preparing an impact assessment, as required by UK law, but this will have no bearing on the UK obligation to implement the standard of payment reporting prescribed in the Directive. This standard clearly requires project-level payment disclosure without any exemptions, and there is no legal possibility for Member States to alter it. Notwithstanding that the exemptions question is closed in the text of the Directive and therefore not subject to the UK consultation, the UK impact assessment notes that the Government had not received any “convincing evidence that any criminal prohibitions on the reporting of payments to governments exist in other countries, or that disclosure of such information would result in any of the above consequences. The majority of companies we have spoken to have indicated that they believe they could continue with their operations even without an exemptions clause.”<sup>18</sup> This echoes the SEC’s own determination “that the evidence of foreign legal prohibitions on Section 1504 disclosures that API members submitted was “unpersuasive” and that they had provided no evidence that any company would face sanctions for making the required disclosures.”<sup>19</sup> In the absence of such evidence anywhere, the SEC must reject calls to weaken Section 1504 by including exemptions, which are both unnecessary and harmful, as we have maintained.<sup>20</sup>

### **III. A Consistent Global Standard**

A consistent global transparency standard is in the interest of citizens and investors because it would enable them to compare data more easily, as well as companies, whose compliance costs will be reduced substantially if their compliance is with respect to a single standard. This is a policy shared by the EU and the US, as evidenced from “international transparency promotion efforts” in the US Dodd-Frank Act and the reference to “a level international playing field” in the Accounting Directive.<sup>21</sup> It was for these reasons that the UK government drove the inclusion of an equivalence provision in the Accounting Directive.<sup>22</sup> The equivalence rule means that, where the European Commission has determined that a non-Member State employs reporting rules equivalent to the EU standard, it will be sufficient for a company caught by both systems merely to publish its home-country report in the EU, rather

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<sup>18</sup> UK Impact Assessment, para. 73, p. 14.

<sup>19</sup> Comment submitted by Publish What You Pay (March 14, 2014), p. 24 (quoting SEC, Order Denying Stay, Rel. No. 68197 at 7 (8 November 2012)), <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-28.pdf>.

<sup>20</sup> Id. at pp. 24-34; Comment submitted by Global Witness (December 18, 2013), pp. 10-17, <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-22.pdf>.

<sup>21</sup> Recital 53 of the Accounting Directive; 15 U.S.C 78m(q)(2)(E).

<sup>22</sup> Presentation by Vickie Wood, Assistant Director, Accounting Policy, UK Department of Business, Innovation and Skills, London (May 2, 2014).

than preparing a separate report.<sup>23</sup> This neat and efficient solution avoids “dual-listed” companies from having to report twice, but relies on third-country reporting systems being compatible with the EU reporting standard in their key terms. As the UK Prime Minister David Cameron noted on the pages of the *Wall Street Journal*, “we must all work harder to secure and fully implement the new standard that will see oil, gas and mining companies reporting project by project payments across the world without exception.”<sup>24</sup>

Given that the EU law leaves no leeway for Member State transposition, whereas the SEC has significant discretion, we urge the SEC to use its discretion to align the US reporting requirements to be equivalent with the strong Europe-wide standard, in the interests of all stakeholders.

Sincerely,



Corinna Gilfillan  
Global Witness  
Head of the U.S. Office

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<sup>23</sup> Article 46.1 of the Accounting Directive. Article 46.3 goes on to state that the European Commission should consider, among other things, “payments captured”, “breakdown” and “attribution” of payments captured, “triggers for reporting on a consolidated basis” (i.e. reporting payments made by overseas subsidiaries) and “anti-evasion measures” in any decision as to equivalence..

<sup>24</sup> David Cameron, “A British-American Tax and Trade Agenda,” *Wall Street Journal* (May 12, 2013), available at <http://online.wsj.com/news/articles/SB10001424127887324216004578478652537662348>.

**APPENDIX: UK Department of Business, Innovation and Skills, “UK implementation of the EU Accounting Directive: Chapter 10: extractive industries reporting – consultation”**  
(March 28, 2014)



# Department for Business Innovation & Skills

**UK IMPLEMENTATION OF THE EU  
ACCOUNTING DIRECTIVE**

**Chapter 10: Extractive industries  
reporting - Consultation**

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**MARCH 2014**

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## Important note about companies within scope of the Accounting Directive, Chapter 10

**Chapter 10 of the Accounting Directive** applies to all large companies and any public interest entity companies registered in the UK which are active in the extractive industries, that is those companies engaged in the extraction of oil, mineral and gas and the logging of primary forests

Public interest entities are treated as large companies for the purposes of the Accounting Directive – Article 2 (1) of Directive 2013/34/EU (replicated below) refers. Therefore, all UK-registered extractives companies which are listed in the UK fall within scope of the requirement to report payments to governments, regardless of their size. References to “large extractives companies” in this document should be taken to include all UK-registered extractives companies which are listed in the UK throughout.

(The **Transparency Directive** (2004/109/EC), as amended by Directive 2013/50/EU, extends the reporting obligation set out in Chapter 10 of the Accounting Directive to companies active in the extractive industries with securities admitted to trading on a regulated market.)

### Article 2 (1):

'public-interest entities' means undertakings within [...] which are:

- (a) governed by the law of a Member State and whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ( 1 );EN L 182/26 Official Journal of the European Union 29.6.2013
- (b) credit institutions as defined in point (1) of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions ( 1 ), other than those referred to in Article 2 of that Directive;
- (c) insurance undertakings within the meaning of Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts of insurance undertakings ( 2 ); or
- (d) designated by Member States as public-interest entities, for instance undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees;

( 1 ) OJ L 145, 30.4.2004, p. 1.

# Consultation on the UK Implementation of the EU Accounting Directive: Chapter 10 Extractive industries reporting

Increased transparency around the payments that extractives industries make to governments is an issue that can directly benefit close to a quarter of the world's population: 1.6 billion people live in countries officially classified as rich in oil, gas and mineral resources. The payments that international oil, gas, mining and forestry companies make to governments have the potential to dramatically boost economic growth and help resource-rich developing countries to pull themselves out of poverty. For example, Africa's income from the extractive industries is estimated to be six times greater than the international aid it receives.

However, many countries rich in oil, gas and mineral resources are plagued by a lack of transparency and corrupt practices. Citizens of those countries are often unable to find out how much their governments are paid for access to their natural resources, or how these payments are re-invested in their country. This means citizens often do not see the benefits of the sale of those resources. Setting a new global standard for extractives transparency is vitally important to ensuring that happens. By requiring large extractive companies to report on the payments they make to governments across the world, we can provide citizens with the detailed information they need to hold their governments to account. The UK has been vocal in its support of greater transparency in this area and this was a feature of discussions under the UK's Presidency of the G8.

Following extensive negotiations, the European Union has recently introduced new reporting requirements for large companies and listed companies operating in the extractive industries – that is those engaged in the extraction of, oil, mineral and gas and the logging of primary forests. The requirements are set out in Chapter 10 of the new Accounting Directive ("the Directive"), 2013/34/EU (to see the full text of the Directive, please [click here](#)). Specifically, the Directive requires companies to report the payments they make to governments in relation to their extraction activities. These requirements support the Government's ambition for strong extractives reporting and represent a significant contribution to the development of a global standard for transparency in these industries.

The Accounting Directive allows Member States up to 24 months to transpose its requirements into national law. However, in line with the UK Government's commitment to quickly implement reporting of payments to governments by the extractive industries<sup>1</sup>, we propose to introduce regulations during 2014 to implement the requirements set out in Chapter 10.

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<sup>1</sup> 2013 Lough Erne G8 Leaders' Communiqué, Extractives paragraphs 34-42

These requirements are also cross referenced by recent changes made to Article 6 of the Transparency Directive (2004/109/EC) by an amending Directive (2013/50/EU). Therefore, issuers with securities admitted to trading on a regulated market will also be subject to these requirements once the revised Article has been implemented. To see the full text of the amending directive, [please click here](#).

This consultation seeks views on the proposed options for implementation of extractives reporting requirements, with a particular view to putting in place an appropriate and workable reporting cycle. This cycle should support strong extractives transparency whilst not placing unnecessary burdens on business.

Comments on the obligation imposed on listed extractives companies by the Accounting Directive, the Transparency Directive and/or on the interaction between the Accounting and Transparency Directives are welcome as part of this consultation

Issued: 28 March 2014

Respond by: 16 May 2014

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This consultation is relevant to: large UK registered extractives companies (i.e. those active in the mining, gas, oil sectors and logging of primary forest) and UK listed extractives companies, as well as civil society organisations with an interest in extractives transparency.

## 1. Executive Summary

1.1 The payments that international oil, gas, mining and forestry companies make to foreign governments have the potential to dramatically boost economic growth and help resource-rich developing countries to pull themselves out of poverty. However, citizens often do not see the benefits of the sale of those resources. By requiring large extractive companies to report on the payments they make to governments across the world, we can provide citizens with the detailed information they need to hold their governments to account.

1.2 The European Union has recently introduced new reporting requirements for large companies operating in the extractive industries – that is those engaged in the mining, oil, gas sectors and the logging of primary forests. The detailed requirements are set out in Chapter 10 of the new Accounting Directive (“the Directive”), 2013/34/EU. This important initiative supports the Government’s ambition for strong extractives reporting and represents a significant contribution to the development of a global standard for transparency in these industries. For the first time, large extractive companies and listed extractives companies of all sizes<sup>2</sup> will be required to report on the payments they make to governments across the world – and not just to national governments but to government bodies at regional and local level and their agencies too. The reports must also provide information at individual project level.

1.3 The obligation to report applies to large extractives companies and listed extractives companies of all sizes registered in EU Member States and requires them to publicly report on the payments they make to any government<sup>3</sup>. The Transparency Directive (2004/109/EC), as amended by Directive 2013/50/EU, extends the reporting obligation to companies active in the extractive industries with securities admitted to trading on a regulated market. Comments on the obligation imposed on listed extractives companies by the Transparency Directive and/or on the interaction between the Accounting and Transparency Directives are therefore also invited as part of this consultation.

1.4 A company is large if, at its balance sheet date, it fulfils **2 out of these 3 criteria:**

- i) A balance sheet of more than £17.8 million
- ii) A net turnover of more than £35.6 million
- iii) Average number of employees during the financial year to which the balance sheet relates exceeds 250

1.5 Reports must be prepared on an annual basis. They must:

<sup>2</sup> Public interest entities are treated as large companies for the purposes of the Accounting Directive – Article 2 (1) of Directive 2013/34/EU refers. Therefore, all UK-registered extractives companies which are listed in the UK fall within scope of the requirement to report payments to governments, regardless of their size. References to “large extractives companies” in this document should be taken to include all UK-registered extractives companies which are listed in the UK throughout.

<sup>3</sup> “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 22(1) to (6) of Directive 2013/34/EU.

- i) Be prepared on the basis of individual projects<sup>4</sup>.
- ii) Include all payments made in money or in kind, whether made as a single payment or a series of related payments, totalling £84,800 or over (€100,000).
- iii) Disclose the total amount of payments made to each level of government, including national, regional and local governments, and state owned organisations.
- iv) Disclose the total amount per type of payment. Types of payment covered are: production entitlements; taxes levied on the income; production or profits of companies (excluding taxes levied on consumption such as value added, personal income taxes or sales taxes); royalties; dividends; signature, discovery and production bonuses; licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and payments for infrastructure improvements.

1.6 Throughout the negotiation of the Directive and since its agreement in June 2013, the Government has been in close informal consultation with industry and NGOs. We have therefore developed a clear picture of the considerations that need to be taken into account when implementing it e.g. a clear specification of the reporting obligation.

1.7 The content of the report is fixed by the Directive. As such, the areas where the UK can define requirements are limited. These areas include the first reporting period, when the report is produced and how it is filed, and the enforcement regime surrounding the requirements. Therefore, the Government is seeking views on the presentation (format) of the reports and when these reports should be produced and filed so that we can ensure an appropriate reporting cycle is put into place. In particular, we welcome views on the period to which reporting requirements should apply and the appropriate time period that should be available for companies to produce their reports.

1.8 The aims of this consultation are to:

- inform decisions on those points on which the UK has discretion
- allow those with an interest in the extractive reports to bring forward suggestions or raise any concerns they might have;
- gather improved information on the costs to industry of implementing this proposal; and
- raise awareness within the extractive industries of the reporting requirement under both the Accounting Directive and Transparency Directive;
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1.9 As a result of the extensive discussion that has already taken place with industry and civil society organisations, we consider that 6 weeks is an appropriate timeframe for a consultation where the Government has such limited scope to influence the overall reporting requirement.

1.10 The Directive allows Member States up to 24 months to transpose its requirements into national law. This means regulations must be in place no later than 20 July 2015. However, in

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<sup>4</sup> “Project” means the operational activities which are governed by a single contract, licence, lease, concession or similar legal agreement, and form the basis for payment liabilities with a government

line with the UK Government's commitment to quickly implement reporting of payments to governments by the extractive industries<sup>5</sup>, we propose to introduce regulations during 2014 to implement the requirements set out in Chapter 10. The regulations will apply to all large or listed extractives companies registered in the UK.

1.11 In developing its approach to the implementation of the Directive in the UK, the Government will have regard to the principles set out in the UK's Open Government Partnership National Action Plan<sup>6</sup>.

1.12 This consultation document has been sent to stakeholders (listed in Annex 2) to obtain views. However, the Government welcomes comments from all individuals, companies or representative bodies with an interest in this topic. In particular, we welcome comments from companies active in the extractives industries and civil society organisations. The responses will be used to determine which of the identified options will support the Government's ambition for strong extractives reporting requirements, whilst not introducing unnecessary burdens on business.

1.13 Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see Section 3, Confidentiality & Data Protection, for further information.

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<sup>5</sup> 2013 Lough Erne G8 Leaders' Communiqué, Extractives paragraphs 34-42

<sup>6</sup> <http://www.opengovernment.org.uk/national-action-plan/>

## 2. How to respond

When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

The consultation response form is available electronically on the consultation page:  
<https://www.gov.uk/government/consultations/extractives-industries-reporting-implementing-the-eu-accounting-directive> until **16 May 2014**. The form can be submitted online/by email or by letter to:

Vickie Wood  
Consultation Responses (Extractive Industries)  
Alternatives to Regulation Team  
Department of Business, Innovation and Skills  
3<sup>rd</sup> Floor, Spur 2  
1 Victoria St  
London  
SW1H 0ET

Email: extractivesconsultation@bis.gsi.gov.uk

BIS consultations are digital by default but if required printed copies of the consultation document can be obtained from:

BIS Publications Orderline  
ADMAIL 528  
London SW1W 8YT  
Tel: 0845-015 0010  
Fax: 0845-015 0020  
Minicom: 0845-015 0030  
<https://www.gov.uk/government/publications?departments%5B%5D=department-for-business-innovation-skills>

Other versions of the document in Braille, other languages or audio-cassette are available on request.

## 3. Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

Responses to the consultation will be published on the consultation webpage. If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

## 4. Help with queries

Questions about the policy issues raised in the document can be addressed to:

Vickie Wood  
Alternatives to Regulation Team  
Department of Business, Innovation and Skills  
Floor 3, Spur 2  
1 Victoria St  
London  
SW1H 0ET

Email: [vickie.wood@bis.gsi.gov.uk](mailto:vickie.wood@bis.gsi.gov.uk)

The consultation principles are in Annex 1.

## 5. Proposals

### Timetable for Implementation in the UK:

5.1 The Directive allows Member States up to 24 months to transpose its requirements into national law. This means regulations must be in place no later than 20 July 2015. However, in line with the UK Government's commitment to quickly implement reporting of payments to governments by the extractive industries<sup>7</sup>, we propose to introduce regulations during 2014 to meet the UK's transposition obligation as set out in Chapter 10. The regulations will apply to all large or listed extractives companies registered in the UK.

### Reporting Period:

5.2 The Directive requires that large extractive companies make public a report on the payments they make to governments on an annual basis. The report must disclose information

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<sup>7</sup> 2013 Lough Erne G8 Leaders' Communiqué, Extractives paragraphs 34-42

in relation to certain activities in respect of the relevant financial year<sup>8</sup>. Listed extractives companies will be required to report on the same basis<sup>9</sup>.

### **First Reporting Period:**

5.3 The Directive requires that relevant undertakings must prepare reports for financial years commencing on or after 20 July 2015 i.e. periods commencing on or after the transposition deadline. However, as noted above, in line with public commitments the Government proposes to introduce regulations in 2014. The regulations will determine the date from which the reporting obligations will commence. This could be determined by reference to any date after the regulations come into force before 20 July 2015.

5.4 It would be possible to require that companies provide a partial report for 2014. However, we are not inclined to pursue this option. This is to ensure that all affected companies have time to put appropriate data collection systems in place. Therefore, we propose companies should report annually in respect of financial years commencing on or after 1 January 2015.

**We propose that the first report should be prepared in respect of financial years commencing on or after 1 January 2015**

### **Timeframe for the Publication of Reports:**

5.5 The Directive does not specify the timeframe within which an extractive report must be published. This contrasts with the Transparency Directive which requires listed companies active in the extractive industries to make public their reports no later than six months after the end of each financial year i.e. two months after the deadline for publishing their annual financial statements<sup>10</sup>. Further, the reports of listed companies must be publicly available for at least ten years.

5.6 One option would be to require all relevant companies (listed and non-listed) to publish their extractive reports to the same timetable i.e. no later than six months after the end of the financial year, to ensure consistency of approach. However, UK registered companies which are not listed have longer - up to nine months after their accounting reference period<sup>11</sup> - in which to prepare and publish their annual financial statements. So whilst this approach would ensure consistency in the timing of publication of reports it is likely to impose significant burdens on companies which are not listed.

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<sup>8</sup> Article 43 sub para 2 of Directive 2013/34/EU

<sup>9</sup> Article 42(1) of Directive 2013/34/EU and Article 1(5) of Directive 2013/50/EU

<sup>10</sup> the DTR requirement for listed companies is to publish their annual financial statements within 4 months of the end of their financial year

<sup>11</sup> Section 442 of the Companies Act 2006 refers

5.7 If we wish to avoid overlapping reporting periods, then the maximum period allowable for the production of a report would be 12 months. In general this would allow unlisted companies an additional three months to prepare their extractive report but there seems to be no reason why it should take longer for an unlisted company to do this than a listed company. We therefore propose a timeframe for reporting that is consistent with the **additional** time allowed for listed companies to provide their extractives reports – i.e. that non-listed companies will be given an additional two months following the deadline for the filing of their annual financial statements to produce and file their extractives report. This would mean that non-listed UK companies must file their extractives report no later than 11 months after the end of their financial year.

**We propose that unlisted UK registered companies, including public companies, are required to publish the extractive report no later than 11 months after the end of their financial year.**

5.8 When the extractive reporting requirements of the Transparency Directive are transposed into UK law issuers subject to those requirements will have a shorter timeframe to prepare their reports. The deadline for transposition of the Transparency Directive is 27 November 2015. (See 5.17 below.) Note that where a company is subject to reporting requirements under both the Accounting Directive and the Transparency Directive the shorter timeframe to prepare reports will apply.

A table showing how reporting timeframes might operate is provided at annex 3.

**Comments are invited on any issues, such as changes to costs or benefits, that may arise from a later transposition deadline for the Transparency Directive.**

**Exemptions available to subsidiary companies:**

5.9 UK registered companies who are subsidiaries will be able to take advantage of the exemption not to prepare a report where the following conditions are fulfilled:

- (a) the parent undertaking is subject to the laws of an EU Member State; and
- (b) the payments to governments made by the undertaking are included in the consolidated report on payments to governments drawn up by the parent undertaking in accordance with the requirements imposed by the Directive.

5.10 UK companies which are subsidiaries of overseas registered companies will be unable to take advantage of the exemption until their parent company fulfils the obligation in either the UK or another EU Member State.

**Comments are invited on any issues that may arise from this approach. Comments are particularly welcome from subsidiaries of overseas registered companies which may not be able to take advantage of this exemption until their parent companies are obliged to produce a consolidated report under rules imposed by another Member State.**

**Format of the Extractive Report:**

5.11 The Directive does not specify a format for the extractive report but, in developing an approach, it will be important that reports have regard to the Open Government principles as set out in the UK's Open Government Partnership National Action Plan. Rather than Government setting out a format in the regulations, we are working with industry representatives on the development of industry guidance<sup>12</sup>. This guidance will provide a recommended template which ensures that reports comply with Directive's requirements; and provide advice to assist companies to address aspects of interpretation in preparing the consolidated report. Representatives from industry and civil society organisations in the UK have been working together to identify issues and develop a suitable format.

An illustration of what a report might look like is included at annex 4.

#### **Publication of Extractive Reports: Filing Reports with Companies House:**

5.12 UK registered companies will be required to publish (file) their extractive reports with Companies House within the timeframe set out in the regulations. Companies House will liaise with the industry-led working group developing best practice in the format of the reports on payments to governments when designing its systems to receive and make this information publicly available.

5.13 As a Trading Fund, Companies House operates on the basis of cost recovery, with fees linked to the forecast cost of providing each specific service and the way in which customers access them. Therefore, there will be a fee attached to this new report for filing at Companies House. The calculation of the fee level for a new filing with Companies House is based on recovering the cost of developing the new service, over an appropriate period, and on recovering any ongoing cost. A specific fee will be determined once the detail of the filing requirement is defined and the supporting systems specification has been determined.

5.14 Companies House will determine rules for the delivery of extractive reports with companies required to publish them in accordance with the regulations as published in consultation. However, we anticipate that reports will be submitted electronically to facilitate efficient handling of data and ease of access for the users of the reports.

**We propose that extractive reports should be published (filed) with Companies House electronically in a format which complies with industry developed best practice (to be determined as part of the systems development).**

#### **The Penalty Regime:**

5.15 The UK is required to establish a penalty regime to apply in the event of failure by large extractives companies to comply with the obligations imposed in accordance with the Directive. The UK has a well established penalty regime for failure to comply with obligations to file statutory reports. We propose that a similar approach is adopted here. The draft regulations at annex 4 provide for the following offences and remedies:

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<sup>12</sup> This work is being undertaken in cooperation with the Oil & Gas Producers Association and the International Council on Mining and Metals.

- Failure to prepare a report or consolidated report: criminal offence for directors
- Failure to deliver report or consolidated report: criminal offence for directors, court may order rectification, civil penalty for company

**We propose that the penalty regime for non-compliance with the obligation placed on large extractive companies to prepare and publish annually reports on the payments they make to governments should reflect that in place for failure to prepare and file statutory accounts and reports.**

**We welcome views on whether this proposed penalty scheme is effective, proportionate and dissuasive. In particular, we would welcome views on:**

- the imposition of an offence for filing a report containing misleading, false or deceptive information,
- how the penalty regime should apply in cases where external factors affect the preparation of a report or prevent a company from filing a report.

#### **Transparency Directive – objectives and transposition deadline; sharing of responses**

5.16 The existing Transparency Directive provides for the harmonisation of transparency requirements across the EU by requiring issuers with securities admitted to a regulated market to disclose a minimum level of information to the public. The revised Transparency Directive aims to improve the existing regime by simplifying and improving the application of the Directive, for small and medium-sized issuers in particular, reducing legal uncertainties and further enhancing investor protection where necessary. The revised Transparency Directive, which entered into force on 27 November 2013, gives Member States 24 months from that date to transpose its requirements in national law.

5.17 Article 6 of the revised Transparency Directive directly cross refers to Chapter 10 of the Accounting Directive so the obligation for extractive companies to report on the payments they make to governments will also apply to listed extractive companies. As noted earlier in this document, comments on the obligation imposed on extractives companies by the Transparency Directive and/or on the interaction between the Accounting and Transparency Directives are welcome as part of this consultation. All responses will be published as set out in section 3. Any response referring to the Transparency Directive will be copied to HM Treasury and used to inform plans for transposition of that directive.

## **6. Draft Regulations**

6.1 Draft regulations have been prepared. A copy is included at annex 5. These reflect the requirements set out in Chapter 10 of the Directive and indicate how we might regulate for those areas where the UK has discretion i.e. period of report, first reporting period, the time limit for the publication of reports and the penalty regime to be applied for non-compliance with obligations imposed by the regulations (see 5.15 above for more information on the penalty regime proposed).

A copy of the draft regulations has been included within the consultation document. You are

invited to comment on the draft text.

## 7. Impact Assessment

7.1 An initial impact assessment has been prepared. This can be found at <https://www.gov.uk/government/consultations/extractives-industries-reporting-implementing-the-eu-accounting-directive>. However, this has been prepared using cost data gathered by the European Commission prior to the publication of its proposal for the Directive in October 2011. This is because there is little evidence available on the costs for UK registered companies specifically.

**The Government would like to gather information which is directly relevant to UK registered companies on the anticipated costs of implementing this reporting requirement.**

It would be particularly helpful to receive information in the following areas:

(i) Benefits to UK companies

For example, quantified and monetised evidence that accountability and governance will increase political and economic stability and/or that improved political and economic stability will improve the profitability of UK firms

(ii) Benefits to UK investors

For example, quantified and monetised evidence that the improved political and economic stability would benefit UK investors and/or evidence on better information leading to more optimal investment choices

(iii) Costs of reporting

As noted above, due to a lack of appropriate information, the initial impact assessment has been prepared using data collected by the European Commission when developing its proposal. We would welcome information about the additional costs UK-registered or listed extractives companies expect to incur as a result of this new reporting requirement. It would be helpful to understand how these costs might vary over time e.g. are costs one-off, transitional or recurring.

Also, the UK has begun the process to become an Extractives Industries Transparency Initiative (EITI) member. What are your expectations of any further costs to meet the additional EITI reporting requirement?

(iv) Wider costs to business associated with extractives reporting

For example, evidence of the extent to which UK firms would be disadvantaged due to

having to disclose commercially sensitive information and additional reporting costs and/or evidence around the costs of a lack of exception clause

NOTE: Commercially sensitive information may be submitted separately from a consultation response. Alternatively, on request, BIS will ensure such information is removed from a response prior to its publication on the consultation website.

## 8. Consultation questions

**(1) We propose that the first report should be prepared in respect of financial years commencing on or after 1 January 2015 (Para 5.3 - 5.4)**

**Question 1.1** Do you agree that companies should only be required to produce whole year reports and should not be required to provide a partial year report for the period between the regulations coming into force and 31 December 2014?

If no, please indicate:

- (a) The minimum period you think should be provided between the regulations coming into force and the date from which reporting of payments made to governments commences: and
- (b) How information from a partial year report will be used and the benefits that would arise from this approach.

Please provide comments on any difficulties/cost that might arise from requiring a partial report for 2014.

**Question 1.2** Do you agree that the first reports should relate to financial years commencing on or after 1 January 2015?

If no, please indicate your preference for the date from which reports should be required and provide an explanation for your preference. (Please note that UK-registered large extractives companies must report on in respect of financial years commencing on or after 20 July 2015 i.e. the deadline for transposition of the Directive.)

**(2) We propose that UK registered companies are required to publish the extractive report no later than 11 months after the end of their financial year. (Para 5.5 – 5.7)**

**Question 2.1** Do you agree that UK registered companies should be allowed an additional two months beyond the time limit to publish their annual financial statements to in which to prepare and publish their extractive reports, that is a maximum of 11 months after the end of their financial year?

If no, please indicate:

- (a) The maximum period, if any, you think should be permitted after the (financial) year end for companies to prepare and publish their extractive reports: and
- (b) Indicate the benefits that would arise from this approach.

**Question 2.2** If a shorter period for reporting was imposed, what impact would this have on UK-registered extractives companies?

**Question 2.3** If this approach would impose costs on business, please provide an estimate of the costs with an explanation of how these are derived. Would such costs be reoccurring costs or transitional costs in the first year only?

**(3) Comments are invited on any issues, such as changes to costs or benefits, that may arise from a later transposition deadline for the Transparency Directive. (Para 5.8)**

**Question 3.1** What issues might arise from a later transposition of the Transparency Directive? Please describe any possible impacts and, if appropriate, provide details of any costs or benefits that might result from this.

**(4) Subsidiaries of overseas-registered companies will be unable to take advantage of the exemption until their parent company fulfils the obligation to report in either the UK or another EU Member State. Comments are invited on any issues that may arise from this approach. Comments are particularly welcome from subsidiaries of overseas registered companies which may not be able to take advantage of this exemption until their parent companies are obliged to produce a consolidated report under rules imposed by another Member State. (Para 5.9 – 5.10)**

**Question 4.1** Please provide information on any issues that arise for UK-registered subsidiaries of EU-registered companies. If appropriate please provide details of any costs that arise as a consequence of being unable to (fully) exercise the exemption in 2015. (All EU Member States are required to implement the reporting requirements by July 2015.)

**(5) We propose that extractive reports should be published (filed) electronically with Companies House in a format which complies with industry developed best practice (to be determined as part of the systems development). (Para 5.11 – 5.14)**

**Question 5.1** Do you agree that it is appropriate that industry should be encouraged to lead in the production of best practice guidance to support the production of extractive reports and encourage consistency?

If no, please provide supporting reasons for your view.

**Question 5.2** Do you agree that reports should be published (filed) electronically with Companies House only i.e. the submission of paper reports is not required or permitted?

If no, please provide supporting reasons for your view.

**(6) We propose that the penalty regime for non-compliance with the obligation placed on large extractive companies to prepare and publish annually reports on the payments they make to governments should reflect that in place for failure to prepare and file statutory annual reports.**

We welcome views on whether the proposed penalty scheme is effective, proportionate and dissuasive. In particular, we would welcome views on:

- the imposition of an offence for filing a report containing misleading, false or deceptive information, and
- how the penalty regime should apply in cases where external factors affect the preparation of the report or prevent a company from filing a report.

**Question 6.1** Do you agree that it is appropriate for the penalty regime here to reflect that in place for failure to prepare and file statutory annual reports?

If no, please indicate your preferred option and provide an explanation for your suggested approach.

**Question 6.2** Do you consider that the proposed penalty regime is effective, proportionate and dissuasive?

If no, please explain why you do not consider the regime would be effective, proportionate and dissuasive. Please provide any suggestions you may have as to how the regime could be improved.

If your suggestions relate to an existing regime, please provide appropriate references.

**Question 6.3** Are there any special circumstances that the Government should take into account when determining the penalty regime? If so what are they, and do you have any suggestions about how these might be dealt with within the penalty regime?

**Question 6.4** Are there any other issues that the Government should consider in developing the penalty regime? If yes, please provide an explanation and supporting evidence where appropriate.

**(7) A copy of the draft regulations implementing Chapter 10 has been included within the consultation document.**

**Question 7.1** Do you have any comments on the draft regulations included at Annex 4? If so, please provide details.

Please note that the UK does not have the discretion to amend the requirements set out in the Directive. As such comments should relate to matters of understanding or those areas where the UK has discretion in determining an option e.g. the timeframe within which an annual report must be published.

**(8) The Government would like to gather information which is directly relevant to UK registered companies on the anticipated costs of implementing this reporting requirement. (Para 7.1)**

**Question 8.1** We would welcome views on the impacts (costs and benefits) arising on business from this new reporting obligation. It would be particularly helpful if you could provide monetised information relating to any additional costs or benefits you identify. Where possible, please indicate if these additional costs are transitional or recurring costs.

In responding to this question, please note:

- (i) *where a company voluntarily produces a similar or related report already*, the costs identified for this purpose should represent only the additional costs necessary to comply with this requirement and not the total cost of production.
- (ii) BIS is happy to receive information considered to be commercially sensitive separately from the consultation response or, if requested, to remove such information from a response prior to its publication on the consultation website.

**Question 8.2** Please describe any other issues associated with this requirement that you would like to draw to our attention.

**(9) The same reporting requirements apply to listed extractives companies under the amended Transparency Directive. The Government would like to gather information which is directly relevant to these companies on the anticipated costs of implementing this reporting requirement.**

**Question 9.1** Please outline any quantifiable costs and benefits specifically relating to the following issues:

- Economic impact
- Legal implications
- Practical implications
- Competitiveness impact including the position of the UK as a centre for international listings

**(10) The Government would welcome any other comments on the implementation of Chapter 10 within the scope of this consultation**

## 9. What happens next?

This consultation is open for 6 weeks. Responses are requested by 16 May 2014.

The Government's response to the consultation on the implementation of Chapter 10 of the Accounting Directive, 2013/34/EU and a proposed timetable for the laying of the regulations will be published within 12 weeks of the closing date. These will be published on the BIS website. Paper copies of the Government response and summary of responses will be made available on request.

Responses relating to the transposition of the Transparency Directive will be copied to HM Treasury.

## Annex 1: Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

### Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

John Conway,  
BIS Consultation Co-ordinator,  
1 Victoria Street,  
London  
SW1H 0ET

Telephone John on 020 7215 6402  
or e-mail to: [john.conway@bis.gsi.gov.uk](mailto:john.conway@bis.gsi.gov.uk)

However if you wish to comment on the specific policy proposals you should contact the policy lead (see section 4).

## Annex 2: List of Individuals/Organisations consulted

<u>Industry</u>	<u>Civil Society</u>
Anglo American	CAFOD
BP	Christian Aid
BG Group	Global Witness
BHP Billiton	ONE
Chrysaor	Open Corporates
Dana Petroleum	Oxfam GB
DONG	Publish What You Pay UK
ENI	Revenue Watch Institute
ExxonMobil	Save the Children UK
Fairfield Energy	Tearfund
Gazprom OAO	
Maersk	
Mineral Products	
Nexen Inc	British Marine Aggregates Association
Perenco	CBI Minerals Group
Petro Fac	FCA
Rio Tinto	ICAEW
Rosneft OJSC	ICAS
Shell	International Council on Mining & Metals
Statoil	International Association of Oil & Gas
TAQA	Producers
Talisman-Sinopec	Oil & Gas UK
Tullow Oil	
	<u>Representative and Professional Bodies</u>
	<u>Accounting Firms</u>
	Baker Tilley
	Deloitte
	Ernst & Young
	Grant Thornton
	KPMG
	PWC

## Annex 3: Illustrative extractive industry company reporting timetable

### Assumptions

- Companies required to report on payments made to governments in financial years commencing 1 January 2015
- **For illustrative purposes only** it is assumed all listed extractives companies will also commence reporting payments made to governments in financial years commencing 1 January 2015
- UK-registered company A has a financial year commencing 1 January 2015
- UK-registered company B has a financial year commencing 1 April 2015
- UK-registered and listed company C has a financial year commencing 1 January 2015
- UK-registered and listed company D has a financial year commencing 1 April 2015

	2015					2016					2017			
	A	B	C	D		A	B	C	D		A	B	C	D
<b>Jan</b>	Begin data collection		Begin data collection											
<b>Feb</b>														
<b>Mar</b>							2015/16 f/y ends		2015/16 f/y ends					
<b>Apr</b>		Begin data collection	2014 accounts	Begin data collection				2015 accounts						
<b>May</b>														
<b>Jun</b>								2015 1 <sup>st</sup> extractive report						
<b>Jul</b>				2014/15 accounts					2015/16 accounts					
<b>Aug</b>														
<b>Sep</b>	2014 Accounts					2015 Accounts			2015/16 1 <sup>st</sup> extractive report					
<b>Oct</b>														
<b>Nov</b>						2015 1 <sup>st</sup> extractive report								
<b>Dec</b>	2015 f/y ends	2014/15 accounts	2015 f/y ends			2016 f/y ends	2015/16 accounts	2016 f/y ends			2016 accounts			2016/17 extractives report
														2016/17 accounts
														2016/17 extractives report
											2017 f/y ends	2016/17 accounts	2017 f/y ends	

## Annex 4: Illustrative extractive report

This example is provided for illustrative purposes only. It shows one of the ways in which data may be presented. Please see paragraph 5.11 to see how industry representatives are working to develop guidance for industry.

### Government Reports

<b>Indonesia Governments</b>	<b>Production Entitlement</b>	<b>Tax</b>	<b>Royalties</b>	<b>Dividends</b>	<b>Sign, Disc, Prodn Bonuses</b>	<b>License Fees etc</b>	<b>Infrastructure Improvements</b>	<b>Total</b>	<b>Notes</b>
Indonesia - National	0	270,000,000	0	0	0	0	0	<b>270,000,000</b>	
Indonesia - Regional - Kalimantan	0	0	8,000,000	0	0	20,000,000	0	<b>28,000,000</b>	
Indonesia - Regional - Papua	0	0	10,000,000	0	10,000,000	2,000,000	0	<b>22,000,000</b>	
Indonesia - Regional - Sumatra	0	0	12,000,000	0	2,000,000	2,000,000	0	<b>16,000,000</b>	
Indonesia - Local - Banjarmasin City	0	0	0	0	0	0	20,000,000	<b>20,000,000</b>	
Indonesia - Local - Jayapura City	0	0	0	0	0	0	30,000,000	<b>30,000,000</b>	
Indonesia - Local - Medan	0	0	0	0	0	0	14,000,000	<b>14,000,000</b>	
Indonesia - Government Controlled Undertaking	1,600,000,000	0	0	0	0	0	0	<b>1,600,000,000</b>	Production entitlement volume of 16 million barrels valued at US\$100 per barrel
	<b>1,600,000,000</b>	<b>270,000,000</b>	<b>30,000,000</b>	<b>0</b>	<b>12,000,000</b>	<b>24,000,000</b>	<b>64,000,000</b>	<b>2,000,000,000</b>	
<b>USA Governments</b>	<b>Production Entitlement</b>	<b>Tax</b>	<b>Royalties</b>	<b>Dividends</b>	<b>Sign, Disc, Prodn Bonuses</b>	<b>License Fees etc</b>	<b>Infrastructure Improvements</b>	<b>Total</b>	<b>Notes</b>
USA National	0	520,000,000	20,000,000	0	10,000,000	0	0	<b>550,000,000</b>	
USA - Regional - Alaska State	0	80,000,000	30,000,000	0	0	250,000	0	<b>110,250,000</b>	
USA - Regional - Texas State	0	60,000,000	0	0	0	100,000	0	<b>60,100,000</b>	
USA - Regional - Wyoming State	0	100,000,000	40,000,000	0	11,500,000	400,000	0	<b>151,900,000</b>	
USA - Local - Anchorage Municipality	0	750,000	0	0	0	0	0	<b>750,000</b>	
USA - Local - Cheyenne Municipality	0	1,000,000	0	0	0	0	500,000	<b>1,500,000</b>	
USA - Local - Houston Municipality	0	500,000	0	0	0	0	125,000,000	<b>125,500,000</b>	
	<b>0</b>	<b>762,250,000</b>	<b>90,000,000</b>	<b>0</b>	<b>21,500,000</b>	<b>750,000</b>	<b>125,500,000</b>	<b>1,000,000,000</b>	
	<b>1,600,000,000</b>	<b>1,032,250,000</b>	<b>120,000,000</b>	<b>0</b>	<b>33,500,000</b>	<b>24,750,000</b>	<b>189,500,000</b>	<b>3,000,000,000</b>	

## Project Reports

	Production Entitlement	Tax	Royalties	Dividends	Sign, Disc, Prodn Bonuses	License Fees etc	Infrastructure Improvements	Total	Notes
<b>Indonesia Projects</b>									
Papua Project (Indonesia)	500,000,000	80,000,000	10,000,000	0	10,000,000	2,000,000	30,000,000	<b>632,000,000</b>	Production entitlement volume of 5 million barrels valued at US\$100 per barrel
Kalimantan Project (Indonesia)	400,000,000	70,000,000	8,000,000	0	0	20,000,000	20,000,000	<b>518,000,000</b>	Production entitlement volume of 4 million barrels valued at US\$100 per barrel
Sumatra Project (Indonesia)	700,000,000	120,000,000	12,000,000	0	2,000,000	2,000,000	14,000,000	<b>850,000,000</b>	Production entitlement volume of 7 million barrels valued at US\$100 per barrel
	<b>1,600,000,000</b>	<b>270,000,000</b>	<b>30,000,000</b>	<b>0</b>	<b>12,000,000</b>	<b>24,000,000</b>	<b>64,000,000</b>	<b>2,000,000,000</b>	
<b>USA Projects</b>									
Texas Project (USA)	0	60,500,000	20,000,000	0	10,000,000	100,000	125,000,000	<b>215,600,000</b>	
Alaska Project (USA)	0	80,750,000	30,000,000	0	0	250,000	0	<b>111,000,000</b>	
Wyoming Project (USA)	0	101,000,000	40,000,000	0	11,500,000	400,000	500,000	<b>153,400,000</b>	
<i>Entity Level Payment (USA)</i>	<i>0</i>	<i>520,000,000</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<b>520,000,000</b>	
	<b>0</b>	<b>762,250,000</b>	<b>90,000,000</b>	<b>0</b>	<b>21,500,000</b>	<b>750,000</b>	<b>125,500,000</b>	<b>1,000,000,000</b>	
<b>Total</b>	<b>1,600,000,000</b>	<b>1,032,250,000</b>	<b>120,000,000</b>	<b>0</b>	<b>33,500,000</b>	<b>24,750,000</b>	<b>189,500,000</b>	<b>3,000,000,000</b>	

## Annex 5: Draft Regulations

*Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and sections 468 and 1290 of the Companies Act 2006 for approval by resolution of each House of Parliament.*

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### DRAFT STATUTORY INSTRUMENTS

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**2014 No. XXXX**

**COMPANIES**

**PARTNERSHIPS**

### The Reports on Payments to Governments Regulations 2014

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* - - [1st October 2014]

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation<sup>(2)</sup>.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 468 of the Companies Act 2006<sup>(3)</sup>, sections 15 and 17 of the Limited Liability Partnerships Act 2000<sup>(4)</sup> and section 2(2) of the European Communities Act 1972.

In accordance with sections 473(3) and 1290 of the Companies Act 2006, section 17(4) of the Limited Liability Partnerships Act 2000 and paragraph 2(2)<sup>(5)</sup> of Schedule 2 to the European Communities Act 1972, a draft of these Regulations has been laid before Parliament and approved by a resolution of each house of Parliament.

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<sup>(1)</sup> 1972 c.68. Section 2(2) was amended by section 17(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51).

<sup>(2)</sup> S.I. 2007/193.

<sup>(3)</sup> 2006 c.46.

<sup>(4)</sup> 2000 c.12.

<sup>(5)</sup> Paragraph 2(2) was amended by section 27(c) of the Legislative and Regulatory Reform Act 2006 (c.51).

## Citation, commencement and application

**1.—(1)** These Regulations may be cited as the Reports on Payments to Governments Regulations 2014.

**(1)** These Regulations come into force on [1st October 2014].

**(2)** These Regulations apply [in relation to a financial year] of an undertaking beginning on or after [1st January 2015].

## Interpretation

**2.—(2)** In these Regulations—

“the Act” means the Companies Act 2006;

“affiliated undertakings” means any two or more undertakings within a group;

“the Directive” means Council Directive 2013/34/EU of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings<sup>(6)</sup>;

“director” means—

(a) in relation to a company—

a director of the company, and any person occupying in relation to it the position of a director (by whatever name called), and

any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of the company are accustomed to act; and

(b) in relation to a limited liability partnership or a partnership, a partner;

“equivalent reporting requirements” are those that—

(a) implement the provisions of the Directive in any member State[; or

(b) are adopted from time to time by the European Commission as being equivalent to the requirements of the Directive in accordance with Article 46 of the Directive];

“government” means any national, regional or local authority of a country, and includes a department, agency or undertaking that is a subsidiary undertaking where the authority is the parent undertaking;

“group” means a parent undertaking and all its subsidiary undertakings;

“large undertakings” means an undertaking that meets at least two of the three following criteria—

(a) its balance sheet total on its balance sheet date exceeds [£17.8 million];

(b) its net turnover on its balance sheet date exceeds [£35.6 million];

(c) average number of employees during the financial year to which the balance sheet relates exceeds 250;

“logging undertaking” means an undertaking which undertakes the activity listed in Table 1 in the Schedule to these Regulations;

“mining or quarrying undertaking” means an undertaking which undertakes any activity listed in Table 2 in the Schedule to these Regulations;

“net turnover” means the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover;

“payment” means an amount paid, whether in money or in kind, for relevant activities, where the payment is any of the following types—

(a) production entitlements;

(b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;

(c) royalties;

(d) dividends, other than dividends paid by an undertaking to a government as an ordinary shareholder of that undertaking, where—

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<sup>(6)</sup> OJ L 182 29.06.2013.

- (i) the dividend is paid to the government on the same terms as to other ordinary shareholders, and
  - (ii) the dividend is not paid in lieu of production entitlements or royalties;
  - (e) signature, discovery and production bonuses;
  - (f) licence fees, rental fees, entry fees and other considerations for licences or concessions; or
  - (g) payments for infrastructure improvements;
- “project” means the operational activities which—
- (a) are governed by a single contract, licence, lease, concession or similar legal agreement, and
  - (b) form the basis for payment liabilities with a government;
- “public-interest entities” means undertakings which are—
- (a) governed by the law of a member State and whose transferable securities are admitted to trading on a regulated market of any member State within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>(7)</sup>;
  - (b) credit institutions as defined in point (1) of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>(8)</sup>, other than those referred to in Article 2 of that Directive;
  - (c) insurance undertakings within the meaning of Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts of insurance undertakings<sup>(9)</sup>; or
  - (d) designated by Member States as public-interest entities;
- “relevant activities” means any activity as set out in the Schedule.

(2) Where—

- (a) an undertaking has been a large undertaking for the purposes of these Regulations, but
- (b) it subsequently ceases to be a large undertaking because it no longer meets at least two of the criteria in the definition of “large undertaking”,

it does not cease to be a large undertaking for the purposes of these Regulations unless it fails to meet the criteria in question in two consecutive financial years.

(3) If agreements of the kind referred to in the definition of “project” are substantially interconnected, those agreements are treated for the purposes of these Regulations as a single project.

(4) For the purpose of paragraph (3), “substantially interconnected” means forming a set of operationally and geographically integrated contracts, licences, leases or concessions or related agreements with substantially similar terms that are signed with a government, giving rise to payment liabilities.

(5) Such agreements can be governed by a single contract, joint venture, production sharing agreement, or other overarching legal agreement.

<sup>(7)</sup> OJ L 145 30.04.2004.

<sup>(8)</sup> OJ L 177 30.06.2006.

<sup>(9)</sup> OJ L 374 31.12.1991.

## PART 1

### REPORT ON PAYMENTS TO GOVERNMENTS

#### **Duty to prepare report on payments to governments**

**3.—(3)** The directors of an undertaking must prepare a report annually on payments to governments [for each financial year] (the “report”) if that undertaking is—

- (a) a large undertaking or a public-interest entity; and
- (b) a mining or quarrying undertaking or a logging undertaking.

(2) In the case of failure to prepare a report in accordance with paragraph (1), an offence is committed by every person who—

- (a) was a director of the undertaking immediately before the end of the period allowed for delivery of the report for the [financial] year in question; and
- (b) failed to take all reasonable steps for securing compliance with that requirement.

(3) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Content of report**

**4.—(4)** For each [financial] year, the report must state the following information in relation to the relevant activities of the undertaking—

- (a) the government to which each payment has been made, including the country of that government;
- (b) the total amount of payments made to each government;
- (c) the total amount per type of payment; and
- (d) where those payments have been attributed to a specific project, the total amount per type of payment, made for each such project and the total amount of payments for each such project.

(2) Where a payment is made by the undertaking in respect of obligations imposed at entity level, this may be disclosed at the entity level rather than at project level.

(3) Any payment, whether made as a single payment or as a series of related payments within a [financial] year, need not be taken into account in the report if it is below £84,800.

(4) Payments, activities and projects may not be artificially split or aggregated to avoid the application of these Regulations.

(5) The disclosure of payments must reflect the substance, rather than the form, of each payment, activity or project concerned.

(6) Where payments in kind are made to a government, the report must state the value of such payments in kind and, where applicable, the volume, and the directors must provide supporting notes to explain how the value has been determined.

#### **Exemption for subsidiaries or parent undertakings included in consolidated reports**

**5.** The directors of an undertaking that is a subsidiary undertaking or a parent undertaking are exempt from preparing a report if—

- (a) the parent undertaking is subject to these Regulations; and
- (b) the payments to governments made by the undertaking are included in the consolidated report drawn up by that parent undertaking in accordance with regulation 6.

## PART 2

### CONSOLIDATED REPORT ON PAYMENTS TO GOVERNMENTS

#### **Duty to prepare a consolidated report**

6.—(5) The directors of a parent undertaking must prepare a consolidated report annually on payments made to governments for each [financial] year (the “consolidated report”) if that undertaking is—

- (a) a large undertaking or a public-interest entity; and
- (b) a mining or quarrying undertaking or a logging undertaking.

(2) A parent undertaking is considered to be a mining or quarrying undertaking or a logging undertaking if any of its subsidiary undertakings is a mining or quarrying undertaking or a logging undertaking.

(3) In the case of failure to prepare a consolidated report in accordance with paragraph (1), an offence is committed by every person who—

- (a) was a director of the parent undertaking immediately before the end of the period allowed for delivery of the consolidated report for the [financial] year in question; and
- (b) failed to take all reasonable steps for securing compliance with that requirement.

(4) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Content of consolidated report**

7.—(6) For each [financial] year, the consolidated report must state the following information in relation to the relevant activities—

- (a) the government to which each payment has been made, including the country of that government;
- (b) the total amount of payments made to each government;
- (c) the total amount per type of payment; and
- (d) where those payments have been attributed to a specific project, the total amount per type of payment, made for each such project and the total amount of payments for each such project.

(2) In this regulation the relevant activities are those of the parent undertaking and of any subsidiary undertaking that would have been required to prepare a report under regulation 3 but for the exemption in regulation 5.

(3) Where a payment is made by the undertaking in respect of obligations imposed at entity level, this may be disclosed at the entity level rather than at project level.

(4) Any payment, whether made as a single payment or as a series of related payments within a [financial] year, need not be taken into account in the report if it is below £84,800.

(5) Payments, activities and projects may not be artificially split or aggregated to avoid the application of these Regulations.

(6) The disclosure of payments must reflect the substance, rather than the form, of each payment, activity or project concerned.

(7) Where payments in kind are made to a government, the report must state the value of such payments in kind and, where applicable, the volume, and the directors must provide supporting notes to explain how the value has been determined.

### **Exemption from duty to prepare a consolidated report**

8.—(7) The obligation to draw up the consolidated report under regulation 6 does not apply to directors of—

- (a) a parent undertaking of a small group, except where any affiliated undertaking is a public-interest entity;
- (b) a parent undertaking of a medium-sized group, except where any affiliated undertaking is a public-interest entity; and
- (c) a parent undertaking which is also a subsidiary undertaking, if its own parent undertaking is governed by the law of a member State.

(2) A group is a “small group” if it consists of parent and subsidiary undertakings to be included in a consolidated report and which, on a consolidated basis, meets at least two of the three following criteria on the balance sheet date of the parent undertaking—

- (a) its balance sheet total does not exceed [£5 million];
- (b) its net turnover does not exceed [£10.1 million];

- (c) its average number of employees during the financial year to which the balance sheet date relates does not exceed 50.
- (3) A group is a “medium-sized group” if it is not a small group and consists of parent and subsidiary undertakings to be included in a consolidated report and which, on a consolidated basis, meets at least two of the three following criteria on the balance sheet date of the parent undertaking—
- (a) its balance sheet total does not exceed [£21.3 million];
  - (b) its net turnover does not exceed [£42.7 million];
  - (c) its average number of employees during the financial year to which the balance sheet date relates does not exceed 250.

## PART 3

### Equivalent reporting requirements

#### **Exemptions from duty to prepare report or consolidated report**

- 9.** The directors of an undertaking are exempt from preparing a report if—
- (a) the undertaking is subject to equivalent reporting requirements; and
  - (b) the payments to governments made by the undertaking are included in a report in accordance with equivalent reporting requirements.
- 10.** The directors of an undertaking that is a subsidiary undertaking or a parent undertaking are exempt from preparing a report if—
- (a) the parent undertaking is subject to equivalent reporting requirements; and
  - (b) the payments to governments made by the undertaking are included in a consolidated report drawn up to the same date, or to an earlier date in the same [financial] year, by that parent undertaking in accordance with equivalent reporting requirements.

## PART 4

### DUTY TO DELIVER REPORTS

#### **Duty to deliver reports**

- 11.** Within [11] months of the end of the [financial] year the directors of an undertaking must deliver to the registrar—
- (a) a report prepared in accordance with regulation 3;
  - (b) a consolidated report prepared in accordance with regulation 6; or
  - (c) a report or consolidated report prepared in accordance with equivalent reporting requirements.

#### **Default in delivering report: offences**

**12.—(8)** If a report or consolidated report is not delivered within [11] months of the end of the [financial] year in accordance with regulation 11, an offence is committed by every person who was a director of the undertaking immediately before the end of the period allowed for delivery.

- (1) It is a defence to prove that the person took all reasonable steps for securing compliance with that requirement.
- (2) It is not a defence to prove that the report in question was not in fact prepared as required by these Regulations.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

## **Default in delivering report: court order**

**13.** The court may, on the application of any member of the undertaking or the registrar, make an order directing the directors (or any of them) within such time as may be specified in the order to make good a default if—

- (a) a report or consolidated report is not delivered within [11] months of the end of the financial year in accordance with regulation 11; and
- (b) the directors of the undertaking fail to make good the default within 14 days after the service of a notice on them requiring compliance.

## **Civil penalty for failure to deliver report**

**14.—(9)** Where the requirements of regulation 11 are not complied with in relation to an undertaking's report or consolidated report for a financial year before the end of the period for delivering that report, the undertaking is liable to a civil penalty.

(1) This penalty is in addition to any liability of the directors under regulation 12.

(2) The penalty shall be calculated in accordance with section 453 of the Act as if the failure to deliver a report or consolidated report within [11] months of the end of the [financial] year in accordance with regulation 11 was a failure to file accounts and reports under section 441(<sup>10</sup>) of the Act.

(3) The penalty may be recovered by the registrar and is to be paid into the Consolidated Fund.

(4) It is not a defence in proceedings to prove that the documents in question were not in fact prepared as required by these Regulations.

## **Directive disclosure requirements**

**15.—(10)** After subsection (4) of section 1078 of the Act (Documents subject to Directive disclosure requirements), insert—

“(4A) Where a company is required by regulation 11 of the Reports on Payments to Governments Regulations 2014 to deliver to the registrar a report on payments to governments, that report or consolidated report.”

(1) In regulation 63 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009(<sup>11</sup>) (Public notice of receipt of certain documents), before the heading “Registered office” insert—

### **“Reports**

Any report or consolidated report on payments to governments required to be delivered to the registrar by regulation 11 of the Reports on Payments to Governments Regulations 2014.”

## **Review of Regulations**

**16.—(11)** The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive (which is implemented by means of these Regulations) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and

<sup>(10)</sup> Section 441 was amended by the Companies Act 2006 (Amendment) (Accounts and Reports) Regulations 2006 (S.I. 2008/393), regulation 6(6), and the Companies and Limited Liability Partnerships (Accounts and Audit Exemptions and Change of Accounting Framework) Regulations 2012 (S.I. 2012/2301), regulation 10.

<sup>(11)</sup> S.I. 2009/1804.

- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
  - (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.
  - (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

*Name*  
Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs  
Date Department for Business, Innovation and Skills

**SCHEDULE 1**

Regulation 2

**Annex 1 to Regulation (EC) No 1893/2006****Table 1****Section A - Agriculture, forestry and fishing**

<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>International Standard Industrial Classification Revision 4</i>
02	02.2	02.20 Logging	0220

**Table 2****Section B – Mining and quarrying**

<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>International Standard Industrial Classification Revision 4</i>
05		Mining of coal and lignite	
	05.1	05.10 Mining of hard coal	0510
	05.2	05.20 Mining of lignite	0520
06		Extraction of crude petroleum and natural gas	
	06.1	06.10 Extraction of crude petroleum	0610
	06.2	06.20 Extraction of natural gas	0620
07		Mining of metal ores	
	07.1	07.10 Mining of iron ores	0710
	07.2	07.21 Mining of non-ferrous metal ores	0721
		07.29 Mining of uranium and thorium ores	0729
08		Mining of other non-ferrous metal ores	
	08.1	Other mining and quarrying	
		Quarrying of stone, sand and clay	
	08.11	Quarrying of ornamental and building stone, limestone, gypsum, chalk and slate	0810 (part of)
		Operation of gravel and sand pits; mining of clays and kaolin	0810 (part of)
	08.9	Mining and quarrying not elsewhere classified	
		08.91 Mining of chemical and fertiliser minerals	0891
		08.92 Extraction of peat	0892
		08.93 Extraction of salt	0893
		08.99 Other mining and quarrying not elsewhere classified	0899

## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations come into force on [1st October 2014] and extend to the whole of the United Kingdom, reflecting the extent of the Companies Act 2006 (c.46) (“the Act”).

These Regulations implement chapter 10 of Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings. Chapter 10 requires certain undertakings active in the extractive or primary logging industries to make and publish reports on payments made to governments.

Where a term is used but not defined in these Regulations, it has the same meaning as given in the Act.

Regulation 3 contains the obligation on directors of undertakings that are both large or classified as a public-interest entity and active in the extractive or primary logging industries to produce a report on payments made to governments. These payments include taxes, royalties, fees and similar payments connected with activities in the extractive or logging industries. The regulation makes it an offence for directors to fail to comply with the requirement to prepare a report.

Regulation 4 sets out the required content of the report and regulation 5 contains exemptions from the requirement to prepare a report.

Regulation 6 requires directors of parent undertakings that have subsidiaries that are mining or quarrying undertakings or logging undertakings to prepare a consolidated report on payments made to governments, and makes it an offence to fail to prepare such a report.

Regulation 7 sets out the required content of the consolidated report and regulation 8 contains exemptions from the obligation to prepare a report.

Regulations 9 and 10 make provision for a further exemption from the duty to prepare a report or consolidated report under these Regulations where an undertaking has already reported its payments to governments under equivalent reporting requirements in another country.

Regulation 11 obliges directors of undertakings who are required to prepare a report or consolidated report to deliver such reports to the registrar of companies within [11] months after the end of the [financial] year of the undertaking.

Regulations 12 to 14 create an enforcement regime to encourage compliance with the Regulations.

Regulation 15 makes necessary consequential amendments to the Act and the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804) to ensure that reports and consolidated reports prepared under these Regulations are subject to the Directive disclosure requirements.

Regulation 16 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Business Environment Directorate, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET or from [www.gov.uk/bis](http://www.gov.uk/bis) and is annexed to the Explanatory Memorandum which is available alongside the instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

## Annex 6: Extractive industries reporting response form

The closing date for this consultation is 16 May 2014

Name:

Organisation (if applicable):

Address:

Please return completed forms to:

Vickie Wood  
 Consultation Responses (Extractive Industries)  
 Alternatives to Regulation Team  
 Department of Business, Innovation and Skills  
 3<sup>rd</sup> Floor, Spur 2  
 1 Victoria St  
 London SW1H 0ET

Email: extractivesconsultation@bis.gsi.gov.uk

Please indicate which of following best represents the group you or the organisation you represent belong to.

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

The following information will help us to better understand the impact of this reporting requirement on your company or group of companies:

	Oil	Minerals	Gas	Logging of primary forests
Please indicate in which of the extractive industries your company is engaged  (NB: this question is relevant only to those companies actively engaged in extraction and not to those providing support or ancillary services)				

Is your company listed on:	Yes	No
• the London Stock Exchange?		
• AIM?		
• another recognised exchange within the EU? (if yes, please state which .....)		
• another international exchange? (if yes, please state which .....)		
• are any of your subsidiaries listed on an exchange? (If yes, please provide details)		

	Yes	No
Will your company be responsible for the preparation of the consolidated report on payments to governments for your group?		

	Micro	Small	Medium	Large
Please indicate the number of subsidiaries within your group that are active in the extractive industries				

**(1) We propose that the first report should be prepared in respect in respect of financial years commencing on or after 1 January 2015 (Para 5.3 -5.4)**

**Question 1.1** Do you agree that companies should only be required to produce whole year reports and should not be required to provide a partial year report for the period between the regulations coming into force and 31 December 2014?

Yes       No       Not sure

If no, please indicate:

- (a) The minimum period you think should be provided between the regulations coming into force and the date from which reporting of payments made to governments commences:

Minimum period.....

and (b) How information from a partial year report will be used and the benefits that would arise from this approach.

Please provide comments on any difficulties/cost that might arise from requiring a partial report for 2014.

**Question 1.2** Do you agree that the first reports should relate to financial years commencing on or after 1 January 2015?

Yes       No       Not sure

If no, please indicate your preference for the date from which reports should be required and provide an explanation for your preference. (Please note that UK-registered large extractives companies must report on in respect of financial years commencing on or after 20 July 2015 i.e. the deadline for transposition of the Directive.)

Preferred date.....

Reasons for preferred date:

**(2) We propose that UK registered companies are required to publish the extractive report no later than 11 months after the end of their financial year. (Para 5.5 – 5.7)**

**Question 2.1** Do you agree that UK registered companies should be allowed a maximum of 11 months after the end of their financial year in which to prepare and publish their extractive reports?

Yes       No       Not sure

If no, please indicate:

- (a) The maximum period, if any, you think should be permitted after the (financial) year end for companies to prepare and publish their extractive reports:

Maximum period.....

and (b) Indicate the benefits that would arise from this approach below.

**Question 2.2** If a shorter period for reporting was imposed, what impact would this have on UK-registered extractives companies?

**Question 2.3** If this approach would impose costs on business, please provide an estimate of the costs with an explanation of how these are derived.

Would such costs be recurring costs or transitional costs in the first year only?

Recurring       Transitional       Not sure

**(3) Comments are invited on any issues, such as changes to costs or benefits, that may arise from a later transposition deadline for the Transparency Directive. (Para 5.8)**

**Question 3.1** What issues might arise from a later transposition of the Transparency Directive? Please describe any possible impacts and, if appropriate, provide details of any costs or benefits that might result from this.

**(4) Subsidiaries of overseas-registered companies will be unable to take advantage of the exemption until their parent company fulfils the obligation to report in either the UK or another EU Member State. Comments are invited on any issues that may arise from this approach. Comments are particularly welcome from subsidiaries of overseas registered companies which may not be able to take advantage of this exemption until their parent**

**companies are obliged to produce a consolidated report under rules imposed by another Member State. (Para 5.9 – 5.10)**

**Question 4.1** Please provide information on any issues that arise for UK-registered subsidiaries of EU-registered companies. If appropriate please provide details of any costs that arise as a consequence of being unable to (fully) exercise the exemption in 2015. (All EU Member States are required to implement the reporting requirements by July 2015.)

**(5) We propose that extractive reports should be published (filed) electronically with Companies House in a format which complies with industry developed best practice (to be determined as part of the systems development). (Para 5.11 – 5.14)**

**Question 5.1** Do you agree that it is appropriate that industry should be encouraged to lead in the production of best practice guidance to support the production of extractive reports and encourage consistency?

Yes       No       Not sure

If no, please provide supporting reasons for your view.

**Question 5.2** Do you agree that reports should be published (filed) electronically with Companies House only i.e. the submission of paper reports is not required or permitted?

Yes       No       Not sure

If no, please provide supporting reasons for your view.

**(6) We propose that the penalty regime for non-compliance with the obligation placed on large extractive companies to prepare and publish annually reports on the payments they make to governments should reflect that in place for failure to prepare and file statutory annual reports.**

**We welcome views on whether the proposed penalty scheme is effective, proportionate and dissuasive. In particular, we would welcome views on:**

- **the imposition of an offence for filing a report containing misleading, false or deceptive information,**
- **on how the penalty regime should apply in cases where external factors affect the preparation of a report or prevent a company from filing a report.**

**Question 6.1** Do you agree that it is appropriate for the penalty regime here to reflect that in place for failure to prepare and file statutory annual reports?

Yes       No       Not sure

If no, please indicate your preferred option and provide an explanation for your suggested approach.

**Question 6.2** Do you consider that the proposed penalty regime is effective, proportionate and dissuasive?

Yes       No       Not sure

If no, please explain why you do not consider the regime would be effective, proportionate and dissuasive. Please provide any suggestions you may have as to how the regime could be improved.

If your suggestions relate to an existing regime, please provide appropriate references.

**Question 6.3** Are there any special circumstances that the Government should take into account when determining the penalty regime?

Yes       No       Not sure

If so what are they, and do you have any suggestions about how these might be dealt with within the penalty regime?

**Question 6.4** Are there any other issues that the Government should consider in developing the penalty regime?

Yes       No       Not sure

If yes, please provide an explanation and supporting evidence where appropriate.

**(7) A copy of the draft regulations implementing Chapter 10 has been included within the consultation document.**

**Question 7.1** Do you have any comments on the draft regulations included at Annex 4?

Yes       No       Not sure

If yes, please provide details. Please note that the UK does not have the discretion to amend the requirements set out in the Directive. As such comments should relate to matters of understanding or those areas where the UK has discretion in determining an option e.g. the timeframe within which an annual report must be published.

**(8) The Government would like to gather information which is directly relevant to UK registered companies on the anticipated costs of implementing this reporting requirement. (Para 7.1)**

**Question 8.1** We would welcome views on the impacts (costs and benefits) arising on business from this new reporting obligation. It would be particularly helpful if you could provide monetised

information relating to any additional costs or benefits you identify. Where possible, please indicate if these additional costs are transitional or recurring costs.

In responding to this question, please note:

- (i) *where a company voluntarily produces a similar or related report already*, the costs identified for this purpose should represent only the additional costs necessary to comply with this requirement and not the total cost of production.
- (ii) BIS is happy to receive information considered to be commercially sensitive separately from the consultation response or, if requested, to remove such information from a response prior to its publication on the consultation website.

**Question 8.2** Please describe any other issues associated with this requirement that you would like to draw to our attention.

(9) The same reporting requirements apply to listed extractives companies under the amended *Transparency Directive*. The Government would like to gather information which is directly relevant to these companies on the anticipated costs of implementing this reporting requirement.

**Question 9.1** Please outline any quantifiable costs and benefits specifically relating to the following issues:

- Economic impact
- Legal implications
- Practical implications
- Competitiveness impact including the position of the UK as a centre for international listings

Economic impacts:

Legal implications:

Practical implications

Competitiveness impact:

**(10) The Government would welcome any other comments on the implementation of Chapter 10 within the scope of this consultation**

**Do you have any other comments that might aid the consultation process as a whole?**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

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