

December 17th, 2014

By E-Mail:

Chair Mary Jo White
Commissioner Luis Aguilar
Commissioner Daniel Gallagher
Commissioner Michael Piwowar
Commissioner Kara Stein

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

CC:

Tamara Brightwell, Senior Special Counsel to the Director, Division of Corporate Finance
Elizabeth Murphy, Associate Director, Division of Corporate Finance
William K. Shirey, Senior Litigation Counsel
Barry Summer, Associate Director, Division of Corporate Finance

Re: Dodd-Frank Section 1504 Rule

Dear Chair and Commissioners,

I write to inform you about the recent progress in implementing revenue transparency in the United Kingdom, and to urge you to act swiftly to implement the similar US law known as Section 1504. As one of the European Parliamentarians who led the effort to enact the EU Accounting and Transparency Directives, I can say that our effort was very much inspired by Section 1504 and the implementing rule issued by your agency in 2012. Notwithstanding that the 2012 rule has since been set aside as a result of a legal challenge, I urge you to swiftly re-issue a similarly strong rule.

Below is an op-ed I wrote and which was published on the Hill's website at <http://thehill.com/blogs/congress-blog/foreign-policy/225627-us-needs-to-step-up-to-the-plate-on-extractives>

Do not hesitate to contact me if you would like to discuss any of these issues.

Yours sincerely,

A handwritten signature in black ink that reads "Arlene McCarthy". The signature is written in a cursive style with a prominent loop at the end of the last name.

Arlene McCarthy
*Former Vice-President of Economic and Monetary Affairs Committee, European Parliament
European Parliament draftsman and negotiator on EU Transparency and Accounting Directives*

US needs to step up to the plate on extractives transparency

By Arlene McCarthy

On Dec. 1, new UK company regulations came into effect that will strengthen the fight against corruption in the international oil, gas and mining sector. The UK is the first EU member state of many to make these new legal standards the law of the land. Specifically, the UK adopted Chapter 10 of the EU Accounting Directive into national law, requiring all large and publicly listed UK-registered companies operating in the oil, mining, gas and forestry sectors to publish year by year the payments they make to governments around the world. This is a hugely significant step, which has been years in the making. In 2011, spurred on by years of campaigning by citizens, NGOs and communities in resource-rich countries, I drafted amendments to the EU law to toughen up the transparency requirements and effectively lift the veil of secrecy over these companies' operations. After two years of negotiations, the EU law was voted through with a massive majority, demonstrating that people power and a drive for change and transparency do deliver results.

This means that, from 2016, we will be able to see every payment above £86,000 (roughly US\$135,000) made by UK extractive companies to governments in every country where they operate. Payment information will be available for each company, and for each of their extractives projects. This will enable communities, with the support of wider civil society, to hold their governments to account – ensuring that they can make an informed decision about whether or not they are getting a fair deal, and whether their governments are using their revenues from natural resources to the best effect. It will also help bring about greater accountability on the part of oil, gas, mining and forestry companies by placing their payments under public scrutiny. Another domino has fallen in a multi-billion game that too often sees poor, marginalized and indigenous groups missing out.

Given that one in five people living on less than two dollars a day currently reside in countries rich in natural resources, this accountability could make a huge difference to some of the world's poorest people. In Nigeria, for example, \$68 billion in oil revenues was received by the Government in 2011, yet 85 percent of citizens live below the poverty line. If Nigeria's oil money is properly accounted for and responsibly spent, the country could be transformed.

With new discoveries of natural resources being made all the time, but the lifetime of non-renewable oil, gas and minerals only a matter of decades in many cases, it's critical that citizens can track the money paid to their governments on an annual basis. This is the only way that citizens can know whether their governments are responsibly using their natural resource endowments to benefit the entire country, rather than merely enriching a handful of well-connected elites, and whether extractive companies are paying a fair price in view of their huge profits.

Sadly, it's clear that resources throughout the world are being misused. In Equatorial Guinea, for example, President Obiang's son is alleged to have spent his country's oil revenues on more than \$3 million worth of Michael Jackson paraphernalia, \$230 million of yachts and a \$30 million mansion in Malibu, while the country has one of the highest poverty rates and lowest life expectancies in the world. Whilst extractives transparency alone won't stop outrages like this, it will equip citizens with the information to ask the necessary questions of their leaders and help shine a light globally on high-level corruption and mismanagement.

The UK government should be proud to be the first EU member state to adopt the EU Directives. This follows the enactment of similar transparency legislation in Norway; the remaining EU member states will adopt their own regulations by November of next year; and Canada and Switzerland are currently debating their own transparency legislation. There is little doubt that we are steadily approaching a global transparency standard for the oil, mining and gas industries.

Yet there is more to be done, of course, not least in the United States, where the Dodd-Frank Act, Section 1504 of which requires project-level reporting, was signed into law more than four years ago, yet still isn't in force. A strict rule, requiring high standards of transparency of US-listed companies, was first issued by the SEC in 2012.

The American Petroleum Institute (API), the lobby group which represents Big Oil, sued the SEC, who set aside the rule. They have since promised to issue a new rule to respect and to enact the will of the legislator and the Dodd-Frank Act. The API has been lobbying heavily for payment information to be disclosed anonymously – so that each company's identity remains hidden – and for payments to be aggregated together, making it impossible for the public to work out which payments relate to which project.

With further delay in implementing the US law, many US companies – including Exxon Mobil and Chevron – will be lagging behind their European rivals in terms of transparency. Public perception will view the less transparent companies as

lacking in corporate citizenship; their social licence to operate is likely to suffer; and investors may begin to lose confidence in their corporate governance. Besides, inconsistent reporting standards in different jurisdictions will cause additional burdens for “cross-listed” companies operating in both the US and the EU.

The API may have set its face against strong transparency rules, but there is no excuse for the SEC to continue to delay and drag its feet on this crucial issue. Any legal issues that need to be cleared up should be resolved swiftly, so that the US can finally join the ranks of nations and states committed to a new global era of transparency for the extractives industries. Since 2008 and the financial crisis, it is equally imperative that integrity and transparency are the guiding principles of companies’ operations. Investors are now more interested than ever in companies’ behaviour and ethics.

Having started out as a leader for the new global transparency rules with Dodd-Frank section 1504, the U.S. has now been relegated to the slow lane, and risks undermining the global spread of these rules.

What is certain is that nations in Africa ravaged by the Ebola crisis will need all the resources they can muster to rebuild their communities, reinvest in their health systems and support progress for future generations. It is time that global transparency standards for the extractive industries are embraced and adopted by all countries. The U.S. should seize its opportunity now to play its part, to stem the flow of the millions of dollars that have been squandered and misused by corrupt governments.

Arlene McCarthy is former vice-chair of the European Parliament's Economic and Monetary Affairs committee.