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ExxonMobil

Ms Vickie Wood
Department of Business Innovation & Skills
1 Victoria Street
London
SW1H 0ET

May 16, 2014

Dear Ms Wood,

Thank you for giving Esso Exploration and Production UK Limited (*ExxonMobil*) the opportunity to provide input into the UK Government's consultation document on Chapter 10 of the EU Accounting Directive (Directive 2013/34/EU, the *Directive*).

Our response to the consultation document's questions is attached to this letter, and is based on input as both a subsidiary of a major oil and gas multinational, Exxon Mobil Corporation, and as a longstanding player in the global transparency field. In addition to our detailed response to the questions raised in the consultation document, we would like to draw your attention to some broader areas of concern with respect to Chapter 10.

Chapter 10 of the Directive is likely to be inconsistent with emerging reporting regimes in other countries, such as the United States, to which all major international oil companies (*IOCs*) are subject. While we understand the desire to accelerate implementation under its G8 commitment, we are disappointed that the UK Government does not appear willing to take the time to allow other developments to mature, so that, through UK support for equivalency, industry is not subject to inconsistent rules that result in multiple and potentially contradictory reporting requirements in different jurisdictions.

A key risk arising from the disclosure obligations imposed by Chapter 10 of the Directive (the *Chapter 10 requirements*) is harm to the competitiveness of the UK's extractives industry. Most of the companies subject to the Chapter 10 requirements are Member State based IOCs. IOCs increasingly compete for prime acreage around the world with large, well-funded national and quasi-national oil companies (*NOCs*) and private equity companies which are not generally subject to the same disclosure requirements. In recent decades NOCs have acquired control of approximately 90 per cent of global oil reserves and account for about 75 per cent of global oil production.

ExxonMobil considers (by way of illustration and without prejudice to the generality of its concerns in respect of the Directive and its implementation) that commercial harm will be occasioned to reporting companies by the implementation of the Directive in the following ways:

- the information required to be disclosed is not just sensitive, but also confidential and will have significant commercial value to reporting companies' competitors and state counterparties, given the highly competitive, global market for oil and gas exploration and exploitation opportunities;

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- the disclosure of the information will therefore put reporting companies at a competitive disadvantage vis-à-vis non-reporting competitors (including NOCs which already have considerable market power). In particular the disclosure of the information will adversely impact commercial negotiations and give rise to a risk of undercutting by competitors;

- this could ultimately cause reporting companies to lose out on commercial opportunities and/or prompt requests from states for contract renegotiation to the potential material detriment of reporting companies;

- separately, such disclosure may have the effect of exacerbating security risks, through identification of the value of particular projects in specific geographical regions, and could, in cases where ownership of a resource may be in dispute, increase regional tensions or make it more difficult to reach a diplomatic resolution;

- additionally, the Chapter 10 requirements could place reporting companies in the invidious position of potentially having to breach the terms of foreign, national laws and/or contracts, exposing companies and their employees to the prospect of real prejudice – including prosecution. The potential criminal liability that could result well illustrates the disproportionate risks faced by reporting companies. Alternatively, companies may be forced to cease doing business in countries which prohibit disclosures that would be required by Chapter 10. The United States Securities and Exchange Commission found in its initial rulemaking in relation to the Dodd Frank legislation that United States listed companies and their shareholders could be exposed to literally tens of billions of dollars of losses should the US disclosure requirements force the companies to abandon investments in even one country (in this case, Qatar). Chapter 10 is meant to impose transparency requirements, not trade sanctions.

Decreasing IOC competitiveness will reduce the positive influence which Europe's oil and gas majors have on anti-corruption business practices, economic reform and capacity building through their investments in resource-rich countries.

The attached consultation response is without prejudice to the generality of ExxonMobil's concerns that, as a matter of EU law, the Directive itself is unlawful. In particular, and without prejudice to the breadth of its concerns, ExxonMobil is concerned that the Directive (the legal basis of which is Article 50(1) of the Treaty on the Functioning of the European Union) fails to respect ExxonMobil's fundamental rights (recognised in EU law), such as rights in relation to the protection of business secrecy, and is disproportionate. The Chapter 10 requirements will obligate ExxonMobil to disclose information that it considers to be, and treats as, confidential and commercially sensitive.

The purported objectives of the Chapter 10 requirements are set out in the recitals to the Directive and appear to be two-fold:

- firstly to increase transparency surrounding payments to resource rich countries with a view to encouraging good governance and accountability in those countries in respect of payments received from the extractive industry (see Recital 44 to the Directive); and

- secondly to ensure harmony between Member States' disclosure laws so as to promote cross-border investment (see Recital 55 to the Directive).

In light of those objectives, ExxonMobil considers that the Directive is disproportionate because:

- it is doubtful whether the Chapter 10 requirements are an appropriate measure for the attainment of either of the Directive's stated objectives; and

- it is evident that the Chapter 10 requirements go beyond what is necessary for the attainment of the Directive's objectives and the disadvantages caused by the requirements are out of proportion to the objectives pursued. In particular, the Chapter 10 requirements do not represent the least restrictive alternative to achieve the desired aim of increasing transparency and encouraging accountability, and will cause substantial commercial harm to reporting companies (as discussed above).

An example of a less restrictive alternative to achieve the desired aims is the compilation model of disclosure, which is well established in cases where two criteria exist: (1) disclosure of individual company information could be commercially harmful; and (2) the public need for information can be met with aggregated data. Transparency requires citizens to be informed of the amounts that governments receive, not the details of individual company payments or contracts.

Compilation along the lines proposed by the American Petroleum Institute, with the reported data tagged using interactive XBRL coding, would largely mitigate the risk that company payment data can be used by competitors and others to the detriment of companies subject to the Chapter 10 requirements, and could provide benefits in terms of the accessibility of reported data. Conversely, implementation of the Chapter 10 requirements in their current form will unnecessarily result in harm to reporting companies, and, as noted above, by decreasing IOC competitiveness, reduce the positive influence which Europe's oil and gas majors exert in resource-rich countries.

We would urge the Government to minimize the detriment to reporting companies to the extent possible. Tangible steps that could be taken by the Government, as discussed at greater length in our response to the consultation document's questions, include ensuring flexibility in applying sanctions for compliance failures, particularly in the initial years of compliance, and exercising its discretion under Article 53 of the Directive to delay the start of reporting and application of other provisions of the Directive until 2016. Use of the flexibility under Article 53 would result in the UK being aligned with the expected timing on implementation in many other Member States; while they may well transpose the Directive into national law by the July 2015 deadline, we understand that they will not be requiring companies to report earlier than from January 2016 onwards.

Please do not hesitate to contact us to seek greater clarification on any of these points.

Thank you for your consideration.

Kind regards,

Robert Lanyon

For and on behalf of Esso Exploration and Production UK Limited