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

## Response form

The closing date for this consultation is 16/05/2014

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Please return completed forms to:

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| | |
|---|---|
| | Business representative organisation/trade body |
| | Central government |
| | Charity or social enterprise |
| | Individual |
| | Large business (over 250 staff) |
| | Legal representative |
| | Local Government |
| | Medium business (50 to 250 staff) |
| | Micro business (up to 9 staff) |
| | Small business (10 to 49 staff) |
| | Trade union or staff association |
| ✓ | Other (please describe) Coalition of 24 UK civil society organisations |

## Extractive Companies

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

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

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

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

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

**Publish What You Pay preliminary statement**

Publish What You Pay would like to preface its response to the questions below by welcoming the UK Government's continuing championing of extractive industry transparency. The Government has exerted effective high-level political leadership on this issue in the EU, the G8 and the Open Government Partnership and has engaged constructively with industry, civil society and others in discussions of policy detail.

In this way the UK has played a key leadership role in raising global standards for extractives transparency in keeping with the vision expressed in the Lough Erne G8 Leaders' Communiqué.[1] And it has helped frame the Accounting Directive as legislation that is fit for purpose in enabling citizens of resource-rich countries to hold their governments, and extractive companies, to account for the extraction of their countries' oil, gas and minerals and for the revenues generated.

UK oil, gas and mining companies bring much-needed investment to resource-dependent developing countries. However, the sector is particularly vulnerable to poor governance and corruption risks. By improving governance and the business operating environment in resource-producing countries, the Accounting and Transparency Directives will help protect and enhance the reputation of UK companies investing overseas.

In the public debate it has sometimes been overlooked that the intention behind extractive industry transparency reporting requirements is to hold not only governments but also oil, gas and mining companies to account. As the European Commission stated in its 2011 Impact Assessment:

> "By requiring disclosure of payments at a project level, where material, local communities would have insight into what governments are being paid by MNCs [multinational companies] for exploiting local oil/gas fields, mineral deposits and forests […]. *A degree of MNC accountability would also be created, as over the life of a project the total payments to government would be known so that civil society would be in a position to question whether the contracts entered into between the government and extractive and loggers of primary forests delivered adequate value to society and government*."[2] [Emphasis added]

We believe that both government accountability and corporate accountability will be significantly furthered by the UK's implementation of the Accounting Directive, in line with our recommendations below.

[1] Lough Erne G8 Leaders' Communiqué, June 2013, https://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communique

[2] European Commission, Part II Impact Assessment for Financial Disclosures on a Country by Country Basis, October 2011, section 7.1.1, page 35, http://ec.europa.eu/internal_market/accounting/docs/sme_accounting/review_directives/20111025-impact-assessment-part-2_en.pdf

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

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

✓☐ Yes ☐ No ☐ Not sure

If no, please indicate:

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

Minimum period……………….

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

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

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

✓☐ Yes ☐ No ☐ Not sure

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

Preferred date…………………..

Reasons for preferred date:

**<u>Publish What You Pay response to Question 1.2</u>**

1.2.1 We strongly support preparation of reports relating to financial years commencing no later than 2015. As the Government has already recognised in the consultation document, “there is a strong international equity argument for implementing the directive early” (page 6). As we elaborate below, there is considerable urgency surrounding extractive industry transparency, in terms of both the economic and social problems arising when the extractives sector does not operate transparently, and the finite nature of oil, gas and minerals and hence these resources' time-limited potential to generate developmental benefits in resource-rich developing countries.

1.2.2 As illustration of this urgency, in April 2014 more than 500 civil society organisations from over 40 countries wrote to the US Securities and Exchange Commission (SEC) expressing the critical need for greater transparency around extractive industry revenues.[3]

1.2.3 The Government and its G8 EU partners have recognised this urgency in their commitment to implement the EU Directives quickly.[4] Requiring companies to report on payments made in financial years starting no later than 2015 will underline the Government's global leadership on this issue and commitment to implement these important reforms without delay. The UK Prime Minister has acted as global champion of extractive transparency through high-level international commitments. In June 2013, during the UK Presidency of the G8, the Prime Minister committed the UK government to quickly implement the EU Directives in the G8 communique; in October 2013, Mr Cameron hosted a meeting of the inter-governmental Open Government Partnership (OGP), where his Government pledged to transpose the Accounting Directive into UK law by the end of 2014.

1.2.4 As part of that OGP commitment, the Government has also committed that in 2015, "UK legislation comes into force requiring UK-listed and UK registered extractive companies to publish data under the EU Accounting and Transparency Directives" and that in 2016, "UK listed and UK registered extractive companies will start to publish data under the EU Directives in an open and accessible format".[5] We are confident that the Government will honour these important international commitments.

1.2.5 For more on the urgent need for extractive industry transparency requirements, see below under Questions 3.1 and 8.1.

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

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

✓☐ Yes ☐ No ☐ Not sure

[3] Publish What You Pay, "Civil society around the world calls on the SEC to reissue strong oil, gas & mining transparency rule", 14 April 2014, http://publishwhatyoupay.org/sites/publishwhatyoupay.org/files/Global%20Civil%20Society%20Letter%20to%20the%20SEC%20-%20April%2014%202014.pdf

[4] Lough Erne G8 Leaders' Communiqué, loc. cit. (note 1 above), para 38.

[5] Open Government Partnership UK National Action Plan 2013 to 2015, 31 October, 2013, p. 49, Commitment 21, http://data.gov.uk/sites/default/files/library/20131031_ogp_uknationalactionplan.pdf.

If no, please indicate:

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

Maximum period……………..

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

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

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

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

☐ Recurring ☐ Transitional ☐ Not sure

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

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

**<u>Publish What You Pay response to Question 3.1</u>**

3.1.1 It is neither desirable nor necessary for there to be later transposition of the Transparency Directive for the following reasons.

3.1.2 The fact that the Transparency Directive (TD) was passed into EU law five months after the Accounting Directive (AD) does not mean that both Directives cannot be transposed into UK law at the same time or closely together in time. If transposition of the TD is completed during 2014, like the AD, then the two Directives will require UK-registered and UK-listed companies respectively to report on payments to governments made in financial years commencing no later than 2015. This would honour the Government's international commitments made at the G8 to "quickly implement" the TD, and at the 2013 OGP summit that the implementing legislation for TD would come into force in 2015 and that companies would start to publish data in 2016 (see para. 1.2.3. and 1.2.4 above). It is in the interests of all stakeholders (companies, the

Government and the public) to ensure that all payments to governments made in financial years commencing in 2015 are subject to the new reporting requirements, regardless of whether they are made by UK-listed or UK-registered companies.

3.1.3 We also note that the substantive payment reporting requirements are all contained in the AD, incorporated into the TD by cross-reference. As such, implementation and consultation should be a far simpler process. We hope that it will be possible for the Government to complete transposition of the two Directives at the same time, or with a minimal lapse of time between the two.

**Costs to citizens of delaying TD transposition**

3.1.4 Citizens of many resource-rich developing countries are not currently receiving the full benefit of their natural resource wealth. In order to hold both governments and extractive companies accountable, they urgently need access to the information that will be disclosed as a result of the two EU Directives. The immense damage inflicted by the "resource curse" on resource-rich developing countries and their citizens is already amply documented. To illustrate briefly, the Africa Progress Report 2013 highlighted how Africa loses more money through trade mispricing and other illicit financial outflows, predominantly associated with the extractive industries, than it receives in aid and foreign direct investment.[6] The report cites oil-rich Angola, where "After a decade of rapid growth, half of the country – 10 million people – still lives on less than US $1.25 a day" because "The benefits of the oil boom have been skewed towards a privileged few"; and Gabon, whose capital city Libreville has become "a living museum of kleptocracy" financed by oil wealth. [7]

3.1.5 By contrast with such negative examples, Botswana's strong track record of transparent management of mineral resources has helped maximise diamond mining revenues and ensure their wise investment in health, education and infrastructure.[8] Botswana's experience confirms that it is only through the urgent implementation of extractive industry transparency that desperate situations in resource-rich countries like Angola and Gabon can be improved.

3.1.6 Further avoidable delay in transposition of the TD could risk postponing the first reports of UK-listed companies under the TD for a further calendar year; i.e. UK-listed companies might not report until June 2017 (rather than 2016), covering their payments to governments made in financial years commencing 1 January 2016 (rather than 2015). In addition to breaking the Government's OGP commitment, this would increase the costs borne by citizens in resource-rich developing countries as a result of delayed release of the payment data that citizens need to hold their governments, and extractive companies, to account for the revenues generated by their countries' finite natural resources.

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[6] Africa Progress Panel, *Africa Progress Report 2013: Equity In Extractives – Stewarding Africa's Natural Resources for All,* 2013, http://africaprogresspanel.org/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_LR.pdf

[7] Ibid., page 20.

[8] Lewin, "Botswana's success: good governance, good policies and good luck", in Chuhan-Pole and Angwafo (eds), *Yes Africa Can: Success Stories from a Dynamic Continent*, World Bank, 2011, http://issuu.com/world.bank.publications/docs/9780821387450

3.1.7 These costs are indirectly also borne by us all. Delayed reporting by UK-listed companies will also prolong the risk that resource-rich developing countries that are recipients of UK overseas aid will use UK taxpayers' money for projects that should be funded by recipients' domestic natural resource revenues (were such revenues not being squandered or siphoned away into the pockets of the elites).

**Costs to investors of delaying TD transposition**

3.1.8 Later transposition of the TD will involve costs to investors in UK regulated markets by delaying access to information which could inform investment allocation decisions and help mitigate risk (as described below in para. 8.1.15 and 8.1.16 discussing "benefits to investors").

**Costs to companies of transposing TD after AD**

3.1.9 Early transposition of both Directives is in the best interest of all stakeholders. The Government's impact assessment suggests that transposing the TD later than the AD could result in additional AD compliance costs for some UK-listed (non-UK registered) companies by requiring their UK registered subsidiaries to produce a report under the AD for a short period of time, until the TD was in force.[9] However, even if the TD transposition were to take place slightly later, given that compliance costs have been exaggerated as a general matter (see para. 8.1.17 to 8.1.24), and compliance costs for a small subgroup of UK registered companies would be minor, there are no grounds whatsoever for delaying transposition of the AD. TD transposition should therefore ideally take place during 2014 alongside AD transposition.

3.1.10 Some UK-registered companies that are required to report under the AD may claim that later transposition of the TD that results in later reporting by UK-listed but not UK-registered companies could cause them – as early reporters – competitive disadvantage or an unfair compliance cost burden. However, we categorically reject claims that being obliged to report payments to governments imposes an unreasonable cost burden or competitive disadvantage (para. 8.1.17 to 8.1.24 address cost issues and para. 8.1.28 to 8.1.34 address competitiveness issues).

**Broader cost and benefit issues**

3.1.11 For more on the benefits and costs of extractive industry transparency to different stakeholders, see under Question 8.1 below.

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

[9] "UK implementation of the EU Accounting Directive: Chapter 10: extractive industries reporting – impact assessment", March 2014, page 3, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298603/bis-14-669-impact-assessment-consultation-on-the-uk-implementation-of-the-eu-accounting-directive.pdf.

**advantage of this exemption until their parent companies are obliged to produce a consolidated report under rules imposed by another Member State. (Para 5.9 – 5.10)**

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

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

**Publish What You Pay response to Question 4.1**

4.1.1 The AD payment reporting obligations should apply to all large UK-registered companies from 2015, including where the company has a parent company in another EU jurisdiction.

4.1.2 The UK has committed to show leadership in implementation of the Accounting Directives as part of a wider ambition to champion extractive industry transparency. The UK will be setting an example in terms of the payment reporting standard established for the UK-based extractive industry as a whole. Until such time as a subsidiary's payments ***are*** being reported in a consolidated report elsewhere in the EU (or in a state whose payment reporting requirements have been deemed equivalent by the EU Commission), that subsidiary should prepare a payment report on the same basis as its UK-headquartered counterparts.

4.1.3 Furthermore, we believe the costs and competitiveness issues around compliance with the payment reporting requirements have been consistently overstated by industry (see para. 8.1.17 to 8.1.24 and para. 8.1.28 to 8.1.34 below). The AD reporting obligations will only apply to subsidiaries which are "large" companies in their own right – i.e. the have a balance sheet total equivalent to €20 million, a turnover of €40 million, or 250 or more employees. By definition, these are companies with significant resources and personnel to enable them to fulfil the reporting requirement until such time as their parent company does so for the whole group. It is crucial that the UK sets a strong precedent of payment reporting in respect of all UK-based operators, introduced "swiftly" in 2014 as per the Government's ambition.

4.1.4 For further information around costs of compliance – and how these are outweighed by the benefits – see our response to Question 8 below.

4.1.5 See under Question 7 below for further observations on the draft regulations' treatment of subsidiaries in the consolidated reporting requirement.

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

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

✓ ☐ Yes – with civil society involvement ☐ No ☐ Not sure

If no, please provide supporting reasons for your view.

**Publish What You Pay response to Question 5.1**

5.1.1 It is important that Companies House's systems for receiving and making this information publicly available are as rigorous, clear, usable and unambiguous as possible. An effective system at Companies House – comprising both an online company reporting template and interface, and an effective users' interface that presents open and machine readable data with optimal accessibility and clarity – will help ensure that the data inputted by different companies is consistently prepared and comparable, maximising its value for all categories of users.

5.1.2 We are keen to work with Companies House in developing its online template and interface and its data output interface.

5.1.3 We recognise that industry guidance will also be needed to clarify definitional issues, e.g. what each payment category means and how figures should be calculated. There will be areas where the reporting methodology is open to interpretation, such as how to categorise a particular payment that does not fit neatly into one of the AD's categories. This industry guidance must comply with the mandate stated in Recital 49 of the AD that "payments or activities should not be artificially split or aggregated with a view to evading such disclosure requirements."

5.1.4 Civil society should be involved in preparation of this industry-led guidance, which we believe merits a multi-stakeholder approach. Civil society worldwide is a key intended user of the payment information and needs to fully understand questions that arise around how the data is compiled and presented. Civil society has a key interest in ensuring that the guidance accurately reflects the range of payments within the scope of the AD and that the data is as comparable as possible.[10]

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[10] A related point is that companies will be reporting payments for different periods, which is likely to create practical difficulties for citizens and civil society organisations seeking to use the data. For example, the first report of a UK-registered company with a 31 December year end would cover January 2015 to December 2015. The first report of a UK-registered company with a 30 June year end, however, would cover July 2015 to June 2016. Both companies might be reporting payments made to the same overseas government, but there would be no way of calculating that government's reportable revenue for 2015. One straightforward remedy could be for companies to indicate what proportion of each type of reported payment was made in in each calendar year (or even financial quarter) covered by the reporting period. We encourage the working groups on data reporting and industry guidance to explore this proposal to maximise the usefulness of data for citizens. This could be written into the reporting template and guidance on reporting, avoiding the need for amending the regulations.

5.1.5 Both Companies House and industry should keep in mind the following factors in developing the online template and interface, the access interface for data users, and the industry guidance:

- Reporting of payment data in open and machine readable formats is essential to meet the UK's G8 and Open Government Partnership commitments. The UK's OGP National Action Plan commits the UK to "principles of open data through the G8 Open Data Charter, which will be applied to extractives' data".[11]

- "Open" data means not just technically accessible but legally free to use and reuse.[12] To confirm that data is legally open requires displaying an appropriate open data licence with the published data.[13] Making data open is a one-off task that can and should be undertaken by companies and by Companies House.

- Data needs to be available in a machine readable format accessible to civil society in developed and developing countries. As the Open Data Charter puts it, this is needed to "empower … data innovators", "increase open data literacy" and "allow automated processing and access with the minimum number of file downloads".[14] Users need machine readable and manipulable data to make comparisons and gain a bigger picture of natural resource payments and revenues, in order to meet the AD's and TD's objectives of increasing accountability via greater transparency.[15]

- Demand from civil society in resource-rich developing countries for open and machine readable data is strong. The issue was emphasised, for example, at the Publish What You Pay Asia Pacific Regional Forum in April 2014, where potential data users in developing countries voiced the need to enable searches of payments by, for example, commodity or receiving government from different companies over a given time period.[16]

- In order for civil society to truly gain insight into the data and analyse it in its full context, it is essential that the data is made available in bulk as well as being accessible for individual companies and projects.

- To ensure that the data can be re-used by the widest possible audience, consideration should be given to making the data available in open formats that can be worked with in common spreadsheet applications (Excel or Libre Office etc). We recommend that there is always an option to download any data as a CSV file.

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[11] G8 Open Data Charter, page 49, https://www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex
[12] http://opendefinition.org/od/
[13] http://opendefinition.org/licenses/
[14] G8 Open Data Charter, loc. cit. (note 11 above), pages 5, 8.
[15] See Open Knowledge Foundation, "Natural resource revenues should be published as open data", 8 August 2013, http://blog.okfn.org/2013/08/08/natural-resource-revenues-should-be-published-as-open-data
[16] Publish What You Pay, "Greater than the sum of its parts: working towards a regional advocacy strategy in Asia-Pacific", 7 April 2014, http://www.publishwhatyoupay.org/newsroom/blog/greater-sum-its-parts-working-towards-regional-advocacy-strategy-asia-pacific

- To enable third parties to build commercial and not-for-profit services and applications that add value to the data, Companies House should consider building a simple, well-documented API (Application Programming Interface).

- Any guidance developed needs to be consistent with Companies House Registrar's Rules which, under the Companies Act 2006, give Companies House the authority to make rules governing certain areas in relation to the filing of documents. These rules are considered as secondary legislation, made under section 1117 of the Act, and include the **form, manner of delivery and method of authentication for documents, whether delivered in electronic format or as a paper document.**[17]

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

✓☐ Yes ☐ No ☐ Not sure

If no, please provide supporting reasons for your view.

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

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

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

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

☐ Yes ✓☐ Not entirely ☐ Not sure

[17] http://www.companieshouse.gov.uk/about/policyDocuments/registrarsRules/infoRegistrarsRules.shtml

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

**Publish What You Pay response to Question 6.1**

6.1.1 It is essential that the penalty regime is effective, proportionate and genuinely dissuasive of any attempts by companies to conceal payments to governments or present misleading information in their payment report.

6.1.2 Where the breach is technical or bureaucratic in nature (e.g. an inadvertent mistake around filing deadlines), a per-day fine against the company may be appropriate. Where it is demonstrated a payment was deliberately concealed – particularly where avoidance of disclosure facilitated an illicit payment – the penalty for non-disclosure must be greater. It must be severe enough to be genuinely dissuasive/exemplary, beyond simply a cost of doing business. The AD seeks to use project-level payment transparency to reduce opportunities for corruption around extractive projects and licensing, while allowing civil society organisations to understand the revenue received for national natural resources.[18] A strong penalties regime will maximise the value of the disclosure system by incentivising companies to avoid transactional relationships which carry corruption risks.

6.1.3 We recognise that the proposed disclosure regime is in line with the "Standard Scale" fines for filing statutory financial information. Fines on these levels are appropriate for technical or procedural breaches of the reporting obligations and the liability attaching to defaulting directors in a personal capacity is a particularly welcome addition.

6.1.4 The level of fines in the Standard Scale may not be enough by themselves, however, to genuinely dissuade the filing of an inaccurate, misleading or deceptive payment report. We strongly support the use of a strong sanctions regime, both against the company and against its directors in such cases.

6.1.5 We note that the concept of personal liability is supported in A.45(2) of the Accounting Directive:

> *"A.45(2) Member States shall 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 drawn up and published in accordance with the requirements of this Directive."*

6.1.6 We understand the TD is likely to be implemented by amendments to the Listing, Prospectus, Disclosure and Transparency Rules. We strongly support the punitive sanctions regime enforced by the FCA in relation to breaches of these and advocate that these apply equally to companies in respect of information in the payment reports (see 6.2 below).

[18] We note recent media revelations that oil companies have paid $3 billion over the past 15 years to resolve a range of charges in the United States of America, relating to underestimation of oil and gas value to lower royalty payments: http://www.trust.org/item/20140513082534-hupqw/

6.1.7 In addition, we recommend that the AD penalty regime be supplemented by the imposition of an offence for filing a report containing misleading, false or deceptive information (see 6.2 below). The existing proposed penalty regime should also explicitly extend to failures to prepare a report in accordance with the specified criteria (as opposed to failures to submit a report on time) – see our proposed amendments in section 7.1.26 below.

6.1.8 We emphasise, however, that the Publish What You Pay (PWYP) coalition strongly supports the current timeline for implementation in October 2014. As such, any penalties must complement BIS's existing authority under UK Companies legislation or the FCA's authority under financial services regulations, avoiding any need for fresh primary legislation which could slow transposition. The effectiveness of penalties should be a matter of close scrutiny during the reporting period leading up to the review of the AD in 2018.

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

☐ Yes ✓☐ Not entirely ☐ Not sure

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

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

**<u>Publish What You Pay response to Question 6.2</u>**

6.2.1 The proposed penalty regime may be appropriate for technical or procedural breaches of the reporting requirements. However, we strongly recommend severe penalties in respect of any report which includes misleading or deceptive information, especially in cases where details of unusual payments are deliberately withheld. We note that the sanctions regime for payment reporting will ultimately be a combination of AD and TD penalties – we therefore outline our thoughts on both elements here.

**Transparency Directive penalties**

6.2.2 We understand the TD will be implemented by amendments to the Listing, Prospectus, Disclosure and Transparency Rules. We strongly encourage the FCA to penalise breaches of the reporting rules as severely as they currently penalise breaches of other information disclosure requirements, including levying fines proportionate to the size of the company's listing (see 6.2 below). The London Stock Exchange is among the world's foremost securities exchanges, and the companies subject to the TD include many of the largest and most well-recognised extractive firms in the industry. It is entirely appropriate, therefore, that these companies are held to the highest standards of integrity in relation to the payment information they report.

6.2.3 The FCA's decision procedure and penalties manual explains the robust approach taken in relation to breaches of the Listing, Prospectus, Disclosure and Transparency Rules. The FCA seeks to "deprive a firm of the financial benefit derived directly from the breach" (DEPP 6.5A.1G) and may levy fines based on a percentage of the company's revenue from the relevant business area, as this is "relevant in terms of the size of the financial penalty necessary to act as a credible deterrent" (DEPP 6.5A.2G). In determining the seriousness of the breach, the FCA can consider a range of factors including whether the company's senior management was aware of the breach and whether the breach facilitated any form of dishonest dealings or financial crime. The fine can also be adjusted for full deterrent effect (DEPP 6.5A.4G).

6.2.4 The extractives sector is widely regarded as carrying significant corruption risks: PWYP members have documented many cases of corrupt or illicit payments by extractive companies to Governments for access to natural resources. Should it be shown that a company listed on a regulated market in the UK has concealed such a payment by failing to include it in its payment report, the penalties can and should be severe: non-disclosure would have effectively aided and abetted an illicit payment being made.

6.2.5 The FCA's sanction methodology provides an ideal system for penalising such failures. Its fines will be effective in the payment reporting context, in that the FCA has the power to set fines at a level which nullifies the financial gain occasioned by such deceit. Such fines will be proportionate, in that the FCA is mandated to consider the circumstances and seriousness of the breach – which in this case should include the consequences for the host-country where the concealed payment took place – and levy the fine appropriately. They will be dissuasive in that the FCA seeks to set fines on the basis of their deterrence value.

**Accounting Directive penalties**

6.2.6 We strongly support the creation of a new offence against Directors where a company submits a payment report which is misleading, false or deceptive.

6.2.7 This is consistent with existing Companies Act 2006 penalties, under which directors can already face criminal charges for making (or acceding to) misleading statements about their company's affairs. Examples include:

- S.418 – Where a director's report containing the statement to the company's auditors statement *"is approved but the statement is false"*, directors are liable to imprisonment for up to two years.

- S.387 – Where a company fails to comply with the duty to keep accurate accounting records – including sufficient detail to *"show and explain the company's transactions"* – under s.386, directors are liable for a fine or to imprisonment for up to two years.

6.2.8 The payment reports will be a crucial tool for civil society organisations to hold both governments and extractive companies to account for development of their countries' natural resource wealth. Local communities share both the benefits and the impacts of extractive operations and as such must be seen as stakeholders in the extractive industry and corporate behaviour. Disclosure rules, such as the payment reporting standard, which are intended to benefit citizens and civil society, should receive equal priority to those designed to protect creditors and shareholders of the company.

6.2.9 We suggest an offence along the following lines.

*(1) Where a payment report or a consolidated payment report delivered to the registrar pursuant to these regulations includes misleading, false or deceptive information (whether by inclusion or by omission of information), every director of the company who-*

*(a) knew that the report included misleading, false or deceptive information (or was reckless as to such inclusion), and*

*(b) failed to take reasonable steps to prevent the report from being approved or delivered to the registrar,*

*commits an offence.*

*(2) A person guilty of an offence under this section is liable—*

*(a)on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);*

*(b)on summary conviction—*

*(i)in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);*

*(ii)in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).*

6.2.10 Such an offence would be effective, in that the personal liability borne by directors would help to ensure payment reports are prepared to the highest standards of accuracy and integrity. It would be proportionate, in that (a) it is very much in line with existing penalties for making misleading statements about the company's affairs and (b) has been reserved for instances of deliberately deceitful or incompetent behaviour at the highest levels of a company's management. It would be dissuasive in that, while the “standard scale” fines are at a level where they can simply be absorbed into the company balance sheet, the threat of criminal convictions and imprisonment would force directors to ensure they have properly discharged their managerial responsibilities in the preparation of the report.

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

✓☐ Yes ☐ No ☐ Not sure

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

**Publish What You Pay response to Question 6.3**

6.3.1 We have particular concerns about the Government's assertion in para (6) above that there may be "cases where external factors affect the preparation of a report or prevent a company from filing a report".

6.3.2 There is an extremely limited exemption in the AD in relation to reporting payments by subsidiaries (for example, where "severe long term restrictions" hinder the parent in exercising management rights);[19] this only applies, however, (a) to the inclusion of payments by specific subsidiaries in the consolidated report and (b) when the same exemption is applied in relation to the subsidiary for consolidated accounting purposes.

6.3.3 There are no other external factors that could prevent filing a report. If this refers to the repeated claims made by certain companies of the need for categorical country reporting exemptions on grounds of supposed legal prohibitions for disclosing payment information, we point out that there is no authority in the AD for any wider exemptions to reporting based on "external factors" or any other factor. Neither, we believe, is there any credible reason why a company would be "unable to file a report" in a given year. The UK Government, other EU Member States, the European Commission and MEPs – as well as the US SEC in its 2012 rule[20] and the Canadian and Norwegian governments – have all recognised that there is no evidence that any country prohibits disclosure of payment information, or that companies lose competitive advantage because of transparency in any country. In fact it is standard practice for oil and mining contracts to exempt contract partners from confidentiality undertakings where disclosure of information is required by law or regulators (see our response to Q.8 below for further details).

6.3.4 As such, despite repeated claims to the contrary, no credible evidence has been presented to date of legal restrictions in any country, much less any such restrictions which could constitute an "external factor" that could prevent preparation of a report.

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

☐ Yes ✓ ☐ No ☐ Not sure

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

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

[19] AD Article 44.3(a).
[20] See the order denying the API request for a stay of the reporting rule, as further discussed in para. 8.1.26.

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

✓☐ Yes ☐ No ☐ Not sure

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

**Publish What You Pay response to Question 7.1**

**Definitions: "Subsidiary undertaking" and "parent undertaking"**

7.1.1 We note the regulations do not specify a definition of "subsidiary undertaking" and "parent undertaking". We would suggest inserting a general provision that these will be interpreted consistently with the Companies Act.

**Definition: "Mining or quarrying undertaking"**

7.1.2 The definition of "mining or quarrying undertaking" in Regulation 2 ("*Interpretation*") and Table 2 in the Schedule, does not currently reflect the wider definition in AD Article 41(1) of "*undertaking … active in the extractive industries*" in that it does not mention exploration, development or other types of extractive activity.

7.1.3 We therefore suggest the following definition to align with the AD:

> *"mining or quarrying undertaking" means an undertaking which undertakes 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 the Schedule to these Regulations".*

**Definition of "payment"**

7.1.4 We suggest amending Regulation 4.1(c) and 7.1(c) to fully align with the AD Article 43.2(b):

> *"(c) the total amount per type of payment* ***made to each government****"*

**Regulations 5.1 and 5.1(a)**

7.1.5 We believe that there is a drafting error in draft Regulations 5.1 and 5.1(a). These state that

> "The directors of an undertaking that is a subsidiary undertaking or a parent undertaking are exempt from preparing a report if— (a) the parent undertaking is subject to these Regulations …"

7.1.6 We understand that the EU-wide intention of the AD is to exempt subsidiaries of any EU-registered parents that have included the subsidiary's payments to government in their consolidated report. Therefore, the exemption in draft regulation 5.1 should be available not only to subsidiaries whose payments are included in a consolidated report prepared under Regulation 6 (i.e. subsidiaries with UK-domiciled parents), but also under the implementing regulations of other member states.

7.1.7 Therefore we believe the exemption should be widened to read:

*"5. The directors of an undertaking that is a subsidiary undertaking or a parent undertaking are exempt from preparing a report* ***in accordance with Regulation 3*** *if -*

*(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 drawn up by that parent undertaking* ***in accordance with Article 44 of the Accounting Directive****".*

**Regulation 7.2**

[*We note from BIS's Q&A on this consultation that this has been acknowledged as a drafting error – we include our analysis for the sake of completeness]*

7.1.8 The draft Regulation 7.2 falls well short of the consolidated payment reporting requirement in the AD. As drafted, a UK company's consolidated report need only include payments by other group companies if those companies are both "large" and UK registered themselves. The consolidated report should cover all payments of €100,000 or by extractive and logging companies registered in the UK, as well as by their overseas subsidiaries. They should include payments by ***all*** the relevant company's subsidiaries, wherever those subsidiaries are registered and regardless of size.

7.1.9 Regulation 7.2 currently states:

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

7.1.10 The undertakings that are *"required to prepare a report under regulation 3"* are *"large undertakings or public interest entities",* which are also mining, quarrying or logging undertakings. "*Large*", in this case, means a company satisfying the balance sheet total, turnover or employee tests in the AD. As this is a UK statutory instrument, *"regulation 3"* only has effect over UK-registered companies and would therefore omit other subsidiaries that should be covered by the regulations. As Reg. 7(2) is drafted, therefore, companies would not have to include payments by overseas (or small / medium size) subsidiaries in their consolidated report.

7.1.11 Reporting of payments by overseas subsidiaries is a fundamental strength of the AD and TD as these subsidiaries are more likely to be active in corrupt or weakly governed states. Accordingly, accurate transposition of this scope of coverage is a huge concern to civil society. AD Recital 44 sets out the reason for enhanced reporting obligations for extractive and logging companies:

> *"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."*

7.1.12 AD Article 44.1, para 2, makes it clear that "*active*" in the extractive or logging industry is intended to be interpreted with the widest possible geographical scope:

> *"A parent undertaking is considered to be active in the extractive industry or the logging of primary forests **if any of** its subsidiary undertakings are active in the extractive industry or the logging of primary forests." [Emphasis added]*

7.1.13 The consolidated payment report requirement itself is also set out in Article 44.1:

> *"A Member State shall require any large undertaking or any public-interest entity active in the extractive industry or the logging of primary forests and governed by its national law to draw up a consolidated report on payments to governments in accordance with Articles 42 and 43 **if that parent undertaking is under the obligation to prepare consolidated financial statements as laid down in Article 22(1) to (6)***." [Emphasis added]

7.1.14 As such, any company which prepares consolidated financial statements for its subsidiaries must also prepare a consolidated report on payments to governments. Under Article 44.3 there are limited exemptions to this requirement, but the exemptions only apply "*if they are also used for the purposes of the consolidated financial statements*". These AD articles clearly tie the consolidated report requirement to the consolidated accounting requirements: if a company includes one or more subsidiaries in its consolidated financial statements, it should report payments by such subsidiaries in its consolidated report on payments to governments. Whether the subsidiary making a payment is "large" or registered in the UK is not relevant.

7.1.15 We would therefore suggest the following wording to amend Regulation 7.2:

> *"7.2 In this regulation the relevant activities are those of the parent undertaking and of any **undertaking included in the parent undertaking's consolidated financial statements."***

7.1.16 If companies can avoid reporting by structuring a payment through a local subsidiary, the reporting regime will be undermined in precisely the jurisdictions where it is most required. The AD should cover all material payments by EU extractive and logging companies, whether made directly or through a local subsidiary. This means UK companies should be reporting for ***all*** their subsidiaries, wherever those subsidiaries are registered and regardless of size. A key reason is to bring to light suspicious or potentially corrupt payments. Anything less than a comprehensive rule would be ineffective and open to abuse.

### Regulations 8.1 and 8.3(a & b)

7.1.17 The GBP (£) thresholds for medium sized groups are incorrect.

7.1.18 According to the draft regulations, a parent undertaking of a medium-sized group is exempt[21] from the duty to prepare a consolidated report if the "*parent and subsidiary undertakings*" meet "*on a consolidated basis*" at least two of three criteria – which criteria include that the group's "*balance sheet total does not exceed [£21.3 million]*" and its "*net turnover does not exceed [£42.7 million]*".

7.1.19 The thresholds must be equivalent to the EURO (€) thresholds in AD Article 3, using the exchange rate published in the Official Journal of the European Union on the date the AD entered into force (as per Article 3.9). The thresholds for a medium-sized group are stated in AD Art. 3 as: (a) balance sheet total: EUR 20 000 000 and (b) net turnover: EUR 40 000 000. According to the £ : € exchange rate in June 2013 (approx. £1 : €1.17), the GBP equivalent thresholds should be (a) £17.1 million and (b) £34.2 million – significantly lower than the figures stated in draft Reg. 8.3(a & b).

7.1.20 AD Article 3 allows Member States leeway to increase the thresholds for small groups (Art. 3.5) but not for medium-sized groups (Art. 3.6).The GBP thresholds given in Reg. 8.3(a & b) should therefore be re-stated in the region of (a) £17.1 million and (b) £34.2 million.

### Regulation definition: "Equivalent reporting requirements"

7.1.21 As drafted, the definition of "*equivalent reporting requirements*" in Regulation 2 ("Interpretation") covers both:

- reporting regimes adopted by the European Commission as being equivalent under Article 46 of the AD (part (b) of the definition) and
- laws implementing the AD in other EU Member States (part (a) of the definition).

7.1.22 The definition of "*equivalent reporting requirements*" should only cover reporting regimes judged equivalent by the Commission – i.e. part (b) only. The regulations already exempt a UK-registered undertaking from reporting requirements where its parent undertaking is registered in an EU Member State – see Regulations 5 and 8(c). Part (a) is therefore superfluous and should be removed.

7.1.23 Moreover, this definition also impacts on Regulation 11(c). Because of how "*equivalent reporting requirements*" is drafted, UK registered subsidiaries would have to send all the consolidated payment reports prepared by their EU-registered parent companies to Companies House. Any subsidiary of a non-EU company relying on the equivalence exemption (i.e. part (b)) should indeed send the equivalent report to Companies House (AD Article 46(1) explicitly states that the exemption does not extend to publication requirements). However, Companies House would not want to receive consolidated reports already published in other EU Member States.

[21] except where any affiliated undertaking is a public-interest entity.

7.1.24 We also note the powers of the European Commission to determine third country equivalence are in ***Article 47*** of the Accounting Directive – it is only the criteria which are contained in Article 46.

### Regulation 10: Equivalence Exemption

7.1.25 A company should only be able to rely on the equivalence exemption for consolidated payment reports where the report includes all relevant payments by its subsidiaries. We therefore suggest the following amendment to Regulation 10 (highlighted in bold):

*"Regulation 10: The directors of an undertaking that is a subsidiary or parent undertaking are exempt from preparing a* ***consolidated payment report*** *if –*

*(a) the undertaking is subject to equivalent reporting requirements; and*

*(b) the payments to governments made by the undertaking* ***and its subsidiary undertakings*** *are included in a consolidated report drawn up to the same date, or to an earlier date in the same [financial year] by that undertaking in accordance with equivalent reporting requirements."*

### Regulations 3 and 11: Failure to prepare a report

7.1.26 The penalty regimes should apply not only where an undertaking fails to prepare a report, but also where the report prepared does not satisfy the content requirements of the regulations. We therefore suggest the following amendments (highlighted in bold):

*"Regulation 3(2): In the case of failure to prepare a report in accordance with paragraph (1)* ***and Regulation 4****, an offence is committed by every person who – "*

*"Regulation 6(3): In the case of failure to prepare a consolidated report in accordance with paragraph (1)* ***and Regulation 7****, an offence is committed by every person who - "*

*"Regulation 11: Within [11] months of the end of the [financial] year the directors of an undertaking must deliver to the registrar –*

***(a)*** *a report prepared in accordance with Regulation 3* ***and Regulation 4****;*
*(b) a consolidated payment report prepared in accordance with Regulation 6* ***and Regulation 7****;*
*(c) a report or consolidated report prepared in accordance with equivalent reporting requirements."*

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

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

In responding to this question, please note:

(i) *where a company voluntarily produces a similar or related report already*, the costs identified for this purpose should represent only the additional costs necessary to comply with this requirement and not the total cost of production.

(ii) BIS is happy to receive information considered to be commercially sensitive separately from the consultation response or, if requested, to remove such information from a response prior to its publication on the consultation website.

**<u>Publish What You Pay response to Question 8.1</u>**

8.1.1 We believe that certain companies have tended to downplay the benefits to companies, investors, governments and citizens, and to exaggerate the costs arising, from this new reporting obligation.

8.1.2 This reporting requirement has enormous benefits in terms of “international equity” as prominently and repeatedly recognized in the Government’s impact assessment. It will help tackle the “resource curse” of corruption and mismanagement that has inflicted immense direct damage on resource-rich developing countries and their citizens and has indirectly harmed us all by weakening equitable economic growth globally and exacerbating international political instability and aid dependency. By facilitating public scrutiny, extractive industry transparency helps ensure that citizens receive a fair deal from companies for their natural resources and that governments use the resulting revenues responsibly and for the public good to enhance pro-poor economic growth rather than mismanaging the money or diverting it to corrupt elites.

8.1.3 Benefits for host countries and their citizens, companies and investors are highlighted in the Lough Erne G8 Leaders’ Communiqué, which speaks of extractive transparency providing resource-rich developing countries with a basis for “strong and sustainable growth … a long term route out of poverty … and an opportunity to reduce dependence on external assistance”; helping “improve accountability, reduce the space for corruption and other illicit activities and ensure that citizens benefit fully from the extraction of natural resources"; and "encourag[ing] more effective and efficient investment".[22]

8.1.4 The UK's Open Government National Action plan makes similar points. Extractive industry transparency is "the essential first step ensuring that governments and companies are transparent and accountable to citizens for the management of natural resources and the payments and revenues generated"; extractive industry transparency will "promot[e] accountability and good governance, enhanc[e] public debate and [help] combat corruption around the world".[23]

**Benefits for host countries and their citizens**

8.1.5 We agree with the Government that one of the strongest policy rationales for extractive payment transparency is international equity, which is also in the economic interest of companies and investors (as detailed below). The global transparency standard will benefit host countries and their citizens by supporting social and political stability, reducing risks of production disruption and delays that would impair tax and royalty income, improving natural resource governance and management of resource revenues, thus helping reduce corruption and the diversion of revenues from national and subnational budgets, assisting measures to combat poverty, and empowering citizens.[24]

8.1.6 Empirical research confirms that these governance benefits of transparency are correlated with tangible economic benefits for host countries, including increased access to aid and foreign direct investment (FDI). Correlation between FDI inflows and extractive transparency is demonstrated in a research paper which is already referenced in the impact assessment (para. 42, page 11). Other research shows that transparency, as represented by the implementation of the Extractive Industries Transparency Initiative (EITI), has a measurable impact on reducing corruption and as a result, countries gain access to increased aid the further they progress through the EITI implementation process.[25]

8.1.7 Extractive transparency will also bring less tangible but equally important equity benefits for developing countries' citizens, communities, parliamentarians, journalists and other stakeholders: empowerment through access to information (a human right under the Universal Declaration of Human Rights Article 19) in a sphere of genuine public interest; informing public monitoring of government expenditures for efficiency and effectiveness; providing a basis for citizen advocacy with government for better public services; allowing communities and subnational governments to ensure that revenues are redistributed by central government

[22] Lough Erne G8 Leaders' Communiqué, loc. cit. (note 1 above), paras 34-6.
[23] Cabinet Office, Open Government Partnership UK National Action Plan 2013 to 2015, October 2013, pages 48-9, https://www.gov.uk/government/consultations/open-government-partnership-uk-national-action-plan-2013/open-government-partnership-uk-national-action-plan-2013-to-2015
[24] These benefits have been thoroughly documented during the US legislative process and subsequent SEC rulemaking process pursuant to Section 1504 of the Dodd-Frank Act, as detailed in the PWYP-US submission to the US SEC, 14 March 2014, pages 9-12, http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-28.pdf.
[25] Liz David-Barrett & Ken Okamura, "The Transparency Paradox: Why Do Corrupt Countries Join EITI?" European Research Centre for Anti-Corruption and State-Building, Working Paper No. 38 (November 2013), http://www.againstcorruption.eu/wp-content/uploads/2013/11/WP-38-The-Transparency-Paradox.-Why-do-Corrupt-Countries-Join-EITI1.pdf.

according to local benefit-sharing agreements; and assisting citizens and others to assess the development impact of extraction locally.

### Benefits to companies

8.1.8 As the Government's Impact Assessment recognized, UK business and investors will realize significant benefits from an improved operating environment.[26] The reporting requirement will help companies reduce operating risk and improve their social licence to operate by demonstrating to communities their company- and project-specific contribution to national and subnational budgets. This will reduce the risk of the protests, social unrest and conflict that can arise when communities bear the impacts of local extraction of natural resources, see little or no economic or social benefit and receive scant information on the economic contribution from the company operating in their locality. The reporting requirement will therefore benefit companies by reducing such potential additional operational costs as heightened security measures, delayed or lost production, and forgone revenues and profits.

8.1.9 There is already ample evidence that accountability and governance will increase political and economic stability, which in turn will improve the profitability of UK firms and benefit investors.[27] We will briefly supplement the evidence already referenced in the consultation. According to a study by researchers at Harvard and Queensland universities, lost extractive industry productivity and costs incurred due to conflicts can be highly significant: "as a result of conflict, a major, world-class mining project with capital expenditure of between US$3 and US$5 billion was reported to suffer roughly US$20 million per week of delayed production in net present value terms."[28]

8.1.10 The Harvard/Queensland study's findings make clear that the social unrest and conflict resulting from extractive companies' lack of social licence is a major, and costly, problem for companies. Companies benefit from the opportunity to enhance their social licence to operate by demonstrating to local communities their contribution to national and subnational budgets. Increasingly, as tax abuse is publicly debated around the world, citizens are asking whether extractive companies are paying their fair share of taxes and increasing pressure on oil and mining companies to disclose their economic contributions.

8.1.11 Besides experiencing fewer costly production delays, companies as corporate members of society will benefit from the additional society-wide benefits that flow from extractive industry transparency. Such benefits include fewer demands for bribes or pressures to enter into unethical business deals; reduced political interference from host country governments; less security risks and consequently less need for costly security measures to protect operations and personnel; greater investor confidence; enhanced local economic linkages; and a healthier, better educated and more productive local workforce.[29]

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[26] BIS Impact Assessment, UK implementation of the EU Accounting Directive, March 2014, page 6.
[27] Ibid., page 15.
[28] Franks, DM, Davis, R, Bebbington, AJ, Ali, SH, Kemp, D, Scurrah, "Conflict translates environmental and social risk into business costs", Proceedings of the National Academy of Sciences, 2014. http://www.pnas.org/cgi/doi/10.1073/pnas.1405135111
[29] These benefits to companies have been thoroughly documented during the US legislative process and subsequent SEC rulemaking process pursuant to Section 1504 of the Dodd-Frank Act, as detailed in the PWYP-

8.1.12 Empirical analysis by Columbia University confirms that increased transparency in the extractive industries is positively correlated with the price/earnings ratio, return on equity and return on invested capital.[30]

8.1.13 Payment transparency will also help to protect companies from spurious allegations of corruption, and to resist demands to make illicit payments. Companies will enjoy public reputational benefits in their home countries from being seen to “do the right thing” in their overseas operations and will be less subject to criticism from home country campaigners, journalists, politicians and others resulting from apparent complicity in opaque and questionable oil, gas and mining deals. This is clearly demonstrated in the example of Tullow Oil, which recently voluntarily provided the required information ahead of the mandatory reporting deadline, and consequently enjoyed positive publicity following their announcement.[31]

8.1.14 Additionally, extractive transparency has important benefits for deterring and sanctioning corrupt and otherwise illicit behaviour. These benefits will accrue to all stakeholders, including companies. Given the enormous fines imposed under legal anti-corruption regimes such as the US FCPA this is not only a matter of morals but also economics. With respect to oil extraction in the US alone, oil companies have paid US$3 billion over the past 15 years to resolve a range of charges including that they regularly cheated the US government and Native American communities out of royalties on oil and gas leases, as revealed in a recent Reuters report.[32] There can be little doubt that the scale of the problem in developing countries is much greater, as shown by the US SEC’s FCPA enforcement fines which can run into hundreds of billions of US Dollars.[33] Taken together, these costs of corruption that are borne by companies dwarf whatever costs are associated with disclosure compliance, making it clear that an ounce of prevention, in the form of a strong transparency regime, is worth a pound of cure, as represented by these sanctions.

### Benefits to investors

8.1.15 We agree with the Government that the lack of transparency around payments “negatively impacts on, and increases the risk for, UK companies and investors active in the extractives sector through civil unrest and poor business environment.”[34] We note that payment transparency has wide support among the international investor community, including from the

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US submission to the US SEC, 14 March 2014, pages 7-8, http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-28.pdf

[30] Vale Columbia Center on Sustainable International Investment, submission to US SEC, 16 December 2011, http://www.sec.gov/comments/s7-42-10/s74210-115.pdf

[31] Tom Burgis, “Tullow steps up transparency in reporting”, Financial Times, 23 March 2014. PWYP International, “Tullow Oil leads on implementing EU directives by publishing project level data”, 24 March 2014, http://publishwhatyoupay.org/resources/tullow-oil-leads-implementing-eu-directives-publishing-project-level-data. Global Witness, “Tullow’s tax disclosures torpedo Big Oil’s campaign for secrecy”, 24 March, 2014, http://www.globalwitness.org/library/tullow%E2%80%99s-tax-disclosures-torpedo-big-oil%E2%80%99s-campaign-secrecy. ONE, “Tullow Oil sets new standard for transparency”, 24 March 2014, http://www.one.org/international/press/tullow-oil-sets-new-standard-for-transparency.

[32] Alia Dharssi and Ashley Renders, “Big oil firms accused of cheating on royalties lead fight to limit US disclosure rules” Thomson Reuters Foundation, 13 May 2014, http://www.trust.org/item/20140513082534-hupqw.

[33] American law firm Gibson Dunn which has represented API in its legal challenge in the US, also monitors FCPA enforcement statistics, see their 2013 Year-End FCPA Update, 6 January, 2014, http://www.gibsondunn.com/publications/pages/2013-Year-End-FCPA-Update.aspx

[34] BIS Impact Assessment, loc. cit. (note 25 above), page 1.

two groups of institutional investors representing trillions of dollars of assets under management that submitted to the US SEC in April 2014.[35] Both submissions endorse the project-by-project reporting standard as laid out in the Accounting and Transparency Directives and the creation of a consistent global reporting regime.

8.1.16 Although we cannot speak for investors, in our opinion a reporting regime that requires project-level disclosure as embodied in the Accounting Directive, without exemption, will create the circumstances in which companies can avoid taking part in constructing deals where illicit payments are frequently a factor. Investigations by PWYP members such as Global Witness have shown that such illicit payments take on many forms, varying from being clearly illegal, through to arrangements that have benefitted from sophisticated legal interventions to avoid falling foul of the law. There is a clear risk to investors associated with deals that involve illicit payment as a standard practice, and these could include significant financial penalties through to loss of the corruptly obtained asset and significant reputational damage.

## Costs to companies

8.1.17 There have been three main strands to certain companies' claims that implementing this reporting requirement will be detrimental: (a) compliance costs, (b) alleged legal prohibitions in certain countries on reporting, and (c) commercial competitive risk (sometimes related to alleged legal prohibitions). We address each strand in turn below.

*Compliance costs*

8.1.18 With regard to companies' compliance costs resulting from this reporting requirement, as the Government has acknowledged in its Impact Assessment, some companies have in the past provided cost estimates without any justification. Because the Government's Impact Assessment draws on the European Commission's Impact Assessment,[36] that figure is also likely to be an overestimate.

8.1.19 In fact, any cost estimate for AD compliance, whatever the methodology, is likely to be a vast overestimate, given the challenge of accurately accounting for the fact that companies are already incurring many of these costs as they already track, and in some cases report, the same or substantially similar information, pursuant to their obligations under EITI, various national anti-corruption regimes (such as the US Foreign Corrupt Practices Act), or otherwise on a voluntary basis as part of their corporate best practice. For example, companies that operate in the US, including BP and Shell, are already required to report royalty payments to the US government at lease level to the Department of Interior, and some companies publicly report payment information by project as required by the World Bank's International Finance Corporation.[37]

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[35] Letter from Peter Lundkvist, Senior Strategist & Head of Corporate Governance, Third Swedish National Pension Fund, et al. to the US SEC, 28th April 2014: http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-36.pdf, and Steve Berexa, Managing Director, Global Head of Research, Senior Portfolio Manager, Allianz Global Investors, et al., letter to the US SEC, 28th April 2014: http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf

[36] European Commission, loc. cit. (note 2 above).

[37] For US reporting, see http://www.onrr.gov/ReportPay/royalty-reporting.htm. For IFC reporting, see http://www.ifc.org/wps/wcm/connect/Industry_EXT_Content/IFC_External_Corporate_Site/Industries/Oil,+Gas+and+Mining/Development_Impact/Development_Impact_Extractive_Industries_Review

8.1.20 In addition, most extractive companies are likely to have monitoring systems already in place to track revenues and payments, as these would generally be required as inputs to cost projections e.g. to financial models for a given project, and especially as most projects in the extractives sector are likely to be set up with the project company as a special purpose vehicle for that project. Therefore tracking payments to governments on a project-by-project basis should already be in the corporate fabric for most extractive companies. Any companies that do not already have the internal systems in place to record this information are not operating to standard industry practice, and therefore any costs they incur to create these systems should not be counted as compliance costs resulting from the transposition of the Accounting Directive.

8.1.21 We strongly agree with the Government that costs attributable to current practice should be excluded from any estimate for compliance costs arising from the Directive. To the extent that such costs cannot be readily quantified, then such cost estimate must be clearly acknowledged as an overestimate. As the Government's Impact Assessment notes: "Many of the multinational companies affected by the Directive will already be required to report some of the information required by Chapter 10 by the EITI, which has now been adopted by 39 countries. Some extractives companies also already report some of the information required by the Directive on a voluntary basis. In these instances, the costs imposed by the Accounting Directive will be lower because companies will already possess some of the internal systems capable of recording payments to governments, and will already be producing reports that include some of the information required. The changes they will need to make are therefore unlikely to be as wide ranging or costly." (para 112).

8.1.22 Indeed, Tullow Oil's decision to voluntarily publish in its 2013 Annual Report its payments to governments on a project-level basis indicates how low compliance costs are likely to be.[38] Tullow Oil CEO Simon Thompson has described these costs as "negligible."[39]

8.1.23. This point is further confirmed in statements from industry leaders such as Lord Browne, former chief executive of BP: "In my view, the additional cost for big companies, which already spend many millions of dollars on compliance, would be negligible. In some cases it would require changing a few lines of accounting code. Small and medium-sized enterprises, which would face proportionally more significant costs, would be exempt."[40] Former Shell executive Alan Detheridge has also pointed out that the Directive has the "advantage of not imposing an undue burden on reporting companies since the relevant payments are already recorded in subsidiary companies' books of account."[41]

8.1.24 Moreover, with the advance of equivalent reporting requirements in the US, Canada, Norway and other jurisdictions, the marginal cost of UK compliance for companies covered by multiple reporting regimes will fall. It will fall even more dramatically if the rules in other jurisdictions are deemed to be equivalent with the Accounting Directive (pursuant to Article 46 of

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[38] Tullow Oil, Annual Report 2013, http://www.tullowoil.com/index.asp?pageid=599
[39] Simon Thompson, statement at East Africa's Oil and Gas Boom – Promise and Peril, Oxfam and Brookings Institution conference, February 2014, http://www.brookings.edu/events/2014/02/20-east-africa-oil-gas
[40] John Browne, "Europe must enforce oil sector transparency", Financial Times, 24 April, 2012, http://www.ft.com/cms/s/0/40dc74aa-8d3a-11e1-8b49-00144feab49a.html
[41] Alan Detheridge, "The oil industry wants to water down transparency rules – Europe must resist," Guardian (February 7, 2013), http://www.theguardian.com/commentisfree/2013/feb/07/oil-industry-transparency-europe.

the Directive), so that dual-covered companies will be exempt from reporting under the Directive. That cost savings from equivalence could be as high as 43% of the total compliance costs figure, based on a sample of 51 of the largest extractive companies listed in the EU, of which 43% (or 22) are also listed in US and therefore subject to the US regime under Section 1504 of the Dodd-Frank Act.[42] Therefore, if the US regime is deemed equivalent with the EU Directive, then nearly half of the largest listed companies which represent the bulk of total compliance costs will incur almost no additional costs.

*Alleged legal prohibitions*

8.1.25 Some companies and the American Petroleum Institute (API) have argued that China, Angola, Cameroon and Qatar may prohibit disclosure of payments. But there is no persuasive evidence for this. The existing record is clear that none of these four countries prohibits disclosure, and, far from suffering competitive harm, companies that already disclose payment information or will be covered by EU and US disclosure requirements continue to win new contracts in these countries.[43]

8.1.26 We therefore fully agree with the acknowledgement in the Government's Impact Assessment that "We have yet to be provided with convincing evidence that any criminal prohibitions on the reporting of payments to governments exist in other countries, or that disclosure of such information would result in any of the above [negative] consequences. The majority of companies we have spoken to have indicated that they believe they could continue with their operations … without an exemptions clause" (para. 73). This is consistent with the determination made by the US SEC that the evidence of foreign legal prohibitions on Section 1504 disclosures was "unpersuasive" and that they had provided no evidence that any company would face sanctions for making the required disclosures.[44]

8.1.27 Even if any foreign law did prohibit payment reporting, the responsibility for any conflict of law would fall on any extractive company that neglected to include standard contractual clauses that would address this remote possibility. Such clauses allow for disclosures required by home country regulators and stock exchanges, such as AD and TD. These clauses have long been an industry standard, as is evident from the long-standing practice of the Association of International Petroleum Negotiators (AIPN). This is confirmed in a 2009 study by the Revenue Watch Institute and Columbia Law School, which canvassed 150 extractive industry contracts

[42] Calculation based on Appendix A on company coverage, p. 45 of the PWYP-US submission (loc. cit). Although this sample represents listed companies which are subject to the Transparency Directive rather than registered companies which are subject to the Accounting Directive, the figure is useful here as an approximation, and is likely to be lower than the actual figure given that these companies are involved in many more projects than smaller unlisted companies.

[43] See e.g. Global Witness submission to US SEC, 18 December 2013, http://www.sec.gov/comments/dftitle-xv/resource-extraction-issuers/resourceextractionissuers-22.pdf

[44] SEC, Order Denying Stay, 8 November 2012, p. 7, http://www.sec.gov/rules/other/2012/34-68197.pdf.

around the world and found that disclosure to regulators and stock exchanges was a standard exception to confidentiality obligations, and has been for decades.[45]

*No commercial competitive risk*

8.1.28 There is no credible evidence that the AD's transparency requirement will put companies at a competitive disadvantage or create additional commercial risk generally. As the Government has already recognized, "companies have not been able to produce any convincing evidence that disclosure of payment information negatively affects their ability to win contracts" (Impact Assessment, para 68).

8.1.29 Neither payment transparency nor confidentiality of payments is a decisive factor in determining an extractive company's success in bargaining and winning bids with host governments. Negotiations for each deal between companies and host states include a range of complex factors, including geology, quality of the resource, technical and financial capacity and experience of the company, above-ground political risks, and economic characteristics of the project. Bidding protocols and bidder evaluation criteria laid out by each host government differ, since they depend on those complex factors, as well as on the host country's strategic development objectives for the sector, the resources under development, and the specific blocks or land areas up for bid. Many factors unrelated to transparency affect whether companies are eligible to bid and competitive in the process. This can be confirmed by the example of BP in Angola, which is cited in the Government's Impact Assessment (para. 67) as well as numerous other examples, including a thorough examination of bidding criteria in Brazil and Nigeria by PWYP-US.[46]

8.1.30 Payment disclosures at project level cannot yield information that would allow companies to determine another company's return on investment or contract terms. This would require far more information, including production levels, capital investments, production costs, cost recovery rates and costs recovered for the given year, tax holidays, customs exemptions, and prices for production sold. Extractive projects tend to be long term projects with company returns determined over the course of 10-25 years and potentially fluctuating during that period due to a variety of factors. Single-year, backwards-looking snapshots of payments to governments such as those required under the AD would not provide a good picture of the company's overall return on investment. The notion of reverse engineering payment data for use in improving the competitiveness of future bids also rests on the assumption that contract terms are uniform, which they are not.

8.1.31 Corporate and government competitors have other, more timely methods of acquiring payment and contract information, which does not require them to wait for AD disclosures to be produced. This includes comprehensive business intelligence services such as those provided by IHS, Global Data, Barrows, Wood MacKenzie and Rystad Energy, which provide access to contract as well as lease-level information. The principal clients of these services are extractive companies themselves, which therefore already have access to much of the information that

[45] Rosenblum and Maples*, Contracts Confidential: Ending Secret Deals in the Extractive Industries*, Revenue Watch Institute and Columbia Law School, 2009, http://www.revenuewatch.org/publications/contracts-confidential-endingsecret-deals-extractive-industries
[46] See e.g. discussion in Publish What You Pay submission to US SEC, 14 March 2014, pages 36-7, http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-28.pdf

their competitors will disclose under the AD. Moreover, these commercial databases provide this information in real-time, giving them far more competitive value than AD disclosures, which will operate on a time delay of up to 23 months after any specific payment was made. This is in addition to a large amount of information made public proactively by governments, including results of bidding rounds at company and lease or contract level as well as contracts.

8.1.32 There is no evidence to support the claim that transparency of payments at project level will produce information that will be decisive in companies losing bids when competing against state-owned companies. As stated above, payment transparency is very unlikely to be a determinant in winning a bid, but if it were, state-owned companies already have access to high quality sources of competitive intelligence and do not need to wait for AD disclosures. Many other factors not related to transparency provide state-owned companies with competitive advantage in expanding their asset base, including access to significant amounts of capital, the ability to obtain government loans at little or no interest and the capacity to arrange resources-for-infrastructure packages with host governments. Seemingly undisturbed by the prospect of payment disclosures, state-owned companies also routinely establish joint ventures with companies covered by the AD aimed at expanding their asset base.[47] Indeed, in countries such as Nigeria, companies wishing to invest must establish a joint venture or operating agreement with a state-owned company. There is no evidence that the competitive advantages of state-owned companies will be enhanced by knowledge of company payments, even at project level. In fact, many state-owned companies will be obliged to report under the EU Directives, such as LSE-listed Gazprom, Lukoil and Rosneft, under equivalent US reporting rules (such as CNOOC, Petrochina, Sinopec, Petrobras, Vale and Ecopetrol), and increasingly under the EITI.

8.1.33 Further, as the Government's Impact Assessment recognises, "A number of extractives companies already disclose certain country by country payments (some even at project level) on a voluntary basis – for example, Statoil, Tullow Oil, Rio Tinto. This indicates that they do not consider any loss of competition to be significantly damaging" (para 68). Moreover, some proactively transparent companies such as Statoil view payment transparency as a competitive advantage rather than disadvantage: "We believe that such reporting is not an impediment for doing business, but has been a competitive advantage for Statoil."[48] The AD does not require companies to reveal contemplated transactions, bids or negotiating position on such transactions, business models, proprietary technology or confidential communications. And in many cases the payments to be reported under the AD will be with respect to contracts signed years earlier, making their relevance to negotiations limited in a changing market, because it can take several years for a natural resource project to come online and generate significant revenues.

8.1.34 Even if there were any merit in claims about competitive disadvantage, there are now mandatory transparency rules in place or in process in more than 30 countries. As a result, existing regulations in the EU, Norway and the US (notwithstanding the decision by US courts to

[47] E.g. Shell and CNOOC: "Shell signs upstream deal with CNOOC", 1 August 2013, http://www.shell.com.cn/en/aboutshell/media-centre/news-and-mediareleases/2013/new-contract-with-cnooc-20130801.html

[48] Global Witness, "Norway's national oil company Statoil withholds support from US anti-transparency lawsuit." 8 February 2013, http://www.globalwitness.org/library/norway%E2%80%99s-national-oil-company-statoil-withholds-support-us-anti-transparency-lawsuit.

require revision of the SEC's 2012 rules as a result of API litigation), and forthcoming Canadian regulations, will together cover 71% of the largest 200 oil, gas and mining companies by market capitalisation.[49] Other companies are covered by the related Hong Kong stock exchange listing requirements, and more and more companies are subject to the reporting requirements of the EITI, which now includes 44 candidate and compliant countries as well as a number of other countries which have committed to seek candidacy including the UK. As the global transparency standard advances, the proportion of extractive companies escaping home or host country payment reporting requirements will diminish, and the already weak basis for claims about competitive disadvantage will grow ever weaker.

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

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

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

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

### Publish What You Pay response to Question 9.1

9.1.1 On economic impacts, see observations under Question 8.1 above.

9.1.2 On legal implications, see observations under Questions 6.2 and 8,1 above.

9.1.3 On company competitiveness, see observations under Question 8.1 above.

9.1.4 Regarding the position of the UK as a centre for international listings, we believe there are reputational and competitiveness benefits to be gained by implementing this reporting requirement for UK-listed companies through the TD.

9.1.5 The UK has become a leading global financial centre through a combination of effectiveness in attracting and allocating capital and high standards of probity and corporate

[49] Publish What You Pay submission to US SEC, loc. cit. (note 45 above), page 45.

governance. The Government's high level championing of extractive industry transparency in the EU, G8, G20 and OGP has enhanced the UK's international standing with regard to probity and governance. As the global extractive transparency standard extends, it will be to the UK's benefit as a centre for listings to remain in the vanguard of this development.

9.1.6 Because of the number of major extractive companies listed on the Alternative Investment Market (AIM), we believe that to create a level playing field for UK- and EU-listed companies the Government should consider extending the application of the TD beyond strictly EU-regulated markets to include AIM, which as an LSE-regulated market would, we understand, not necessarily be included under the TD.

9.1.7 For similar reasons, we would encourage the Government to use its considerable influence over the Channel Islands to strongly encourage the relaunched Channel Islands Securities Exchange (CISE) in Guernsey to adopt equivalent mandatory reporting requirements. This will avoid the Channel Islands becoming a European listings centre that attracts "'forum-shopping" by companies seeking to avoid application of the TD.

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

**Publish What You Pay response to Question 10**

10.1 We believe that to address all key risk areas in extractives, the AD needs a broader definition of the scope of activities than currently, to include payments relating to trading, transport and export of oil, gas and minerals.

10.2 Transit payments**:** European energy supplies are particularly dependent upon transport through pipelines, making natural gas transport a growing industry of key geopolitical importance to European energy security, especially in the case of pipelines from the former Soviet Union. In Africa major new pipeline networks are proposed and under construction and the focus of large capital investments. Revenues earned from the energy transit trade are at risk of corruption and mismanagement and should be covered by the EU legislation in the longer term. The extractives transportation subsector can involve destabilising instances of theft and corruption. For example, oil theft and fraudulent gas deals with international companies are estimated to cost Nigeria more than US $1 billion a month.[50] Tracking volumes and the payments is critical to understanding the use and control of pipelines and other transport mechanisms.

10.3 Commodities trading: Payment flows between resource-exporting developing countries and international oil and minerals trading companies are a particular concern, because commodities trading is one of the most opaque areas of the natural resources sector. Countries where the

[50] UPI Business News, "Nigeria loses billions in oil, gas theft", 25 October 2012, http://www.upi.com/Business_News/Energy-Resources/2012/10/25/Nigeria-loses-billions-in-oil-gas-theft/UPI-77851351181960/

"resource curse" is strong such as Angola, Congo-Brazzaville, Gabon and Nigeria are highly dependent on commodity trading companies, many of them based in Switzerland (the world leader in terms of volumes of oil and minerals traded by domiciled companies) and the UK (second in the world for oil trading).[51] National oil companies' sales in countries such as Azerbaijan and Nigeria constitute 70% or more of total government revenues,[52] largely to oil traders. A 2010 contract with the Nigerian state oil company, for example, is reported to have enabled a trading company to buy oil at below current market value in return for "commission payments" to government officials.[53]

10.4 "The revelation of traders' profitability will heighten calls for greater transparency from an industry that, although central to the global economy, is little understood and largely unregulated", said the *Financial Times* in 2013.[54] Major UK-registered and/or -listed companies that engage in commodities trading include not only recognised traders such as Glencore-Xstrata but also BP and Shell.[55]

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[51] Berne Declaration, Commodities: Switzerland's Most Dangerous Business, 2012, http://www.evb.ch/en/p19492.html; Revenue Watch Institute, "Swiss disclosure proposal would promote global transparency", 24 September 2012, http://www.revenuewatch.org/news/press_releases/swiss-disclosure-proposal-would-promote-global-transparency

[52] Revenue Watch Institute, Azerbaijan, http://www.revenuewatch.org/countries/eurasia/azerbaijan/overview, and Nigeria, http://www.revenuewatch.org/countries/africa/nigeria/overview

[53] Berne Declaration, loc. cit. (note 50 above), page 207.

[54] Financial Times, "Commodity traders reap $250 bn harvest", 14 April 2013, http://www.ft.com/cms/s/0/9f6f541e-a397-11e2-ac00-00144feabdc0.html#axzz2zAOjz800

[55] Ibid.

10.5 Extension of the AD and TD and the implementing UK regulations to cover exports and commodities trading would be in keeping with the revised EITI Standard: “Sale of the state’s share of production or the revenues collected in-kind: 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. The published data must be  disaggregated to levels commensurate with the reporting of other payments and revenue streams …” (Requirement 4.1.c); “Transportation: Where revenues from the transportation of oil, gas and minerals constitute one of the largest revenue streams in the extractive sector, the government and state owned enterprise/s are expected to disclose the revenues received. The published data must be disaggregated to levels commensurate with the reporting of other payments and revenue streams … (4.1.f)”[56]

10.6 When the Government comes to review the AD regulations, in accordance with draft Regulation 16 and AD Article 48, we would encourage it to consider seeking agreement with other Member States, the European Commission and MEPs to broaden the AD’s requirements’ scope to include payments relating to trading activities, and especially transport and export. This would be entirely in line with the UK’s current commitment on extractives transparency and enhance the consistency of global reporting requirements.

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

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

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

Please acknowledge this reply ☐ ✓

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

☐ Yes ✓ ☐ No

[56] EITI Standard, http://eiti.org/document/standard

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