August 16, 2018

By E-Mail:
Chair Jay Clayton
Commissioner Kara Stein
Commissioner Robert J. Jackson, Jr.
Commissioner Hester Peirce

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

Re: Disclosure of Payments by Resource Extraction Issuers

Dear Chair and Commissioners:

Thank you for the opportunity to comment on the Security and Exchange Commission's (SEC) pending re-issuance of rule 13q-1implementing Section 13(q) of the Securities Exchange Act of 1934 ("Section 13(q)"). As an independent non-profit that has been a leader on this issue since first exposing how oil revenues were fueling corruption in Angola in 1999,[1] Global Witness is writing to provide important context on Section 1504 ("Disclosure of Payments by Resource Extraction Issuers") as the SEC enters a new rulemaking process. We fully support the comments submitted by Publish What You Pay on March 14, 2018.

Executive Summary & Recommendations

The Commission has spent a significant amount of time on this regulation culminating in a robust, evidence-based rule in 2016. However, due to a Congressional Review Act resolution in February 2017, the SEC is now challenged with issuing a new rule that satisfies multiple mandates. The rule must fulfill the congressional intent of Section 1504 and be consistent with the established evidence in the record for payment disclosure, as the 2016 rule did. To the extent that the Congressional Review Act resolution applies, the rule may not be issued in "substantially the same form" as the previous rule. In fulfilling these mandates, the Commission should be guided by a few core tenets:

- Neither the statutory mandate nor original congressional intent of Section 1504 of the Dodd-Frank Act has changed, despite the recent resolution under the Congressional Review Act;
- Globally, the evidence basis for public disclosure of disaggregated project-level extractive payments is now stronger than ever given almost four years of implementation in 30 other countries;
- In the U.S., the only factor that has changed since adoption of the 2016 rule is the political environment; and

[1] For Global Witness letters to the Commission in previous rulemakings, see the following submission dates: (1)February 25, 2011 ; (2)February 24, 2012 ; (3)February 24, 2012 ; (4)December 18, 2013 ; (5)May 16, 2014 ; (6)June 27, 2014 ; (7)February 16, 2016 ; (8)May 8, 2016.

- While there is no definition of not "substantially the same," it remains clear that to the extent it applies, it must be construed to ensure that any changes made to the 2016 rule are based on congressional intent and evidence in the record, not politics.

To support the Commission in its efforts, this submission summarizes the established evidence base behind two key aspects of the rule: the definition of project and exemptions. We then outline key areas of the economic analysis that merit substantial revision based on advances in extractive payment disclosure on the global market. We urge the Commission to take this evidentiary backing and changed economic landscape into account in writing a new rule. Specifically, we recommend that the Commission issue a rule that:

- Defines "project" on a contract-basis consistent with the 2016 rule and in line with standards used in the EU, Canada, Norway and the EITI standard currently being implemented in 51 countries;
- Excludes any categorical exemptions for host-country, contract or confidentiality reasons consistent with the previous rule and in line with standards used in the EU, Canada, Norway and the EITI standard currently being implemented in 51 countries; and
- Substantially updates the economic analysis, especially to include the empirical data now available from implementation in other markets.

Likewise, we urge the Commission to provide ample time and opportunity for experts to weigh in with analysis of new information to inform the revised rule and for the Commission to fully review and incorporate new evidence. This is particularly important given the complexity of fulfilling multiple mandates while meeting the political and legal challenges of interpreting the meaning of "not substantially the same."

Congressional Intent

Members of Congress that have weighed in with the Commission from both parties – from the original authors of the legislation to a recent letter from a group of Senators who voted for the Congressional Review Act – have all agreed on one thing: that the rule must be consistent with the international standards already adopted by European and other governments. As the next section of this letter details, the international standards adopted by the EU, Norway and Canada are all consistent in their call for contract-based project level reporting with no exemptions. Given the clear Congressional support for international alignment, even from those who voted to vacate the 2016 rule, the Commission must prioritize alignment in whatever changes are made to the rule.

Background & Changed Global Landscape

As the Commission has noted in previous rulemakings, Section 1504 is intended to bring greater transparency to payments made to governments by resource extraction issuers required to report to the SEC, both domestic and foreign. The intent of this transparency is to provide important

information that both benefits investors and promotes U.S. anti-corruption and transparency efforts.[2]

When the U.S. adopted Section 1504 in 2010 it was the first of its kind, in line with the U.S.' longstanding global leadership in anti-corruption and transparency measures. Despite a series of delays in the rulemaking process, the Commission issued a strong, evidence-based final rule in June 2016 that was praised by bipartisan members of Congress, civil society organizations, and investors alike.[3] However, since the rule did not take effect until September 2016 and the first disclosures were not due until 2019, the rule had not yet been implemented in the U.S. when it was vacated by a resolution under the Congressional Review Act. Despite these setbacks to the rule, the legislative intent of Section 1504 remains clear: issuers must publicly disclose disaggregated project-level payments with no exemptions in alignment with regulations in other markets.

While implementation has been stalled in the U.S., a global movement towards mandatory disclosure requirements has significantly strengthened the evidence base for robust, contract-based project-level disclosure rules. Thirty other countries - Canada, Norway, the UK and the other 27 members of the European Union - have implemented equivalent laws in their markets. Under these laws, hundreds of major multinational oil, gas and mining companies are reporting payments to foreign governments on a project-by-project basis.

- In June and October of 2013, the European Union (EU) Parliament and Council adopted two directives—the EU Accounting Directive and the EU Transparency Directive, respectively (the "EU Directives"). These EU Directives require oil, gas, mining, and logging companies to disclose payments they make to governments on a per government and per project basis.[4] In 2014, the United Kingdom became the first of the EU member states to implement the EU Accounting and Transparency Directives, which have since been implemented by the 27 other EU member states;[5]
- In December 2013, Norway adopted rules requiring resource extraction companies to disclose payments to governments project-by-project;[6] and

[2] See comment submitted to the SEC by Senator Cardin (December 1, 2010), p. 1. and comment submitted to the SEC by Senators Lugar, Levin and Dodd (February 4, 2016), p.1.

[3] See Appendix A for press release by Senator Cardin (June 27, 2016), press release by Senator Lugar (June 27, 2016), press release by Global Witness (June 27, 2016), press release by Publish What You Pay – United States (June 27, 2016), press release by Natural Resource Governance Institute (June 27, 2016), press release by EarthRights International (June 28, 2016), press release by Oxfam International (June 28, 2016), press release by the ONE Campaign (June 28, 2016), op-ed by Morning Consult, Calvert Investments (July 11, 2016), and press release by US SIF (June 28, 2016).

[4] See Appendix B for European Parliament, excerpt of EU Accounting Directive, Directive 2013/34/EU of the European Parliament and of the Council (June 26, 2013), and excerpt of EU Transparency Directive, Directive 2013/50/EU of the European Parliament and of the Council (October 22, 2013).

[5] See EUR-Lex for list of countries implementing the Accounting (2013/34/EU) and Transparency (2013/50/EU) Directives.

[6] See Appendix C for Government of Norway, Forskrift om land-for-land rapportering (December 20, 2013). English translation available via PWYP.

- In December 2014, the Canadian government adopted a federal resource extraction disclosure regime similar to the Commission's originally adopted resource extraction rules, known as the Extractive Sector Transparency Measures Act ("ESTMA").[7] In July 2015, Canada determined that the reporting requirements of the EU Accounting and Transparency Directives were equivalent to ESTMA.[8]

Similar draft legislation is currently being considered in Switzerland[9] and Ukraine[10] and has been adopted into the platform of the Australian Labor opposition party in the run up to their national elections in 2019.[11]

Furthermore, in 2013 the Extractive Industries Transparency Initiative (EITI) agreed to require project-by-project payment reporting for all EITI implementing countries. Guidance and a reporting template issued by the EITI International Secretariat in September 2017 aligns with the project-level reporting provisions contained in the European and Canadian laws. The Guidance states that: "for the purposes of EITI reporting MSGs (Multi-Stakeholder Groups) should follow the guiding principle that project-level payments should be reported in relation to the legal agreement which forms the basis for payment liabilities with the government."[12]

The Commission discussed these international efforts at length in its proposing release and specifically cited the regulations in other markets when issuing the 2016 rule, noting that the type of disclosure required by the rule was "consistent with an emerging global consensus to combat government corruption through greater transparency and accountability."[13,14]

Given that these laws were modeled on the U.S. provision, implementation in these markets now provides us with first-hand evidence to address some of the concerns that were raised in previous rule-making processes, as detailed below.

Project-Level Reporting

Alignment with Global Markets. The EU, Norwegian, and Canadian regulations all require full public disclosure of disaggregated project-level payments on a company-by-company basis. All

[7] See Appendix D for Government of Canada, excerpt of Extractive Sector Transparency Measures Act "ESTMA" (December 16, 2014).
[8] See Appendix E for Government of Canada, Substitution Process and Determination (March 29, 2018).
[9] See Appendix F for excerpt of Conseil fédéral suisse, Projet de modification du code des obligations (Droit de la société anonyme) (November 23, 2016), art. 964a-964e.
[10] See Appendix G for news article by DiXi Group, "DiXi Group welcomes the initial steps towards mandatory reporting of extractive companies and calls for continued progress by adopting the Draft Law No. 6229" (October 6, 2017).
[11] See Appendix H for article by Lisa Comish, Devex, "Plans to Legislate Transparency of Australia's International Mining Operations" (November 2, 2017).
[12] See Appendix I for EITI, Project-level reporting, Guidance note 29 – Requirement 4.7 (Sept. 2017).
[13] SEC, Proposed Rule, "Disclosure of Payments by Resource Extractive Issuers", 2015, at I.E.1. (Introduction and Background/ Objectives of Section 13(q)'s Required Disclosures and the Proposed Rules/ The U.S. Government's Foreign Policy Interest in Reducing Corruption in Resource-rich Countries), p. 80063-80065.
[14] See Appendix J for Public Statement by Commissioner Luis A. Aguilar "Enhancing the Transparency of Resource Extraction Revenue Payments" (December 11, 2015).

of these jurisdictions define project on the basis of terms of contracts, in line with standard industry terminology. Specifically:

- The EU defines project as "the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities to a government."[15]
- Canada defines project as "the operational activities that are governed by a single contract, license, lease, concession or similar legal agreement and form the basis for payment liabilities with a government."[16]

The Commission's own substantial analysis in the 2016 rule led to the conclusion that the US should also define project on a contract-basis:[17]

> "After considering commenters' recommendations and international developments since the Proposing Release, we are adopting the definition of "project" as proposed. The final rules define "project" as operational activities that are governed by a single contract, license, lease, concession, or similar legal agreement, which form the basis for payment liabilities with a government. Commenters continue to express strong disagreement over the level of granularity that should be adopted for the definition of "project." After carefully considering the comments received, we remain persuaded that the definition of project that we proposed is necessary and appropriate to achieve a level of transparency that will help advance the important anticorruption and accountability objectives underlying Section 13(q)."[18]

The Commission further explained the specific considerations that support and demonstrate the benefits of a contract-based definition of project, including ensuring that revenues benefit local communities, allowing for comparisons to identify discrepancies that could reflect potential corruption, monitoring to ensure that governments are properly collecting payments, and acting as a strong deterrent to companies potentially underpaying or making suspect payments. Examples of project-level data being used for each of these purposes are detailed below.

Evidence Base. Investors, companies and civil society groups have all stated on the record to the Commission that payment information on a disaggregated, company-by-company, project-level basis is necessary to provide them with sufficiently meaningful information to make informed investment choices and hold governments to account. Calvert Investments summarized the rationale well in a 2016 letter to the Commission:

> Calvert commends the Commission's decision to align the proposed rule's project definition with the European Union (EU) Directives and the draft Canadian

[15] See Appendix B for European Parliament, excerpt of EU Accounting Directive, Directive 2013/34/EU of the European Parliament and of the Council, para 43 (June 26, 2013).
[16] See Appendix K for Government of Canada, excerpt of Extractive Sector Transparency Measures Act Technical Reporting Specifications, p. 5 (2016).
[17] SEC, Final Rule, "Disclosure of Payments by Resource Extraction Issuers", 2016, at II.E. (Final Rules Under Section 13(q)/Definition of "Project"), p. 49,377-49,983.
[18] ibid, p. 49,379.

> definitions, as operational activities that are governed by a single contract, license, lease, concession, or similar legal agreement that forms the basis for payment liabilities with a government. The usefulness of this level of disaggregation is pointed out throughout the investor comments referenced in this letter. A contract-based project definition also reflects existing reporting by companies, which is the basis for investors' general understanding of an extractive resource project. Further, the Commission's effort to achieve consistency in this definition between the EU Directives and the draft Canadian definitions not only benefits investors seeking consistent disclosure, but also companies attempting to provide these disclosures efficiently and to achieve equivalency between disclosures required in different jurisdictions and through the EITI processes in which they may be engaged.[19]

Over the course of previous rulemakings investors currently representing over $11.8 trillion in assets under management[20] and 89 civil society organizations from 27 countries[21] have written to the Commission in support of project-level disclosure and a common global reporting standard. A total of 544 civil society organizations from 40 countries joined together to endorse project-level reporting in a multiparty submission to the Commission.[22] From Angola alone, a total of 174 Angolan civil society organizations and citizens collectively wrote to the Commission in support of detailed project-level disclosures.[23]

Civil society organizations around the world are pro-actively using data generated by the mandatory rules. [24] Contrary to some theoretical concerns that this level of information would be too overwhelming for public use, not only has there not been a single concern raised in this regard, investors and citizens have shown that this level of detail is required for the data to be useful as highlighted in the cases below.

Ensuring that revenues benefit local communities

In India, a local non-profit organization named IndiaSpend investigated the revenue-sharing agreement between mining companies and local communities in northern India by analyzing project-level payments disclosed by mining companies under the EU law. Indian law requires mining companies to return a percentage of mining royalties to local district authorities to fund local social and economic development programs. Similar laws are also in place in other major oil and mineral producing countries, including Indonesia, Peru and Nigeria to name a few. Project-level payment disclosures enable citizens and civil society groups to calculate how much they are entitled to through revenue-sharing systems and track the payments into district authority accounts. However, IndiaSpend's investigation found that local government authorities had a poor record of revenue investment in the community. Access to local project-level data on

[19] See comment submitted to the SEC by Calvert Investments (February 16, 2016).
[20] See Appendix L for list of investor institutions and link to one of their SEC submission.
[21] See Appendix M for list of organizations and countries.
[22] See comment submitted to the SEC by Publish What You Pay (April 14, 2014).
[23] See comment submitted to the SEC by Isaac et al (March 13, 2012).
[24] See Publish What You Pay International's Data Extractors program for example.

actual payments provided IndiaSpend with the information needed to call on the Indian government to make better use of the funds in their community.[25]

Allowing for comparisons to identify discrepancies that could reflect potential corruption
In Uganda, a local group called the Civil Society Coalition on Oil and Gas analyzed the project-level payments made by oil companies Total and Tullow, which are required to report under EU regulations. The group found that there was an unexplained $14 million discrepancy between the payments published by the companies and corresponding receipts published by the Ugandan government. On the basis of this information, the group was able to initiate in-depth dialogue with government officials, including a presentation to parliament, and demanded an explanation for the discrepancy.[26]

Monitoring to ensure that governments are properly collecting payments
In Ghana, Ghana-EITI used an auditor to reconcile 2010-2011 payments by extractive companies that were disclosed under EITI reporting with the Government of Ghana's receipts. In a review of project-level payment data from oil companies operating in the Jubilee oil field, the account reconciler found that no capital gains taxes had been charged on an equity acquisition,[27] resulting in $70 million in lost revenue for the country.[28] While national tax laws mandated capital gains taxes, the government had been unable to collect them due to conflicting and ambiguous petroleum sector tax laws.[29] Based on these findings, Ghana EITI and the government worked together to pass new tax laws in 2013 that help ensure the collection of capital gains taxes on future oil sector transactions provide a direct benefit to the national economy.[30]

Acting as a strong deterrent to companies potentially underpaying or making suspect payments
Royal Dutch Shell and Eni, an Italian oil company, and senior executives are currently on trial in an Italian court.[31] The prosecutor alleges that $1.1 billion of the funds paid by Shell and Eni for Nigerian oil license OPL 245 was, with the knowledge of the companies, diverted away from a government account to a former oil minister who distributed $523 million in cash as bribes to top government officials, including the former oil minister and the Nigerian president himself. Leaked internal emails published by Global Witness show that senior Shell executives knew that their payment was likely part of a vast bribery scheme. According to the prosecutor $50 million in cash, an alleged kickback for Eni executives, was allegedly

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[25] See Appendix N for IndiaSpend (India), "How Not To Use A Development Fund For Mineral-Rich Areas" (October 24, 2017).
[26] See Appendix O for Global Rights Alert (Uganda), "Project Level Disclosures Open Up Uganda's Opaque Oil Sector" (January 27, 2017).
[27] See Appendix P for GHEITI, excerpt of GHEITI Final Report-Aggregation and Reconciliation of Oil and Gas Sector payments and receipts for 2010 & 2011 (February 2013), p. 43.
[28] See Appendix Q for press release by Tullow Oil, "Tullow to acquire the Ghanaian interests of EO Group Limited for $305 million" (May 26, 2011); and Government of Ghana Media Center (Mahmud Soali), "Action-Aid Organises Media Sensitisation Workshop on Tax Justice/Tax Incentives".
[29] See Appendix R for Government of Ghana, excerpt of Ghana Internal Revenue Act, 2000 (Act 592), Section 95; and Government of Ghana, excerpt of the Petroleum Income Tax Law, 1987 (PNDC Law 188), p. 26.
[30] See Appendix S for excerpt of GHEITI Report - Oil & Gas Sector for 2012 and 2013 (December 2014), p. 90; and Government of Ghana, Ghana Internal Revenue (Amendment) (No.2), 2013 (Act 871).
[31] See Appendix T for article by Eric Sylvers & Sarah Kent, Wall Street Journal, "Shell, Eni Face Italian Charges Over Nigerian Deal" (December 20, 2017).

delivered directly to the home of Eni's current Chief Operating Officer. The $1.1 billion diverted away from the Nigerian people in the upfront payment exceeds the country's entire health budget. In addition to the ongoing trial in Italy, the Nigerian government has also brought charges and there are ongoing investigations in Nigeria and the Netherlands. Foreign Corrupt Practice Act reporting obligations were not successful in deterring these actions, but had public disclosure requirements been in place, it is much less likely that these kinds of secret deals would have happened.[32] Shell, Eni and their executives have denied all charges.

Exemptions

Alignment with Global Markets. None of the EU, UK, Canadian nor Norwegian regulations include any contractual or country-level exemptions. As a bipartisan group of Senators previously wrote to the Commission, maintaining the "Commission's approach to exemptions also ensures consistency with EU, Canadian and EITI reporting schemes and furthers the U.S. Government's goal of promoting an international transparency standard."[33]

Evidence Base. As the Commission and members of Congress have previously stated, there is not, nor has there ever been, any credible evidence to support arguments that have been made in the past by the American Petroleum Institute (API) and some of its members claiming that they would not be able to disclose in certain countries – namely Angola, Cameroon, Qatar and China – due to host country laws barring disclosure. Even if such laws had existed, it has long been standard industry practice to include carve-out provisions in extractive contracts that allow disclosure of information where required by regulators.[34] Members of Congress have emphasized to the Commission that there is no evidence of any country – including those singled out – that ban Section 1504 type disclosures.[35] Faced with this evidence, the API dropped its claims regarding Angola and Cameroon during the most recent rulemaking process.[36] The Commission already conducted a thorough analysis of various concerns raised and concluded on the basis of the evidence available that blanket exemptions were not warranted based on any foreign laws or contractual provisions, while still allowing for consideration on a case-by-case or targeted basis.[37]

Recent reporting under EU, Canadian and Norwegian law in all four of the countries of concern, including by some of the same companies who previously made these claims, has now clearly disproven any need for unnecessary exemptions. In the last three years alone, a total of 24 companies, including 10 dual-listed in the U.S., have reported 280 project-level payments

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[32] See Appendix U for press release by Global Witness, "Judge Orders Biggest Corporate Bribery Trial in History Against Shell, Eni, CEO and Executives" (December 20, 2017).

[33] See comment submitted to the SEC by Senators Lugar, Levin and Dodd (February 4, 2016), p.2.

[34] See comment submitted to the SEC by Oxfam America and Earthrights International (March 8, 2016) and comment submitted to the SEC by Oxfam America and EarthRights International (May 2, 2016).

[35] See comment submitted to the SEC by Senators Lugar, Levin and Dodd (February 4, 2016), p.2.

[36] SEC, Final Rule, "Disclosure of Payments by Resource Extraction Issuers", 2016, at III.C.1. (Economic Analysis/Potential Effects Resulting From Specific Implementation Choices/Exemption from Compliance), p. 49,412-49,417.

[37] SEC, Final Rule, "Disclosure of Payments by Resource Extraction Issuers", 2016, at II.I.3 (Final Rules Under Section 13(q)/ Exemption from Compliance/ Final Rules), p. 49,390-49.392.

totaling USD 35.3 billion in Angola, Cameroon, Qatar and China without any reported repercussions, including the following:[38]

Angola: A total of 139 project payments totaling USD 21.3 billion has been reported by 11 companies, including six that are dual-listed in the U.S.: A.P. Moller-Maersk Group, BP Public Limited Company, China Petroleum & Chemical Corporation (Sinopec), Eni S.p.A., ExxonMobil Luxembourg Corporation Limited, Galp Energia, INA Naftaplin, Partex Holding Bv, Public Joint Stock Company Gazprom, Statoil, and Total S.A.

Cameroon: A total of two project payments totaling USD 5,890 has been reported by one company, Dana Petroleum Limited. In addition, Cameroon is voluntarily implementing EITI and requiring all companies operating in the country (including ExxonMobil and a subsidiary of Royal Dutch Shell) to publicly report their payments.[39]

Qatar: A total of 27 project payments totaling USD 8.5 billion has been reported by four companies, all of which are dual-listed in the U.S.: A.P. Moller-Maersk Group, BP Public Limited Company, Royal Dutch Shell Public Limited Company, and Total S.A.

China: A total of 112 project payments totaling USD 5.5 billion has been reported by 15 companies, seven of which are dual-listed in the U.S.: BHP Billiton Public Limited Company, BP Public Limited Company, Cementir Holding S.p.A., China Gold International Resources Corporation Limited, China National Offshore Oil Corporation Limited, China Petroleum & Chemical Corporation (Sinopec), Eldorado Gold Corporation, Green Dragon Gas Limited, Husky Energy Incorporated, Imerys S.A., Nexen Petroleum U.K. Limited, Primeline Energy Holdings Incorporated, Royal Dutch Shell Public Limited Company, Silvercorp Metals Incorporated, and Total S.A.

Economic Cost Analysis

The Commission's extensive cost analysis in the 2016 rule took a best estimate approach to predicting what the costs of compliance would be for companies, given that it was not possible to fully account for costs until the final rule was determined and implemented. At the time, quantitative estimates were based largely on two companies' predictions of what the associated reporting costs would be. Drawing on issuer estimates, the Commission proposed an estimated range of fixed, annual costs commensurate with company size and reflected as a percentage of total assets. The Commission likewise estimated a range of initial upfront costs based on whether companies had the necessary reporting systems in place. Finally, the Commission calculated the expected total industry costs based on an assessment of the total number of listed companies that would be required to report that were not already doing so in other markets, on the assumption that there would not be additional cost burdens for countries cross listed and already reporting in other markets.

Given that there have now been three to four years of reporting in other markets, it is incumbent on the Commission to revisit these estimates and recalculate them based on real-world data from

[38] Analysis based on payment data hosted at NRGI's resourceprojects.org
[39] See EITI-Cameroon

companies already reporting in other jurisdictions. It is also important to provide ample time and opportunity for experts to weigh in with analysis of new information to inform the revised rule in this regard. Notably, this allows the Commission to fact check and update quantitative cost calculations in three significant ways:

- *Actual company compliance costs to date* and, based on quantifiable fixed and variable costs, revised cost estimates for small and large issuers in terms of a percentage of total assets. For example, Tullow Oil has reported that their annual compliance costs are approximately 0.001% of their total assets.[40] This is in line with the lower cost range estimated by the Commission, which was based on cost projections provided by Barrick - Gold (which is twice the size of Tullow in terms of total assets) and proposed costs of approximately 0.002% of total assets. These estimates were validated by the only independent cost study submitted to the Commission, which determined that Barrick - Gold's anticipated costs aligned with findings of the study and should be deemed as reasonable in the Commission's analysis.[41] However, most disagreement on costs has been over the higher range put forth by the Commission, which was based only on ExxonMobil estimates and not on any verifiable cost actuals. Based on ExxonMobil's cost estimates, the Commission anticipated that costs could range up to 0.021% of total assets. However, the independent cost study found this estimate to be vastly overstated, estimating that ExxonMobil's costs would be roughly 0.005% of its total assets, less than one quarter of the upper estimate. Given the vast discrepancies in the higher cost estimate range, it is crucial to revisit these numbers based on actual costs to date.
- *Updated number of cross-listed companies* that will have negligible additional reporting costs resulting from the Commission's rule. In 2016 the Commission estimated that 192 listed issuers were "subject to disclosure requirements in foreign jurisdictions that are substantially similar to the final rules and therefore will likely already be bearing compliance costs for disclosure."[42] Accordingly, the Commission did not include these companies in their cost estimates. Given three to four years of reporting in other markets, this number should be updated to include: (1) current number of cross-listed companies, (2) listed issuers with subsidiaries already reporting in other jurisdictions, and (3) issuers operating in EITI countries which will require project-level reporting starting in 2018.
- *Estimated cost burden of dual reporting* if the proposed rule were to differ from the global reporting standard and cross listed companies were forced to report differently in different jurisdictions. As noted above, current cost estimates are lowered on the premise that reporting in multiple jurisdictions is aligned and does not require any additional reporting burden or duplicative systems. If the Commission were to propose a rule that differs from the international standard, the additional reporting costs and loss of cost savings noted above will need to be fully estimated and publicly documented.

In addition, while the 2016 rule cited some concerns that disclosure could give rise to competitive disadvantage in some limited cases, the Commission acknowledged that this risk

[40] Tullow Oil, email communication to PWYP UK (5 Feb. 2018).
[41] See comment submitted to the SEC by Claigan Environmental (February 16, 2016).
[42] SEC, Final Rule, "Disclosure of Payments by Resource Extraction Issuers"2016, at III.B.2.b. (Economic Analysis/Potential Effects Resulting from the Payment Reporting Requirement/Costs/ Quantitative Estimates of Compliance Costs), p. 49,407-49,392.

would be minimal. It is important to note that under the European and Canadian rules oil, gas and mining firms have reported project-level payments worth at least $324.9 billion in 135 countries, with no sign of harmful effects on companies' competitiveness.[43] The economic analysis on indirect costs and competitive effects requires updating accordingly:

- *Empirical evaluation and data on competitive effects* – The Commission was clear in its finding that any competitive impact should be minimal where information is already publicly available and substantially reduced where other jurisdictions have similar laws. Concerns around competitive disadvantages because of payment disclosure were based on theoretical concerns without any empirical basis. Given the last three to four years of reporting in other jurisdictions, it is important to now ground truth those hypothetical concerns by looking at any competitive impacts on those reporting. In the absence of any quantifiable, correlated impacts, there is no evidence to substantiate claims of competitive disadvantage stemming from payment disclosures.

Finally, the 2016 economic analysis included cost estimates potentially associated with disclosure prohibitions in some countries. At the time, the Commission noted that "it is not clear that these costs will be incurred by issuers in light of the present uncertainty over the existence and scope of such foreign law prohibitions." Given that it has now been shown that companies can and are disclosing in countries which allegedly prohibited disclosure, as described above, these estimates no longer have relevant bearing on total company costs.

Congressional Intent & the Congressional Review Act

As stated in the opening of this letter, the Commission is charged with promulgating a rule that meets the Congressional intent of Section 1504 and is supported by the substantial evidence in the record. Neither the Congressional Review Act nor the resolution of disapproval have altered those obligations in any way. It is important to note that the February 2017 resolution passed pursuant to the Congressional Review Act does not in any way change the existing statutory mandate or original legislative intent. The statute remains in effect as is and the Congressional intent of the statute remains as originally enacted and is not altered in any way by Congressional comments made during the resolution.

For example, while six Senators expressed concerns to the Commission about the potential competitive effects or perceived cost burdens, these arguments are with the statute itself and not the rule as written. Accordingly, while these arguments do point out the importance of updating the economic analysis with empirical data, they are not relevant for consideration in developing the specific parameters of the rule.

Likewise, some Senators argued that this is a "social rule" and therefore does not belong at the SEC. However, the substantial documentation in the record of investors in support of the 2012 and 2016 rule are evidence of the investor-basis of this rule. Furthermore, Congress has invested the authority for this rule within the Commission, as the only U.S. agency with the authority to mandate company disclosures. This authority remains unchanged and is not a relevant factor in any proposed changes to the rule.

[43] See ResourceProjects.org, project payments section.

As previously stated, to the extent that the Congressional Review Act resolution's language on not "substantially the same" applies, it must be construed to ensure that the final rule is consistent with the evidence in the record, the experience of reporting in other markets, and the unaltered statutory mandate to produce a pro-disclosure rule.

Conclusion & Recommendations

As this letter has made clear, in proposing a new rule that addresses its three-pronged mandate, the Commission must be guided by the following underlying premises:

- The statutory mandate and Congressional intent of Section 1504 have not changed, despite the resolution issued under the Congressional Review Act;
- Globally, the evidence basis for public disclosure of disaggregated project-level extractive payments is now stronger than ever given almost four years of implementation in 30 other countries;
- In the U.S., the only factor that has changed since adoption of the 2016 rule is the political environment; and
- While there is no definition of not "substantially the same," it remains clear that to the extent it applies, it must be construed to ensure that any changes made to the 2016 rule must still be based on the Dodd-Frank Act and the evidence in the record – not politics.

With this in mind, we strongly recommend that the Commission issue a new rule that:

- Defines "project" on a contract-basis consistent with the 2016 rule and in line with standards used in the EU, Canada, Norway and the EITI standard currently being implemented in 51 countries;
- Excludes any categorical exemptions for host-country, contract or confidentiality reasons consistent with the previous rule and in line with standards used in the EU, Canada, Norway and the EITI standard currently being implemented in 50 countries; and
- Substantially updates the economic analysis, especially to include the empirical data now available from implementation in other markets.

We applaud the Commission for its continued efforts on Section 13(q) and urge the Commission to propose a strong rule based on the evidence in the record and global standards. We appreciate the opportunity to provide written comments and would welcome the opportunity to meet with you to clarify any of our comments.

About Global Witness

Global Witness is an independent non-profit organization dedicated to ending the environmental and human rights abuses that are driven by the exploitation of natural resources and corruption in the global political and economic system. We carry out hard-hitting investigations to expose these abuses, and advocate for change. We were a strong supporter of Congressional enactment of Section 13(q) and were closely involved in the subsequent rulemakings. We also are an investor holding stock in several issuers subject to Section 13(q). We have played a leading role in developing and implementing international transparency and natural resource governance

mechanisms, including the Extractive Industries Transparency Initiative ("EITI"). Global Witness also conceived and co-launched the Publish What You Pay ("PWYP") campaign which is a global coalition of over 800 civil society organizations in more than 70 countries. We have played a leading role in EITI since its creation in June 2003, and served on the international board from its inception in 2006 until 2016. We have also served on the US EITI and UK EITI Multi-Stakeholder Groups.

Sincerely,

Corinna Gilfillan
Head of U.S. Office

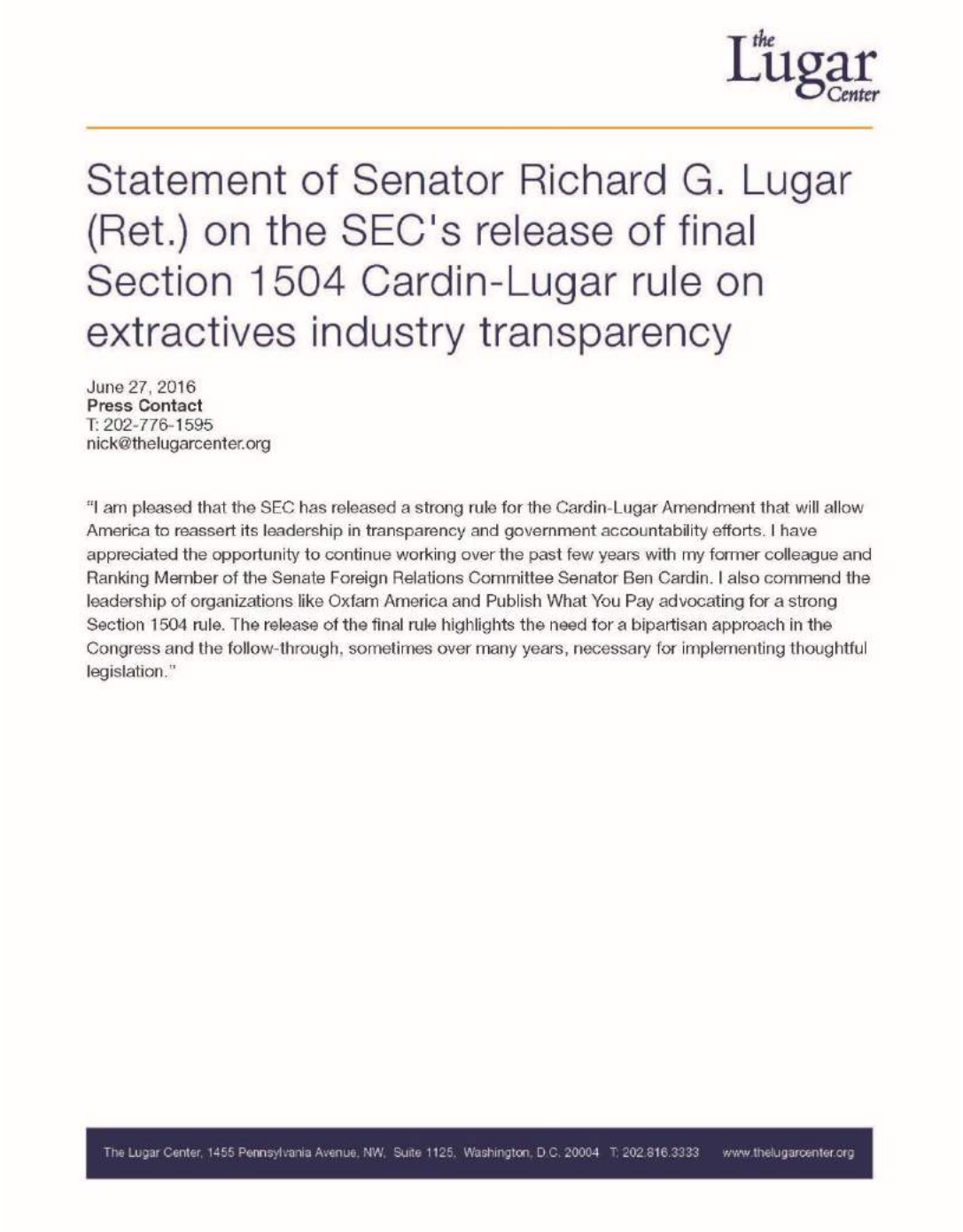
Appendices

Appendix A

2016 Final Rule praised by bipartisan members of Congress, civil society organizations, & investors.

Bipartisan members of Congress: (1) press release by Senator Lugar (2) press release by Senator Cardin

Bipartisan members of Congress (1): Senator Lugar (June 27, 2016)



the Lugar Center

Statement of Senator Richard G. Lugar (Ret.) on the SEC's release of final Section 1504 Cardin-Lugar rule on extractives industry transparency

June 27, 2016
Press Contact
T: 202-776-1595
nick@thelugarcenter.org

"I am pleased that the SEC has released a strong rule for the Cardin-Lugar Amendment that will allow America to reassert its leadership in transparency and government accountability efforts. I have appreciated the opportunity to continue working over the past few years with my former colleague and Ranking Member of the Senate Foreign Relations Committee Senator Ben Cardin. I also commend the leadership of organizations like Oxfam America and Publish What You Pay advocating for a strong Section 1504 rule. The release of the final rule highlights the need for a bipartisan approach in the Congress and the follow-through, sometimes over many years, necessary for implementing thoughtful legislation."

The Lugar Center, 1455 Pennsylvania Avenue, NW, Suite 1125, Washington, D.C. 20004 T: 202.816.3333 www.thelugarcenter.org

Bipartisan members of Congress (2): Senator Cardin (June 27, 2016)

JUNE 27, 2016

SEC ISSUES FINAL RULE ON CARDIN-LUGAR EFFORT TO INCREASE TRANSPARENCY IN U.S. EXTRACTIVE INDUSTRIES

WASHINGTON – The U.S. Securities and Exchange Commission (SEC) ruled Monday that all foreign and domestic companies listed on U.S. stock exchanges and involved in oil, gas and mineral resource extraction must publish the project-level payments they make to foreign countries in which they operate.

The rule implements Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, a provision authored by **U.S. Senators Ben Cardin (D-Md.) and Richard Lugar (R-Ind.)** in 2010. America led the international community in promoting transparency in the extractive industry by adopting Cardin-Lugar six years ago, but delays by the SEC and a spurious court challenge by the oil and gas industry have allowed other countries to surpass the United States.

"Today is a watershed moment as the United States reclaims its position as a leader in the effort to increase global accountability and transparency. This final rule will enable citizens and local civil society organizations to hold government leaders accountable for their management of valuable oil, gas, and mineral resources and

revenues while ensuring investor protections," **Senator Cardin said.** "Transparency is the enemy of corruption, and today the United States has sent a clear message to government officials who seek to siphon off public funds for personal gain."

Section 1504 will benefit investors in extractive industry companies, contribute to more functional and secure energy markets, and empower citizens and shareholders in the United States and abroad. Particularly in resource rich but otherwise poor countries, when citizens have such power, they can access information they need to hold their leaders accountable.

"I thank the Publish What You Pay coalition, Oxfam America, the One Campaign, and other partners for their tireless work leading up to today's achievement. And this rule would not have been possible without the strong leadership and support of former Senators Lugar, Dodd and Senators Leahy and Durbin," **Cardin added.**

###

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Civil society organizations*: (1) *Global Witness* (2) *Publish What You Pay – United States* (3) *Natural Resource Governance Institute* (4) *EarthRights International* (5) *Oxfam International* (6) *ONE Campaign

Civil society organizations (1): Global Witness (June 27, 2016)

global witness

For Immediate Release: June 27, 2016

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SEC Announces Historic Transparency Rule for U.S. Oil, Gas and Mining Companies Doing Deals With Foreign Governments

Groundbreaking Transparency Rule First Called for by Global Witness Will Curb Corruption and Cut Poverty Overseas by Bringing Payments Into the Open

Global Witness Releases Initial Response to SEC Rule Requiring Extractive Industries Transparency, Detailed Review to Follow

Washington, DC — Today, the U.S.Securities and Exchange Commission (SEC) announced a landmark transparency rule which requires U.S.-listed oil, gas and mining companies to publish details of their payments to governments for the right to exploit a country's natural resources. The rule, which follows more than 16 years of campaigning by Global Witness and our Publish What You Pay-US allies, has been celebrated by human rights and transparency advocates as a key step in curbing corruption and cutting poverty around the globe.

For decades, corruption in the oil, gas and mining industries has helped keep poor countries poor, propped up dirty regimes and created risks for investors. This kind of state looting is currently possible because huge deals for natural resources are struck behind closed doors between companies and governments, meaning citizens cannot see how much money is at stake, who is benefitting from the deals, or if corrupt transactions are taking place.

The new SEC measures will make it much harder to strike such deals, and enable citizens to "follow the money" generated by their country's resources, understanding what revenue their country should be receiving in exchange for its natural wealth. The ruling requires companies to declare what they pay their governments for oil, gas and mining deals, broken down by country and by project.

Global Witness was the first organization to call for mandatory disclosure laws that would bring payments into the open in December 1999, following years of investigations which showed that transformational amounts of money were being stolen by corrupt elites in backroom deals with companies. In 2002, Global Witness conceived and was the co-founder of the Publish What You Pay campaign, which has since seen the European Union, the UK, Canada and Norway enacting transparency laws requiring companies to disclose project-level payments to governments.

Simon Taylor, Director of Global Witness and co-founder of Publish What You Pay said:

"This is historic! This rule will go a long way to help end injustice from shady deals between companies and kleptocrats. Such deals are why so many citizens in resource-rich countries remain so desperately poor, because their most valuable assets are being stolen. Today's U.S. rule has real teeth: by requiring companies to publish payments they make for each individual oil, gas or mining project, it will end the practice of striking shady deals behind closed doors. That's good for society, investors and companies alike. After years of hard work from campaigners all over the world, the U.S. has now resumed its seat as a leader in the global movement to ensure transparency and accountability for the extractive industries. It should be swiftly put into place and fully enforced."

Section 1504 was bipartisan and enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. The SEC introduced an implementing rule for Section 1504 in 2012, but this was set aside by a U.S. district court in 2013 following a legal challenge by the American Petroleum Institute, an oil industry lobby group whose members include Exxon, Chevron, Shell and BP.

The court decision required the SEC to revisit and strengthen the legal justifications for its original rule and the SEC has now done this. Civil society groups around the world, prominent economic experts, the U.S. State Department and investor groups managing trillions of dollars of assets have all submitted statements of support urging the SEC to put out a strong rule that is consistent with the transparency laws adopted in the European Union, the UK, Canada and Norway.

Having a common, global standard simplifies compliance for multinational companies and makes it possible for civil society to use and compare disclosures from different jurisdictions to hold their governments and the companies that exploit their resources accountable.

###

About Global Witness

Global Witness wants a better world — where corruption is challenged and accountability prevails, all can thrive within the planet's boundaries, and governments act in the public interest. Many of the world's worst environmental and human rights abuses are driven by the exploitation of natural resources and corruption in the global political and economic system. Global Witness is campaigning to end this. We carry out hard-hitting investigations, expose the facts, and push for change. We are independent, not-for-profit, and work with partners around the world in our fight for justice.

Civil society organizations (2): Publish What You Pay – United States (June 27, 2016)

FOR IMMEDIATE RELEASE: June 27, 2016
Contact: Jana Morgan, Director - jmorgan@pwypusa.org
Office 202-496-1189 – Mobile 703-795-8542

Publish What You Pay
United States

SEC Releases Strong Oil, Gas and Mining Transparency Rule and Restores US Leadership

Washington, D.C. - Publish What You Pay - United States (PWYP-US) celebrates today's release by the Securities and Exchange Commission (SEC) of a long-awaited rule for the landmark transparency provision, Section 1504, of the Dodd-Frank Act. Section 1504, also known as the Cardin-Lugar amendment, requires oil, gas and mining companies listed on US stock exchanges to publicly report, by project, the payments made to US and foreign governments for access to natural resources in all countries of operation.

PWYP-US, a civil society coalition dedicated to creating a more open and accountable extractives sector, has led the nearly six-year long effort to secure a strong Section 1504 rule. The implementing rule, which requires project-level reporting, by company, with no categorical exemptions for supposed host-country prohibitions, aligns with similar payment transparency requirements already in effect in 30 countries.

"The SEC has heeded the call of investors with nearly $10 trillion in assets under management, senior members of Congress, major oil, gas and mining companies, and more than 500 civil society organizations in resource-rich countries by producing a robust final rule that will shed much needed sunlight on financial flows between companies and governments," said Jana Morgan, Director of PWYP-US. "This rule will give investors the tools they need to assess and mitigate risk in the volatile extractives market, as well as empower citizens to hold their governments accountable for how their resource wealth is used."

While the rule is a win for transparency advocates around the world, PWYP-US is disappointed that the SEC has allowed for an unnecessary two-year phase-in period before companies are required to report, as well as the provision allowing a one year delay in reporting for payments related to exploratory activities.

Some extractives companies, such as Total, BHP Billiton and Eni have publicly urged the SEC to align the final 1504 rule with transparency laws in place in the United Kingdom, European Union, Canada and Norway. Reporting under these laws began in Norway in 2015, while disclosures from the EU started in January. "The passage of Section 1504 catalyzed change around the world, and now its implementation will level the playing field by requiring disclosure from US-listed companies consistent with the global standard," continued Morgan.

The United States is home to the world's largest extractives market. Implementation of Section 1504 will require payment disclosure by all six of the "supermajor" oil companies, including ExxonMobil and Chevron - as well as some Chinese and Brazilian state-owned oil companies.

"Today is a watershed moment as the United States reclaims its position as a leader in the effort to increase global accountability and transparency," said U.S. Senator Ben Cardin (D-MD), the Ranking Member of the Senate Foreign Relations Committee and the co-author of the Cardin-Lugar amendment. "Transparency is the enemy of corruption, and today the United States has sent a clear message to government officials who seek to siphon off public funds for personal gain." Senator Cardin, along with former Senator Richard Lugar (R-IN) and Senator Patrick Leahy (D-VT), have led Congressional efforts to ensure the SEC produced a strong implementing rule.

"While we are still in the process of reviewing the details of the rule, it is clear that the SEC has considered the compelling evidence in the administrative record, dismissed the false claims of a few loud industry voices, and released a final rule that is fit for purpose," said Morgan. "PWYP-US and our partners stand ready to begin translating extractives payment data into accountability."

###

Notes for Editors:

- PWYP-US is reviewing the final rule and will release a detailed analysis in the days ahead. To learn more about our positions, review the following key submissions to the SEC:
  - March 2014 Position Statement
  - February 2016 Response to Proposed Rule
  - March 2016 Rebuttal Statement
- See here for a comprehensive analysis of the companies subject to Section 1504.
- Supportive investor groups have written nearly 30 letters to the SEC calling for strong rules and noting the importance of public, project-level disclosure to help investors better understand and mitigate their investment risks.
- The following are three key letters submitted to the SEC by groups of investors representing $6.4 trillion, $5.6 trillion, and $2.85 trillion in assets under management.
- For more on investor support and the materiality of these disclosures to investors see the Columbia Center for Sustainable Investment SEC submission.
- The Department of State, USAID and the Department of Interior have all written to the SEC to signal their support for a strong Section 1504 rule.
- With the finalization of Section 1504, EITI implementing countries must now begin reporting project-level payments in accordance with the revised 2013 EITI standard. The United States government unilaterally disclosed its 2013 payment receipts *by county* in its first EITI report, published December 2015. Extractives companies only reported at the country level.
- The SEC originally produced an implementing rule for Section 1504 in August 2012. However, that rule was vacated by the DC District Court following a lawsuit led by the American Petroleum Institute and the US Chamber of Commerce.
- Additional background information can be found at: www.pwypusa.org
- To learn how PWYP-US and our partners are digging into extractives payment data, visit: www.extractafact.org

Publish What You Pay (PWYP) is a global civil society coalition that believes that the wealth generated by oil, gas, and mining industries can be a pathway to poverty reduction, stable economic growth, and development in resource-rich countries. Founded in 2002, PWYP comprises over 800 organizations from nearly 70 countries that advocate for payment transparency as a necessary ingredient for accountability. The US coalition comprises 40 members, including development, faith-based, human rights, environmental, financial reform, and anti-corruption organizations representing over 2.5 million constituents spread through every state in the nation.

Civil society organizations (3): Natural Resource Governance Institute (June 27, 2016)

U.S. Oil and Mining Companies to Disclose Payments to Governments

resourcegovernance.org/news/2016-dodd-frank-ruling

June 27, 2016

SEC rule comes almost six years after Dodd-Frank Act mandated disclosure

NEW YORK, 27 June 2016—Transparency advocates hailed the adoption today of a rule by the United States Securities and Exchange Commission requiring oil, gas and mining companies listed on U.S. stock exchanges to publicly disclose the billions of dollars in payments that they make to governments around the world in exchange for natural resources.

The rule means that major industry players like ExxonMobil, Chevron and Vale will have to disclose detailed project-level information for all payments of USD 100,000 or more. Companies will have to begin reporting payments for all fiscal years ending after 30 September 2018.

The long overdue rule implements a provision of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. A previous version of the rule was struck down following a legal challenge led by the American Petroleum Institute.

"This rule marks the end of an era of secrecy," said Suneeta Kaimal, chief operating officer of the Natural Resource Governance Institute (NRGI). "We're still reviewing the details, but at long last, citizens will be armed with the information they need to combat corruption and hold governments to account for natural resources managed on their behalf. This rule will also provide investors with an important source of information in order to manage risk in the volatile commodities sector."

Similar rules requiring public, project-level payment disclosure have been passed in the European Union (including the U.K., home to many extractive companies), Norway and Canada since the Dodd-Frank Act was made law, but the U.S. had lagged behind due to legal challenges and a failure to implement the pioneering law. Many U.S.-listed companies such as Royal Dutch Shell, BP, Statoil and Total have already reported under European laws, but the SEC's new rule will extend these requirements to a further 425 companies such as ExxonMobil and Chevron which have vigorously opposed disclosure, as well as some major state-owned companies such as Brazil's corruption-plagued Petrobras and China's CNOOC.

Unlike the European and Canadian rules, the SEC rule includes a targeted exemption from disclosure which allows companies to delay for one year reporting payments related to exploratory activities. "Exploratory activities are subject to just as much corruption risk as other activities and should be subject to the same levels of disclosure," said Joseph Williams,

NRGI's senior advocacy officer. "We view this exemption as unnecessary."

Royal Dutch Shell's disclosures in April this year under U.K. law revealed that the company received large tax refunds in the U.S. and U.K. in 2015 and allowed citizens groups in the Philippines to question their government about how revenues from a major oil project were used. NRGI and others are building innovative tools to ensure this important new financial data is accessible to all stakeholders to deter corruption, engender accountability and improve investment decisions.

"Similar disclosure requirements in Australia, Brazil, China, India, Russia and South Africa would complement those in north America and Europe and increase global coverage," Williams said. "However, failure to implement the U.S. law has given these countries an excuse not to pursue greater transparency. With the world's largest capital market now demanding disclosure, those countries will be hard-pressed to stand against this global trend."

Trading missing from disclosure requirement

While the rule requires public, project-level disclosure of payments including taxes, royalties and fees, payments related to commodity trading where a company buys hydrocarbons or minerals from a government entity, such as a national oil company, have been left out almost entirely from the final rule. The final rule does acknowledge the scale of these payments and will require disclosure of the repurchase value of production entitlements paid in kind, but many commodity trading payments will go undisclosed. "The exclusion from the final rule of most trading payments, which carry many corruption risks, leaves a major gap," Kaimal said. "In countries like Iraq, Libya and Nigeria, the sale of oil to traders constitutes the government's largest source of revenue. The omission of most trading payments from the rule means these transactions will remain opaque."

At the May 2016 London Anti-Corruption Summit, 11 countries including major trading hubs like Switzerland, the U.K. and the Netherlands committed to "enhance company disclosure" of payments to governments for the purchase of oil, gas and minerals. "NRGI calls on the U.S. government to make a similar commitment and ensure all these massive, corruption-prone payments are included within the SEC's disclosure regime as soon as possible," Williams said.

"The SEC appears to have adopted a solid rule largely in line with similar laws internationally," Williams added. "This rule is a victory for the Publish What You Pay coalition which has campaigned for years on the issue, as well as congressional champions including Senator Ben Cardin, former Senator Richard Lugar and Senator Patrick Leahy."

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Notes for editors

NRGI is a member of the U.S. and U.K. chapters of the global Publish What You Pay coalition and actively participated in the SEC's most recent rulemaking to implement Section 1504 of the Dodd-Frank Act. See for example:

A 2012 version of the rule was struck down in July 2013 after a legal challenge by the American Petroleum Institute and U.S. Chamber of Commerce before any companies had disclosed their payments. Oxfam America then successfully sued the SEC for failing to rewrite the rule in a timely manner, resulting in the SEC committing to meet to adopt a final rule by 27 June 2016.

About NRGI

The Natural Resource Governance Institute, an independent, non-profit organization, helps people to realize the benefits of their countries' oil, gas and mineral wealth through applied research, and innovative approaches to capacity development, technical advice and advocacy. We work with government ministries, civil society organizations, journalists, legislatures,

private sector actors, and international institutions to promote accountable and effective governance in the extractive industries. Learn more at www.resourcegovernance.org.

Civil society organizations (4): EarthRights International (June 28, 2016)

Home (https://earthrights.org) / Media Release (https://earthrights.org/stories/media/) / SEC Issues Long-Awaited Transparency Rule for Oil, Gas and Mining

(https://earthrights.org/wp-content/uploads/justice_2.jpg)

SEC Issues Long-Awaited Transparency Rule for Oil, Gas and Mining

Location: Washington, D.C.

The Securities and Exchange Commission (SEC) issued a landmark transparency rule yesterday requiring oil, gas and mining companies listed on U.S. stock exchanges to disclose the payments they make to the U.S. and foreign governments. In 2010, Congress mandated the rule in Section 1504 of the Dodd-Frank Act, in order to provide

critical information to investors and help communities in resource-rich countries hold their governments accountable for the responsible management of billions of dollars in extractive resource revenues.

Members of Congress, investors worth nearly $10 trillion in assets under management, civil society groups, and citizens of resource-rich countries voiced support for a strong rule, emphasizing the need for detailed payment information. While some oil companies have sought to keep the payments they make to governments secret, other companies are already disclosing payment information voluntarily, or under similar regulations in other jurisdictions.

"The baseless arguments and doomsday predictions made by certain oil companies and industry groups to try to maintain payment secrecy have been thoroughly undermined by the rulemaking record and transparency developments in the rest of the world," said Michelle Harrison, Staff Attorney at EarthRights International (ERI). "The SEC weighed the evidence and rightfully rejected calls for certain sweeping rule-based exemptions and anonymous, highly-aggregated disclosures that would deprive investors and communities of precisely the information they need. While we are still reviewing the details, we are pleased to see the SEC finally take action on this critical transparency rule."

The final rule has been delayed for years, prompting ERI, on behalf of Oxfam America, to sue the SEC twice for dragging its feet. Last year, a federal judge ordered the SEC to issue the rule promptly, finding that the SEC had "unlawfully withheld" the final rule. "Our successful lawsuit made sure the SEC could no longer delay action that Congress required it to take years ago," said Harrison.

"Extractive industry payments have been secret for too long. This rule is a huge victory for investors and citizens who have long called for such information," said Ian Gary, Associate Policy Director at Oxfam America. "The final rule aligns with the rules in other markets by requiring public disclosure of project-level payments to governments and enables the U.S. to reassert itself as a leader in transparency."

Section 1504 inspired similar disclosure laws around the world, setting a new global standard for transparency. While the U.S. rule faced delay, the European Union, Canada and Norway plowed ahead, adopting similar mandatory disclosure laws. Many U.S.-listed extractive companies are also covered by the regulations in other markets. Some companies, like Shell, Total and Statoil, are already reporting on their project-level payments in all countries of operation under those regulations without consequence, while others have voluntarily disclosed their payment information. The SEC's rule intentionally aligns with those rules to ensure consistent reporting obligations.

ERI has submitted numerous comments to the SEC during the 6 year rulemaking process on its own, on behalf of Oxfam, and as part of the U.S. Publish What You Pay Coalition (PWYP-US).

###

EarthRights International (ERI) is a nongovernmental, nonprofit organization that combines the power of law and the power of people in defense of human rights and the environment, which we define as "earth rights." We specialize in fact-finding, legal actions against perpetrators of earth rights abuses, training grassroots and

community leaders, and advocacy campaigns, and have offices in Southeast Asia, the United States and Peru. More information on ERI is available at http://www.earthrights.org.

Documents:
sec_final_rule_0 (https://earthrights.org/wp-content/uploads/sec_final_rule_0.pdf)

Civil society organizations (5): [Oxfam International]

New SEC rule to shed light on oil and mining money

June 28, 2016 | By Oxfam

Azubuike Samson is a student at this school in the Niger Delta, an area that produces most of the oil in Nigeria but is one of the most impoverished regions of the country. New requirements for disclosure of payments by oil companies to the government may help citizens in Nigeria devote more resources to education. Photo: George Osodi / Panos for Oxfam America.

Oxfam welcomes news of measures to increase transparency, and help countries track money.

A rule released by the US Securities and Exchange Commission (SEC) will now require oil and mining companies publicly traded on US stock exchanges to disclose payments to the US and foreign governments. These disclosures will help citizens track money from natural resources, and help to make visible the ways funds are used for public goods like schools and hospitals.

"This is a victory for investors, and for citizens in resource rich countries around the world who wish to follow the money their governments receive from oil and mining companies," says Ian Gary, a policy director at Oxfam America.

The rules will finally enact Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, passed by Congress and signed by President Obama in 2010.

Oxfam estimates that between 2010 and 2015 the oil industry should have paid oil-producing countries $1.5 trillion. With limited means to track such payments, citizens in these countries can't tell

what payments their governments received nor can they see where the money is spent.

By finalizing these rules, the US joins 30 countries, including members of the European Union as well as the UK, Canada and Norway, that will require oil, gas, and mining company disclosure of payments to governments.

The SEC's deadline to issue the rules this month was imposed by a US District Court order resulting from a suit brought by Oxfam against the SEC.

"Oxfam has been campaigning for this law and its implementation for almost a decade," Gary. "While we're still reviewing the details, we look forward to working with our partners to put the information generated by this crucial rule to work all over the world."

Read more stories & updates about
Natural resources and rights

Civil society organizations (6): [ONE Campaign]

ONE Campaign welcomes SEC's rule on Dodd-Frank 1504

June 28 2016

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Lack of transparency enables corruption and shady deals that cost the developing world $1 trillion

WASHINGTON — As the U.S. Securities and Exchange Commission (SEC) released its rule to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the ONE Campaign issued the following reaction from ***Tom Hart, ONE's Executive Director for North America***:

"Financial transparency is critical for rooting out the kind of corruption that keeps many poor countries trapped in poverty. Publishing payment information for natural resource extraction is essential for helping citizens — particularly those in developing countries — hold their governments accountable and curb widespread corruption and mismanagement of revenues. The SEC's new rule is a welcome and overdue step forward, and while it contains several unnecessary exemptions, it appears that commissioners have stood up to industry pressure to weaken the rule. This rule is a win-win-win for investors, for governments, and for citizens – especially those living in the world's poorest countries.

"The ONE Campaign has been a vocal advocate for transparency and accountability because of the importance of open and accountable institutions to combatting extreme poverty. In 2014, ONE published The Trillion Dollar Scandal, a report detailing the

LOOKING FOR SOMETHING?

About ONE

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Get the Facts (PDF)

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NIGERIA

Innocent Edache

siphoning of more than $1 trillion dollars from developing countries each year through corruption and shady deals. As part of this work, ONE has advocated for implementation of Section 1504 that requires detailed project-by-project reporting without exemptions, aligning the U.S. with a rapidly emerging global standard."

Section 1504 mandates that all oil, gas, and mining companies required to file an annual report with the SEC must report what they pay governments to extract natural resources. This payment information doesn't only help citizens in the poorest countries hold their countries accountable for natural resource wealth, it also protects investors and markets.

The rule that was just released requires project level reporting, by company, and no categorical exemptions for supposed host-country prohibitions and aligns with similar payment transparency requirements already in effect in 30 countries.

Notes to reporters:

- The United States is home to the world's largest extractives market. Implementation of Section 1504 will require payment disclosure by all six of the "supermajor" oil companies, including ExxonMobil and Chevron – as well as some Chinese and Brazilian state-owned oil companies.
- The United States now joins an emerging global standard of natural resource transparency. Mandatory disclosure legislation has been enacted all over the world, including in the UK, Norway, Canada and the European Union.
- Extractives firms such as Total, BHP Billiton and Eni have publicly urged the SEC to align the final 1504 rule with transparency laws in place in the United Kingdom, European Union, Canada and Norway.

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- The rule contains two exemptions which ONE feels are unnecessary: 1) If a company acquires a company not previously subject to the final rules they will not be required to report payment information until filing a form for the first fiscal year following the acquisition; 2) There is a one year delay related to payments related to exploratory activities (concession to industry on competitive harm for new discovery). The SEC can also grant exemptions on a case by case basis.

###

About ONE

ONE is a campaigning and advocacy organization of more than 9 million people taking action to end extreme poverty and preventable disease, particularly in Africa. Not politically partisan, we raise public awareness and press political leaders to combat AIDS and preventable diseases, increase investments in agriculture and nutrition, and demand greater transparency in poverty-fighting programs.

Investors*: (1) op-ed by Morning Consult, *Calvert Investments* (2) press release by *US SIF

Investors (1): Calvert Investments (July 11, 2016)

MORNING CONSULT INTELLIGENCE NEWS

OPINION

Transparency from Energy Companies is Good for Investors, and Good for Business

BY **STU DALHEIM**
July 11, 2016

Investors in the securities of oil, gas, and mining companies face a range of challenges, from volatility in commodity pricing to acute social, political, and regulatory risks related to natural resource extraction in countries with poor governance. Whether it is the threat of production disruptions in the Niger River Delta, nationalization or abrupt changes of tax policy risks in Venezuela, or tenuous license to operate in Guatemala, project-specific social and political risks are becoming more significant as companies push further into the frontiers of petroleum and mineral exploration.

For example, instability and conflict in Libya led to lengthy disruptions of oil and gas production. Between 2011 and 2014 five US-listed companies, including Marathon, Hess and Total, missed out on an estimated $17.42 billion in revenues due to halted production in Libya – a serious impact for company income statements as well as investors. Fully quantifying and accounting for social, political, and regulatory risks in investment analyses is difficult with the currently available public disclosures.

On June 27, the Securities and Exchange Commission (SEC) voted to enact a rule to implement section 1504 of the 2010 Dodd-Frank Act, which requires oil, gas, and mining companies to report their payments to

governments by project in every country of operation. This rule will provide investors with the information they need to understand corporate exposure to changes in host government policies and international operating conditions. Such transparency will also strengthen governmental accountability to citizens in resource producing countries about the way that natural resource wealth is managed.

My firm, Calvert Investments, has limited holdings in these companies in part because of our concerns about their social risks and impacts. Indeed, for that very reason, we are supportive of section 1504 – it can help us understand and manage our exposure to the risks of operating in challenging social and political environments.

Regardless of a particular investor's direct investments, oil, gas, and mining companies are a major part of the global capital markets and all investors have an interest in transparency and accountability within the natural resources sector. It is telling that there is unanimous support for section 1504 in the over two dozen letters submitted to the SEC by institutional investors representing over $9.8 trillion dollars in assets under management.

Section 1504 was a milestone, setting the baseline for mandatory disclosure requirements that have developed internationally. Parallel disclosure requirements are now on the books in the EU, Canada, and Norway. Royal Dutch Shell and Total, two of the world's largest oil and gas companies, have reported their project-level payments to governments under EU transparency requirements. With the SEC approval of the implementing rule for Section 1504, the global transparency standard for the extractives sector extends to the United States, the world's largest extractives market.

The project-level payments that extractive companies make to governments are material to investors. Public disclosure of royalties, taxes, production entitlements, bonuses, and other fees paid by extractive companies can provide investors the data to accurately model and analyze a company's exposure to country-specific and project-specific risks. Project-level tax data and a clearer picture of company performance can contribute to better investment decisions.

Disclosures required through Section 1504 can reduce the information asymmetry that exists between investors and extractive companies. With this sector in particular, the gap in information can be even more pronounced due to the social, political, and regulatory risk factors described above. The information provided to investors through 1504 disclosures can lead to increased trust and willingness to invest in extractive companies, especially in difficult international operating environments, thus lowering the cost of capital to the companies.

The US will no longer lag behind the global oil, gas, and mining transparency standard. With project-level reports coming out under parallel transparency requirements, public mistrust could increase for US-listed companies if they were not subject to similar disclosure requirements. Such mistrust could lead to an increase in social and political risks affecting investments in US-listed oil, gas, and mining companies. The SEC action brings the US in line with the global transparency standard, providing a level playing field for industry, and a more stable and predictable environment for investors.

Stu Dalheim is Vice President, Governance and Advocacy at Calvert Investments.

Investors (2): US SIF (June 28, 2016)

US SIF
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US SIF Commends New Payment Disclosure Rule For Resource Extraction Companies

By: admin **On**: 06/28/2016 15:53:39 **In:** Policy

US SIF issues statement in response to the long-awaited new rule on the disclosure of payments by publicly-traded companies that extract natural resources, as required by Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

WASHINGTON, D.C. - US SIF: The Forum for Sustainable and Responsible Investment issued this statement today in response to the long-awaited new rule on the disclosure of payments by publicly-traded companies that extract natural resources, as required by Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under the rule, companies listed on US stock exchanges are required to make annual disclosures, by project, to the Securities and Exchange Commission (SEC) about their payments to US and foreign governments for the commercial development of oil, natural gas or minerals. Companies are required to begin reporting payments for all fiscal years ending after September 30, 2018.

Lisa Woll, CEO of US SIF, said:

"We applaud the SEC for releasing a strong payment disclosure rule covering companies' commercial development of natural resources. US SIF has worked closely with a broad coalition of investors and civil society organizations to urge the SEC to enact this rule since the Dodd-Frank Act became law six years ago. We thank SEC Chair Mary Jo White, the Commissioners and staff for their hard work in finalizing a strong rule.

"The new rule will foster corporate accountability, enable investors to better assess certain investment risks and benefit the citizens of resource-rich countries, who often cannot find reliable data on the payments their governments receive for mineral, oil and gas extraction rights.

"US SIF and investors representing trillions of dollars in assets under management believe that the disclosures benefit all investors by yielding material information, which in turn helps to maintain fair, orderly and efficient markets and to facilitate capital formation. As a result of the rule, investors will be able to compare the payments that resource companies make to governments around the world, and analyze whether these payments or operations pose regulatory, tax, reputational, political and social risks. The promulgation of this rule has therefore been a high priority for US SIF.

"We believe that the rule strikes an appropriate balance between providing useful information to investors and providing companies with flexibility in its implementation. While we are disappointed to see a one-year reporting delay in disclosing payments related to exploratory activities, we are pleased that the rule requires robust public, project-level disclosure of payments including taxes, royalties, fees (including license fees), production entitlements, bonuses, dividends, payments for infrastructure improvements and, if required by law or contract, community and corporate social responsibility payments. We are also pleased to see that the new rule aligns with the payment transparency rules in other countries, including those adopted in the European Union and Canada. We encourage companies involved in the extraction of resources to begin reporting their payments to governments even before the regulatory deadline."

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About US SIF

US SIF: The Forum for Sustainable and Responsible Investment is the leading voice advancing sustainable, responsible and impact investing across all asset classes. Our mission is to rapidly shift investment practices towards sustainability, focusing on long-term investment and the generation of positive social and environmental impacts. Among the hundreds of US SIF members are investment management and advisory firms, mutual fund companies, research firms, financial planners and advisors, broker-dealers, community investing institutions, non-profit associations, and pension funds, foundations and other asset owners.

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Appendix B

Excerpt, EU Directives: (1) EU Accounting Directive (2) EU Transparency Directive

EU Directives (1): EU Accounting Directive, Directive 2013/34/EU (June 26, 2013)

DIRECTIVES

DIRECTIVE 2013/34/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee [1],

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) This Directive takes into account the Commission's better regulation programme, and, in particular, the Commission Communication entitled "Smart Regulation in the European Union", which aims at designing and delivering regulation of the highest quality whilst respecting the principles of subsidiarity and proportionality and ensuring that the administrative burdens are proportionate to the benefits they bring. The Commission Communication entitled "Think Small First – Small Business Act for Europe", adopted in June 2008 and revised in February 2011, recognises the central role played by small and medium-sized enterprises (SMEs) in the Union economy and aims to improve the overall approach to entrepreneurship and to anchor the "think small first" principle in policy-making from regulation to public service. The European Council of 24 and 25 March 2011 welcomed the Commission's intention to present the "Single Market Act" with measures creating growth and jobs, bringing tangible results to citizens and businesses.

The Commission Communication entitled "Single Market Act", adopted in April 2011, proposes to simplify the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies [3] and the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts [4] (the Accounting Directives) as regards financial information obligations and to reduce administrative burdens, in particular for SMEs. "The Europe 2020 Strategy" for smart, sustainable and inclusive growth aims to reduce administrative burdens and improve the business environment, in particular for SMEs, and to promote the internationalisation of SMEs. The European Council of 24 and 25 March 2011 also called for the overall regulatory burden, in particular for SMEs, to be reduced at both Union and national level and suggested measures to increase productivity, such as the removal of red tape and the improvement of the regulatory framework for SMEs.

(2) On 18 December 2008 the European Parliament adopted a non-legislative resolution on accounting requirements as regards small and medium-sized companies, particularly micro-entities [5], stating that the Accounting Directives are often very burdensome for small and medium-sized companies, and in particular for micro-entities, and asking the Commission to continue its efforts to review those Directives.

(3) The coordination of national provisions concerning the presentation and content of annual financial statements and management reports, the measurement bases used therein and their publication in respect of certain types of undertakings with limited liability is of special importance for the protection of shareholders, members and third parties. Simultaneous coordination is necessary in those fields for such types of undertakings because, on

[1] OJ C 181, 21.6.2012, p. 84.
[2] Position of the European Parliament of 12 June 2013 (not yet published in the Official Journal) and decision of the Council of 20 June 2013.
[3] OJ L 222, 14.8.1978, p. 11.
[4] OJ L 193, 18.7.1983, p. 1.
[5] OJ C 45 E, 23.2.2010, p. 58.

the one hand, some undertakings operate in more than one Member State and, on the other hand, such undertakings offer no safeguards to third parties beyond the amounts of their net assets.

(4) Annual financial statements pursue various objectives and do not merely provide information for investors in capital markets but also give an account of past transactions and enhance corporate governance. Union accounting legislation needs to strike an appropriate balance between the interests of the addressees of financial statements and the interest of undertakings in not being unduly burdened with reporting requirements.

(5) The scope of this Directive should include certain undertakings with limited liability such as public and private limited liability companies. Additionally, there is a substantial number of partnerships and limited partnerships all the fully liable members of which are constituted either as public or as private limited liability companies, and such partnerships should therefore be subject to the coordination measures of this Directive. This Directive should also ensure that partnerships fall within its scope where members of a partnership which are not constituted as private or public limited companies in fact have limited liability for the partnership's obligations because that liability is limited by other undertakings within the scope of this Directive. The exclusion of not-for-profit undertakings from the scope of this Directive is consistent with its purpose, in line with point (g) of Article 50(2) of the Treaty on the Functioning of the European Union (TFEU).

(6) The scope of this Directive should be principles-based and should ensure that it is not possible for an undertaking to exclude itself from that scope by creating a group structure containing multiple layers of undertakings established inside or outside the Union.

(7) The provisions of this Directive should apply only to the extent that they are not inconsistent with, or contradicted by, provisions on the financial reporting of certain types of undertakings or provisions regarding the distribution of an undertaking's capital which are laid down in other legislative acts in force adopted by one or more Union institutions.

(8) It is necessary, moreover, to establish minimum equivalent legal requirements at Union level as regards the extent of the financial information that should be made available to the public by undertakings that are in competition with one another.

(9) Annual financial statements should be prepared on a prudent basis and should give a true and fair view of an undertaking's assets and liabilities, financial position and profit or loss. It is possible that, in exceptional cases, a financial statement does not give such a true and fair view where provisions of this Directive are applied. In such cases, the undertaking should depart from such provisions in order to give a true and fair view. The Member States should be allowed to define such exceptional cases and to lay down the relevant special rules which are to apply in those cases. Those exceptional cases should be understood to be only very unusual transactions and unusual situations and should, for instance, not be related to entire specific sectors.

(10) This Directive should ensure that the requirements for small undertakings are to a large extent harmonised throughout the Union. This Directive is based on the "think small first" principle. In order to avoid disproportionate administrative burdens on those undertakings, Member States should only be allowed to require a few disclosures by way of notes that are additional to the mandatory notes. In the case of a single filing system, however, Member States may in certain cases require a limited number of additional disclosures where these are explicitly required by their national tax legislation and are strictly necessary for the purposes of tax collection. It should be possible for Member States to impose requirements on medium-sized and large undertakings that go further than the minimum requirements prescribed by this Directive.

(11) Where this Directive allows Member States to impose additional requirements on, for instance, small undertakings, this means that Member States can make use of this option in full or in part by requiring less than the option allows for. In the same way, where this Directive allows Member States to make use of an exemption in relation to, for instance, small undertakings, this means that Member States can exempt such undertakings wholly or in part.

(12) Small, medium-sized and large undertakings should be defined and distinguished by reference to balance sheet total, net turnover and the average number of employees during the financial year, as those criteria typically provide objective evidence as to the size of an undertaking. However, where a parent undertaking is not preparing consolidated financial statements for the group, Member States should be allowed to take steps they deem necessary to require that such an undertaking be classified as a larger undertaking by determining its size and resulting category on a consolidated or aggregated basis. Where a Member State applies one or more of the optional exemptions for micro-undertakings, micro-undertakings should also be defined by reference to balance sheet total, net turnover and the average number of employees during the financial year. Member States should not be obliged to define separate categories for medium-sized and large undertakings in their national legislation if medium-sized undertakings are subject to the same requirements as large undertakings.

(13) Micro-undertakings have limited resources with which to comply with demanding regulatory requirements. Where no specific rules are in place for micro-undertakings, the rules applying to small undertakings apply to them. Those rules place on them administrative burdens which are disproportionate to their size and are, therefore, relatively more onerous for micro-undertakings as compared to other small undertakings. Therefore, it should be possible for Member States to exempt micro-undertakings from certain obligations applying to small undertakings that would impose excessive administrative burdens on them. However, micro-undertakings should still be subject to any national obligation to keep records showing their business transactions and financial position. Moreover, investment undertakings and financial holding undertakings should be excluded from the benefits of simplifications applicable to micro-undertakings.

(14) Member States should take into account the specific conditions and needs of their own markets when making a decision about whether or how to implement a distinct regime for micro-undertakings within the context of this Directive.

(15) Publication of financial statements can be burdensome for micro-undertakings. At the same time, Member States need to ensure compliance with this Directive. Accordingly, Member States making use of the exemptions for micro-undertakings provided for in this Directive should be allowed to exempt micro-undertakings from a general publication requirement, provided that balance sheet information is duly filed, in accordance with national law, with at least one designated competent authority and that the information is forwarded to the business register, so that a copy should be obtainable upon application. In such cases, the obligation laid down in this Directive to publish any accounting document in accordance with Article 3(5) of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent [1], should not apply.

(16) To ensure the disclosure of comparable and equivalent information, recognition and measurement principles should include the going concern, the prudence, and the accrual bases. Set-offs between asset and liability items and income and expense items should not be allowed and components of assets and liabilities should be valued separately. In specific cases, however, Member States should be allowed to permit or require undertakings to perform set-offs between asset and liability items and income and expense items. The presentation of items in financial statements should have regard to the economic reality or commercial substance of the underlying transaction or arrangement. Member States should, however, be allowed to exempt undertakings from applying that principle.

(17) The principle of materiality should govern recognition, measurement, presentation, disclosure and consolidation in financial statements. According to the principle of materiality, information that is considered immaterial may, for instance, be aggregated in the financial statements. However, while a single item might be considered to be immaterial, immaterial items of a similar nature might be considered material when taken as a whole. Member States should be allowed to limit the mandatory application of the principle of materiality to presentation and disclosure. The principle of materiality should not affect any national obligation to keep complete records showing business transactions and financial position.

(18) Items recognised in annual financial statements should be measured on the basis of the principle of purchase price or production cost to ensure the reliability of information contained in financial statements. However, Member States should be allowed to permit or require undertakings to revalue fixed assets in order that more relevant information may be provided to the users of financial statements.

(19) The need for comparability of financial information throughout the Union makes it necessary to require Member States to allow a system of fair value accounting for certain financial instruments. Furthermore, systems of fair value accounting provide information that can be of more relevance to the users of financial statements than purchase price or production cost-based information. Accordingly, Member States should permit the adoption of a fair value system of accounting by all undertakings or classes of undertaking, other than micro-undertakings making use of the exemptions provided for in this Directive, in respect of both annual and consolidated financial statements or, if a Member State so chooses, in respect of consolidated financial statements only. Furthermore, Member States should be allowed to permit or require fair value accounting for assets other than financial instruments.

(20) A limited number of layouts for the balance sheet is necessary to allow users of financial statements to better compare the financial position of undertakings within the Union. Member States should require the

[1] OJ L 258, 1.10.2009, p. 11.

use of one layout for the balance sheet and should be allowed to offer a choice from amongst permitted layouts. However, Member States should be able to permit or require undertakings to modify the layout and present a balance sheet distinguishing between current and non-current items. A profit and loss account layout showing the nature of expenses and a profit and loss account layout showing the function of expenses should be permitted. Member States should require the use of one layout for the profit and loss account and should be allowed to offer a choice from amongst permitted layouts. Member States should also be able to allow undertakings to present a statement of performance instead of a profit and loss account prepared in accordance with one of the permitted layouts. Simplifications of the required layouts may be made available for small and medium-sized undertakings. However, Member States should be allowed to restrict layouts of the balance sheet and profit and loss account if necessary for the electronic filing of financial statements.

(21) For comparability reasons, a common framework for recognition, measurement and presentation of, *inter alia*, value adjustments, goodwill, provisions, stocks of goods and fungible assets, and income and expenditure of exceptional size or incidence should be provided.

(22) The recognition and measurement of some items in financial statements are based on estimates, judgements and models rather than exact depictions. As a result of the uncertainties inherent in business activities, certain items in financial statements cannot be measured precisely but can only be estimated. Estimation involves judgements based on the latest available reliable information. The use of estimates is an essential part of the preparation of financial statements. This is especially true in the case of provisions, which by their nature are more uncertain than most other items in the balance sheet. Estimates should be based on a prudent judgement of the management of the undertaking and calculated on an objective basis, supplemented by experience of similar transactions and, in some cases, even reports from independent experts. The evidence considered should include any additional evidence provided by events after the balance-sheet date.

(23) The information presented in the balance sheet and in the profit and loss account should be supplemented by disclosures by way of notes to the financial statements. Users of financial statements typically have a limited need for supplementary information from small undertakings, and it can be costly for small undertakings to collate that supplementary information. A limited disclosure regime for small undertakings is, therefore, justified. However, where a micro- or small undertaking considers that it is beneficial to provide additional disclosures of the types required of medium-sized and large undertakings, or other disclosures not provided for in this Directive, it should not be prevented from doing so.

(24) Disclosure in respect of accounting policies is one of the key elements of the notes to the financial statements. Such disclosure should include, in particular, the measurement bases applied to various items, a statement on the conformity of those accounting policies with the going concern concept and any significant changes to the accounting policies adopted.

(25) Users of financial statements prepared by medium-sized and large undertakings typically have more sophisticated needs. Therefore, further disclosures should be provided in certain areas. Exemption from certain disclosure obligations is justified where such disclosure would be prejudicial to certain persons or to the undertaking.

(26) The management report and the consolidated management report are important elements of financial reporting. A fair review of the development of the business and of its position should be provided, in a manner consistent with the size and complexity of the business. The information should not be restricted to the financial aspects of the undertaking's business, and there should be an analysis of environmental and social aspects of the business necessary for an understanding of the undertaking's development, performance or position. In cases where the consolidated management report and the parent undertaking management report are presented in a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole. However, having regard to the potential burden placed on small and medium-sized undertakings, it is appropriate to provide that Member States may choose to waive the obligation to provide non-financial information in the management report of such undertakings.

(27) Member States should have the possibility of exempting small undertakings from the obligation to draw up a management report provided that such undertakings include, in the notes to the financial statements, the data concerning the acquisition of own shares referred to in Article 24(2) of Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent [1].

[1] OJ L 315, 14.11.2012, p. 74.

(28) Given that listed undertakings can have a prominent role in the economies in which they operate, the provisions of this Directive concerning the corporate governance statement should apply to undertakings whose transferable securities are admitted to trading on a regulated market.

(29) Many undertakings own other undertakings and the aim of coordinating the legislation governing consolidated financial statements is to protect the interests subsisting in companies with share capital. Consolidated financial statements should be drawn up so that financial information concerning such undertakings may be conveyed to members and third parties. National law governing consolidated financial statements should therefore be coordinated in order to achieve the objectives of comparability and equivalence in the information which undertakings should publish within the Union. However, given the lack of an arm's-length transaction price, Member States should be allowed to permit intra-group transfers of participating interests, so-called common control transactions, to be accounted for using the pooling of interests method of accounting, in which the book value of shares held in an undertaking included in a consolidation is set off against the corresponding percentage of capital only.

(30) In Directive 83/349/EEC there was a requirement to prepare consolidated financial statements for groups in cases where either the parent undertaking or one or more of the subsidiary undertakings was established as one of the types of undertakings listed in Annex I or Annex II to this Directive. Member States had the option of exempting parent undertakings from the requirement to draw up consolidated accounts in cases where the parent undertaking was not of the type listed in Annex I or Annex II. This Directive requires only parent undertakings of the types listed in Annex I or, in certain circumstances, Annex II to draw up consolidated financial statements, but does not preclude Member States from extending the scope of this Directive to cover other situations as well. In substance there is therefore no change, as it remains up to the Member States to decide whether to require undertakings which do not fall within the scope of this Directive to prepare consolidated financial statements.

(31) Consolidated financial statements should present the activities of a parent undertaking and its subsidiaries as a single economic entity (a group). Undertakings controlled by the parent undertaking should be considered as subsidiary undertakings. Control should be based on holding a majority of voting rights, but control may also exist where there are agreements with fellow shareholders or members. In certain circumstances control may be effectively exercised where the parent holds a minority or none of the shares in the subsidiary. Member States should be entitled to require that undertakings not subject to control, but which are managed on a unified basis or have a common administrative, managerial or supervisory body, be included in consolidated financial statements.

(32) A subsidiary undertaking which is itself a parent undertaking should draw up consolidated financial statements. Nevertheless, Member States should be entitled to exempt such a parent undertaking from the obligation to draw up such consolidated financial statements in certain circumstances, provided that its members and third parties are sufficiently protected.

(33) Small groups should be exempt from the obligation to prepare consolidated financial statements as the users of small undertakings' financial statements do not have sophisticated information needs and it can be costly to prepare consolidated financial statements in addition to the annual financial statements of the parent and subsidiary undertakings. Member States should be able to exempt medium-sized groups from the obligation to prepare consolidated financial statements on the same cost/benefit grounds unless any of the affiliated undertakings is a public-interest entity.

(34) Consolidation requires the full incorporation of the assets and liabilities and of the income and expenditure of group undertakings, the separate disclosure of non-controlling interests in the consolidated balance sheet within capital and reserves and the separate disclosure of non-controlling interests in the profit and loss of the group in the consolidated profit and loss accounts. However, the necessary corrections should be made to eliminate the effects of the financial relations between the undertakings consolidated.

(35) Recognition and measurement principles applicable to the preparation of annual financial statements should also apply to the preparation of consolidated financial statements. However, Member States should be allowed to permit the general provisions and principles stated in this Directive to be applied differently in annual financial statements than in consolidated financial statements.

(36) Associated undertakings should be included in consolidated financial statements by means of the equity method. The provisions on measurement of associated undertakings should in substance remain unchanged from Directive 83/349/EEC, and the methods allowed under that Directive can still be applied. Member States should also be able to permit or require that a jointly managed undertaking be proportionately consolidated within consolidated financial statements.

(37) Consolidated financial statements should include all disclosures by way of notes to the financial statements for the undertakings included in the consolidation taken as a whole. The names, registered offices and group interest in the undertakings' capital should also be disclosed in respect of subsidiaries, associated undertakings, jointly managed undertakings and participating interests.

(38) The annual financial statements of all undertakings to which this Directive applies should be published in accordance with Directive 2009/101/EC. It is, however, appropriate to provide that certain derogations may be granted in this area for small and medium-sized undertakings.

(39) The Member States are strongly encouraged to develop electronic publication systems that allow undertakings to file accounting data, including statutory financial statements, only once and in a form that allows multiple users to access and use the data easily. With regard to the reporting of financial statements, the Commission is encouraged to explore means for a harmonised electronic format. Such systems should, however, not be burdensome to small and medium-sized undertakings.

(40) The Members of the administrative, management and supervisory bodies of an undertaking should, as a minimum requirement, be collectively responsible to the undertaking for drawing up and publishing annual financial statements and management reports. The same approach should also apply to members of the administrative, management and supervisory bodies of undertakings drawing up consolidated financial statements. Those bodies act within the competences assigned to them by national law. This should not prevent Member States from going further and providing for direct responsibility to shareholders or even other stakeholders.

(41) Liability for drawing up and publishing annual financial statements and consolidated financial statements, as well as management reports and consolidated management reports, is based on national law. Appropriate liability rules, as laid down by each Member State under its national law, should be applicable to members of the administrative, management and supervisory bodies of an undertaking. Member States should be allowed to determine the extent of the liability.

(42) In order to promote credible financial reporting processes across the Union, members of the body within an undertaking that is responsible for the preparation of the undertaking's financial statements should ensure that the financial information included in the undertaking's annual financial statement and the group's consolidated financial statement gives a true and fair view.

(43) Annual financial statements and consolidated financial statements should be audited. The requirement that an audit opinion should state whether annual or consolidated financial statements give a true and fair view in accordance with the relevant financial reporting framework should not be understood as restricting the scope of that opinion but as clarifying the context in which it is expressed. The annual financial statements of small undertakings should not be covered by this audit obligation, as audit can be a significant administrative burden for that category of undertaking, while for many small undertakings the same persons are both shareholders and managers and, therefore, have limited need for third-party assurance on financial statements. However, this Directive should not prevent Member States from imposing an audit on their small undertakings, taking into account the specific conditions and needs of small undertakings and the users of their financial statements. Furthermore, it is more appropriate to define the content of the audit report in Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts [1]. Therefore that directive should be amended accordingly.

(44) In order to provide for enhanced transparency of payments made to governments, large undertakings and public-interest entities which are active in the extractive industry or logging of primary forests [2] should disclose material payments made to governments in the countries in which they operate in a separate report, on an annual basis. Such undertakings are active in countries rich in natural resources, in particular minerals, oil, natural gas and primary forests. The report should include types of payments comparable to those disclosed by an undertaking participating in the Extractive Industries Transparency Initiative (EITI). The initiative is also complementary to the Forest Law Enforcement, Governance and Trade Action Plan of the European Union (EU FLEGT) and the provisions of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market [3], which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering the Union market.

[1] OJ L 157, 9.6.2006, p. 87.
[2] Defined in Directive 2009/28/EC as "forest of native species, where there is no clearly visible indication of human activities and the ecological processes are not significantly disturbed.".
[3] OJ L 295, 12.11.2010, p. 23.

(45) The report should serve to help governments of resource-rich countries to implement the EITI principles and criteria and account to their citizens for payments such governments receive from undertakings active in the extractive industry or loggers of primary forests operating within their jurisdiction. The report should incorporate disclosures on a country and project basis. A project should be defined as the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities to a government. Nonetheless, if multiple such agreements are substantially interconnected, this should be considered a project. 'Substantially interconnected' legal agreements should be understood as a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements with substantially similar terms that are signed with a government, giving rise to payment liabilities. Such agreements can be governed by a single contract, joint venture, production sharing agreement, or other overarching legal agreement.

(46) Any payment, whether made as a single payment or as a series of related payments, need not be taken into account in the report if it is below EUR 100 000 within a financial year. This means that, in the case of any arrangement providing for periodic payments or instalments (e.g. rental fees), the undertaking must consider the aggregate amount of the related periodic payments or instalments of the related payments in determining whether the threshold has been met for that series of payments, and accordingly, whether disclosure is required.

(47) Undertakings active in the extractive industry or the logging of primary forests should not be required to disaggregate and allocate payments on a project basis where payments are made in respect of obligations imposed on the undertakings at the entity level rather than the project level. For instance, if an undertaking has more than one project in a host country, and that country's government levies corporate income taxes on the undertaking with respect to the undertaking's income in the country as a whole, and not with respect to a particular project or operation within the country, the undertaking would be permitted to disclose the resulting income tax payment or payments without specifying a particular project associated with the payment.

(48) An undertaking active in the extractive industry or in the logging of primary forests generally does not need to disclose dividends paid to a government as a common or ordinary shareholder of that undertaking as long as the dividend is paid to the government on the same terms as to other shareholders. However, the undertaking will be required to disclose any dividends paid in lieu of production entitlements or royalties.

(49) In order to address the potential for circumvention of disclosure requirements, this Directive should specify that payments are to be disclosed with respect to the substance of the activity or payment concerned. Therefore, the undertaking should not be able to avoid disclosure by, for example, re-characterising an activity that would otherwise be covered by this Directive. In addition, payments or activities should not be artificially split or aggregated with a view to evading such disclosure requirements.

(50) In order to ascertain the circumstances in which undertakings should be exempted from the reporting requirements provided for in Chapter 10, the power to adopt delegated acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of determining the criteria to be applied when assessing whether third country reporting requirements are equivalent to the requirements of that Chapter. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(51) In order to ensure uniform conditions for the implementation of Article 46(1), implementing powers should be conferred upon the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of implementing powers [1].

(52) The reporting regime should be subject to a review and a report by the Commission within three years of the expiry of the deadline for transposition of this Directive by the Member States. That review should consider the effectiveness of the regime and take into account international developments, including issues of competitiveness and energy security. The review should also consider the extension of reporting requirements to additional industry sectors and whether the report should be audited. In addition, the review should take into account the experience of preparers and users of the payments information and consider whether it would be appropriate to include additional payment information such as effective tax rates and recipient details such as bank account information.

[1] OJ L 55, 28.2.2011, p. 13.

(53) In line with the conclusions of the G8 Summit in Deauville in May 2011 and in order to promote a level international playing field, the Commission should continue to encourage all the international partners to introduce similar requirements concerning reporting on payments to governments. Continued work on the relevant international accounting standard is particularly important in this context.

(54) In order to take account of future changes to the laws of the Member States and to Union legislation concerning company types, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the TFEU in order to update the lists of undertakings contained in Annexes I and II. The use of delegated acts is also necessary in order to adapt the undertaking size criteria, as with the passage of time inflation will erode their real value. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(55) Since the objectives of this Directive, namely facilitating cross-border investment and improving Union-wide comparability and public confidence in financial statements and reports through enhanced and consistent specific disclosures, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and the effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(56) This Directive replaces Directives 78/660/EEC and 83/349/EEC. Therefore, those Directives should be repealed.

(57) This Directive respects fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union.

(58) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of correlation tables to be justified,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

SCOPE, DEFINITIONS AND CATEGORIES OF UNDERTAKINGS AND GROUPS

Article 1

Scope

1. The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the types of undertakings listed:

(a) in Annex I;

(b) in Annex II, where all of the direct or indirect members of the undertaking having otherwise unlimited liability in fact have limited liability by reason of those members being undertakings which are:

(i) of the types listed in Annex I; or

(ii) not governed by the law of a Member State but which have a legal form comparable to those listed in Annex I.

2. Member States shall inform the Commission within a reasonable period of time of changes in the types of undertakings in their national law that may affect the accuracy of Annex I or Annex II. In such a case, the Commission shall be empowered to adapt, by means of delegated acts in accordance with Article 49, the lists of undertakings contained in Annexes I and II.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) 'public-interest entities' means undertakings within the scope of Article 1 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];

[1] OJ L 145, 30.4.2004, p. 1.

CHAPTER 10

REPORT ON PAYMENTS TO GOVERNMENTS

Article 41

Definitions relating to reporting on payments to governments

For the purpose of this Chapter, the following definitions shall apply:

(1) 'undertaking active in the extractive industry' means an undertaking with any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the economic activities listed in Section B, Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 [1];

(2) 'undertaking active in the logging of primary forests' means an undertaking with activities as referred to in Section A, Division 02, Group 02.2 of Annex I to Regulation (EC) No 1893/2006, in primary forests;

(3) '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 this Directive;

(4) 'project' means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. None the less, if multiple such agreements are substantially interconnected, this shall be considered a project;

(5) 'payment' means an amount paid, whether in money or in kind, for activities, as described in points 1 and 2, 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;

(e) signature, discovery and production bonuses;

(f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and

(g) payments for infrastructure improvements.

[1] OJ L 393, 30.12.2006, p. 1.

Article 42

Undertakings required to report on payments to governments

1. Member States shall require large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests to prepare and make public a report on payments made to governments on an annual basis.

2. That obligation shall not apply to any undertaking governed by the law of a Member State which is a subsidiary or parent undertaking, where both of the following conditions are fulfilled:

(a) the parent undertaking is subject to the laws of a 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 that parent undertaking in accordance with Article 44.

Article 43

Content of the report

1. Any payment, whether made as a single payment or as a series of related payments, need not be taken into account in the report if it is below EUR 100 000 within a financial year.

2. The report shall disclose the following information in relation to activities as described in points (1) and (2) of Article 41 in respect of the relevant financial year:

(a) the total amount of payments made to each government;

(b) the total amount per type of payment as specified in points (5)(a) to (g) of Article 41 made to each government;

(c) where those payments have been attributed to a specific project, the total amount per type of payment as specified in point (5)(a) to (g) of Article 41, made for each such project and the total amount of payments for each such project.

EU Directives (2): EU Transparency Directive, Directive 2013/50/EU (October 22, 2013)

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, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Acting in accordance with the ordinary legislative procedure [3],

Whereas:

(1) Under Article 33 of Directive 2004/109/EC of the European Parliament and of the Council [4], the Commission had to report on the operation of that Directive to the European Parliament and to the Council, including on the appropriateness of ending the exemption for existing debt securities after the 10-year period as provided for by Article 30(4) of that Directive, and on the potential impact of the operation of that Directive on the European financial markets.

(2) On 27 May 2010 the Commission adopted a report on the operation of Directive 2004/109/EC which identified areas where the regime created by that Directive could be improved. In particular, the report demonstrates the need to provide for the simplification of certain issuers' obligations with a view to making regulated markets more attractive to small and medium-sized issuers raising capital in the Union. Furthermore, the effectiveness of the existing transparency regime needs to be improved, in particular with respect to the disclosure of corporate ownership.

(3) In addition, in its communication of 13 April 2011 entitled 'Single Market Act, Twelve levers to boost growth and strengthen confidence, Working together to create new growth', the Commission identified the need to review Directive 2004/109/EC in order to make the obligations applicable to listed small and medium-sized enterprises more proportionate, whilst guaranteeing the same level of investor protection.

(4) According to the Commission report and the Commission communication, the administrative burden associated with obligations linked to admission to trading on a regulated market should be reduced for small and medium-sized issuers in order to improve their access to capital. The obligations to publish interim management statements or quarterly financial reports represent an important burden for many small and medium-sized issuers whose securities are admitted to trading on regulated markets, without being necessary for investor protection. Those obligations also encourage short-term performance and discourage long-term investment. In order to encourage sustainable value creation and long-term oriented investment strategy, it is essential to reduce short-term pressure on issuers and give investors an incentive to adopt a longer term vision. The requirement to publish interim management statements should therefore be abolished.

(5) Member States should not be allowed to impose in their national legislation the requirement to publish periodic financial information on a more frequent basis than annual financial reports and half-yearly financial reports. However, Member States should nevertheless be able to require issuers to publish additional periodic financial information if such a requirement does not constitute a significant financial burden, and if the additional information required is proportionate to the factors that contribute to investment decisions.

[1] OJ C 93, 30.3.2012, p. 2.
[2] OJ C 143, 22.5.2012, p. 78.
[3] Position of the European Parliament of 12 June 2013 (not yet published in the Official Journal) and decision of the Council of 17 October 2013.
[4] OJ L 390, 31.12.2004, p. 38.

This Directive is without prejudice to any additional information that is required by sectoral Union legislation, and in particular Member States can require the publication of additional periodic financial information by financial institutions. Moreover, a regulated market can require issuers which have their securities admitted to trading thereon to publish additional periodic financial information in all or some of the segments of that market.

(6) In order to provide additional flexibility and thereby reduce administrative burdens, the deadline for publishing half-yearly financial reports should be extended to three months after the end of the reporting period. As the period in which issuers can publish their half-yearly financial reports is extended, small and medium-sized issuers' reports are expected to receive more attention from the market participants, and thereby those issuers become more visible.

(7) In order to provide for enhanced transparency of payments made to governments, issuers whose securities are admitted to trading on a regulated market and who have activities in the extractive or logging of primary forest industries should disclose in a separate report, on an annual basis, payments made to governments in the countries in which they operate. The report should include types of payments comparable to those disclosed under the Extractive Industries Transparency Initiative (EITI). The disclosure of payments to governments should provide civil society and investors with information to hold governments of resource-rich countries to account for their receipts from the exploitation of natural resources. The initiative is also complementary to the Forest Law Enforcement, Governance and Trade Action Plan of the European Union (EU FLEGT) and the provisions of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market [1], which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering into the Union market. Member States should ensure that the members of the responsible bodies of an undertaking, acting within the competences assigned to them by national law, have responsibility for ensuring that, to the best of their knowledge and ability, the report on payments to governments is prepared in accordance with the requirements of this Directive. The detailed requirements are defined in Chapter 10 of 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 [2].

(8) For the purposes of transparency and investor protection, Member States should require the following principles to apply to reporting on payments to governments in accordance with Chapter 10 of Directive 2013/34/EU: materiality (any payment, whether made as a single payment or a series of related payments, need not be taken into account in the report if it is below EUR 100 000 within a financial year); government and project-by-project reporting (reporting on payments to governments should be done on a government and project-by-project basis); universality (no exemptions, for instance for issuers active in certain countries, should be made which have a distortive impact and allow issuers to exploit lax transparency requirements); comprehensiveness (all relevant payments to governments should be reported, in line with Chapter 10 of Directive 2013/34/EU and supporting recitals).

(9) Financial innovation has led to the creation of new types of financial instruments that give investors economic exposure to companies, the disclosure of which has not been provided for in Directive 2004/109/EC. Those instruments could be used to secretly acquire stocks in companies, which could result in market abuse and give a false and misleading picture of economic ownership of publicly listed companies. In order to ensure that issuers and investors have full knowledge of the structure of corporate ownership, the definition of financial instruments in that Directive should cover all instruments with similar economic effect to holding shares and entitlements to acquire shares.

(10) Financial instruments with similar economic effect to holding shares and entitlements to acquire shares which provide for cash settlement should be calculated on a 'delta-adjusted' basis, by multiplying the notional amount of underlying shares by the delta of the instrument. Delta indicates how much a financial instrument's theoretical value would move in the event of variation in the underlying instrument's price and provides an accurate picture of the exposure of the holder to the underlying instrument. This approach is taken in order to ensure that the information about the total voting rights accessible by the investor is as accurate as possible.

(11) In addition, in order to ensure adequate transparency of major holdings, where a holder of financial instruments exercises its entitlement to acquire shares and the total holdings of voting rights attaching to underlying shares exceed the notification threshold without affecting the overall percentage of the previously notified holdings, a new notification should be required to disclose the change in the nature of the holdings.

[1] OJ L 295, 12.11.2010, p. 23.
[2] OJ L 182, 29.6.2013, p. 19.

(12) A harmonised regime for notification of major holdings of voting rights, especially regarding the aggregation of holdings of shares with holdings of financial instruments, should improve legal certainty, enhance transparency and reduce the administrative burden for cross-border investors. Member States should therefore not be allowed to adopt more stringent rules than those provided for in Directive 2004/109/EC regarding the calculation of notification thresholds, aggregation of holdings of voting rights attaching to shares with holdings of voting rights relating to financial instruments, and exemptions from the notification requirements. However, taking into account the existing differences in ownership concentration in the Union, and the differences in company laws in the Union leading to the total number of shares differing from the total number of voting rights for some issuers, Member States should continue to be allowed to set both lower and additional thresholds for notification of holdings of voting rights, and to require equivalent notifications in relation to thresholds based on capital holdings. Moreover, Member States should continue to be allowed to set stricter obligations than those provided for in Directive 2004/109/EC with regard to the content (such as disclosure of shareholders' intentions), the process and the timing for notification, and to be able to require additional information regarding major holdings not provided for by Directive 2004/109/EC. In particular, Member States should also be able to continue to apply laws, regulations or administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies supervised by the authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids [1] that impose disclosure requirements more stringent than those in Directive 2004/109/EC.

(13) Technical standards should ensure consistent harmonisation of the regime for notification of major holdings and adequate transparency levels. It would be efficient and appropriate to entrust the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council [2], with the elaboration, for submission to the Commission, of draft regulatory technical standards which do not involve policy choices. The Commission should adopt the regulatory technical standards developed by ESMA to specify the conditions for the application of existing exemptions from the notification requirements for major holdings of voting rights. Using its expertise, ESMA should in particular determine the cases of exemptions while taking account of their possible misuse to circumvent notification requirements.

(14) In order to take account of technical developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission to specify the contents of notification of major holdings of financial instruments. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(15) To facilitate cross-border investment, investors should be able to easily access regulated information for all listed companies in the Union. However, the current network of officially appointed national mechanisms for the central storage of regulated information does not ensure an easy search for such information across the Union. In order to ensure cross-border access to information and to take account of technical developments in financial markets and in communication technologies, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to specify minimum standards for dissemination of regulated information, access to regulated information at Union level and the mechanisms for the central storage of regulated information. The Commission, with assistance of ESMA, should also be empowered to take measures to improve the functioning of the network of officially appointed national storage mechanisms and to develop technical criteria for access to regulated information at Union level, in particular, concerning the operation of a central access point for the search for regulated information at Union level. ESMA should develop and operate a web portal serving as a European electronic access point ('the access point').

(16) In order to improve compliance with the requirements of Directive 2004/109/EC and following the communication from the Commission of 9 December 2010 entitled 'Reinforcing sanctioning regimes in the financial sector', the sanctioning powers should be enhanced and should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying an administrative sanction or measure, key sanctioning powers and levels of administrative pecuniary sanctions. Those sanctioning powers should be available at least in case of breach of key provisions of Directive 2004/109/EC. Member States should also be able to exercise them in other circumstances. In particular, Member States should ensure that the administrative sanctions and measures that can be applied include the possibility of imposing pecuniary sanctions which are sufficiently high to be dissuasive. In the case of breaches by legal entities, Member States should be able to provide for the application of sanctions to members

[1] OJ L 142, 30.4.2004, p. 12.
[2] OJ L 331, 15.12.2010, p. 84.

of administrative, management or supervisory bodies of the legal entity concerned or other individuals who can be held liable for those breaches under the conditions laid down in national law. Member States should also be able to provide for the suspension of, or for the possibility of suspending, the exercise of voting rights for holders of shares and financial instruments who do not comply with the notification requirements. Member States should be able to provide that the suspension of voting rights is to apply only to the most serious breaches. Directive 2004/109/EC should refer to both administrative sanctions and measures in order to cover all cases of non-compliance, irrespective of their qualification as a sanction or a measure under national law, and should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.

Member States should be able to provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than those provided for in Directive 2004/109/EC, having regard to the need for sufficiently dissuasive sanctions in order to support clean and transparent markets. The provisions regarding sanctions, and those regarding the publication of administrative sanctions, do not constitute a precedent for other Union legislation, in particular for more serious regulatory breaches.

(17) In order to ensure that decisions imposing an administrative measure or sanction have a dissuasive effect on the public at large, they should normally be published. The publication of decisions is also an important tool to inform market participants of what behaviour is considered to be in violation of Directive 2004/109/EC and to promote wider good behaviour amongst market participants. However if the publication of a decision would seriously jeopardise the stability of the financial system or an ongoing official investigation or would, in so far as can be determined, cause disproportionate and serious damage to the institutions or individuals involved, or where, in the event that the sanction is imposed on a natural person, publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication, the competent authority should be able to decide to delay such publication or to publish the information on an anonymous basis.

(18) In order to clarify the treatment of non-listed securities represented by depository receipts admitted to trading on a regulated market and in order to avoid transparency gaps, the definition of 'issuer' should be further specified to include issuers of non-listed securities represented by depository receipts admitted to trading on a regulated market. It is also appropriate to amend the definition of 'issuer' taking into account the fact that in some Member States issuers of securities admitted to trading on a regulated market can be natural persons.

(19) Under Directive 2004/109/EC, in the case of a third-country issuer of debt securities the denomination per unit of which is less than EUR 1 000 or of shares, the issuer's home Member State is the Member State referred to in point (1)(m)(iii) of Article 2 of Directive 2003/71/EC of the European Parliament and of the Council [1]. To clarify and simplify the determination of the home Member State of such third-country issuers, the definition of that term should be amended to establish that the home Member State is to be the Member State chosen by the issuer from amongst the Member States where its securities are admitted to trading on a regulated market.

(20) All issuers whose securities are admitted to trading on a regulated market within the Union should be supervised by a competent authority of a Member State to ensure that they comply with their obligations. Issuers who, under Directive 2004/109/EC, have to choose their home Member State but who have not done so, can avoid being supervised by any competent authority in the Union. Therefore, Directive 2004/109/EC should be amended to determine a home Member State for issuers that have not disclosed their choice of home Member State to the competent authorities within a three-month period. In such cases, the home Member State should be the Member State where the issuer's securities are admitted to trading on a regulated market. Where the securities are admitted to trading on a regulated market in more than one Member State, all those Member States will be home Member States until the issuer chooses, and discloses, a single home Member State. This would become an incentive for such issuers to choose and disclose their choice of home Member State to the relevant competent authorities, and in the meantime competent authorities would no longer lack the necessary powers to intervene until an issuer has disclosed its choice of home Member State.

(21) Under Directive 2004/109/EC, in the case of an issuer of debt securities the denomination per unit of which is EUR 1 000 or more, the issuer's choice of a home Member State is valid for three years. However, where an issuer's securities are no longer admitted to trading on the regulated market in the issuer's home Member State and remain admitted to trading in one or more host Member States, such issuer has no relationship with

[1] OJ L 345, 31.12.2003, p. 64.

the home Member State originally chosen by it where that is not the Member State of its registered office. Such issuer should be able to choose one of its host Member States or the Member State where it has its registered office as its new home Member State before the expiration of the three-year period. The same possibility of choosing a new home Member State would also apply to a third-country issuer of debt securities the denomination per unit of which is less than EUR 1 000 or of shares whose securities are no longer admitted to trading on the regulated market in the issuer's home Member State but remain admitted to trading in one or more host Member States.

(22) There should be consistency between Directives 2004/109/EC and 2003/71/EC concerning the definition of the home Member State. In this respect, in order to ensure supervision by the most relevant Member State, Directive 2003/71/EC should be amended to provide for greater flexibility for situations where the securities of an issuer incorporated in a third country are no longer admitted to trading on the regulated market in its home Member State but instead are admitted to trading in one or more other Member States.

(23) Commission Directive 2007/14/EC [1] contains, in particular, rules concerning the notification of the choice of the home Member State by the issuer. Those rules should be incorporated into Directive 2004/109/EC. To ensure that competent authorities of the host Member State(s) and of the Member State where the issuer has its registered office, where such Member State is neither home nor host Member State, are informed about the choice of home Member State by the issuer, all issuers should be required to communicate the choice of their home Member State to the competent authority of their home Member State, the competent authorities of all host Member States and the competent authority of the Member State where they have their registered office, where it is different from their home Member State. The rules concerning notification of the choice of home Member State should therefore be amended accordingly.

(24) The requirement under Directive 2004/109/EC regarding disclosure of new loan issues has led to many implementation problems in practice and its application is considered to be complex. Furthermore, that requirement overlaps partially with the requirements laid down in Directive 2003/71/EC and Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) [2] and it does not provide much additional information to the market. Therefore, and in order to reduce unnecessary administrative burdens for issuers, that requirement should be abolished.

(25) The requirement to communicate any amendment of an issuer's instruments of incorporation or statutes to the competent authorities of the home Member State overlaps with the similar requirement under Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies [3] and can result in confusion regarding the role of the competent authority. Therefore, and in order to reduce unnecessary administrative burdens for issuers, that requirement should be abolished.

(26) A harmonised electronic format for reporting would be very beneficial for issuers, investors and competent authorities, since it would make reporting easier and facilitate accessibility, analysis and comparability of annual financial reports. Therefore, the preparation of annual financial reports in a single electronic reporting format should be mandatory with effect from 1 January 2020, provided that a cost-benefit analysis has been undertaken by ESMA. ESMA should develop draft technical regulatory standards, for adoption by the Commission, to specify the electronic reporting format, with due reference to current and future technological options, such as eXtensible Business Reporting Language (XBRL). ESMA, when preparing the draft regulatory technical standards, should conduct open public consultations for all stakeholders concerned, make a thorough assessment of the potential impacts of the adoption of the different technological options, and conduct appropriate tests in Member States on which it should report to the Commission when it submits the draft regulatory technical standards. In developing the draft regulatory technical standards on the formats to be applied to banks and financial intermediaries and to insurance companies, ESMA should cooperate regularly and closely with the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council [4], and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council [5], in order to take into account the specific characteristics of those sectors, ensuring cross-sectoral consistency of work and reaching joint positions. The European Parliament and the Council should be able to object to the regulatory technical standards pursuant to Article 13(3) of Regulation (EU) No 1095/2010, in which case those standards should not enter into force.

[1] OJ L 69, 9.3.2007, p. 27.

[2] OJ L 96, 12.4.2003, p. 16.
[3] OJ L 184, 14.7.2007, p. 17.
[4] OJ L 331, 15.12.2010, p. 12.
[5] OJ L 331, 15.12.2010, p. 48.

(27) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1] and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [2], are fully applicable to the processing of personal data for the purposes of this Directive.

(28) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaty and has to be implemented in accordance with those rights and principles.

(29) Since the objective of this Directive, namely to harmonise the transparency requirements relating to information about issuers whose securities are admitted to trading on a regulated market, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale or effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(30) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents [3], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(31) Directives 2004/109/EC, 2003/71/EC and 2007/14/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2004/109/EC

Directive 2004/109/EC is hereby amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (d) is replaced by the following:

'(d) "issuer" means a natural person, or a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market.

In the case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented, whether or not those securities are admitted to trading on a regulated market;';

(ii) point (i) is amended as follows:

(i) in point (i), the second indent is replaced by the following:

'— where the issuer is incorporated in a third country, the Member State chosen by the issuer from amongst the Member States where its securities are admitted to trading on a regulated market. The choice of home Member State shall remain valid unless the issuer has chosen a new home Member State under point (iii) and has disclosed the choice in accordance with the second paragraph of this point [letter] (i);';

(ii) point (ii) is replaced by the following:

'(ii) for any issuer not covered by point (i), the Member State chosen by the issuer from among the Member State in which the issuer has its registered office, where applicable, and those Member States where its securities are admitted to trading on a regulated market. The issuer may choose only one Member State as its home Member State. Its choice shall remain valid for at least three years unless its securities are no longer admitted to trading on any regulated market in the Union or unless the issuer becomes covered by points (i) or (iii) during the three-year period;';

(iii) the following point is added:

'(iii) for an issuer whose securities are no longer admitted to trading on a regulated market in its home Member State as defined by the second indent of point (i) or (ii) but instead are admitted to trading in one or more other Member States, such new home Member State as the issuer may choose from amongst the Member States where its securities are admitted to trading on a regulated market and, where applicable, the Member State where the issuer has its registered office;';

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.
[3] OJ C 369, 17.12.2011, p. 14.

Appendix C

Forskrift om land-for-land rapportering, Government of Norway (December 20, 2013)

English translation available via PWYP

Regjeringen.no

Forskrift om land-for-land rapportering

Forskrift | Dato: 20.12.2013 | Finansdepartementet (http://www.regjeringen.no/no/dep/fin/id216/)

Fastsatt av Finansdepartementet 20. desember 2013 med hjemmel i lov 17. juli 1998 om årsregnskap § 3-3 c syvende ledd og lov 29. juni 2007 nr. 75 om verdipapirhandel § 5-5 a fjerde ledd.

I

§ 1. Virkeområde

Forskriften gjelder for foretak som driver virksomhet innen utvinningsindustrien eller skogsdrift innen ikke-beplantet skog, som enten har regnskapsplikt etter regnskapsloven § 1-2 nr. 1 til 6, eller nr. 13 og på balansedagen tilfredsstiller minst to av følgende tre vilkår:

årlig salgsinntekt mer enn 320 millioner kroner, balansesum mer enn 160 millioner kroner, gjennomsnittlig antall ansatte gjennom regnskapsåret mer enn 250,

eller er utsteder med Norge som hjemstat etter verdipapirhandeloven § 5-4 annet til fjerde ledd

Forskriften gjelder også foretak som er utsteder eller er regnskapspliktig og enten alene eller sammen med datterselskapene tilfredsstiller størrelseskriteriene i første ledd, som har ett eller flere datterselskaper som driver virksomhet innen utvinningsindustrien eller skogsdrift innen ikke-beplantet skog.

§ 2. Definisjoner

Med «virksomhet innen utvinningsindustrien» menes virksomhet som omfatter leting etter, prospektering etter , funn av, utvikling av og utvinning av mineraler, olje, naturgassforekomster eller andre materialer innenfor næringsgrenene oppført i næringshovedgruppe 05-08 under næringshovedområde B i EØS-regler som svarer til vedlegg I til Europaparlaments- og rådsforordning (EF) nr. 1893/2006, jf. forskrift om gjennomføring av EØS-rettsakter om europeisk statistikk § 2.

Med «skogsdrift innen ikke-beplantet skog» menes virksomhet innen ikke-beplantet skog som oppført i næringshovedgruppe 2.2 under næringshovedområde A i EØS-regler som svarer til vedlegg I til Europaparlaments- og rådsforordning (EF) 1893/2006, jf. forskrift om gjennomføring av EØS-rettsakter om europeisk statistikk § 2.

Med «myndighet» menes enhver nasjonal, regional eller lokal myndighet. Begrepet omfatter også organer og foretak som en eller flere myndigheter har bestemmende innflytelse over. Bestemmende innflytelse skal anses å foreligge dersom myndigheten:

a) har slik innflytelse over foretaket som angitt i regnskapsloven § 1-3 annet ledd annet punktum.

b) er nærstående part til foretaket. Definisjonen av nærstående fastsatt i medhold av regnskapsloven § 7-30b gjelder tilsvarende så langt den passer.

Med «prosjekt» menes operasjonell virksomhet som reguleres av en enkelt kontrakt, lisens, leieavtale, konsesjon eller lignende juridisk avtale, og som danner grunnlaget for betalingsforpliktelser overfor en myndighet. Dersom flere slike avtaler er tett knyttet sammen, skal disse likevel anses som ett prosjekt.

Med «betaling» menes følgende typer overføringer, enten i form av penger eller in natura, for virksomhet som nevnt i nr. 1 og 2:

a) produksjon som avgis til myndighet, herunder finansielle instrumenter som gir rett til produksjon eller produksjonens verdi,

b) skatter og avgifter som pålegges foretakets inntekt, produksjon eller resultat, unntatt skatter og avgifter som pålegges forbruk, for eksempel merverdiavgift, inntektsskatt for personer eller omsetningsavgift,

c) royaltyer,

d) utbytte,

e) signatur-, funn- og produksjonsbonuser,

f) lisens-, leie- og adgangsgebyr, samt andre vederlag for lisenser og/eller konsesjoner,

g) betaling for forbedret infrastruktur, og

h) aksjer, andeler eller andre eierrettigheter som myndigheten får i foretaket eller i foretakets datterselskaper eller i nærstående parter til foretaket, jf. regnskapsloven § 7-30b.

Med «tilsvarende utenlandsk regelverk» menes nasjonal lovgivning i EØS-stat som gjennomfører direktiv 2013/34/EU.

§ 3. Rapport

Foretakene skal utarbeide rapport som nevnt i regnskapsloven § 3-3d og verdipapirhandelloven § 5-5a som minst skal inneholde følgende opplysninger om betalinger:

a) den samlede betaling til hver myndighet i løpet av regnskapsåret, fordelt per land og fordelt per type betaling som nevnt i § 2 nr. 5 bokstav a) til h),

b) betalinger knyttet til et prosjekt skal også rapporteres per prosjekt og per type betaling som nevnt i § 2 nr. 5 bokstav a) til h).

Opplysningskravet i første ledd gjelder ikke for betalinger som tilsvarer mindre enn 800 000 kroner, som gjøres enkeltvis eller som flere sammenhørende betalinger innenfor samme regnskapsår.

Når det er plikt til å gi opplysninger om betalinger skal rapporten også inneholde opplysninger om foretakets investeringer, salgsinntekt, produksjonsvolum, kjøp av varer og tjenester fordelt på de enkelte land hvor foretaket driver virksomhet innen utvinningsindustrien eller skogsdrift innen ikke-beplantet skog. Det skal i rapporten også opplyses om foretakets rentekostnad til andre foretak i samme konsern som er hjemmehørende i andre jurisdiksjoner enn foretaket.

Beløp som er utbetalt av foretaket for forpliktelser som pålegges på enhetsnivå, kan rapporteres på enhetsnivå i stedet for på prosjektnivå.

For betalinger in natura til en myndighet skal både verdi og, når relevant,mengde, oppgis. Det skal gis en forklaring om hvordan verdien er fastsatt.

§ 4. Konsernrapportering

Foretak som nevnt i § 1 annet ledd skal utarbeide en konsernrapport med konsolidert oppstilling av de opplysningene som kreves etter § 3 første ledd og § 3 tredje ledd første punktum, hvor de foretakene i konsernet som driver virksomhet innen utvinningsindustrien eller skogdrift innen ikke beplantet skog, vises som en enhet.

Datterselskap kan utelates fra den konsoliderte oppstillingen etter annet ledd dersom

a) alvorlige langvarige restriksjoner hindrer morselskapet i vesentlig grad i å utøve sine rettigheter over datterselskapet,

b) de opplysninger som er nødvendige for å utarbeide den konsoliderte rapporten i samsvar med denne forskrift, kan ikke innhentes innen rimelig tid eller uten uforholdsmessig store kostnader, eller

c) aksjer eller andeler i datterselskapet eies midlertidig og skal klassifiseres som omløpsmidler etter regnskapsloven § 5-1,

og tilsvarende unntak også gjøres gjeldende for konsernregnskapet.

Konsernrapporten skal, uavhengig av om det er plikt til å gi opplysninger om betalinger, inneholde opplysninger om hvor foretakets datterselskap er hjemmehørende, om antall ansatte i det enkelte datterselskap og om hvert enkelt datterselskaps rentekostnad til andre foretak i samme konsern som er hjemmehørende i andre jurisdiksjoner enn datterselskapet.

II

Denne forskrift trer ikraft 1. januar 2014 med virkning for regnskapsår påbegynt 1. januar 2014 og senere.

Finansdepartementet

TEMA

Finansmarkedene

RELATERT

› Forskrift om land-for-land rapportering (http://www.regjeringen.no/no/aktuelt/forskrift-om-land-for-land-rapportering/id748537/)

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Appendix D

Excerpt, ESTMA, Government of Canada (December 16, 2014)

CANADA

CONSOLIDATION

CODIFICATION

Extractive Sector Transparency Measures Act

Loi sur les mesures de transparence dans le secteur extractif

S.C. 2014, c. 39, s. 376

L.C. 2014, ch. 39, art. 376

NOTE

[Enacted by section 376 of chapter 39 of the Statutes of Canada, 2014, in force June 1, 2015, *see* SI/2015-43.]

NOTE

[Édictée par l'article 376 du chapitre 39 des Lois du Canada (2014), en vigueur le 1er juin 2015, *voir* TR/2015-43.]

Current to February 15, 2018

Last amended on June 1, 2015

À jour au 15 février 2018

Dernière modification le 1 juin 2015

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

NOTE

This consolidation is current to February 15, 2018. The last amendments came into force on June 1, 2015. Any amendments that were not in force as of February 15, 2018 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

NOTE

Cette codification est à jour au 15 février 2018. Les dernières modifications sont entrées en vigueur le 1 juin 2015. Toutes modifications qui n'étaient pas en vigueur au 15 février 2018 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

TABLE OF PROVISIONS

An Act to implement Canada's international commitments to participate in the fight against corruption through the imposition of measures applicable to the extractive sector

TABLE ANALYTIQUE

Loi visant à mettre en œuvre les engagements internationaux du Canada en matière de lutte contre la corruption par l'imposition de mesures applicables au secteur extractif

S.C. 2014, c. 39, s. 376

An Act to implement Canada's international commitments to participate in the fight against corruption through the imposition of measures applicable to the extractive sector

[*Assented to 16th December 2014*]

L.C. 2014, ch. 39, art. 376

Loi visant à mettre en œuvre les engagements internationaux du Canada en matière de lutte contre la corruption par l'imposition de mesures applicables au secteur extractif

[*Sanctionnée le 16 décembre 2014*]

Short Title

Short title

1 This Act may be cited as the *Extractive Sector Transparency Measures Act*.

Interpretation and General Provisions

Definitions

2 The following definitions apply in this Act.

category of payment means a category of payment set out in any one of paragraphs (a) to (h) of the definition ***payment***. (*catégorie de paiement*)

commercial development of oil, gas or minerals means

(a) the exploration or extraction of oil, gas or minerals;

(b) the acquisition or holding of a permit, licence, lease or any other authorization to carry out any of the activities referred to in paragraph (a); or

(c) any other prescribed activities in relation to oil, gas or minerals. (*exploitation commerciale de pétrole, de gaz ou de minéraux*)

Titre abrégé

Titre abrégé

1 *Loi sur les mesures de transparence dans le secteur extractif*.

Définitions et dispositions générales

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

bénéficiaire Vise :

a) tout gouvernement au Canada ou à l'étranger;

b) tout organisme établi par au moins deux gouvernements;

c) tout conseil, toute commission, toute fiducie ou société ou tout autre organisme qui exerce, pour un gouvernement visé à l'alinéa a) ou un organisme visé à l'alinéa b), des attributions publiques ou qui est établi pour le faire;

d) tout autre bénéficiaire désigné par règlement. (*payee*)

entity means a corporation or a trust, partnership or other unincorporated organization

(a) that is engaged in the commercial development of oil, gas or minerals in Canada or elsewhere; or

(b) that controls a corporation or a trust, partnership or other unincorporated organization that is engaged in the commercial development of oil, gas or minerals in Canada or elsewhere. (*entité*)

gas means natural gas and includes all substances, other than oil, that are produced in association with natural gas. (*gaz*)

minerals means all naturally occurring metallic and non-metallic minerals, including coal, salt, quarry and pit material, and all rare and precious minerals and metals. (*minéraux*)

Minister means the member of the Queen's Privy Council for Canada designated under section 5. (*ministre*)

oil means crude petroleum, bitumen and oil shale. (*pétrole*)

payee means

(a) any government in Canada or in a foreign state;

(b) a body that is established by two or more governments;

(c) any trust, board, commission, corporation or body or authority that is established to exercise or perform, or that exercises or performs, a power, duty or function of government for a government referred to in paragraph (a) or a body referred to in paragraph (b); or

(d) any other prescribed payee. (*bénéficiaire*)

payment means a payment — whether monetary or in kind — that is made to a payee in relation to the commercial development of oil, gas or minerals and that falls within any of the following categories of payment:

(a) taxes, other than consumption taxes and personal income taxes;

(b) royalties;

(c) fees, including rental fees, entry fees and regulatory charges as well as fees or other consideration for licences, permits or concessions;

(d) production entitlements;

catégorie de paiement Catégorie visée à l'un ou l'autre des alinéas a) à h) de la définition de ***paiement***. (*category of payment*)

entité Personne morale ou société de personnes, fiducie ou autre organisation non constituée en personne morale qui :

a) soit s'adonne à l'exploitation commerciale de pétrole, de gaz ou de minéraux au Canada ou à l'étranger;

b) soit contrôle une personne morale ou une société de personnes, fiducie ou autre organisation non constituée en personne morale qui s'adonne à l'exploitation commerciale de pétrole, de gaz ou de minéraux au Canada ou à l'étranger. (*entity*)

exploitation commerciale de pétrole, de gaz ou de minéraux L'une ou l'autre des activités suivantes :

a) l'exploration de pétrole, de gaz ou de minéraux ou leur extraction;

b) l'acquisition ou la détention d'un permis, d'une licence, d'un bail ou d'une autre autorisation permettant de mener l'une ou l'autre des activités visées à l'alinéa a);

c) toute autre activité relative au pétrole, au gaz ou à des minéraux prévue par règlement. (*commercial development of oil, gas or minerals*)

gaz Le gaz naturel ainsi que toute substance produite avec ce gaz, à l'exclusion du pétrole. (*gas*)

minéraux Les minerais métalliques ou non métalliques naturels, notamment le charbon, le sel, les produits de carrières et de puits ainsi que tous les métaux et minéraux rares et précieux. (*minerals*)

ministre Le membre du Conseil privé de la Reine pour le Canada désigné en vertu de l'article 5. (*Minister*)

paiement Paiement en espèces ou en nature se rapportant à des activités d'exploitation commerciale de pétrole, de gaz ou de minéraux et fait à un bénéficiaire au titre de l'une ou l'autre des catégories de paiement suivantes :

a) taxes, à l'exclusion des taxes à la consommation et des impôts sur le revenu des particuliers;

b) redevances;

c) frais, notamment frais de location, droits d'accès et frais de nature réglementaire et frais — ou autre

(e) bonuses, including signature, discovery and production bonuses;

(f) dividends other than dividends paid as ordinary shareholders;

(g) infrastructure improvement payments; or

(h) any other prescribed category of payment. (*paiement*)

Rules relating to payments

3 For the purposes of this Act,

(a) a payment that is made to an employee or public office holder of a payee is deemed to have been made to the payee;

(b) a payment that is due to a payee and that is received by a body that is not a payee for the payee is deemed to have been made to the payee;

(c) a payment that is made by an entity, other than an entity referred to in subsection 8(1), that is controlled by another entity is deemed to have been made by the controlling entity;

(d) a payment that is made for an entity is deemed to have been made by the entity; and

(e) the value of a payment in kind is the cost to the entity — or, if the cost cannot be determined, the fair market value — of the goods or services that it provided.

Control

4 (1) Subject to the regulations, an entity is controlled by another entity if it is controlled by the other entity, directly or indirectly, in any manner.

Deemed control

(2) An entity that controls another entity is deemed to control any entity that is controlled, or deemed to be controlled, by the other entity.

contrepartie — relatifs à une licence, à un permis ou à une concession;

d) droits découlant de la production;

e) primes, notamment primes de signature et primes liées à la découverte de gisements ou à la production;

f) dividendes, à l'exclusion des dividendes payés à titre d'actionnaire ordinaire d'une entité;

g) paiements pour l'amélioration d'infrastructures;

h) toute autre catégorie de paiement prévue par règlement. (*payment*)

pétrole Le pétrole brut, le bitume et les schistes pétrolifères. (*oil*)

Règles relatives aux paiements

3 Pour l'application de la présente loi :

a) le paiement fait à l'employé d'un bénéficiaire ou au titulaire d'une charge publique au sein d'un bénéficiaire est réputé avoir été fait à ce bénéficiaire;

b) le paiement dû à un bénéficiaire et reçu, pour son compte, par tout organisme qui n'est pas un bénéficiaire est réputé avoir été fait à ce bénéficiaire;

c) le paiement fait par une entité — autre qu'une entité visée au paragraphe 8(1) — qui est contrôlée par une autre entité est réputé avoir été fait par cette dernière;

d) le paiement fait pour le compte d'une entité est réputé avoir été fait par celle-ci;

e) la valeur d'un paiement en nature correspond aux coûts engendrés par l'entité pour les biens ou services qu'elle a offerts ou, s'il est impossible de les établir, à leur juste valeur marchande.

Contrôle

4 (1) Sous réserve des règlements, une entité est contrôlée par une autre si elle est contrôlée par celle-ci directement ou indirectement, de quelque manière que ce soit.

Contrôle réputé

(2) L'entité qui en contrôle une autre est réputée contrôler toute entité qui est contrôlée, ou réputée l'être, par cette autre entité.

Appendix E

Substitution Process and Determination - EU Accounting and Transparency Directives equivalency to ESTMA

Government of Canada / Gouvernement du Canada

Canada

Natural Resources Canada

Home ➔ Mining/Materials ➔ Mining/Materials Resources ➔ Extractive Sector Transparency Measures Act ➔ Substitution Process and Determination

Substitution Process and Determination

Substitution Policy

Section 10(1) of the *Extractive Sector Transparency Measures Act* (the Act) allows the Minister of Natural Resources to determine that the reporting requirements of another jurisdiction are an acceptable substitute for those set out in section 9 of the Act.

The Government will conduct an assessment of whether a jurisdiction's legislation or other measure:

- Achieves the purposes of the reporting requirements under the Act (i.e., deter corruption through public transparency)
- Addresses a similar scope of the reporting requirements in the Act

Once a determination has been issued, a reporting entity may provide the same report that was submitted to a substitutable jurisdiction to meet the reporting obligations under the Act.

The Minister of Natural Resources may impose additional conditions, which would be included in the substitution determination.

Substitution Determination

Assessment of the European Union Accounting and Transparency Directives

- As of July 31st, 2015, it has been determined that the reporting requirements in the European Union's (EU's) Accounting and Transparency Directives meet the purpose of the Government of Canada's Extractive Sector Transparency Measures Act

(ESTMA or "the Act") and are an acceptable substitute for the requirements set out in section 9.

- Reports submitted to **European Union and European Economic Area member-states that have implemented the EU Accounting and Transparency Directives** at a national level may be submitted to Natural Resources Canada (NRCan) as a substitute for a report prepared under the Act.

- As a condition to the above substitution determination, the report must be accompanied by the ESTMA reporting template cover page that includes a completed attestation statement.

Assessment of the Quebec Extractive Sector Transparency legislation: *An Act Respecting Transparency Measures in the Mining, Oil and Gas Industries* and the *Regulation Respecting the Application of the Act Respecting Transparency Measures in the Mining, Oil and Gas Industries*

It has been determined that the payment reporting requirements found in Quebec's extractive sector transparency legislation achieve the purposes of the reporting requirements under the *Extractive Sector transparency Measures Act* (ESTMA), and are an acceptable substitute for those set out in section 9 of the ESTMA.

Reports submitted to Quebec under *An Act Respecting Transparency Measures in the Mining, Oil and Gas Industries* and its accompanying regulations may be submitted to the Minister of Natural Resources as a substitute for a report prepared under the ESTMA.

As a condition to the above substitution determination, the report must be accompanied by the ESTMA reporting template cover page, excluding the completed attestation statement, which is already provided under Quebec's *An Act Respecting Transparency Measures in the Mining, Oil and Gas Industries*.

Substitution Process

To be eligible to use this substitution determination, a reporting entity must be subject to the reporting requirements of the other jurisdiction, and must have provided the report to the other jurisdiction's competent authority.The substituted report that is submitted for the purposes of the Act must be the exact report that was submitted to the other jurisdiction. The report must be accompanied by an ESTMA cover page and a completed attestation statement.

Additional information may be required if the substitution determination includes additional conditions. To meet additional conditions, reporting entities must submit and publish an ESTMA reporting template containing only the additional information required by the substitution determination for that jurisdiction as an addendum to their substituted report.

Reporting entities must also follow the publication requirements set out in the Act, as per section 12.

Deadline for submitting a substituted report

Should the deadline for filing a report in the other jurisdiction extend beyond 150 days after the end of a reporting entity's financial year, the reporting entity must notify NRCan within 150 days by email at nrcan.ESTMA_Reports-rapports_LMTSE.rncan@Canada.ca, of its intent to submit a substituted report at a later date. The reporting entity must submit its report to NRCan within the timeframe prescribed by the other jurisdiction.

Should the deadline for filing a report in the other jurisdiction precede 150 days after the end of a reporting entity's financial year, the reporting entity must submit the substituted report within the deadline set out in Section 9 of the Act.

Steps for submitting a substituted report

1. Enroll with NRCan and obtain an ESTMA ID number by completing and submitting an ESTMA Contact Form to nrcan.estma_reports-rapports_ltmse.rncan@canada.ca.

2. Complete all fields of the ESTMA reporting template cover page, including the required attestation.

   If the substitution determination includes additional conditions, complete an ESTMA reporting template with only the additional information required by the substitution determination for that jurisdiction.

3. Publish the **exact report** that was submitted to the substitutable jurisdiction and the completed ESTMA cover page on a publicly accessible website.

   If an ESTMA reporting template was also completed to meet additional conditions in the substitution determination, it must be published along with the substituted report and the ESTMA cover page.

   The report must be provided in either English or French and published in either XLS

or PDF to ensure accessibility. The documents must be publicly available online at the same link for at least five years.

4. Send a copy of, and a link to, the documents to: nrcan.ESTMA_reports-rapports_LMTSE.rncan@Canada.ca.

   The email must include the ESTMA ID number of all entities included in the report, the jurisdiction under which the substituted report was originally filed, and the date the report is due based on the other jurisdiction's legislation.

5. NRCan will then publish the link to the substituted report and cover page on the ESTMA website.

6. In the event that a published substituted report requires amendments, inform NRCan in detail of any changes to the report, provide an electronic copy of the latest version of the report and ensure that the most up-to-date report is available at the previously provided link. In addition, the amended report must include a note that identifies the amendment(s).

Other Areas of Interest
Learn about the ESTMA and its key reporting obligations
Learn how to enrol with Natural Resources Canada
Learn how to prepare an ESTMA report and download Technical Reporting Specifications, Guidance, reporting templates and forms
View all ESTMA reports published within the last 5 years
Contact ESTMA

Date Modified:
2017-12-07

Appendix F

Excerpt, Conseil fédéral suisse, Projet de modification du code des obligations (Droit de la société anonyme

Art. 960f

E. Comptes intermédiaires

1 Les comptes intermédiaires sont établis selon les règles applicables **aux comptes annuels et se composent d'un bilan, d'un compte de résultat et d'une annexe. Les dispositions applicables aux grandes** entreprises et aux groupes sont réservées.

2 Des simplifications ou réductions sont admissibles pour autant que la représentation de la marche des affaires donnée par les comptes inter**médiaires ne s'en trouve pas altérée. Les comptes intermédiaires** doivent comporter au moins les rubriques et les totaux intermédiaires **qui figurent dans les derniers comptes annuels. L'annexe aux comptes** intermédiaires contient en outre les indications suivantes:

1. le but des comptes intermédiaires;
2. les simplifications et réductions, y compris tout écart par rapport aux principes régissant les derniers comptes annuels;
3. tout autre facteur qui a sensiblement influencé la situation **économique de l'entreprise pendant la période considérée,** notamment la saisonnalité.

3 Les comptes intermédiaires doivent être désignés comme tels. Ils **sont signés par le président de l'organe supérieur de direction ou d'administration et par la personne qui répond de l'établissement des comptes intermédiaires au sein de l'entreprise.**

Art. 961d, titre marginal et al. 1

E. Simplifications

1 **L'entreprise peut renoncer aux mentions supplémentaires dans l'annexe aux comptes annuels, au tableau des flux de trésorerie et au** rapport annuel:

1. **lorsqu'elle établit des états financiers ou des comptes consoli**dés selon une norme comptable reconnue;
2. **lorsqu'une personne morale qui la contrôle établit des comptes** consolidés selon une norme comptable reconnue.

Art. 963a, al. 2, ch. 2, et al. 3

2 **La personne morale reste néanmoins tenue d'établir des comptes consolidés si elle satisfait à l'une des** conditions suivantes:

2. un ou plusieurs associés représentant au moins 20 % du capital social, 10 % des associés de la société coopérative ou 20 % **des membres de l'association l'exigent;**

3 **Si le capital social n'est pas fixé en francs, les cours de conversion déterminants pour établir les valeurs fixées à l'al. 1, ch. 1, sont, pour** le total du bilan, le cours de conversion à la date de clôture du bilan, et **pour le chiffre d'affaires, le cours moyen de l'exercice.**

Titre précédant l'art. 964a

Chapitre VI: Transparence dans les entreprises de matières premières

Art. 964a

A. Principe

1 Les entreprises que la loi soumet au contrôle ordinaire et qui sont, directement ou indirectement, actives dans la production de minerais, de pétrole ou de gaz naturel ou dans l'**exploitation de forêts pr**imaires, doivent établir chaque année un rapport sur les paiements effectués au profit de gouvernements.

2 **Les entreprises tenues d'établir des comptes annuels consolidés** établissent un rapport consolidé sur leurs paiements au profit de gouvernements (rapport sur les paiements du groupe); celui-ci remplace le rapport des sociétés du groupe.

3 Si une entreprise ayant son siège en Suisse est incluse dans le rapport sur les paiements du groupe établi par elle ou par une autre entreprise **ayant son siège à l'étranger, elle n'est pas tenue d'établir son propre rapport. Dans ce cas, l'entreprise doit indiquer dans l'annexe aux comptes annuels le nom de l'autre entreprise qui établit le rapport** dans lequel elle est incluse et elle doit publier ce rapport.

4 **La production comprend toutes les activités de l'entreprise consi**stant **en l'exploration, la prospection, la découverte, l'exploitation et l'extraction de minerais, de pétrole ou de gaz naturel ou en l'exploitation** de bois provenant de forêts primaires.

5 Sont considérés comme des gouvernements les autorités nationales, **régionales ou communales d'un pays tiers ainsi que les administra**tions et les entreprises contrôlées par ces dernières.

Art. 964b

B. Types de prestations

1 Les paiements **effectués au profit de gouvernements peuvent l'être** en espèces ou en nature. Ils comprennent notamment les types de prestations suivants:

1. les droits à la production;
2. les impôts ou taxes sur la production, le revenu ou le bénéfice des entreprises, à **l'exclusion des taxes sur la valeur ajo**utée ou **sur le chiffre d'affaires et des autres impôts ou taxes sur la** consommation;
3. les redevances;
4. **les dividendes, à l'exclusion des dividendes versés à un gouvernement en sa qualité d'associé tant que ces div**idendes lui sont versés à des conditions identiques à celles applicables aux autres associés;

5. les primes de signature, de découverte et de production;
6. **les droits de licence, de location et d'entrée et toute autre contrepartie d'autorisations ou de co**ncessions;
7. les paiements pour amélioration des infrastructures.

[2] **Si le paiement effectué au profit d'un gouvernement consiste en une prestation en nature, l'objet, la valeur, le mode d'évaluation et, le cas** échéant, le volume de la prestation doivent être mentionnés.

Art. 964c

C. Forme et contenu du rapport

[1] Le rapport sur les paiements effectués au profit de gouvernements ne rend compte que des paiements provenant des activités de production **de minerais, de pétrole ou de gaz naturel ou d'exploitation** de forêts primaires.

[2] Il comprend tous les paiements qui atteignent au moins 100 000 **francs par exercice, qu'ils prennent la forme d'un versement effectué en une seule fois ou d'une série de paiements atteignant ensemble au** moins 100 000 francs.

[3] Il mentionne le montant total des paiements et le montant des paiements par types de prestation effectués au profit de chaque gouvernement et pour chaque projet spécifique.

[4] Le rapport est établi par écrit dans une des langues nationales ou en anglais et doit être **approuvé par l'organe supérieur de direction ou d'administration.**

Art. 964d

D. Publication

[1] Le rapport sur les paiements effectués au profit de gouvernements est publié par voie électronique dans un délai de six mois à compter de **la fin de l'exercice.**

[2] Il doit rester accessible au public au moins pendant dix ans.

[3] Le Conseil fédéral peut édicter des dispositions sur la structure des données à mentionner dans le rapport.

Art. 964e

E. Tenue et conservation

L'art. 958*f* **s'applique par analogie à la tenu**e et à la conservation du rapport sur les paiements effectués au profit de gouvernements.

Art. 984, al. 1

[1] La sommation de produire le titre est publiée dans la Feuille officielle suisse du commerce.

Appendix G

News article, DiXi Group, "DiXi Group welcomes the initial steps towards mandatory reporting of extractive companies and calls for continued progress by adopting the Draft Law No. 6229"

DiXi Group welcomes the initial steps towards mandatory reporting of extractive companies and calls for continued progress by adopting the Draft Law No. 6229

06 OCTOBER 2017

On October 5, the Verkhovna Rada adopted a law on the implementation of international financial reporting standards, which should ensure greater transparency and accountability in extractive industries for investors and local communities.

In particular, the law **introduces the concept of "payments to government report"** - a detailed informative reporting on taxes, fees and other payments incurred by enterprises for the benefit of the government. This new procedure applies to enterprises engaged in the extraction of minerals of national importance, logging, and pipeline transportation of hydrocarbons and chemical products.

DiXi Group welcomes the adoption of the law as **a first step towards meeting the requirements of the Extractive Industries Transparency Initiative (EITI) and implementation of the Directive 2013/34/EU on financial reporting.** More than 600 companies in the UK, France, and Canada already report based on similar standards; soon hundreds more will join them.

At the same time, the full **implementation of the new system will not be feasible without the adoption of the Draft Law No. 6229 "On Ensuring Transparency in Extractive Industries".** The Draft Law No. 6229 complements current law by stating that companies must report at the project level – i.e., licenses for subsoil use in specific fields – as required by the EITI standard and the Directive 2013/34/EU.

The document contains a clear list of information for disclosure, sets the procedure for publishing reports and provides an open method for decision-making through the Multi-Stakeholder Group at the Ministry of Energy and Coal Industry, which brings together government, business and civil society.

Effective implementation of international reporting standards will necessitate effective sanctions, as required by the Directive 2013/34/EU. In addition, we are convinced that not only should extractive companies be required to report payments to the government, but also the public authorities should report any funds they have received to ensure they were allocated to the appropriate budgets.

The adoption of this special law regarding transparency in extractive industries is extremely important for the development of economy and energy security of Ukraine as a whole. Local communities, where exploration and production activities are underway, need this detailed information. Additionally, responsible businesses are also interested in obtaining a "social license" in the territories where they operate.

Considering this, **DiXi Group calls for adoption of the Draft Law No. 6229** in order to fully transpose the provisions in the Directive 2013/34/EU into the Ukrainian law. This is a priority highlighted in the Action Plan to Implement the Open Government Partnership Initiative for 2016-2018, the Anti-Corruption Strategy for 2014-2017, as well as the Action Plan regarding implementation of the Concept for Development of Ukraine's Gas Production Industry.

Appendix H

Article, Lisa Comish, Devex, "Plans to Legislate Transparency of Australia's International Mining Operations"

Plans to legislate transparency of Australia's international mining operations

devex.com/news/plans-to-legislate-transparency-of-australia-s-international-mining-operations-91434

By Lisa Cornish November 2, 2017

Shadow Assistant Minister for Treasury Matt Thistlethwaite. Photo by: Australian Council for International Development

MELBOURNE — The Australian Labor Party is pushing for comprehensive legislation requiring internationally operating mining giants to be transparent in their financial dealings with governments and communities. At theAustralian Council for International Development 2017 National Conference in Melbourne on October 31, Rep. Matt Thistlethwaite, shadow assistant minister for treasury, made his pitch to the development sector, which has long criticized the secrecy surrounding how Australian mining companies operate abroad.

The Extractive Industry Transparency Regime — part of Labor's platform ahead of the next election, which is up to two years away — will require large Australian oil, gas, and mining companies to meet international best practices for tax transparency. Under the planned legislation, companies will begin reporting payments to governments from July 2020, with reports including royalties, dividends, bonuses, fees, payments for infrastructure improvements, and production entitlements, as well as taxes on income or profits of companies. Payments must be disclosed if they are made to any national, regional, or local authority of a country including a department, agency, or state-owned enterprise.

1/5

For the purposes of the new legislation, large Australian oil, gas, and mining companies will meet at least two of three criteria: a balance sheet total exceeding 50 million Australian dollars ($38 million); a net turnover on its balance sheet date exceeding 100 million Australian dollars ($77 million); and an average number of employees in excess of 250.

The announcement was met with strong support from ACFID CEO Marc Purcell. "Our members have campaigned extremely hard to improve revenue and tax transparency and I would like to pay tribute to their work," he told the media. "Greater corporate transparency of taxes and payments to foreign governments is a positive step for communities in the world's poorest nations and will leave them less open to exploitation."

More than politics

Speaking to Devex, Thistlethwaite explained that his own experience witnessing the impact of Australian mining industries in developing countries encouraged him to push for this new policy.

"When I was a parliamentary secretary for the Pacific Islands in the [Kevin] Rudd and [Julia] Gillard governments, I travelled around our region and visited some of the most resource rich countries in the world, but they had the poorest populations," he said. "Many of them failed to meet their basic humanitarian goals associated with education, health care, access to transport, and telecommunications. It didn't seem right that multinational corporations were exploiting these resources that were really owned by the people of that nation who were not benefiting from the royalties and payments flowing into government, translating into better living standards."

WhenPublish What You Pay — a network of NGOs pushing for revenue transparency in the extractive industries sector — began briefing lawmakers in Australia, Thistlethwaite took note.

"Labor had been on a process of looking at our tax laws and making sure they are more transparent, accountable, and [that] we are bringing integrity to it. So I was able to work with organizations like Oxfam, the Tax Justice Network, and indeed with some of the mining companies, to craft a policy that we think is fair and reasonable," he said.

A policy linked to national concerns

As in many countries, corporate tax havens and other loopholes have become a key issue of concern in Australia. By linking this new extractive industry policy to a larger tax system shakeup encouraging greater transparency from corporations, Labor is expecting the legislation won't be identified solely as a development issue, reducing the chances of it being sidelined.

"This is part of Labor's transparency and accountability push in terms of taxation," Thistlethwaite said. "We are keen to ensure Australia meets international standards, following the push from the World Bank and OECD to open up taxation systems."

But Thistlethwaite is aiming for more — he wants to develop the "world's best practice" for transparency and accountability to combat corruption among extractive industries. This, in turn, can improve the opportunities for developing countries to grow economies and raise living standards. Given Australia's outsized role in the extractive industry, such leadership should be expected, said Thistlethwaite.

"Most Australians don't know that we are the biggest player in Africa in terms of the number of companies operating on the African continent," he said. "We're certainly biggest in terms of mining in the Asia-Pacific region, and I think in that respect Australians understand that if we are going to have such a dominance in this industry we should be meeting best practice in terms of transparency and accountability. But that is not the case at the moment."

Instead, said Thistlethwaite, the only way to learn what sort of payments an Australian company might be making to a foreign government is if the company is listed on the Canadian or U.K. stock exchange. "You can't use Australian legislation. You have to go overseas, and that simply is not good enough in this day and age and that is why we are implementing this policy."

Work on the regime will start almost immediately if his party is elected to govern.

"We'll establish a multistakeholder group within months and work through the issues about how it is implemented," Thistlethwaite said. "This will include organizations who work in this space internationally as well as mining companies and government representatives."

Providing quality information for change

By going beyond the existing standards for reporting at national levels, Thistlethwaite said, the accessible information would easily identify corruption by companies as well as governments.

"We're going down to a project level for companies, so if they have a number of different projects they will have to report on each one them individually," he said. "There will be a wealth of information organizations will be able to use to ensure they hold the governments in some of these developing countries to account for the way they are spending money on their populations."

With more accessible information on companies and the payments they are making to extract resources — particularly payments that are made to local landholders and cooperatives — Thistlethwaite hopes it will lead to better spending from governments on health care, education, and transport and other areas that will build strong people and communities.

"That is the missing link at the moment," he said. "There might be information available at the national level but there is no real information about what is going locally, and local communities are in the dark about how money is being spent in their areas and they are missing out."

The flow-on effects to international aid programs

By improving the social responsibility of corporations operating in developing countries, Thistlethwaite is hopeful his party's new policy will improve delivery and outcomes of Australia's aid program.

"Australia is the biggest aid donor to the Pacific and one of the largest to the Asia-Pacific region generally," he said. "Given that some of those countries where we spend overseas aid dollars aren't meeting their Millennium Development Goals, it's essential to ensure that we get value for money in terms of the programs we invest in but also that the governments we work with are effective in translating aid money into better living standards — which is the reason we are following payments.

"Any program that provides greater transparency and accountability for those government will only assist in ensuring our aid dollars are spent more efficiently and wisely."

Following the announcement, the Extractive Industry Transparency Regime will now become part of the platform of policies Labor will take to the next election, and they will be actively promoting the issue to the wider Australian community.

"But we'll also be happy to work with other parties," Thistlethwaite said encouragingly. "If the government wants to do this before the election we would be very pleased to support them and would try and work with them through parliamentary channels to achieve this important outcome."

Devex is supporting the ACFID National Conferenceas a media partner. Follow the conference on November 1 and 2 using the hashtag #ACFID2017.

Trade & Policy
Banking & Finance

About the author

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Lisa Cornish is a Devex Reporter based in Canberra, where she focuses on the Australian aid community. Lisa formerly worked with News Corp Australia as a data journalist for the national network and was published throughout Australia in major metropolitan and regional newspapers, including the Daily Telegraph in

Melbourne, Herald Sun in Melbourne, Courier-Mail in Brisbane, and online through news.com.au. Lisa additionally consults with Australian government providing data analytics, reporting and visualization services. Lisa was awarded the 2014 Journalist of the Year by the New South Wales Institute of Surveyors.

Appendix I

EITI, Project-level reporting, Guidance note 29 – Requirement 4.7 (Sept. 2017)

Extractive Industries Transparency Initiative

Guidance note 29
September 2017

This note has been issued by the EITI International Secretariat to provide guidance to implementing countries on meeting the requirements in the EITI Standard. Readers are advised to refer to the EITI Standard directly, and to contact the International Secretariat to seek further clarification. Contact details can be found at www.eiti.org.

Project-level reporting

Guidance note 29 - Requirement 4.7

1. Introduction

Company taxes and other payments related to oil, gas and minerals are often levied on a project-level basis, i.e. per individual legal agreement giving rights to an extractive deposit. Government entities collecting such payments also record the receipts by project in their internal systems, often with the exception of general taxes such as corporate income tax, which is typically (but not always) levied and recorded by legal entity.

Public disclosure of payments by project may enable the public to assess the extent to which the government receives what it ought to from each individual extractive project, comparing the terms governing a project with data on actual payments. For host communities, it could contribute to show the benefits that each extractive project generates. It has also been argued that project-level reporting can help address tax avoidance and tax evasion by shedding light on transfer pricing practices. It can also assist governments in making more accurate forecasts for future changes in revenues. In terms of costs and benefits of project-level reporting in the EITI, it has been pointed out by government agencies in particular that reporting by project would be easier than current reporting, as it would be more consistent with how governments levy and record payments or revenues. This could reduce time, costs and discrepancies in EITI Reporting. The investor community has also been supportive of project-level reporting, noting how such reporting can contribute to a more stable investment climate and improve investors' ability to manage risk.

Over the past few years, several jurisdictions have made efforts to adopt regulations which require companies engaged in natural resource extraction to disclose the payments they make to governments, including state-owned companies. At the Board Meeting in Bogota March 2017, the EITI Board reaffirmed that project level reporting is required for all EITI disclosures covering fiscal years ending on or after 31 December 2018[1]. This note provides guidance to EITI implementing countries on how to disaggregate EITI financial disclosures by

[1] For details on the Board decision, see https://eiti.org/BD/2017-14.

project. Specifically, it provides step by step guidance on how to define a project, how to identify the level of disaggregation for each revenue stream, as well as who should report.

2. EITI Requirements covering project-level reporting

Requirement 4.7 Level of disaggregation

The multi-stakeholder group is required to agree the level of disaggregation for the publication of data. It is required that EITI data is presented by individual company, government entity and revenue stream. Reporting at project level is required, provided that it is consistent with the United States Securities and Exchange Commission rules and the forthcoming European Union requirements.

Source: EITI Standard 2016

In addition to company (and government) reporting of payments (receipts) on a project-by-project basis, the EITI Standard has a number of provisions that include the phrase: "commensurate with the reporting of other payments and revenue streams (4.7)", which implies project-level disclosures. This concerns reporting of the sale of the state's share of production or other revenues collected in kind (requirement 4.2), infrastructure provisions and barter arrangements (requirement 4.3), transportation revenues (requirement 4.4), social expenditures by extractive companies (requirement 6.1), and quasi-fiscal expenditures by SOEs (requirement 6.2).

Extracts of the EITI Board decision of 8 March 2017

"The Board reaffirmed that project level reporting is required. The national multi-stakeholder group should devise and apply a definition of the term project that is consistent with relevant national laws and systems as well as international norms (...) Project level reporting is required for all reports covering fiscal years ending on or after 31 December 2018. Given the EITI's "two-year rule" (requirement 4.8), this would effectively require project level reporting by all countries by 31 December 2020 at the latest. In the interim, the current language of requirement 4.7 remains (...)".

3. Guidance

Step 1 – Agreeing a definition of the term 'project'

The EITI has tasked the MSG to "devise a definition of the term project that is consistent with relevant national laws and systems as well as international norms". The MSG is therefore advised to explore the following questions:

(1) What definitions of 'project' are used in other jurisdictions?

Example

Article 41(4) of the **European Union** Accounting Directive[1] defines a project as: *"the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. None the less, if multiple such agreements are substantially interconnected, this shall be considered a project."*

Canada's Extractive Sector Transparency Measures Act (ESTMA)[2] contains an equivalent definition of the term project, stating that *"A "project" means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreement and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, this shall be considered a project." "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 and give rise to payment liabilities.*

These definitions show that one of the **key take-aways from global practice is that what constitutes a project is linked to the forms of legal agreement(s) governing extractive activities between the government and companies.** In other words, in a production-sharing regime, a project is typically the contract that gives rise to payment liabilities. In a tax/royalty regime, a project is typically the license that gives rise to payments.

(2) What are the types of legal instruments governing the extractive activities in the country?

To ensure that the definition of the term 'project' is consistent with national laws and systems, the MSG is advised to gain an understanding of the types of legal instruments that govern extractive activities in their country. Legal instruments can take many forms, including contracts, concessions, production-sharing agreements and other agreements, as well as licensees, leases, titles and permits governing rights to develop oil, gas and minerals. **It is recommended that the MSG produces a list of the types of instruments that exist and should therefore be part of the definition of 'project'.**

(3) Are substantially interconnected legal agreements an issue in the country?

Both the EU and Canadian definitions of projects include wording on "substantially interconnected" legal agreements which allow for multiple legal agreements to be grouped together to form one project in cases where all of the following criteria apply: the legal agreements are both operationally and geographically

[2]ESTMA Technical Reporting Specifications, p. 5, http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mining-materials/PDF/ESTMA–TRS.pdf

integrated and have substantially similar terms. It is important to note that the definition of project found in the EU and Canadian laws was designed to apply to a company reporting in all countries of operation and therefore allows some flexibility. While the wording relating to 'substantially interconnected agreements' is open to different interpretations[3], for the purposes of EITI reporting MSGs should follow **the guiding principle that project level payments should be reported in relation to the legal agreement which forms the basis for payment liabilities with the government.**

(4) Documenting the definition of project

Once the MSG has considered the points above and taken a decision on what constitutes a project in their country, it is recommended that the definition of project is documented in MSG meeting minutes, including the rationale for arriving at the definition. A practical approach could be for the MSG to simply tailor and edit existing definitions to the national context, using the following "definition template":

> "In [country], a project is defined as the operational activities that are governed by a single [contract, agreement, concession, license, lease, permit, title, etc.] and form the basis for payment liabilities with a government".

Step 2 – Identifying which revenue streams should be reported by project

Even if licenses and contracts form the basis for payment liabilities, this does not necessarily mean that all types of payments are levied by license or contracts. Although extractive-specific revenue flows like production share, royalties, bonuses and license fees are typically levied by project, other payments like corporate income tax are often levied in relation to the legal entity holding the license[4]. Understanding the fiscal regime, and distinguishing between payment liabilities levied on a company basis and those levied on licenses or other legal agreements, will help clarify which revenue streams should be disaggregated by project and those that are only subject to be disaggregated by company. The MSG is therefore advised to explore the following questions:

(1) What is the fiscal regime governing the extractive sector and what are the different types of payments arising from licenses and contracts governing oil, gas and mining operations?

The MSG is advised to review and gain an understanding of what taxes, fees and other payments extractive companies are required to make to the government. Typical revenue streams include royalties, corporate

[3] See the International Association of Oil & Gas Producers' (IOGP) Report 535: The Reports on Payments to Governments Regulations 2014 Industry Guidance, page 35: http://www.iogp.org/bookstore/product/the-reports-on-payments-to-governments-regulations-2014-industry-guidance/

[4] There are exceptions to this rule. For example, some countries ringfence financial accounts by certain activities or operations, and in such cases general taxes tend to be levied by project.

income tax, production share, dividends, bonuses and fees. These payments may be constitutionally mandated, required by national or local legislation or regulation, or set out in a license or contract. Requirement 4 of the EITI Standard outlines the revenue streams that should be covered in the EITI Report provided that they are material, and further mandates the MSG to agree which payments and revenues are material and therefore must be disclosed. The MSG may wish to consider relevant laws, regulations and model contracts and consult relevant ministries, tax collecting entities, and extractive companies in order to gather a complete picture of all existing revenue flows. Please consult guidance note 13 for further advice on identifying material revenue streams for the purpose of EITI reporting[5].

(2) Which of these payment types are levied on a license/contract basis, and which are levied on a company basis?

Some of the revenue streams that should be included in EITI reporting may not be imposed at project level. These are said to be *levied* or *imposed* on a company or entity basis. The Canadian and EU rules recognise that such payments may be disclosed at entity level without artificially assigning them to particular projects: "Payments made by the undertaking in respect of obligations imposed at entity level may be disclosed at the entity level rather than at project level"[6].

Example

In **Norway**, area fee, CO2 fee and NOx fee are levied by license, whereas taxes are levied by corporate entity. The below illustrates how Total discloses these payments when applying project-level reporting:

Figure 1: Screenshot of Total's report on payments to the Government of Norway

(in thousands of dollars)	Taxes	Royalties	License fees	License bonus	Dividends	Infrastructure improvements	Production entitlements	Total of Payments
Norway								
Payments per Project								
Asgard area	-	-	3,786	-	-	-	-	3,786
Ekofisk area	-	-	2,105	-	-	-	-	2,105
Heimdal area	-	-	1,357	-	-	-	-	1,357
Oseberg area	-	-	2,228	-	-	-	-	2,228
Sleipner area	-	-	314	-	-	-	-	314
Snohvit area	-	-	940	-	-	-	-	940
Troll area	-	-	387	-	-	-	-	387
Martin Linge PL043	-	-	499	-	-	-	-	499
Non-attributable	29,814	-	-	-	-	-	-	29,814
Total	29,814	-	11,616	-	-	-	-	41,430

Source: 2016 Registration Document, Total (2017). Excerpt from page 338.
http://www.total.com/en/investors/publications-and-regulated-information/regulated-information/report-payments-governments

[5] Guidance note 13 on defining materiality, reporting thresholds and reporting entities, EITI (2016). https://eiti.org/sites/default/files/documents/guidance_note_13_on_defining_materiality_2016.pdf
[6] Art. 43(2)c of the EU Directive.

The rights to explore or exploit oil and gas in Norway are governed by license agreements. The payments companies make to the government pursuant to license agreements are corporate income tax, petroleum tax, area fee, CO2 fee and NOx fee. The taxes are levied on an entity level and are not attributable to individual licenses. Given that there are always multiple parties to each license, the government requires the parties to regulate their activities through a joint operating agreement without incorporating a specific legal entity. As such project-level reporting in Norway entails disclosure of fees per license, and disclosure of taxes per entity.

MSGs are therefore advised to consult the legal framework and revenue collecting agencies in order to identify which revenue streams are levied by project, and which are levied by corporate entity. Sometimes, the definition of a revenue stream can help determine whether a particular payment is levied on a project or an entity basis. For example, in Burkina Faso there are so-called area/surface taxes (Taxes Superficiaries). As this payment obligation is named a tax, it could suggest that it is a payment which is not levied on the basis of licenses. However, by examining the definition of the payment obligation it is clear it is levied on a project level. These are annual payments every holder of a mining title is obliged to make based on the area-size covered by a license. The liability of rights-holders in this case is mandated by law, through Burkina Faso's Mining Code and two additional decrees[7].

Other payments levied on projects include production shares/entitlements (sometimes also known as profit oil), a common feature of production sharing agreements and contracts (PSAs/PSCs). In these instances, the agreements between companies and the state gives rise to payment obligations of companies, less "allowable expenditures" or *cost oil*. As the agreements give rise to the production entitlements of the government, these payments are therefore levied on a contractual or project basis. It is not levied on a company-basis, as a company may have multiple agreements or contractual arrangements.

(3) Are there any obstacles to disclosing payments levied by project as such?

In reviewing how revenue streams are levied, the MSG should also look out for any practical obstacles to project level reporting and reform needs. As documented in the case study on the Philippines below, government record keeping systems might not always enable project level disclosure.

Example

The **Philippines** disclose certain revenue streams in their EITI report by project. PHEITI has explained that many payments are imposed per project, as well as reported as such (see table below). Royalties, occupation fees, field based investigation fees, annual rentals and government share of production are all payment liabilities levied per project, and reported in this way. Excise taxes and

[7] See 2015 Burkina Faso EITI Report, p. 170. ITIE Burkina Faso (2017). https://eiti.org/document/burkina-faso-2015-eiti-report

corporate income taxes are also imposed per project, alongside withholding taxes for royalties to claim owners. However, these are not reported per project due to the format of the tax filing forms. In pursuing project-level reporting, it is therefore important that PHEITI together with the relevant government agencies consider whether reforms such as e.g. amending tax filing forms are needed in order to comply with the project-level disclosure requirement by FY 2018.

Table 1: Revenue streams in the Philippines, how they are levied versus level of disaggregation

Imposition	Taxes / Revenue streams	Disclosure
Levied / imposed per company	Withholding tax - foreign shareholders dividends	Disclosed by company
	Withholding tax - Profit remittance to principal	
	Withholding tax - IAET	
	Customs duties	
	VAT on imported materials and equipment	
	Excise tax on imported goods	
	Wharfage fees	
	Local business tax	
	Real property tax	
	Mayor's permit	
	Community tax	
Levied / imposed per project	Withholding tax - Royalties to claim owners	
	Excise tax	
	Corporate income tax	
	Royalty for IPs	Disclosed by project
	Field based Investigation fee	
	Government share from oil and gas production	
	Annual rental fees for retained area after exploration	
	Royalty on mineral reservation	
	Occupation fees	

Source: PH-EITI. The above information was provided by the national secretariat of PH-EITI for the purpose of determining whether their latest report included disclosures commensurate with project-level reporting

(4) Documenting the findings on how revenues should be reported

The MSG is advised to document the findings of its review of how the various payments and revenue streams are levied. Building on the "definition template" suggested under step 1 above, a practical approach could be for the MSG to attach the following explanation to their definition of project in order to clarify which payments should be disaggregated by project vs company:

> "Where payments are attributed to a specific project – [list the payment types levied by project] - then the total amounts per type of payments shall be disaggregated by project. Where payments are levied at an entity level rather than at a project level – [list the payment types levied by company] – the payments will be disclosed at an entity level rather than at a project level."

Step 3 – Identifying who should report

In accordance with the EITI Standard, all oil, gas and mining companies that make material payments to a government entity, including state-owned enterprises (SOEs) are required to disclose their payments. This principle is retained also in project level reporting. However, in arrangements which involve multiple parties it might be necessary to identify what kind of payments are effectuated by the different parties to the contract. It might also be necessary to look at the payments effectuated by government bodies, like SOEs. MSGs are therefore advised to consider the following questions:

(1) Are projects involving multiple participants common in your country? If so, who effectuates the payments to the government?

Given the risks and costs associated in particular with upstream oil and gas projects, agreements are often entered into by several companies which act together in a consortium. They share risk, costs and financing and typically designate an *operating company* which may have more administrative and operational responsibilities than other participants.

In some countries the *operator* is responsible for effectuating the payments. This means that the operators perform payments to governments on behalf of the consortiums/JVs as a whole, with other parties indirectly making payments to governments. Typically this excludes taxes which tend to be levied on each individual participant. A settlement between the various participants is then performed as internal transactions within the consortium/JV.

In such cases, for the purpose of EITI reporting, the operator could disclose the payments they make to the government on behalf of the consortium/JV, with other parties disclosing any payments levied directly on them. Alternatively, the operator could disclose their share of the payments and taxes, excluding those made on behalf of the consortiums/JVs. Other parties would also disclose their respective share of the payments and taxes imposed on the consortium/JV.

In other countries, as is common in francophone African countries, all participants to a contract are responsible for their respective shares of payment liabilities. In such cases, for the purposes of EITI reporting, each participant would disclose their payments to the government.

Regardless of the system agreed by the MSG for company reporting, the government agencies would report the total revenues received for the project in accordance with how these revenues are recorded in their systems.

Examples

In **Indonesia**, revenues are disaggregated by individual operator and by individual block for non-tax payments (production share, royalty, DMO etc.). Tax payments are not paid by operators and are therefore reported by each party to a PSC, per PSC.

In **Trinidad and Tobago**, the operator is responsible for paying to the Ministry of Energy and Energy Industries (MEEI) a profit share and other payments on behalf of itself and other parties in the PSC. However, if MEEI participates in the PSC, the ministry is ...

> "[...] responsible under the PSC for payment, [...] out of the Government's Share of Profit Petroleum, of the Contractor's liability for Royalty, Petroleum Impost, Petroleum Profits Tax, Supplemental Petroleum Tax, Petroleum Production Levy, Green Fund Levy, Unemployment Levy and any other taxes or impositions whatsoever measured upon income or profits arising directly from the operations." (Trinidad and Tobago EITI Report 2014 and 2015, page 65[8]).

This means that all payment liabilities levied on companies for these projects are voided, while the only payment obligation levied on projects is the Government's Share of Profit Petroleum, less the payments made by MEEI on behalf of the companies.

In **Kazakhstan**, some PSAs are still in use as the governing instrument for petroleum projects. One of the largest is Tengizchevroil LLP, an incorporated joint venture which, according to Kazakhstan's 2015 EITI Report, is now owned by Chevron, ExxonMobil, KazMunaiGas and LukArko. As it is an incorporated joint venture, operated by Tengizchevroil LLP, the operator has its own taxpayer ID number (930440000929) and would be treated as a single company under a PSA for the purposes of EITI reporting.

In other instances, the government may require the parties to regulate their activities through a joint operating agreement without incorporating a specific legal entity. Such arrangements are typically considered *unincorporated joint ventures*.

Company example: Proportionate reporting of production entitlements by Statoil

Statoil's *2015 Payments to governments* report includes production entitlement payments to host governments for unincorporated joint ventures, including payments made indirectly via the operator. Statoil explains that it does this "because host government entitlements in some cases constitute the most significant payment to governments and because these payments are not always transparent to the civil society". Statoil proportionately reported its 2015 production entitlements payments to host governments totalling just over US $2 billion. Of this, $1.9 billion (95%) was attributable to production entitlement payments for projects where Statoil was not the operator.

(2) Does a state-owned enterprise operate in your country? If so, what role do they play and how do they disaggregate payments and/or receipts?

State-owned enterprises (SOEs) often represent important institutions in the extractive sector of EITI implementing countries. Although less common or dominant in the mining sector, they may still play an important role by owning and operating projects, or through their participation in joint ventures.

The EITI requires that the multi-stakeholder group ensures that the reporting process comprehensively addresses the role of SOEs, including material payments to SOEs from oil, gas and mining companies, and transfers between SOEs and other government agencies (see requirement 2.6).

Where the sale of the state's share of production or other revenues collected in-kind is material, the government, including state-owned enterprises, are required to disclose the volumes sold and revenues received relating to that production and to publish data disaggregated by individual buying company (requirement 4.2). The multi-stakeholder group should consider how the project definition adopted is best applied to sale of the state's share of production. For example, which legal agreements (e.g. contracts) give rise to payments made by buying companies related to sale of the state's share of production or other revenues collected in-kind.

MSGs should take care in ensuring that SOEs will now have to report in a more disaggregated form, same as private companies as outlined under step 2.

Examples

Sometimes SOEs act as a fiscal agent by collecting revenue on behalf of governments. In the **Republic of the Congo**, their state-owned enterprise receives in-kind payments from private companies on behalf of the state for marketing. In this instance, once companies' payments are reported per project, the government's share will also implicitly be disaggregated by project.

Other times, SOEs may play similar roles as private companies by making payments to governments in accordance with their participation in various projects. In **Ghana** for example, Ghana National Petroleum Corporation (GNPC) participates in multiple petroleum projects and effectuate specific payments that are levied through contracts – lifting barrels of oil intended for the payment of carried and participating interests, as well as royalties. So far, GNPC has reported these payments as aggregated transactions to the government. This means disclosures are made on a company basis, not by project.

Regardless of whether an SOE is considered a payer, a revenue collector, or both, disclosures by SOEs must be disaggregated by project if the payment type is levied by project.

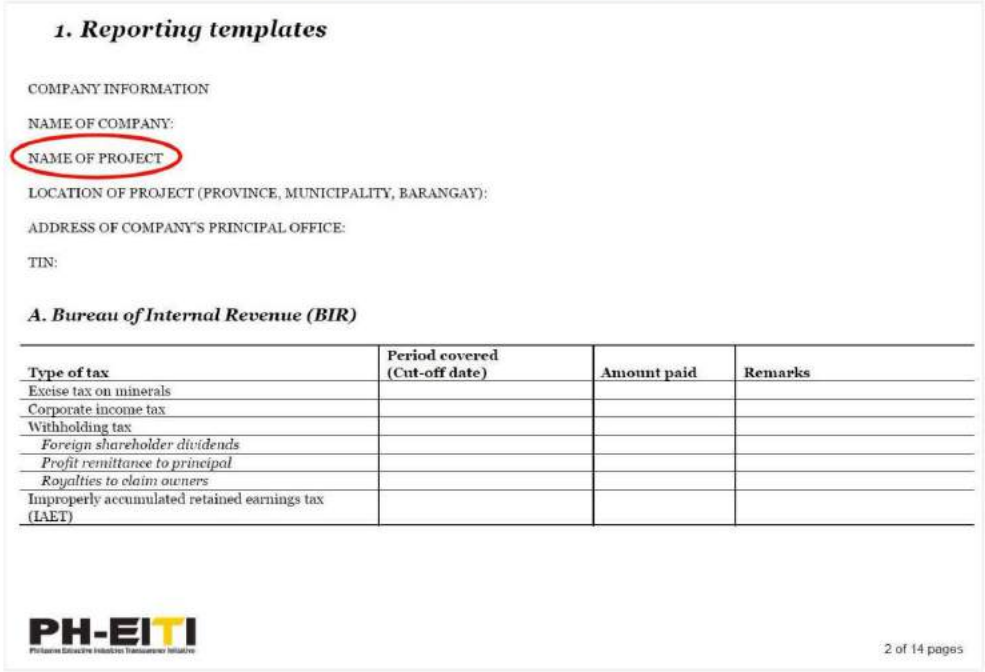
[8] 2014-2015 Trinidad and Tobago EITI Report. TTEITI (2016). https://eiti.org/document/20142015-trinidad-tobago-eiti-report

Step 4 – Reporting templates

Once the MSG has agreed the definition of project (step 1) and which payments should be disaggregated at project vs entity level (step 2), then the MSG should develop and agree reporting templates reflecting the outcomes. **The EITI is considering developing a standard reporting template. In the meantime, here are some examples of reporting templates in use, which have been linked to compliance with project-level reporting**:

The **Philippines** uses reporting templates which they specifically ask to be filled out *per project*. This ensures project-level reporting (for almost all revenue streams), which is also ensured as PH-EITI have only included companies that operate a single project in their latest scope:

Figure 2: Screenshot from Philippines' reporting templates



1. Reporting templates

COMPANY INFORMATION

NAME OF COMPANY:

NAME OF PROJECT

LOCATION OF PROJECT (PROVINCE, MUNICIPALITY, BARANGAY):

ADDRESS OF COMPANY'S PRINCIPAL OFFICE:

TIN:

A. Bureau of Internal Revenue (BIR)

Type of tax	Period covered (Cut-off date)	Amount paid	Remarks
Excise tax on minerals			
Corporate income tax			
Withholding tax			
Foreign shareholder dividends			
Profit remittance to principal			
Royalties to claim owners			
Improperly accumulated retained earnings tax (IAET)			

PH-EITI

2 of 14 pages

Source: Reporting templates, PH-EITI (2017). Excerpt from Oil and Gas Companies' reporting templates
https://ph-eiti.org/Country-Reports/#/Reporting-Templates

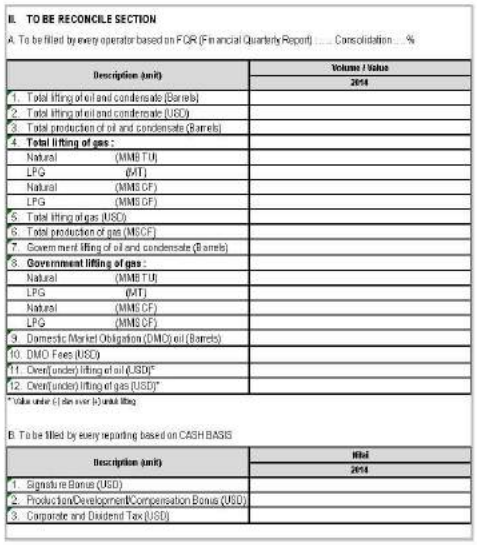
In **Indonesia**, oil and gas companies report on details for the various PSCs pertaining to different fields/blocks. They also include information regarding the different shareholders with their corresponding shares in ownership. The reporting templates are available on their website and provides disaggregated data by individual operator and by individual block for non-tax payments as these are payment obligations levied on projects through the respective PSCs (these non-tax revenues include production share, royalties, domestic

market obligations and more). Tax payments are not paid by the operator but by each individual participating company and are therefore reported by each party to a PSC, per PSC (see figure 3a for operator reporting requirements, and 3b for participating companies' reporting requirements).

To the left in the figure below, Indonesia requires operators of a project to disclose operational and financial information relevant to a project. However, as can be seen on the right-hand side, partners which are non-operators are only required to report on their tax obligations to the government.

Figure 3: Indonesian oil and gas companies reporting templates

a) Operator reporting template



II. TO BE RECONCILE SECTION

A. To be filled by every operator based on FQR (Financial Quarterly Report) ..... Consolidation ..... %

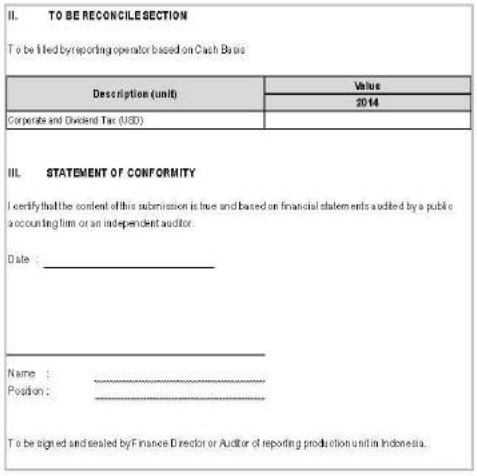
Description (unit)	Volume / Value 2014
1. Total lifting of oil and condensate (Barrels)	
2. Total lifting of oil and condensate (USD)	
3. Total production of oil and condensate (Barrels)	
4. **Total lifting of gas :**	
Natural (MMBTU)	
LPG (MT)	
Natural (MMSCF)	
LPG (MMSCF)	
5. Total lifting of gas (USD)	
6. Total production of gas (MSCF)	
7. Government lifting of oil and condensate (Barrels)	
8. **Government lifting of gas :**	
Natural (MMBTU)	
LPG (MT)	
Natural (MMSCF)	
LPG (MMSCF)	
9. Domestic Market Obligation (DMO) oil (Barrels)	
10. DMO Fees (USD)	
11. Over/(under) lifting of oil (USD)*	
12. Over/(under) lifting of gas (USD)*	

* Value under (-) else over (+) unlift lifting

B. To be filled by every reporting based on CASH BASIS

Description (unit)	Nihil 2014
1. Signature Bonus (USD)	
2. Production/Development/Compensation Bonus (USD)	
3. Corporate and Dividend Tax (USD)	

b) Non-operator reporting template



II. TO BE RECONCILE SECTION

To be filled by reporting operator based on Cash Basis

Description (unit)	Value 2014
Corporate and Dividend Tax (USD)	

III. STATEMENT OF CONFORMITY

I certify that the content of this submission is true and based on financial statements audited by a public accounting firm or an independent auditor.

Date : _____

Name :
Position :

To be signed and sealed by Finance Director or Auditor of reporting production unit in Indonesia.

Source: Oil and Gas Operators' reporting templates (left, figure 3a); Oil and Gas Partners' reporting templates (right, figure 3b).
EITI Indonesia (2016). http://eiti.ekon.go.id/en/category/download/formulir-eiti/

The **United Kingdom** reports partially by project for specific payments obligations of petroleum companies. On page 9 of their latest EITI Report it is stated that *"the MSG decided that PRT [Petroleum Revenue Tax] should be reported at the project level (i.e. by field)."*[9]

Similar reporting tables were also included for other payment obligations levied on projects, such as Petroleum License Fee payments. The template for reporting on these payments therefore includes data identifying the licensee for a particular license, the license number, and the respective license fee-transactions corresponding

[9] 2015 United Kingdom EITI Report, UKEITI (2017). https://eiti.org/document/2015-united-kingdom-eiti-report

to each of these. The reporting template of United Kingdom therefore enables project-level disclosures, the results of which are made available by the UKEITI MSG:

Table 2: (Re)payments of petroleum revenue tax in 2015 as reported by HMRC (in GBP)

Company/group	Field name	(Re)Payment as reported by HMRC (£)
Apache North Sea	Forties	71,701,248
Royal Dutch Shell Group	Barque	29,068,079
ExxonMobil	Barque	28,994,505
SSE	Sean	28,986,849
Total Holdings UK Limited	Bruce	25,415,491
Perenco UK	Wytch Farm	22,730,078
Total Holdings UK Limited	Alwyn	20,869,920
Royal Dutch Shell Group	Sean	14,240,680
Centrica Energy E&P	Morecambe	12,697,268
Premier Oil [incl E.ON Ruhrgas]	Wytch Farm	11,258,731
Endeavour Corp	Alba	11,067,140
BP	Bruce	10,013,123

Source: Data on payments of petroleum revenue tax by field 2015. UKEITI (2017).
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604712/EITI_2015_PRT.CSV

Table 3: Payments of petroleum licence fees in 2015 as reported by the Oil and Gas Authority (in GBP)

Company/group	Licence Number	Payment as reported by the OGA (£)
CNOOC [Nexen Petroluem U.K. Limited]	P928	1,810,440
ENGIE E&P UK Limited (formerly GDF SUEZ E&P UK Ltd)	P1055	1,485,000
INEOS INDUSTRIES [incl. RWE DEA UK SNS Ltd]	P1230	1,266,540
BP	P556	1,146,000
CNOOC [Nexen Petroluem U.K. Limited]	P986	951,797
Dong E&P (UK) Ltd	P1598	803,250
Total Holdings UK Limited	P1453	786,240
OMV (U.K.) Limited	P1028	752,517
Eni UK Limited	P710	688,200
Chevron North Sea Limited	P1026	678,492
Xcite Energy Resources Ltd	P1078	636,000
Faroe Petroleum	P516	595,200
Total Holdings UK Limited	P911	567,525

Source: Data on payments of petroleum licence fees by licence in 2015. UKEITI (2017).
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604711/EITI_2015_PLF.csv

4. Additional information and further readings

Mandatory disclosures under EU and ESTMA

The **European Union Accounting Directive**'s corporate disclosure rules were due to be transposed into national legislation by 20 July 2015[10]. Article 6 of the **EU Transparency Directive** extended the reporting obligations in the Accounting Directive to all relevant companies whose securities are publicly listed on EU regulated stock markets, regardless of whether they are incorporated in the EU. The Transparency Directive was due to be transposed into national legislation by 26 November 2015. In 2014, the United Kingdom transposed the reporting requirements into national law. Therefore, as an early adopter of the reporting requirements, the United Kingdom has ample examples of corporate filings under the EU Accounting Directive.

> *Corporate filings for UK incorporated companies under the UK legislation are available on Companies House extractives service which are accessible here:* https://extractives.companieshouse.gov.uk/
>
> *Guidance for the Companies House extractives service can be found here:* https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries/guidance-for-the-companies-house-extractives-service
>
> Companies which are listed on the main market of the London Stock Exchange but not incorporated in the EU must file their reports according to the Financial Conduct Authority's Disclosure Guidance and Transparency Rules (DTR) 4.3A here https://www.handbook.fca.org.uk/handbook/DTR/4/3A.html and make an announcement to the UK's National Storage Mechanism (NSM) here http://www.morningstar.co.uk/uk/NSM

Since the enactment of **Canada's Extractive Sector Transparency Measures Act** (ESTMA) in 2015, more than 700 filings have been made by companies on their payments to governments by project. Therefore, the corporate filings repository is a valuable source of information to view existing practices of companies reporting by project.

However, it is noteworthy that project-level reporting under is different under EITI when compared to UK and ESTMA disclosures, in that EITI also requires government agencies to report. This means that the level of disaggregation and understanding of projects must to be the same for companies *and* government agencies.

> *For more information and guidance regarding company disclosures under ESTMA, please see* https://www.nrcan.gc.ca/mining-materials/estma/18180

[10] Information about Directive 2013/43/EU, European Commission. https://ec.europa.eu/info/law/accounting-rules-directive-2013-34-eu/law-details_en

Examples of reporting templates

Please find links to specific reporting templates which incorporate project-level disclosures below:

Selected reporting templates from EITI implementing countries:

- **Indonesia** (excel): http://eiti.ekon.go.id/en/category/download/formulir-eiti/
- **Philippines** (excel): https://ph-eiti.org/Country-Reports/#/Reporting-Templates
- **Trinidad and Tobago** (excel): http://www.tteiti.org.tt/explore-data/open-data/
- **United Kingdom** (excel): https://www.gov.uk/guidance/extractive-industries-transparency-initiative

ESTMA and UK payments to governments reporting templates:

- **ESTMA reporting templates** (excel): http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mining-materials/PDF/ESTMA%E2%80%93ReportingTemplate.xlsx
- **UK Extractives Service** (XML schema) according to EU Directive: http://xmlgw.companieshouse.gov.uk/extractives.shtml

Proposed reporting templates for collecting project-level information

See attached excel-files for proposed reporting templates

Annex: Project-level reporting checklist

Step 1 – Agreeing a definition of the term 'project'

- What definitions of 'project' are used in other jurisdictions?
- What are the types of legal instruments governing the extractive activities in the country?
- Are substantially interconnected legal agreements an issue in the country?
- Documenting the definition of project

Step 2 – Identifying which revenue streams should be reported by project

- What is the fiscal regime governing the extractive sector and what are the different types of payments arising from licenses and contracts governing oil, gas and mining operations?
- Which of these payment types are levied on a license/contract basis, and which are levied on a company basis?
- Are there any obstacles to disclosing payments levied by project as such?
- Document the findings on how revenues should be reported

Step 3 – Identifying who should report

- Are projects involving multiple participants common in your country?
- Does a state-owned enterprise operate in your country? If so, what role do they play and how do they disaggregate payments and/or receipts?

Step 4 – Reporting templates

- Once the MSG has agreed the definition of project (step 1) and which payments should be disaggregated at project vs entity level (step 2), then the MSG should develop and agree reporting templates reflecting the outcomes.
- A proposed standard reporting template is available in an excel file attached to this guidance note.

Appendix J

Public Statement: Commissioner Luis A. Aguilar (December 11, 2015)

Enhancing the Transparency of Resource Extraction Revenue Payments

sec.gov/news/statement/disclosure-of-payments-by-resource-extraction-issuers.html

Commissioner Luis A. Aguilar

Dec. 11, 2015

Today, as required by Section 1504 of the Dodd-Frank Act,[1] the Commission re-proposes rules that would create a new disclosure regime for payments made to a government by oil, natural gas, and mining companies for the purpose of the commercial development of a country's natural resources.[2] This type of disclosure is consistent with an emerging global consensus to combat government corruption through greater transparency and accountability.[3] Today's re-proposed rules are consistent with those global efforts.[4]

The Congressional mandate under Section 1504 has proven to be among the more controversial rules that the Commission has been required to undertake under the Dodd-Frank Act. When the Commission originally proposed rules under Section 1504 back in December 2010, it received over 149,000 comment letters from corporations, industry and professional associations, government officials (both foreign and domestic), non-governmental organizations, academics and other interested parties, with over 150 individual letters and the rest form letters.[5] These comment letters represented a wide variety of viewpoints from both those supportive of the rulemaking and those opposed.[6] Reflecting the difficult nature of this rulemaking, after the Commission adopted final resource extraction disclosure rules in August 2012, these rules were challenged in court and ultimately, in July 2013, vacated by the United States District Court for the District of Columbia.[7]

As a result of the rules being vacated, the Congressional mandate under Section 1504 remained unresolved.[8] Subsequently, on September 2, 2015, the United States District Court for the District of Massachusetts ordered the Commission to meet its obligation under Section 1504 and to file an expedited schedule for promulgating final resource extraction rules.[9] In doing so, the Court noted that despite the Commission's originally adopted rules having been vacated, the Commission's "duty to promulgate a final extraction payments disclosure rule remains unfulfilled more than four years past Congress's deadline."[10] In response to the Court's direction, on October 2, 2015, the Commission filed a proposed schedule to complete the required rulemaking, including re-proposing the resource extraction rules before the end of the year.[11] Today's proposed rulemaking thus represents an important step forward in both responding to the Court's direction and in faithfully completing the Congressional mandate.

It's noteworthy that during the period following the Commission's original adoption of the resource extraction rules, global efforts to increase the transparency for resource extraction payments have continued to advance. For example, since the Commission first adopted its

resource extraction rules in 2012, other jurisdictions have move forward in their efforts to increase the transparency of resource extraction payments, including the following:

- In June and October of 2013, the European Union (EU) Parliament and Council adopted two directives—the EU Accounting Directive and the EU Transparency Directive, respectively (the "EU Directives"). These EU Directives require oil, gas, mining, and logging companies to disclose payments they make to governments on a per government and per project basis.[12] In 2014, the United Kingdom became the first of the EU member states to implement the EU Accounting Directive, which has since been implemented by 11 other EU member states;[13]
- In December 2013, Norway adopted rules requiring resource extraction companies to disclose payments to governments on a project level;[14] and
- In December 2014, the Canadian government adopted a federal resource extraction disclosure regime similar to the Commission's originally adopted resource extraction rules, known as the Extractive Sector Transparency Measures Act ("ESTMA").[15]

Furthermore, following the Commission's original 2012 adoption of the resource extraction rules, global companies in the extractive industry began to provide, on a voluntary basis, more comprehensive disclosures of their resource extraction payments to governments.[16] For example, at least two large resource extraction companies already provide payment disclosure on a project basis,[17] and at least one other major resource extraction company voluntarily provides such disclosure on a per country and/or legal entity basis.[18] Other global companies are also beginning to open their books to permit a window into their resource extraction payments to foreign governments.[19]

Indeed, driven in part by the recent global developments in resource extraction disclosure legislation, industry representatives, human rights and environmental advocacy groups, and other government agencies have written the SEC to press for new resource extraction disclosure rules.[20]

That brings us to today.

Today's re-proposed rules strive to faithfully implement the Congressional intent to increase transparency and accountability in the resource extraction sector. In doing so, the Commission has endeavored to comprehensively consider all viewpoints; and it has carefully considered what is occurring internationally.[21]

In the end, the rules being re-proposed today fulfill the Commission's Congressional mandate, meet the conditions of the District Court's order, and are consistent with the emerging global consensus to fight corruption through enhanced disclosure of resource extraction payments to governments.

Conclusion

In closing, I will support today's re-proposing release on resource extraction disclosure. In my view, today's rules reflect a deliberate, careful, and well-reasoned approach.

I would like to thank the staff from the Division of Corporation Finance, the Division of Economic Research and Analysis, and the Office of the General Counsel for their work on this rulemaking. I appreciate your dedication and the important work that you do to protect investors.

Thank you.

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, H.R. 4173 (July 2010) (the "Dodd-Frank Act").

[2] *See Disclosure of Payments by Resource Extraction Issuers*, Release No. 34-76620 (Dec. 11, 2015) (hereinafter "Proposing Release") at I.E.1. (Introduction and Background/ Objectives of Section 13(q)'s Required Disclosures and the Proposed Rules/ The U.S. Government's Foreign Policy Interest in Reducing Corruption in Resource-rich Countries), *available at* http://www.sec.gov/rules/proposed/2015/34-76620.pdf (noting that "a global consensus has begun to emerge that increasing revenue transparency through the public disclosure of revenue payments made by companies in the resource extraction sector to foreign governments can be an important tool to help combat the corruption that resource-rich developing countries too often experience.").

[3] *See* Proposing Release, at I.E.1. (Introduction and Background/ Objectives of Section 13(q)'s Required Disclosures and the Proposed Rules/ The U.S. Government's Foreign Policy Interest in Reducing Corruption in Resource-rich Countries) (noting that "a global consensus has begun to emerge that increasing revenue transparency through the public disclosure of revenue payments made by companies in the resource extraction sector to foreign governments can be an important tool to help combat the corruption that resource-rich developing countries too often experience." In particular, these disclosure rules seek to address the concern regarding "corruption within the governments of developing countries that are rich in oil, gas, or minerals.").

[4] *See* Senate Floor Statement of Senator Lugar, "Lugar Floor Speech on Transparency Amendment" (May 18, 2010), *available at* https://votesmart.org/public-statement/507898/restoring-american-finacial-stability-act-of-2010#.Vl3YjHZOm70 (stating that "[t]ransparency empowers citizens, investors, regulators, and other watchdogs and is a necessary ingredient of good governance for countries and companies alike. ... More importantly, it would help empower citizens to hold their governments to account for the decisions made by their governments in the management of valuable oil, gas, and mineral resources and revenues.").

[5] *See Comments on Proposed Rule: Disclosure of Payments by Resource Extraction Issuers*, *available at* http://www.sec.gov/comments/s7-42-10/s74210.shtml.

[6] Compare Letter from Institute for 21st Century Energy, U.S. Chamber of Commerce (Mar.

2, 2010), *available at* http://www.sec.gov/comments/s7-42-10/s74210-60.pdf (expressing that the ultimate purpose of Section 1504 is "to influence the behavior of governments" and thus reflected a "deviation from [the Commission's] long-standing mission.") and Letter from California State Teachers' Retirement System Investments (Mar. 1, 2011), *available at* http://www.sec.gov/comments/s7-42-10/s74210-59.pdf ("CalSTRS appreciates the thoroughness of the preparation and presentation of the Commissions proposed rules for the implementation of Section 1504 and we support the Commission in this effort to provide greater transparency to shareholders so that more informed investment decisions can be made."). In particular, critics of the original rulemaking focused on, among other things, the potentially substantial costs of compliance with the rules and the possible competitive harm that could result from public disclosure of resource extraction payments. *See, e.g.,* Letter from American Petroleum Institute (Aug. 11, 2011), *available at* http://www.sec.gov/comments/s7-42-10/s74210-107.pdf (referring to the "potential for hundreds of millions of dollars in direct reporting and compliance costs" and also "to the very real potential for tens of *billions* of dollars of existing, profitable capital investments to be placed at risk should the final rules require public disclosure of information that is prohibited from disclosure by the laws of other countries."); Letter from ExxonMobil (Oct. 25, 2011), *available at* http://www.sec.gov/comments/s7-42-10/s74210-112.pdf (noting that "[w]hile ExxonMobil's longstanding support of the Extractive Industry Transparency Initiative ('EITI') affirms our belief in the benefits of transparency, we feel obliged to reaffirm the cost estimate (over $50 million) we provided in our earlier comment letter and to confirm our support of the industry-wide cost estimate (hundreds of millions of dollars) provided in the American Petroleum Institute's earlier comment letters.").

[7] *See* Memorandum Opinion, *American Petroleum Institute, et al., v. Securities and Exchange Commission and Oxfam America, Inc.*, Civil Action No. 12- 1668 (JDB) (July 2, 2013), *available at* https://www.sec.gov/rules/final/2013/34-67717-court-decision-vacating-rule.pdf.

[8] In particular, see Section 1504 of the Dodd-Frank Act, which added Section 13(q) to the Securities and Exchange Act of 1934. *See* Pub. L. No. 111-203 (July 21, 2010). Section 13(q) requires the Commission to "issue final rules that require each resource extraction issuer to include in an annual report . . . information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and (ii) the type and total amount of such payments made to each government." *See* 15 U.S.C. 78m(q)(2)(A).

[9] *See* Memorandum and Order, *Oxfam America, Inc., v. United States Securities and Exchange Commission*, Civil Action No. 14- 13648-DJC (Sept. 2, 2015), *available at* http://www.oxfamamerica.org/static/media/files/CASPER_DECISION.pdf.

[10] *See id.*

[11] *See* Notice of Proposed Expedited Rulemaking Schedule, *Oxfam America, Inc., v. United States Securities and Exchange Commission*, Civil Action No. 14-cv-13648 (Sept. 2, 2015), *available at* http://dodd-frank.com/wp-content/uploads/2015/10/SEC-Implementation-of-Resource-Extraction-Rule.pdf.

[12] *See* Proposing Release at I.C. (Introduction and Background/Developments Subsequent to the 2013 Court Decision).

[13] *See* Letter from United States Department of the Interior (Nov. 6, 2015),*available at* http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-96.pdf (describing the United Kingdom's *The Reports on Payments to Government Regulations 2014* (Dec. 1, 2014)). The other EU member states to implement the EU Accounting Directive include Austria, Croatia, the Czech Republic, Denmark, Germany, Hungary, Italy, Lithuania, Portugal, Slovakia, and Spain. *See* Proposing Release at I.C. (Introduction and Background/Developments Subsequent to the 2013 Court Decision). As a general matter, the EU Accounting Directives require large public companies incorporated in the EU, such as Total and BP among others, to report their resource extraction payments. The EU Transparency Directives require companies listed on EU-regulated stock exchanges to report their resource extraction payments. *See also, UK Passes Historic Transparency Law For Oil, Gas And Mining Companies*, Oxfam (Dec. 1, 2014), *available at* http://www.oxfamamerica.org/press/uk-passes-historic-transparency-law-for-oil-gas-and-mining-companies/.

[14] *See* Letter from Publish What You Pay (Mar. 14, 2014), *available at* http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-28.pdf; *Transparency on the Move: Payment Disclosure by the World's Largest Oil, Gas & Mining Companies*, Publish What You Pay (updated Feb. 2015), *available at* http://www.publishwhatyoupay.org/wp-content/uploads/2015/10/Company_Coverage_Fact_Sheet_Final.pdf.

[15] *See* Proposing Release at I.C. (Introduction and Background/Developments Subsequent to the 2013 Court Decision).

[16] *See* Proposing Release at I.C. (Introduction and Background/Developments Subsequent to the 2013 Court Decision). In addition to public corporations voluntarily providing these disclosures, governments are also providing such disclosures. For example, in March 2014, the United States completed the process to become a candidate country for the Extractive Industries Transparency Initiative ("EITI"), of which 49 countries are a part. *See* Letter from United States Department of the Interior (Nov. 6, 2015), *available at* http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-96.pdf.

To achieve candidacy status, the United States government formed a required multi-stakeholder group, which included representatives from the government, civil society, and industry, to oversee implementation of the U.S. EITI. As a result of its commitment to the EITI,

the United States plans to file its first mandatory EITI report this month, which will include publicly-disclosed information on revenue payments that companies paid the federal government in connection with the extraction of oil, gas, and mining resources. *See USEITI 2015 Workplan, available at* http://www.doi.gov/eiti/FACA/upload/WORKPLAN-2015-12_19_14-final.pdf; U.S. Department of the Interior website, US Extractive Industries Transparency Initiative, *available at* https://www.doi.gov/eiti.

[18] *See, e.g., 2014 Payments to governments*, Statoil (2015), *available at* http://www.statoil.com/no/InvestorCentre/AnnualReport/AnnualReport2014/Documents/DownloadCentreFiles/01_KeyDownloads/2014%20Payments%20to%20governments.pdf.

[19] *See* Paula Dupraz-Dobias, *Moving towards greater transparency?*, swissinfo.ch (Oct. 22, 2015), *available at* http://www.swissinfo.ch/eng/business/commodity-trading_moving-towards-greater-transparency-/41735418 (describing how in December 2015, the Swiss commodities trading company Trafigura will publish its first disclosures that are compatible with the global standard of the EITI).

[20] *See, e.g.*, Letter from Publish What You Pay (Aug. 10, 2015), *available at* http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-82.pdf ("Publish What You Pay urges the Securities and Exchange Commission to promptly re-issue a rule for Section 1504 that is in line with the 2012 rule and the global transparency standard."); Letter from Chevron Corporation (May 7, 2014), *available at* http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-40.pdf (stating that "Chevron urges the Commission to move ahead with new rulemaking under Section 13(q) as soon as possible in 2014."); Letter from Royal Dutch Shell plc and Exxon Mobil Corporation (May 1, 2014), *available at* http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-37.pdf (indicating that the implementation of transparency legislation in the United Kingdom "increases the urgency for the Commission to consider Dodd-Frank 1504 in calendar year 2014."); Letter U.S. Department of State (Nov. 13, 2015), *available at* http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-102.pdf (stating that "I encourage the Commission to produce a strong Section 1504 rule that improves transparency by ensuring a sufficiently detailed level of information concerning payments from the extractive industry to foreign governments for the development of oil, natural gas, and minerals [and that] will be made public and accessible to civil society and investors. In the absence of this level of transparency, citizens have fewer means to hold their governments accountable, and accountability is a key component of reducing the risk of corruption."); *See* Letter from United States Department of the Interior (Nov. 6, 2015), *available at* http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-96.pdf (stating that the Interior Department "believe[s] that a significant opportunity now exists to leverage the U.S. government's EITI and Section 1504 investments designed to bring more meaningful transparency to natural resource revenue disclosure.").

[21] This approach can be illustrated through one example, among many, in today's release: the proposed rules would allow issuers to meet the resource extraction disclosure

requirements, in certain circumstances, by providing disclosures that would comply with a foreign jurisdiction's own resource extraction rules, or that meet the U.S. EITI reporting requirements, if the Commission has made a determination that those reporting requirements are substantially similar to the Commission's own adopted resource extraction reporting regime. *See* Proposing Release at II.G.4. (Proposed Rules Under Section 13(q)/Disclosure Required and Form of Disclosure /Alternative Reporting). This alternative reporting regime, a presumption of comity extended to other substantially similar disclosure regimes, will not only further the United States' own foreign policy goals, but should facilitate compliance with these rules for resource extraction issuers.

Appendix K

Excerpt, ESTMA Technical Reporting Specifications (2016)

2.3.2 Breakdown of payments

Payments must be broken down to indicate which payee received the payment.

Payments must also be broken down to the project level when they can be attributed to a specific project. Where a payment is not attributable to a specific project, it may be disclosed in the report without splitting or disaggregating the payment to allocate it to a specific project. Payee-level disclosure for such payments is sufficient.

The report must also include the total of each payment category to each payee and project where applicable.

Reporting Entities are encouraged, where practical, to list the name of the department, agency or other body of the payee that received the payment, if more than one such body of a payee received a payment from the reporting entity.

Project definition

A "project" means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreement and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, this shall be considered a project.

"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 and give rise to payment liabilities.

2.3.3 Substance over form

The disclosure of payments required under the Act must reflect the substance rather than the form of the payment or activity concerned.

2.3.4 Reporting currency

Reporting Entities must report in Canadian currency or in the currency of the Reporting Entity (e.g. currency used in a Reporting Entity's consolidated financial statements). Reports must use only one type of currency.

If a Reporting Entity has made payments in currencies other than Canadian dollars or its reporting currency, it may choose to calculate the currency conversion between the currency in which the payment was made and Canadian dollars or the reporting currency, as applicable, in one of three ways:

- By converting the payments at the exchange rate existing at the time the payment is made.
- Using a weighted average of the exchange rates during the period.
- Based on the exchange rate as of the issuer's financial year end.

Reporting Entities must include a note in their ESTMA reports that discloses the exchange rate and primary method used for currency conversions.

2.3.5 In-kind payments

The monetary value of any in-kind payment made to a payee by a Reporting Entity must be reported under the Act.

If a Reporting Entity can determine the cost of an in-kind payment, that is the value that should be reported. If the cost is not determinable, the in-kind payment should be reported at the fair market value. A Reporting Entity may employ an existing valuation methodology used in its financial statements or for another commercial purpose (e.g. a production-

Appendix L

List of investor institutions in support of project-level disclosure and a common global reporting standard

	Investment Institution	Sample SEC Comment
1	California State Teachers' Retirement System (CalSTRS)	Feb. 1, 2018 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/cll6-3079757-161907.pdf
2	Walden Asset Management/Boston Trust & Investment Management Company	Jan. 24, 2018 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/cll6-3079746-161906.pdf
3	ACTIAM NV	Mar. 8, 2016 https://www.sec.gov/comments/s7-25-15/s72515-52.pdf
4	BMO Global Asset Management	Mar. 8, 2016 https://www.sec.gov/comments/s7-25-15/s72515-52.pdf
5	Cartica Capital	Mar. 8, 2016 https://www.sec.gov/comments/s7-25-15/s72515-52.pdf
6	Calvert Asset Management Company, Inc.	Feb. 16, 2016 https://www.sec.gov/comments/s7-25-15/s72515-39.pdf
7	Alliance Trust PLC	Oct. 28, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-90.pdf
8	Allianz Global Investors	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
9	Aviva Investors	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
10	British Columbia Investment Management Corporation (bcIMC)	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
11	Amundi Asset Management	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
12	AP1/Första AP-Fonden (The First Swedish National Pension Fund)	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
13	AP2/Andra AP-Fonden (The Second Swedish National Pension Fund)	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
14	AP3/Tredje AP-Fonden (The Third Swedish National Pension Fund)	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
15	AP4/Fjärde AP-Fonden (The Fourth Swedish National Pension Fund)	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf

16	AP7/Sjunde AP-Fonden (The Seventh Swedish National Pension Fund)	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
17	APG Algemene Pensioen Groep NV	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
18	Bâtirente	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
19	BNP Investment Partners	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
20	State of Connecticut	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
21	Element Investment Managers	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
22	ERAFP	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
23	Ethos Foundation, Switzerland	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
24	Henderson Global Investors	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
25	Hermes Equity Ownership Services Ltd	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
26	ING IM International (now NN Investment Partners)	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
27	Legal & General Investment Management Ltd	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
28	MN	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
29	Natixis Asset Management and Mirova	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
30	Nordea Asset Management	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf

31	NEI Investments	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
32	OPSEU Pension Trust	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
33	PGGM	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
34	Royal London Asset Management	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
35	Robecco	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
36	RPMI Railpen Investments	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
37	USS Investment Management	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf
38	New York State, Office of the State Comptroller	Apr. 28, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-36.pdf
39	Boston Common Asset Management, LLC	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
40	CAAT Pension Plan	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
41	CCLA Investment Management	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
42	Christian Brothers Investment Services, Inc.	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
43	Clean Yield Asset Management	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
44	Domini Social Investments LLC	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
45	Everence & the Praxis Mutual Funds	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf

46	Friends Fiduciary Corporation	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
47	Kames Capital	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
48	Loring, Wolcott & Coolidge	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
49	Scottish Widows Investment Partnership	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
50	Trillium Asset Management, LLC	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
51	UBS Global Asset Management	Aug. 14, 2013 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
52	TIAA-CREF	Mar. 2, 2011 http://www.sec.gov/comments/s7-42-10/s74210-54.pdf
53	Newground Social Investment	Mar. 1, 2011 http://www.sec.gov/comments/s7-42-10/s74210-39.htm
54	Bon Secours Health System, Inc.	Mar. 1, 2011 http://www.sec.gov/comments/s7-42-10/s74210-51.pdf
55	California Public Employees' Retirement System (CalPERS)	Feb. 28, 2011 http://www.sec.gov/comments/s7-42-10/s74210-32.pdf
56	Harrington Investments, Inc.	Jan. 19, 2011 http://www.sec.gov/comments/s7-42-10/s74210-6.pdf

Appendix M

List of civil society organizations from 27 of countries in support of project-level disclosure and a common global reporting standard

	Investment Institution	Country	Sample SEC Comment
1	The ONE Campaign	USA	Mar. 16, 2016 https://www.sec.gov/comments/s7-25-15/s72515-64.pdf
2	EarthRights International	USA	Mar. 8, 2016 https://www.sec.gov/comments/s7-25-15/s72515-59.pdf
3	Global Witness	USA	Feb. 16, 2016 https://www.sec.gov/comments/s7-25-15/s72515-46.pdf
4	Publish What You Pay - United States coalition (PWYP-US)	USA	Feb. 16, 2016 https://www.sec.gov/comments/s7-25-15/s72515-45.pdf
5	Oxfam America	USA	Feb. 16, 2016 https://www.sec.gov/comments/s7-25-15/s72515-35.pdf
6	Natural Resource Governance Institute (NRGI)	USA	Feb. 16, 2016 https://www.sec.gov/comments/s7-25-15/s72515-38.pdf
7	Transparency International	USA	Feb. 16, 2016 https://www.sec.gov/comments/s7-25-15/s72515-30.pdf
8	Greenpeace	USA	Mar. 8, 2012 https://www.sec.gov/comments/s7-42-10/s74210-263.pdf
9	Human Rights Watch	USA	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
10	EG Justice	USA	Mar. 29, 2011 https://www.sec.gov/comments/s7-42-10/s74210-77.pdf
11	United Steelworkers (USW)	USA	Mar. 29, 2011 https://www.sec.gov/comments/s7-42-10/s74210-78.pdf
12	Missionary Oblates, Justice, Peace and Integrity of Creation Office (JPIC)	USA	Mar. 2, 2011 https://www.sec.gov/comments/s7-42-10/s74210-48.pdf
13	Maryknoll Office for Global Concerns	USA	Mar. 2, 2011 https://www.sec.gov/comments/s7-42-10/s74210-48.pdf
14	The Columban Center for Advocacy and Outreach	USA	Mar. 2, 2011 https://www.sec.gov/comments/s7-42-10/s74210-48.pdf
15	Leadership Conference of Women Religious	USA	Mar. 2, 2011 https://www.sec.gov/comments/s7-42-10/s74210-48.pdf
16	Sisters of Mercy of the Americas – Institute Justice Team	USA	Mar. 2, 2011 https://www.sec.gov/comments/s7-42-10/s74210-48.pdf
17	EARTHWORKS	USA	Mar. 2, 2011 https://www.sec.gov/comments/s7-42-10/s74210-58.pdf
18	Tax Justice Network USA	USA	Mar. 1, 2011 https://www.sec.gov/comments/s7-42-10/s74210-38.pdf
19	World Resources Institute (WRI)	USA	Mar. 1, 2011 https://www.sec.gov/comments/s7-42-10/s74210-37.pdf
20	International Justice and Peace	USA	Feb. 9, 2011 https://www.sec.gov/comments/s7-42-10/s74210-67.pdf
21	Catholic Relief Services (“CRS”)	USA	Feb. 9, 2011

			https://www.sec.gov/comments/s7-42-10/s74210-67.pdf
22	Revenue Watch Institute (RWI)	USA	Dec. 17, 2010 https://www.sec.gov/comments/s7-42-10/s74210-304.pdf
23	Unitarian Universalist Service Committee	USA	Dec. 13, 2010 https://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-103.pdf
24	Medical Mission Sisters, Alliance for Justice	USA	Dec. 13, 2010 https://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-103.pdf
25	Global Financial Integrity	USA	Nov. 22, 2010 https://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-82.pdf
26	Publish What You Pay Canada	Canada	Jan. 8, 2014 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-24.pdf
27	International Association of Oil and Gas Producers (OGP)	Belgium	Jan. 27, 2011 https://www.sec.gov/comments/s7-42-10/s74210-14.pdf
28	CIDSE	Belgium	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
29	Coalition of the Flemish North-South Movement - 11.11.11	Belgium	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
30	Broederlijk Delen Belgium	Belgium	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
31	Justice & Peace Commission Belgium	Belgium	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
32	International Transport Workers' Federation (ITF)	England	Mar. 7, 2016 https://www.sec.gov/comments/s7-25-15/s72515-55.pdf
33	Tax Research LLP	England	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
34	Tearfund	England	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
35	The Global Poverty Project	England	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
36	Christian Aid	England	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
37	Publish What You Pay UK	England	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
38	Secours Catholique	Germany	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
39	PowerShift e.V.	Germany	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
40	Fatal Transactions	Germany	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
41	Cordaid	The Netherlands	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
42	Scottish Catholic International Aid Fund	Scotland	Apr. 28, 2011

			https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
43	SWISSAID	Switzerland	Apr. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-88.pdf
44	Open Society Institute for Southern Africa-Angola (OSISA-A)	Angola	Jan. 29, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-60.pdf
45	Cameroon Coalition of Publish What You Pay (CCPWYP)	Cameroon	Jun. 8, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-75.pdf
46	Réseau de Lutte contre la Faim (RELUFA)	Cameroon	Mar. 14, 2011 https://www.sec.gov/comments/s7-42-10/s74210-74.pdf
47	Cellule de veille et de Protection des Victimes des Activités Minières (CELPRO)	Cameroon	Jun. 8, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-75.pdf
48	Centre pour l'Education, Formation et l'Appui aux Initiatives de Développement (CEFAID)	Cameroon	Jun. 8, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-75.pdf
49	Centre Régional Africain pour le Développement en milieu Economique (CRADEC)	Cameroon	Jun. 8, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-75.pdf
50	Développement Sans Frontières (DSF)	Cameroon	Jun. 8, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-75.pdf
51	Réseau des Chefs Traditionnelles sur les Ressources Naturelles (ReCTrad)	Cameroon	Jun. 8, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-75.pdf
52	Transparency International – Cameroun (TIC)	Cameroon	Jun. 8, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-75.pdf
53	Africa Centre for Energy Policy (ACEP)	Ghana	Feb. 16, 2016 https://www.sec.gov/comments/s7-25-15/s72515-40.pdf
54	Libyan Transparency Association	Libya	Feb. 22, 2012 https://www.sec.gov/comments/s7-42-10/s74210-189.pdf
55	Petroleum & Natural Gas Senior Staff Association of Nigeria (PENGASSAN)	Nigeria	Jun. 27, 2011 https://www.sec.gov/comments/s7-42-10/s74210-93.pdf
56	Nigeria Union of Petroleum and Natural Gas Workers (NUPENG)	Nigeria	Jul. 8, 2011 https://www.sec.gov/comments/s7-42-10/s74210-97.pdf
57	National Advocacy Coalition on Extractives	Sierra Leone	Feb. 10, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-61.pdf
58	National Civil Society Coalition on Mineral Resource Governance in Senegal	Senegal	Feb. 14, 2012 https://www.sec.gov/comments/s7-42-10/s74210-158.pdf
59	The Global Movement for Budget Transparency, Accountability and Participation (BTAP)	Tanzania	Mar. 30, 2012 https://www.sec.gov/comments/s7-42-10/s74210-305.htm

60	Action Coalition on Climate Change	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
61	Advocates Coalition for Development and Environment	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
62	Advocates for Natural Resource Governance and Development	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
63	Citizen Concern Africa	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
64	Civic Response on Environment and Development	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
65	Environmental Management for Livelihood Improvement	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
66	Forum for Women in Democracy	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
67	Global Rights Alert	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
68	Green Watch Uganda	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
69	Kibaale District Civil Society Organization's Network	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
70	Livelihood Improvement Programme of Uganda	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
71	Navigators for Development Assistance	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
72	Practicing Environmental Managers Organization	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
73	Pro-Biodiversity Conservationists in Uganda	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
74	Southern and Eastern African Trade, Information and Negotiations Institute	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
75	Southwestern Institute on Environment and Development	Uganda	May. 18, 2015

			https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
76	Transparency International Uganda	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
77	Water Governance Institute	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
78	Youth Concern on Environment and Development	Uganda	May. 18, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf
79	Publish What You Pay Zimbabwe coalition (PWYP Zimbabwe)	Zimbabwe	Feb. 20, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-63.pdf
80	Cambodians for Resource Revenue Transparency (CRRT)	Cambodia	Feb. 7, 2012 https://www.sec.gov/comments/s7-42-10/s74210-135.pdf
81	Publish What You Pay – Indonesia (PWYP – Indonesia)	Indonesia	Mar. 11, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-64.pdf
82	Ta'ang Students and Youth Organization (TSYO)	Myanmar	Jun. 28, 2011 https://www.sec.gov/comments/s7-42-10/s74210-92.pdf
83	Human Rights Foundation of Monland (HURFOM)	Thailand	Mar. 8, 2011 https://www.sec.gov/comments/s7-42-10/s74210-71.pdf
84	Civil Society Roundtable for Transparency in the Extractive Sector (Mesa de la Sociedad Civil para la Transparencia en las Industrias Extractivas)	Colombia	Nov. 13, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-99.pdf
85	Grupo FARO	Ecuador	Feb. 13, 2012 https://www.sec.gov/comments/s7-42-10/s74210-160.pdf
86	Asociación de Forestería Comunitaria de Guatemala Ut'z Che'	Guatemala	Mar. 3, 2012 https://www.sec.gov/comments/s7-42-10/s74210-247.pdf
87	Derecho Ambiente y Recursos Naturales DAR	Perú	Mar. 23, 2012 https://www.sec.gov/comments/s7-42-10/s74210-302.htm
88	Presbyterian Church (USA)	Perú	Feb. 10, 2012 https://www.sec.gov/comments/s7-42-10/s74210-153.htm
89	Iraqi Transparency Alliance for Extractive Industries	Iraq	Sept. 28, 2015 https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-87.pdf

Appendix N

IndiaSpend: "How Not To Use A Development Fund For Mineral-Rich Areas" (October 24, 2017)

How Not To Use A Development Fund For Mineral-Rich Areas

indiaspend.com/cover-story/how-not-to-use-a-development-fund-for-mineral-rich-areas-40871

October 24, 2017

A stone mine near Samodi village in Bhilwara district, Rajasthan. The Pradhan Mantri Khanij Kshetra Kalyan Yojana empowers India's mining districts to levy a charge on mining operations to create a fund for development of surrounding areas. The fund in Bhilwara has over Rs 400 crore so far.

Bhilwara, Rajasthan: Like much of Mewar in Rajasthan, Bhilwara has rich reserves of prized granite and base metals such as iron, zinc and lead. Mining companies such as Hindustan Zinc and Jindal Saw have invested hundreds of crores in the region, yet Bhilwara remains underdeveloped on most socioeconomic indicators.

There is water shortage and contamination throughout the district. Roads are non-existent or potholded. The rates of child marriage and female illiteracy are high. And at least 1,000 mine workers are afflicted with silicosis, an incurable disease caused by fine silica dust released from mineral mining operations.

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This is the case with most mineral-rich areas across India, where mining has not only failed to benefit local residents but has degraded lands and rivers and destroyed traditional livelihoods. It is this anomaly that the Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY) seeks to remedy by creating a corpus for local area development from a levy on all mining operations.

A great idea in theory, PMKKKY's implementation so far has been less impressive. **IndiaSpend**'s investigation in Bhilwara shows a district administration treating the PMKKKY funds as an extension of existing government funding, displaying no better planning, targeting or urgency. Implementation is entirely top-down, so much so that villagers have not even heard of PMKKKY. Planning is piecemeal and short-sighted. Members of the legislative assembly (MLAs) have established too much control over the funds. And the mining department does not have enough staff or expertise to handle the task it has been entrusted with.

Bhilwara had collected an impressive Rs 400 crore by October 7, 2017–compare that with the district's health budget of Rs 23 crore for the current year–yet the fund lies unutilised.

This second part of our two-part series on PMKKKY examines whether there is a better way to handle and use PMKKKY funds. The first part detailed why Bhilwara, and other mining regions, need a development fund (read it here).

How a District Mineral Foundation works

District Mineral Foundations (DMF) are independent trusts set up by the government under a 2015 programme called the Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKY, or Prime Minister's Development Programme for Mining-Affected Regions).

The foundations manage a trust fund created from a levy on mining companies. Those mining major minerals (such as copper, tungsten and coal) must pay an amount equivalent to 30% of the royalty of a mine leased before 2015 towards the fund; all mines leased after 2015 as well as those extracting minor minerals (such as marble and granite) must pay 10% of the royalty.

DMFs comprise two committees, the makeup of which is decided by the state government. In Rajasthan, the managing committee is headed by the district collector, while the governing council, which has the final say on any decision taken, is headed by the Zila Pradhan (who is elected by and from among all district-level elected office-holders including sarpanches (elected village heads) and MLAs).

Upto 40% of PMKKKY funds can be used for physical infrastructure such as roads and bridges, irrigation projects, power supply and watershed development. The remaining 60% or so are to be used for social development purposes such as education; environment and pollution control measures; healthcare; drinking water supply; welfare of women, children, the aged and the disabled; skill development; and sanitation.

These committees, in consultation with other government departments such as public works, water and education, decide which areas and people are categorised as mining-affected, allocate the fund, approve projects and monitor their implementation.

Top-down implementation

DMF's success will depend on the extent to which it is able to democratise planning, decision-making and implementation, Chandra Bhushan, deputy director-general of the Delhi-based research and advocacy group Centre for Science and Environment (CSE), told **IndiaSpend**. CSE has been tracking DMFs across India and is helping some districts prepare a plan to better utilise the funds. "At the end of the day, this is not the government's money... It's people's money and therefore people should have the right to decide where they want to spend this money," he said.

Few villagers **IndiaSpend** interacted with knew of PMKKKY or the fund, making it unlikely they had been consulted or in any way involved in the decision-making.

In the village of Nayanagar, residents said their biggest problem is water shortage–borewells have to be dug deep yet go dry in the summer. When **IndiaSpend** told them about the fund, they said they would want a groundwater recharge project, perhaps one that would build a check-dam on Banas river that flows 30 km from the village.

The DMF has proposed projects involving borewells and solar pumps, but villagers say these will not work. "A recently installed hand pump is already not working," said Prabhu Gurjar, a farmer who travels to Mumbai as a migrant worker in the off-season.

District officials said a check-dam on the Banas may not be feasible, but admitted that no one had suggested this or any other water recharge proposal under the DMF for this village.

The other problem in villages, according to officials from the public health engineering department of Jahazpur block, is excess fluoride in the water, which can cause stained and pitted teeth in children, and pain in the joints and even bone deformities.

A reverse osmosis plant has also been proposed for the area, but it will not cover the village of Nayanagar as it does not receive piped water supply, Dheeraj Gurjar, a Congress MLA from Jahazpur, told **IndiaSpend**.

Clearly, villagers and officials are not on the same page, yet there is currently no plan to create awareness about the fund. Government officials and MLAs said word will spread as projects begin on the ground, but those projects would have been planned and executed entirely top-down.

"In a democracy, there are representatives of people. In my opinion we have received proposals from the ground through this channel," Kamleshwar Baregama, a senior mining engineer with the mining department in Bhilwara, who is also the secretary-general of the two DMF committees, told **IndiaSpend**.

Civil society organisations disagree. "Seventy years of democracy in this country tells us that we have to start putting more faith in participatory democracy and not only electoral democracy," Bhushan of CSE said, emphasising that there are accountability gaps in electoral democracy.

Incomplete information

The grassroots experience so far has been disappointing. "Even if transparency is talked about as part of the law, it is difficult to find out things about the DMF," Nikhil Dey of Mazdoor Kisan Shakti Sangathan (MKSS), a Rajasthan-based grassroots movement, told **IndiaSpend**.

For instance, the mining department is not making public the projects it is considering through the DMF. When asked, the department said only the list of approved projects would be made public.

Every district's DMF is supposed to have a website detailing the money in its fund, minutes of every meeting, the current status of implementation of projects and so on. Bhilwara DMF's website is still under construction.

As much as 85% of Bhilwara is affected by mining and its undesirable fallouts, as **IndiaSpend** reported in the first part of this series. This includes villages on or near mining lands, areas lying in the path of wind or water flow from mines, as well as mining dispatch regions such as the paths of trucks ferrying minerals.

However, there is a lack of clarity on some issues, for instance, whether silicosis-affected mine workers who live in villages not considered mining-affected are eligible for benefits under the fund. For such people, the government "would need to conduct a ground survey for which there is currently no manpower", said Baregama, the mining engineer.

Even where a more participatory process is followed, there is incomplete information. For instance, panchayat heads, when asked to send proposals, are unaware of the PMKKKY law and its provisions. Kailash Chandra Suthar, *sarpanch* (village head) of Kankroliya, said he found out about the DMF from an MLA and the *zila pradhan* (literally, district head, president of a directly-elected district council). "They told me there is a lot of money, and that we should send proposals of projects we would like to undertake," he said.

Suthar said he sent proposals for about Rs 8 crore–Rs 5 crore for a bridge over a small stream that overflows in the monsoons, Rs 2.5 crore to repair a road, Rs 25 lakh for a check dam, and Rs 2.5 lakh for solar pumps–but that he had made these choices based on limited information. He did not know what size of projects he could propose, or the priority areas suggested under the law, he said, but had been informed that all his proposals had been approved and he could send new proposals when more funds come in.

Suthar's experience, despite the lack of information, shows how participative democracy can work when the PMKKKY is implemented well.

The district mines department, however, says it is flooded with unviable proposals. "People are not aware of the guidelines and they send proposals of projects that are not within the scope of the law," a local government official told **IndiaSpend**, not wishing to be identified. The department had received 3,696 proposals by September.

MLAs had started submitting project proposals even before the DMF had identified mining-affected regions, blocks and panchayats. Despite being members of the governing council, which takes final decisions for the DMF, many MLAs did not seem to have much knowledge about the fund. Ramlal Gurjar, a Bharatiya Janata Party (BJP) MLA from Asind constituency–where there is an acute water shortage in several areas, and fluoride-contaminated water in some villages–said he "knew a little about the fund".

Gurjar said he had proposed roads in mining areas, construction of classrooms, piped water and borewells, among other projects. On being asked whether anything had been proposed for silicosis patients in Asind, he said, "We've previously provided some funds for medicines for silicosis patients but nothing has been proposed under the DMF."

Stakeholders disagree

Various stakeholders want a say in how the funds are used. Mining companies see it as their money and want to be involved in how it is spent (the law in Rajasthan says mine owners have to be represented on the governing council). Some of the largest payments come from Hindustan Zinc's mine in Rampur Agucha in northern Bhilwara, and Jindal Saw's mine near the village of Dedwas in southern Bhilwara.

Companies Making The Highest Payment To The Bhilwara District Mineral Foundation

Company	Minerals	Payment to DMF(Rs crore)
Hindustan Zinc Limited	Lead and Zinc	395.26
Jindal Saw Ltd. (2 mines)	Gold/Lead/Zinc/Copper/Iron/Cobalt/Nickel	10.26
Udaipur Mineral Development Syndicate	Soapstone and Dolomite	1.22
Mine Owned by Sanjay Kumar Garg	River bed mining	0.89
Mine Owned by Mahendra Singh Rajawat	River bed mining	0.22

Source: Data collected from the Bhilwara Mines Department, as of October 7, 2017

The government sees it as its own fund. Activists say the money belongs to the people who have been impacted by mining.

Consequently, there is disagreement on the fund's role. Activists feel the district would do better with some guidance on implementing the law as it is new and different from other government programmes. But government officials disagree. "Nothing new is being asked of them. We are not asking them to develop a rocket," an official from the central government's ministry of mines told **IndiaSpend**, asking not to be named. "It's the same kind of projects in a more targeted way to one area. What training do you require to use these funds?"

The same kind of projects done in the same way is not the best way forward, Dey of MKSS said: "The greatest danger to the fund is that it will become just another

development/infrastructure government programme that will be prioritised as per the MLAs and bureaucrats, and not help those who are most affected by mining."

If the programme does not succeed, it is not because "the scheme is bad. The scheme is not working because we have not prepared the institution to deliver", Bhushan said.

Slow process

The first meeting of the Bhilwara DMF's managing committee took place in October 2016, but things did not start moving until September 2017. "The meetings kept getting postponed. Sometimes because of administrative reasons. Sometime because key people, such as the speaker of the Rajasthan assembly who is also an MLA from Bhilwara, couldn't attend," said Kalu Lal Gurjar, a BJP MLA from the Mandal constituency in Bhilwara, and a member of the DMF's governing council.

The state government approved the nomination of members (the law empowers the district to recommend nominated members and the state government to approve) to represent mine workers and mine-affected persons only in September 2017.

The speed at which this system is established, and the law implemented, is completely up to the district, a central government mines department official told **IndiaSpend**. The law mandates a minimum of two meetings in a year, but the district can have as many as members want and send as many proposals as often as they like. "The speed of the implementation completely depends on the stakeholders," he said.

Lack of long-term planning

Of the proposals received, the mines department discarded 394 projects outright for not involving mining-affected areas and 574 for not coming under the scope of DMF work.

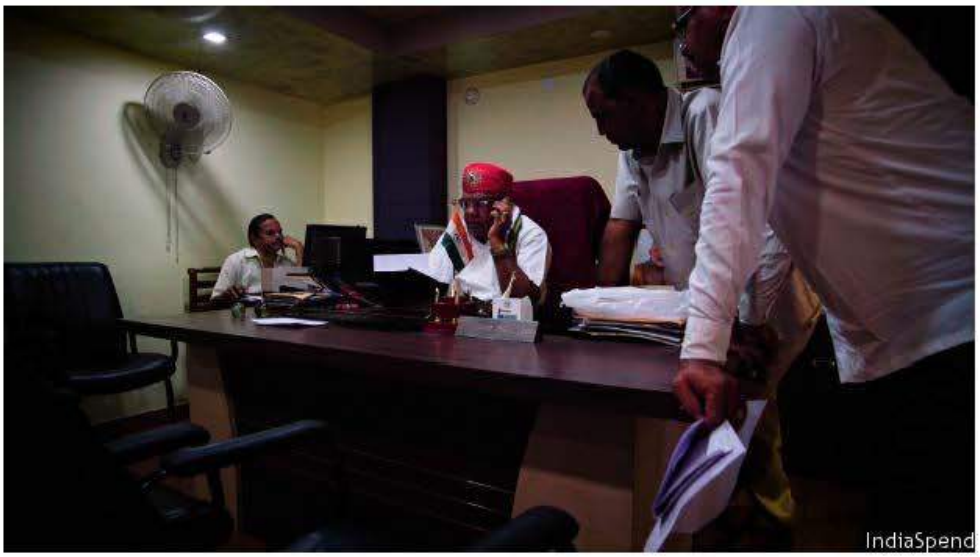
In all, 1,803 projects together costing about Rs 250-300 crore, were deemed viable and necessary and are now being scrutinised by the governing committee with help from the relevant government departments (education, health and public works). These pertain to projects to assist silicosis patients, create training centres for women, and build education and health infrastructure.

"People want to do projects that are tangible because locals can see it and credit them for it," a Rajasthan state government official, who requested anonymity, told **IndiaSpend**, explaining that projects to improve learning, nutrition or health outcomes, often more meaningful, are not undertaken because they lack visibility.

Because they do not lapse, DMF funds offer a rare opportunity to plan for long-term development. "It is fine if you spend a year preparing the plan," Bhushan of CSE said. "So that when you start investing, then you do it properly. We are saying you could [immediately] spend some amount of money on drinking water, sanitation etc., perhaps 10-15%, but for the rest, plan well."

However, he said, as of now DMF projects in many districts are being chosen in an ad-hoc manner from among piecemeal, unconnected proposals. He suggested making a three- or five-year plan after thorough research into all existing programmes and the problems they seek to address. "You understand the area, you do focus group studies, you involve gram sabhas, and then come out with a three-year or a five-year perspective plan and then decide how money will be spent every year," he said.

Officials and MLAs involved with the fund, however, do not see the need for long-term planning. "The money is coming daily. We'll spend now, and in another six months there will be more money," Kalu Lal Gurjar, the Mandal MLA, said.



Kalu Lal Gurjar, an MLA from Mandal constituency in Bhilwara, Rajasthan, is a member of the governing council of the district mineral foundation. Gurjar said there is little need for long-term planning to utilise the money collected under the Pradhan Mantri Khanij Kshetra Kalyan Yojana as the corpus will be constantly renewed from fresh levies.

Some officials agree on the need for better planning and preparation. "It is a huge amount. We have to understand how to streamline the process and the money. For instance, if a department's budget is Rs 10 crore, you are now telling them to handle Rs 40 crore," said Muktanand Agrawal, the district collector of Bhilwara, and head of the DMF's managing committee. "It should establish a system," he said, explaining that the system should work even when the people in charge (MLAs and bureaucrats, for instance) change.

Needed: Less political interference

The law in Rajasthan makes all MLAs members of the the DMF governing council. Not all states have this provision, and activists say it may allow politics to influence decision-making. State-level officials and civil society organisations, even as they emphasise the need to involve

MLAs, suggest they should have limited power in project selection. "MLAs look at it as a source of income," Dey of MKSS said. "The DMF shouldn't become another MLA fund."

Mining department needs more hands on deck

The mining department controls the fund and how it is used, even though they have no expertise in undertaking the works this fund is to be used for.

"This might slow down the process, and other people involved won't take full responsibility. The mines department also wants control because they feel it's their money in some way," the state government official said. Further, the district requires permission from the state government for projects that cost more than Rs 1 crore (about $153,000) which could also slow the process down.

The mining department in Bhilwara does not have the manpower to manage the fund, and officials said they would request help from other government departments. The law in Rajasthan says the government can spend up to 5% of the DMF funds for administrative purposes. Mining department officials say they are working overtime, in addition to their regular duties, on DMF.

Streamlining some processes would speed up implementation. For instance, mining companies cannot transfer funds to the DMF digitally, and enabling this would speed things along and make it easier for companies to comply.

Some of these are certainly teething problems–the information asymmetry, the lack of clarity over who is eligible or not, the transition to an online payment system, and so on–which will get resolved in due time. It is the more entrenched systemic problems, such as political interference and lack of long-term planning, that are more worrisome and difficult to overcome.

"I am going to give it another three-five years before I make a judgement that this scheme has failed or not…it is too early to say," Bhushan of CSE said, adding that he has seen encouraging signs in some districts. "In a small district like Ramgarh [in Jharkhand], where hardly anyone would have gone to IIT, DMF money is being used to give scholarship and tuition to bright students."

IndiaSpend Solutions

1. **Long-term planning**: Analyse all existing programmes as well as sources of funding in the district before allocating PMKKKY money, Chandra Bhushan of the Centre for Science and Environment suggested. There should be thorough analysis of the major issues facing a district, and gram sabhas (village councils) must be part of all consultations. Targets, financial allocations and deadlines must be clearly defined.
2. **Involvement of local people**: Villagers, mine workers, panchayats, as well as local civil society organisations must be consulted to understand the needs of mining-affected areas. Decision-making should not be in the hands of political representatives and bureaucrats, and should prioritise those affected by mining, such as silicosis patients, Nikhil Dey of the Mazdoor Kisan Shakti Sangathan said.

3. **Transparency**: Implementation should be transparent–a website should track the monies collected, display a list of mining-affected villages and peoples, the projects proposed, and their status of implementation, as mandated under the central government guidelines for PMKKKY. There should be a mechanism for villagers to know about the projects undertaken in their area, activists say.
4. **Monitoring**: There should be independent third-party tracking, monitoring and evaluation of projects; a chartered accountant should audit financial records, as suggested under PMKKKY guidelines. Gram sabhas should be informed on a yearly basis about the works undertaken.
5. **Involvement of mining companies**: Mining companies should not be involved in deciding how the PMKKKY fund is used because they do not understand the developmental issues in the area, villagers that **IndiaSpend** spoke to in Bhilwara said. The money, though it comes from mining companies, should be seen as belonging to people impacted by mining, Bhushan of CSE said.
6. **Guidance and training for district officials**: The central or state government, or specially appointed agencies, should help district officials utilise the fund, Bhushan of CSE said.
7. **Political influence**: By generating awareness among residents, their participation can be enhanced. DMFs must guard against letting MLAs wrest control over PMKKKY projects and allocations, villagers and officials told **IndiaSpend**.

Series concluded. You can read the first part here.

*(This story is part of the Publish What You Pay (PWYP) Data Extractors programme. **Shah**, a writer with IndiaSpend, is a 2017 Data Extractor with PWYP, a group of civil society organisations working for an open and accountable mining sector. **Ragini Bafna**, an intern with IndiaSpend, contributed to this story.)*

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Appendix O

Global Rights Alert, "Project Level Disclosures Open Up Uganda's Opaque Oil Sector"

Project level disclosures open up Uganda's opaque oil sector (http://www.extractafact.org/blog/project-level-disclosures-open-up-ugandas-opaque-oil-sector)

2/27/2017
0 Comments (http://www.extractafact.org/blog/project-level-disclosures-open-up-ugandas-opaque-oil-sector#comments)

By Winnie Ngabiirwe, Global Rights Alert (http://www.globalrightsalert.org)

Uganda is on the verge of an oil boom. At least 6.5 billion barrels have been discovered from less than 40% of the country's oil regions making Uganda's oil fields the third largest by reserves in sub-Saharan Africa. Once production starts, the revenues from oil are projected to substantially impact the domestic budget. If managed well, the expected oil revenues could transform the economy and dramatically improve living conditions for Uganda's 37 million citizens, 13 million of whom live on less than $1.90 per day. Without proper management, oil revenues could instead exacerbate poverty by further perpetuating Uganda's long history of endemic government corruption.

The government of Uganda has been mired by several high-level cases of corruption that deprive citizens of much needed funding for public services, and directly undermine billions of dollars in foreign aid Uganda receives annually. In fact, after one particular instance of embezzlement of funds in the Office of the Prime Minister in 2012, many major western donors temporarily suspended aid (http://www.reuters.com/article/us-uganda-aid-idUSBRE8B30DA20121204) to the country. According to a 2013 report (https://www.hrw.org/report/2013/10/21/letting-big-fish-swim/failures-prosecute-high-level-corruption-uganda) by Human Rights Watch, corruption has permeated all levels of government creating a destructive culture of impunity.

Seeking a means through which to address entrenched corruption in the country, the Civil Society Coalition on Oil & Gas in Uganda wrote (https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf) in 2015 to the United States Securities and Exchange Commission. The group called on the agency to pass a strong rule mandating project-by-project disclosure from US-listed oil and mining companies that would bring much needed information to Ugandan citizens. The idea was enthusiastically welcomed considering that civil society has been largely unable to influence the Ugandan government to provide access to oil sector information despite several attempts. (http://www.right2info.org/cases/r2i-charles-mwanguhya-mpagi-and-izama-angelo-v.-attorney-general)

Despite having a strong Access to Information Act in place, Ugandans lack access to almost all meaningful information regarding the country's developing oil sector. While the government feigns interest in implementing various extractive industry governance initiatives (https://www.globalwitness.org/en/campaigns/uganda/how-compliant-uganda-extractive-industries-transparency-initiative-eiti/), it consistently fails to respond to civil society campaigns (http://allafrica.com/stories/201512021341.html) for increased transparency. Most citizens have virtually no idea how much oil is in the country's reserves, or how much revenue the government stands to receive from extraction. In fact, citizens' most steady source of oil information comes from the local newspapers reporting on the latest scandal financed by pre-production oil payments.

Thus, civil society in Uganda enthusiastically welcomed the idea that more information would soon be made available to citizens through the passage of a strong US extractives transparency rule that required public reporting. While the US rule has stalled, the landmark law set a precedent that has been followed by 30 jurisdictions around the world such as the European Union (EU) and Canada. Despite delays with the SEC rule, Ugandan civil society has benefitted in the meantime from company disclosures filed in compliance with the EU disclosure requirements.

The government of Uganda has issued production licenses to Tullow, Total and China National Offshore Oil Corporation (CNOOC). Tullow and Total are both listed in EU markets and are publicly reporting payments under those UK and French laws. However, CNOOC is listed only on US and Chinese stock exchanges. This creates an uneven reporting regime among companies. The US transparency rule would have required reporting from CNOOC, expanding the availability of payment information for Ugandans about companies that will be operating in their country.

Since Uganda's oil reserves are still in pre-production, civil society has had difficulty identifying the preliminary payments made by oil companies since these payments are even harder to track than production-based payments. The only major sources of publicly available information are the Bank of Uganda Annual Reports which provide incomplete and ad-hoc disclosure on the activities of the national petroleum fund.

However, with the EU disclosures published in 2016, civil society was able to examine the payment information reported by Tullow and Total and compare this information to the payments disclosed in the Bank of Uganda Annual Reports for fiscal years 2015 (https://www.bou.or.ug/bou/bou-downloads/publications/Annual_Reports/Rprts/All/Annual-Report-2014-2015.pdf) and 2016 (https://www.bou.or.ug/bou/bou-downloads/publications/Annual_Reports/Rprts/All/Annual-Report-2015-2016.pdf). This information has been used in direct dialogue with government officials as civil society representatives query discrepancies and demand financial accountability using real data, rather than hypothetical figures.

After reviewing Tullow (https://extractives.companieshouse.gov.uk/company/03919249) and Total's (http://www.total.com/sites/default/files/atoms/files/total-ddr2015-en_acces.pdf) 2015 payment disclosures, civil society representatives found $14 million not included in government reports. Unless these funds were part of a prior transfer into the country's general budget before the full operationalization of the Petroleum Fund, these $14 million in payments could reasonably be deemed to be missing. Equipped with this kind of information, civil society representatives have had much more valuable, in-depth debate with government officials to demand explanation for the missing funds. Civil society groups no longer have to rely on the political will of a government that has clearly demonstrated its disinterest in transparency. In this way, mandatory disclosure requirements on exchanges in major extractives markets are filling a very real void in Uganda and other resource-rich countries by providing information that would otherwise remain secret.

Project payment reconciliation				
Tullow- 2015 reported payments	**Total- 2015 reported payments**	**Bank of Uganda Annual Report 2014/2015**	**Bank of Uganda Annual Report 2015/2016**	**Reconciled?**
$33,683,871- income tax $2,374,659- income tax		$36,000,000- CGT payment from Tullow	$36,000,000- CGT payment from Tullow	YES
$11,453- license fees	$579,000- license fees			Not reported by GoU
$907,000-VAT (voluntary disclosure)				Not reported by GoU
$6,286,000- withholding tax (voluntary disclosure)				Not reported by GoU
$6,121,000- PAYE & national insurance (voluntary disclosure)				Not reported by GoU
$276,000- training allowances (voluntary disclosure)				Not reported by GoU
		$352,000,000- settlement payment from Tullow (re: Heritage lawsuit)		Not reported by companies- Maybe (interpreted as) outside of EU disclosure mandate OR possibly paid 2014.
		$171,000,000- stamp duty payment Tullow farm-down to Total/CNOOC		Not reported by companies- Maybe (interpreted as) outside of disclosure mandate OR possibly paid 2014.

The relevance of this work was reinforced in January 2017 when it was revealed (http://allafrica.com/stories/201701170165.html) that Ugandan President Yoweri Museveni

approved the payment of nearly $2 million in oil revenues to various government officials as a "reward" for their involvement in a successful lawsuit between the government of Uganda and Heritage Oil. This case was fought for four years, finally ending with a decision in favor of the government of Uganda over a disputed capital gains tax charge of $434 million. While the President's decision demonstrates flagrant disregard for protocols set in the recently passed Public Finance Management Act (http://www.parliament.go.ug/images/stories/acts/2015/Public%20Finance%20Management%20Act%202015.pdf), it also provides civil society monitors with important indications of areas of weakness in the current legal framework that could have been manipulated to allow for this sort of corruption.

Civil society can examine whether the Ugandan government is working under a questionable or unrealistic definition of "petroleum revenues" to artificially narrow the revenues that enter the petroleum fund. Alternatively, the statute outlining the permitted uses for petroleum revenues may be opportunistically misinterpreted to allow for corrupt payments. Or, the executive could simply be ignoring the law altogether.

These are the questions that will help civil society make real progress on effectively preventing future corruption in Uganda. Real progress must be based on real data so that civil society can meaningfully engage with Uganda's secretive government in demanding answers. For the first time ever, newly available project-level disclosures have provided local civil society groups with the information necessary to query government, conduct investigations and demand accountability. Newfound access to payment information gives Ugandan citizens a much needed chance to inform development priorities and ensure that oil revenues lead to tangible positive outcomes for the citizens of the country. With access to this information, civil society is one step closer to opening Uganda's opaque oil sector up to all citizens in the hopes that newspaper headlines no longer report on the latest government scandals, but instead on how oil revenues are being managed for the benefit of all rather than a few government elites.

Kathleen Brophy contributed to this piece.

3. **Transparency**: Implementation should be transparent–a website should track the monies collected, display a list of mining-affected villages and peoples, the projects proposed, and their status of implementation, as mandated under the central government guidelines for PMKKKY. There should be a mechanism for villagers to know about the projects undertaken in their area, activists say.
4. **Monitoring**: There should be independent third-party tracking, monitoring and evaluation of projects; a chartered accountant should audit financial records, as suggested under PMKKKY guidelines. Gram sabhas should be informed on a yearly basis about the works undertaken.
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Appendix P

Excerpt, GHEITI, Final Report-Aggregation and Reconciliation of Oil and Gas Sector payments and receipts for 2010 & 2011 (February 2013)

11.0 SIGNIFICANT FINDINGS AND OBSERVATIONS:

11.1 Capital Gains Tax

11.1.1 Finding

Tullow Oil Plc. acquired the in EO Group Limited in 2011. The reconciler did not come across any capital gain tax in the transaction. GRA has issued a ruling that the transaction is subject to tax but issues have been raised on it.

The Petroleum Revenue Management Act, Act 815 section 6(e) indicate capital gains tax derived from the sale of ownership of exploration, development and production rights as a possible receipt for the petroleum holding fund.

11.1.2 Recommendation:

It is recommended that GRA pursues the issue of capital gains tax on the E.O Group's acquired 1.75% equity and other such acquisitions to its logical conclusion. It may also be prudent for the necessary legislation on capital gains to be streamlined as the E.O Group acquisitions may only be the beginning of such transactions.

11.2 Thin Capitalization:

11.2.1 Finding: Interest expense is generally deductible in determining the chargeable income for corporate tax purposes. There is however no provision in the PITL that relates to excessive interest charges. There is the risk that taxpayers may use unlimited interest payments to strip profits, resulting in lower corporate tax payments. However, Section 41 of the PITL, 1987 provides that without express exemption of a contractor from taxation, the general law or provisions thereof relating to taxation may apply. This provision according to the GRA ensures that provisions on limitations in interest deductions in ACT 2000, the Internal Revenue Act is applicable in the petroleum sector.

11.2.2 Recommendation:

There is the need to harmonise the provisions in the PITL and the Internal Revenue Act, Act 2000.

11.3 Losses carried forward.

11.3.1 Finding:

Tax losses, under the PITL are carried forward indefinitely. Under the IRA, ACT 2000, the Losses are carried forward for only five years for mining operations. The practice under the Income Tax law however is that capital allowances do not create losses and are carried forward indefinitely.

Appendix Q

(1) Tullow Oil (2) Government of Ghana Media Center

(1) Press release, Tullow Oil, "Tullow to acquire the Ghanaian interests of EO Group Limited for $305 million" (May 26, 2011)

TLW 228.10GBp -5.90p (-2.52%) MARKET CAP (£b) 3.17

FACEBOOK TWITTER LINKEDIN YOUTUBE GOOGLE+

Tullow to acquire the Ghanaian interests of EO Group Limited for $305 million

Published on: 26 MAY 2011

Tullow Oil plc ("Tullow" or "the Company") announces that today it entered into a conditional agreement to acquire the interests of EO Group Limited (EO).

The acquisition consists of EO's entire interests offshore Ghana, for a combined share and cash consideration of $305 million.

This acquisition will increase Tullow's interest in the West Cape Three Points licence offshore Ghana by 3.5% to 26.4% and increase the Group's interest in the world-class Jubilee Oil field, which Tullow Operates, by 1.75% to 36.5%.

Tullow will issue 10,137,196 ordinary shares of 10p each in the share capital of the Company ("the Shares") to EO to satisfy approximately $216 million of the consideration. The balance, which will include certain working capital adjustments, will be paid in cash. The number of shares has been determined using an average of the closing share prices and exchange rates for the five business days up to and including 24 May 2011. The receipt of Tullow shares as part of the consideration gives EO the opportunity to retain an indirect interest in the upside potential of all of Tullow's Ghanaian assets.

The effective date of the transaction is 1 December 2010. The agreement is conditional on the receipt of various consents, approvals and assurances, including from the Government of Ghana.

Upon completion of the agreement, application will be made to the UK Listing Authority and the Irish Stock Exchange for the Shares to be admitted to the official list of the UK Listing Authority and the official list of the Irish Stock Exchange and application will be made to the London Stock Exchange and the Irish Stock Exchange for the Shares to be admitted to trading on their respective main markets.

AIDAN HEAVEY, TULLOW'S CHIEF EXECUTIVE, COMMENTED TODAY:

"This acquisition represents an excellent opportunity to extend our interest in these high-quality assets in Ghana. Following our exploration and production successes over the last few years, which culminated in First Oil in late 2010, this purchase further demonstrates Tullow's long-term commitment to Ghana and our belief in its significant remaining potential."

NOTES TO EDITORS

Tullow is a leading independent oil & gas, exploration and production group, quoted on the London, Irish and Ghanaian stock exchanges (symbol: TLW). The Group has interests in over 80 exploration and production licences across 16 countries which are managed as three Business Delivery Teams: West Africa, East Africa and New Ventures.

(2) (2) Excerpt, Government of Ghana Media Center (Mahmud Soali), "Action-Aid Organises Media Sensitisation Workshop on Tax Justice/Tax Incentives"

ACTION-AID ORGANISES MEDIA SENSITISATION WORKSHOP ON TAX JUSTICE/TAX INCENTIVES

Print

Developing countries lose between US$120 and US$160 billion annually in revenue owing to money hidden in tax havens, while eliminating corporate tax incentives could raise more than US$138 billion in revenue annually, according to studies conducted by ActionAid-Ghana.

According to ActionAid, the over US$138 billion currently being given away in corporate tax incentives could put the 57 million children, who currently did not go to primary school, into the classroom; provide the agricultural investment of US$42.7 million—according to the UN Food & Agricultural Organisation (FAO)— needed to achieve a world free from hunger; and meet international goals to reduce ill health, costing a maximum of US$58.9 billion—by the Organisation for Economic Co-operation & Development (OECD) estimates— more than twice over.

These came to light at a media sensitisation workshop in Accra, yesterday, on Tax Justice/Tax incentives in Ghana.

The workshop, during which the preliminary findings of a study titled 'Investments Incentives in Ghana—The Cost to Socio-Economic Development' was launched, was organised by ActionAid-Ghana as part of its Tax Power campaign to end harmful tax incentives; end corporate tax dodging; and increase transparency of governments and big corporations.

The theme for the workshop was 'Progressive Tax, Progressively Spent.'

Presenting the findings of a Research on Tax Incentives in Ghana, Mr Bernard Anaba of the Integrated Development Centre (ISODEC) disclosed that over the past two years, Ghana had lost about US$70 million in the Oil and Gas sector alone as a result of the country's inability to apply the Capital Gains Tax provided in the Internal Revenue Act, 2000 (Act 592) in relation to the sale of the EO Group's 3.5 percentage stake in Kosmos Energy to Tullow Oil and Sabre Oil's sale of a 4.05 per cent share in Tullow Oil to South Africa's national company, PetroSA.

Mr Anaba said according to the research findings, Ghana might be losing about US$45 million annually since 2011 due the inability of government to apply the new fiscal rates as a result of stability agreements negotiated with these companies.

Stability agreements or clauses, he explained, were usually provisions in the contracts of mining companies which freeze the tax laws of the host country in respect of their applicability to the companies concern for periods between 10 and 15 years.

Furthermore, he said, the research findings revealed that Ghana was losing close to about GhȻ2.4 billion annually—an amount equivalent to about twice the entire Government of Ghana health budget for 2013 and about half the entire education budget— as a result of tax incentives.

The findings, he said, also revealed that as a result of trade tariff rationalisation and the general tax incentive policy since the early 2000 to date, Ghana had lost about US$1.2 billion a year, based on current prices and estimates.

He said according to the findings of the research, Ghana had one of the lowest overall tax rates in the West African sub-region as a result of a drive towards trade and investment competitiveness, its accompanying corporate abuses, especially in the extractive sector, resulting from morbid contractual agreements and the incoherent and varied interpretation of the applicable laws.

In a presentation, Mr Emmanuel Budu-Addo, Head of Finance, ActionAid-Ghana, urged the media and civil society not to sit on the fence, but to develop effective strategies to promote tax justice and embolden government with the needed evidence-based research to enable government to implement the various recommendations for progressive taxation.

Mr Budu-Addo said it was much better for developing country governments to fund services from tax revenues than from foreign development assistance, adding that tax revenues were more reliable than aid flows as they did not come with conditions attached.

He noted that given that aid flows were likely to continue to decline from their peak in 2008 due to the on-going financial crises in

Europe and the US, raising tax revenues would become more necessary to make up resulting budget shortfalls.

Mr Budu-Addo, therefore, called on commercial enterprises, especially multi-nationals, to pay income and other levies at rates in reasonable proportions to the profit they made in places in which they transacted business, extracted resources and made profits.

Source: ISD (G.D. Zaney)

Appendix R

(1) *Ghana Internal Revenue (Act **592)*** ***(2)*** Petroleum Income Tax Law

(1) Excerpt, Ghana Internal Revenue Act, 2000 (Act 592), Section 95

CHAPTER II

CAPITAL GAINS TAX

PART I—IMPOSITION OF CAPITAL GAINS TAX

Section 95—Imposition and Rate of Capital Gains Tax

(1) Subject to subsection (2), capital gains tax is payable by a person at the rate of ten per cent of capital gains accruing to or derived by that person from the realisation of a chargeable asset owned by that person.

(2) Capital gains tax is not payable on capital gains from the realisation of a chargeable asset falling within paragraph (b) of subsection (1) of section 97 unless and until those gains are brought into or received in Ghana.

PART II—REALISATION

Section 96—Realisation

(1) Subject to subsection (2), a person who owns a chargeable asset is treated as realising the asset where

(a) that person parts with ownership of the asset including where the asset is

(i) sold, exchanged, surrendered, or distributed by the owner of the asset, or

(ii) redeemed, destroyed or lost;

(b) that person begins to use the asset in such a way that it ceases to be a chargeable asset; or

(c) that person is a resident who becomes a non-resident but only with respect to chargeable assets referred to in paragraph (b) of subsection (1) of section 97.

(2) For the purposes of this Act, a realisation of a chargeable asset does not include a realisation by way of gift within the meaning of Chapter III or a realisation involving the disposal of shares in the course of the liquidation of a company.

(2) ***Excerpt, Government of Ghana, Petroleum Income Tax Law, 1987 (PNDC Law 188), p. 26.***

(3) There shall be no tax charged, or withholding of tax required, under the provisions of the Income Tax Decree, 1975 (S.M.C.D. 5) in respect of any income, or dividends paid out of any income which is taken into account in ascertaining chargeable income or loss under the provisions of this Law, or which is excluded from gross income hereunder.

(4) Nothing in the Additional Profits Tax Law, 1985 (P.N.D.C.L. 122) or the Capital Gains Tax Decree, 1975 (N.R.C.D. 347) shall apply to petroleum operations hereunder.

(5) Except as specifically provided in this Law or under legislative instruments made under section 41, the general laws of Ghana relating to tax administration, jurisdiction to impose tax and to try offences in respect of tax matters, shall continue to apply to the matters provided for in this Law.

Penalties and fines to be paid in currency in which tax is payable.

40. All penalties and fines provided for in this Law shall be paid in the currency in which payments of tax are to be made under the terms of the applicable Petroleum Agreement.

Exemption.

41. Where he deems fit the Secretary may by legislative instrument exempt a contractor from the operation of any general law or provisions thereof relating to taxation other than this Law.

Appendix S

(1) GHEITI (2) Ghana Internal Revenue Amendment (Act 871)

(1) Excerpt, GHEITI, GHEITI Report - Oil & Gas Sector for 2012 and 2013 (December 2014)

8.0 UPDATE ON RECOMMENDATIONS MADE IN THE 2010/2011 REPORT:

Table 8.1: Details of implementation of recommendations

Issue	Finding	Recommendation	Status	Remarks
Capital Gains Tax	Petroleum rights did not attract capital gains tax	Change in ownership of petroleum rights should attract capital gains tax	Implemented The capital gains tax positions in the PITL and Act 592 have been harmonized as per Act 871(Internal Revenue(Amendment)(NO.2) ACT,2013.	Petroleum rights now attract capital gains tax.
Thin Capitalization	There is no provision in the PITL that relates to excessive interest charges. However IRA 2000;Act 892 has limitations on interest charges.	The Petroleum income tax law should be harmonized with the Act 592, with regards to interest charges.	Outstanding	The GRA applies the thin capitalization provision in Act 592 to the Petroleum sector.
Ring Fencing:	Ring fencing applies to contractor may set off expenses that are exclusive to a production area against income from another production area. This may delay corporate tax revenues.	Ring fencing should be applied at the production area level.	Outstanding.	
Carry forward of losses.	Petroleum Income Tax law allows for the indefinite carry forward of losses. Meanwhile in the mining sector losses are carried forward for 5 years.	Recommended that the carry forward of losses in the petroleum sector should be restricted to 5 years.	Outstanding	

Act 871

THE EIGHT HUNDRED AND SEVENTY-FIRST

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

INTERNAL REVENUE (AMENDMENT) (NO.2) ACT, 2013

AN ACT to amend the Internal Revenue Act, 2000 (Act 592) to provide for the imposition of Capital Gains Tax on petroleum operations, to amend the withholding tax rates for non-residents; to amend the tax rates for free zone enterprises at the end of their ten year tax holiday and to provide for related matters.

DATE OF ASSENT: *30th December, 2013*

PASSED by Parliament and assented to by the President:

Section 11A of Act 592 inserted

1. The Internal Revenue Act, 2000 (Act 592) referred to in this Act as the "principal enactment" is amended by the insertion after section 11 of

'Taxation of Free Zone Enterprises

11A. A free zone developer or enterprise granted a licence under the Free Zones Act, 1995 (Act 504) is exempt from the payment of income tax on profits for the first ten years from the date of commencement of operations.".

Imposition of Capital Gains Tax

2. Despite any enactment to the contrary, the provisions of Chapter Two of the principal enactment relating to Capital Gains Tax apply to petroleum operations.

First Schedule of Act 592 amended

3. The First Schedule to the principal enactment is amended

(a) in paragraph 2 of Part One by the substitution for "15%" of "20%"; and

(b) in Part Two by

(i) the substitution for paragraph 1 of

"1. Subject to paragraphs 3, 4, 5 and 6B of this Part, the income tax rate applicable to companies (other than a company principally engaged in the hotel industry) and income from goods and services provided to the domestic market by free zone enterprises after their tax holiday are:

Nature of income	-	Rate of Income Tax (for every cedi)
Income from the export of non traditional goods	-	8%
Other income	-	25%

(ii) the insertion after paragraph 6A of Part Two of "6B The income tax rate applicable to exports of a free zone enterprise outside the domestic market shall not exceed 8% ;

(c) in Part Five

(i) by the substitution for "10%" of "15%" in para-graph *(b)*,

(ii) by the substitution for "15%" of "20%" in para-graph *(c)*;

(d) in Part Seven by the substitution for "10%" of 15%; and

(e) in Part Eight by the substitution for "15%" of "20%".

Interpretation

4. In this Act, unless the context otherwise requires,

"petroleum operations" means exploration, development or production operations, including operations for the sale, export or disposal without sale of petroleum being operations carried out by a contractor.

Date of *Gazette* notification: 31st December, 2013.

GPCL/ASSEMBLY PRESS, ACCRA. GPCL/A640/1,200/12/2013
Website: www.ghanapublishingcompany.com E-mail: info@ghanapublishingcompany.com

MEMORANDUM

The purpose of the Bill is amend the Internal Revenue Act, 2000 (Act 592) to impose Capital Gains Tax on petroleum operations, to amend the withholding tax rates for non-residents and to amend the tax rates for free zone enterprises at the end of their ten year tax holiday and to provide for related matters.

The Bill provides for the extension of capital gains under the Internal Revenue Act, 2000 (Act 592) to petroleum operations.

The withholding tax rate for the employee income of a non-resident is to be at par with the rate of management and technical service fees. The purpose of the amendment is to curb the reclassification of non-resident employee services by a taxpayer as management and technical services in order to attract a lesser withholding tax rate.

The Bill also provides that income derived from the supply of goods and services provided by free zone enterprises to the domestic market should be taxed at the same rate as their counterparts operating in the domestic market. This is to prevent instances where goods produced by free zone enterprises gain unfair advantage over those goods produced by non free zone enterprises. The income derived from exports will however continue to have the benefit of an incentive tax rate of up to eight percent.

Minister responsible for Finance

Date: 27th November, 2013.

Appendix T

Article, Eric Sylvers & Sarah Kent, Wall Street Journal, "Shell, Eni Face Italian Charges Over Nigerian Deal" (December 20, 2017)

DOW JONES, A NEWS CORP COMPANY

DJIA 23951.13 -2.26% ▼ Nasdaq 6942.62 -1.89% ▼ U.S. 10 Yr 12/32 Yield 2.787% ▲ Crude Oil 61.91 -2.57% ▼ Euro 1.2282 0.33% ▲

THE WALL STREET JOURNAL.

BUSINESS

Shell, Eni Face Italian Charges Over Nigerian Deal

Prosecutors say Eni's Claudio Descalzi knew $1.3 billion payment would be mostly for bribes

Claudio Descalzi, chief executive officer of Eni, is one of a number of oil-and-gas industry executives indicted by an Italian judge over corruption charges connected to a 2011 deal. PHOTO: ALESSIA PIERDOMENICO/BLOOMBERG NEWS

By Eric Sylvers in Milan and Sarah Kent in London

Updated Dec. 20, 2017 5:59 p.m. ET

Royal Dutch Shell PLC, Italian energy company Eni E 0.18% ▲ SpA and its chief executive, as well as other industry executives, must stand trial on corruption charges connected to a 2011 Nigerian oil deal, an Italian judge ruled Wednesday.

The prosecution marks a rare case in which top oil executives could face jail time for corruption allegations.

Prosecutors say in court documents that Eni CEO Claudio Descalzi and the other executives at both Shell and state-backed Eni knew most of the $1.3 billion the companies paid to the Nigerian government to acquire the drilling rights would be distributed as bribes. Prosecutors say Goodluck Jonathan, the Nigerian president at the time of the deal, received part of the kickbacks.

Mr. Jonathan didn't respond to a request for comment. He has previously denied being involved in any corruption.

The trial is due to start March 5 and represents a significant development in one of the oil industry's biggest corruption scandals.

Prosecutors are expected to delve into the operations of the two companies and more widely into an industry that often operates in countries where graft is pervasive like Nigeria. The oil industry has long faced charges of corruption though trials have rarely reached into the very upper echelons of management of giants like Shell and Eni.

Other executives indicted include Paolo Scaroni, Eni's CEO at the time of the deal, and Malcolm Brinded, Shell's global exploration and production chief at the time of the deal.

Eni's board of directors said it had "full confidence" that Mr. Descalzi wasn't involved in illegal conduct and "reaffirmed its confidence that the company wasn't involved in alleged corrupt activities." Eni said it reached these conclusions after several independent investigations into the matter.

"We aren't happy that this is going to trial, but now there will be the judicial process and the company and Descalzi will have the opportunity to defend themselves," Eni Chairwoman Emma Marcegaglia said in an interview.

Shell said it was "disappointed" by the indictment, but that it believes a trial will show there is no case against the company or its former employees. "There is no place for bribery or corruption in our company."

Mr. Scaroni, who is no longer at Eni, declined to comment. In the past he has denied any wrongdoing.

Mr. Brinded, who has since left Shell, said through a spokesman: "I have done nothing wrong and believe that will become clear in any legal proceedings."

The trial is likely to last about 18 months. The decision can be appealed twice. meaning five years or more can pass before a definitive verdict.

Shell shares traded down 0.7% and Eni was down 0.4%, while other major oil companies traded somewhat higher Wednesday.

The charges revolve around a giant oil block off Nigeria's Atlantic coast known as OPL 245, which Shell has pursued for nearly two decades. Long the dominant oil company in Nigeria, the British-Dutch oil giant spent years in legal battles with successive Nigerian governments over the bloc's ownership.

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Appendix U

Press release, Global Witness, "Judge Orders Biggest Corporate Bribery Trial in History Against Shell, Eni, CEO and Executives" (December 20, 2017)

Press release / Dec. 20, 2017

JUDGE ORDERS BIGGEST CORPORATE BRIBERY TRIAL IN HISTORY AGAINST SHELL, ENI, CEO AND EXECUTIVES

Landmark trial sees senior former Shell executives and CEO of Eni in the dock for billion dollar Nigerian oil deal

Royal Dutch Shell and Italian oil giant Eni have been ordered to stand trial in Milan on charges of aggravated international corruption for their role in a 2011 $1.1bn deal for Nigerian oil block OPL 245. Mrs Justice Barbara handed down the ruling today. The judge set March 5 as the date for the trial to begin.

Eni's current CEO Claudio Descalzi, former CEO Paolo Scaroni, Chief Operations and Technology Officer Roberto Casula were also ordered to face trial alongside four Royal Dutch Shell former staff members including Malcolm Brinded CBE, former Executive Director for Upstream International and two former MI6 agents employed by Shell.

No company as large as Royal Dutch Shell or such senior executives of a major oil company have ever stood trial for bribery offences.

The investigation by the Milan public prosecutor was triggered by a complaint filed in Autumn 2013 by Global Witness, The Corner House, Re:Common and Nigerian anti-corruption campaigner Dotun Oloko. The case has also been investigated in Nigeria and the United States following the groups' complaints. Public prosecutors in The Netherlands are also investigating the case.

"The Nigerian people lost out on over $1 billion dollars, equivalent to the country's entire health budget, as a result of this corrupt deal. They deserve to know the truth about what happened to their missing millions. We welcome the prosecutor's efforts to bring this case to trial. It will be the biggest corporate bribery trial in history – and act as a warning to others who see corruption as a route for quick financial wins", said Simon Taylor, co-founder of Global Witness.

In a statement today Shell said "We are disappointed by the outcome of the preliminary hearing and the decision to indict Shell and its former employees. We believe the trial judges will conclude that there is no case against Shell or its former employees."

Eni said "Eni's Board of Directors has reaffirmed its confidence that the company was not involved in alleged corrupt activities in relation to the transaction. The Board of Directors also confirmed its full confidence that chief executive Claudio Descalzi was not involved in the alleged illegal conduct and, more broadly, in his role as head of the company. Eni expresses its full confidence in the judicial process and that the trial will ascertain and confirm the correctness and integrity of its conduct."

Antonio Tricarico of Italian NGO Re:Common said, "Prime Minister Renzi was utterly wrong in 2014 when he defended Mr Descalzi's appointment as Eni's CEO, by warning that it would 'not allow a media scoop to put jobs at risk, or a notice of investigation issued on newspapers to change the business policy of a country'. If the deal for OPL 245 represents business as usual for Italy's biggest company, partly controlled by the government, prosecutors were right to investigate and right to bring this matter before the courts. Renzi should apologise to the Italian and Nigerian public".

"This case heralds the dawning of the age of accountability, a world where even the most powerful corporations can no longer hide their wrongdoing and avoid justice." Said Lanre Suraju, Chairman of Nigerian NGO Human and Environmental Development Agenda.

For years, Shell had claimed that it only paid the Nigerian Government for the oil block. But after the joint investigations of Global Witness and Finance Uncovered, Shell confessed it had dealt with former oil minister Dan Etete, via his front company Malabu. Dan Etete was convicted of money laundering in France in 2007. Etete had awarded the OPL 245 oil block to his secretly owned company while serving as oil minister.

In December 2016, the Milan Public Prosecutor alleged that $520 million from the deal was converted into cash and intended to be paid to the then Nigerian President Goodluck Jonathan, members of the government and other Nigerian government officials. The prosecutor further alleges that money was also channelled to Eni and Shell executives with $50 million in cash delivered to the home of Eni's then Head of Business for Sub-Saharan Africa, Roberto Casula.

Nigerian authorities have also filed charges against a Shell subsidiary and Eni as well as several of their staff. In January Nigerian law enforcement also charged Mohammed Adoke, the former Nigerian Minister of Justice and Attorney General with money laundering over his receipt of $2.2m in alleged proceeds of the OPL 245 deal.

The Nigerian government successfully recovered US$85m in proceeds of the deal from the UK. The money had previously been frozen as suspected proceeds of crime at the request of Italian authorities. The Nigerian government has also issued a billion dollar civil claim against JP Morgan for their role as a banker to the deal. JP Morgan has stated that they consider the allegation against them to be "unsubstantiated and without merit".

"This is not a case involving a few rotten apples," said Nick Hildyard of Corner House. "The evidence points to systemic corruption – from the top down. In this case Italy has championed the rule of law over abusive corporate power. The world waits to see if the UK and The Netherlands, where Shell is based, will have the backbone to follow suit."

/ ENDS

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NOTES TO EDITOR:

1. In December 2016 money laundering charges were filed by Nigerian law enforcement against Dan Etete and the former Nigerian Attorney General and Justice Minister Mohammed Adoke. In a statement in December 2016, Mohammed Adoke said: "I hope to at the appropriate time make myself available to defend the charge for whatever its worth." He also emphasised that he did not benefit from the deal, which he said saved the government from a breach of contract suit in which Shell was claiming $2 billion. He called the charges "orchestrated plans to bring me to public disrepute in order to satisfy the whims and caprices of some powerful interests on revenge mission." The full statement from Mohammed Adoke is available at http://thenationonlineng.net/malabu-will-come-defend-adoke/
2. Goodluck Jonathan's statement addressing the allegations against him is available at http://www.premiumtimesng.com/news/headlines/220059-breaking-malabu-oil-deal-jonathan-breaks-silence-bribe-allegation.html
3. Dan Etete's response to the public allegations against him is available at: https://www.thisdaylive.com/index.php/2017/02/08/etete-government-did-not-invest-a-dime-in-malabu-oil/