

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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Organisation (if applicable): **BRINDEX (The Association of British Independent Oil Exploration Companies)**

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Please return completed forms to:

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

Email: extractivesconsultation@bis.gsi.gov.uk

Y	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)

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 (NB: this question is relevant only to those companies actively engaged in extraction and not to those providing support or ancillary services)	Yes		Yes	

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

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

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

(1) We propose that the first report should be prepared in respect 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.

Our members may not have financial systems set up to extract the relevant information. Given the very low level of €100,000 to be applied to payments to Governments the required data may not be readily identifiable. Additional resource (time and cost) will be required to amend systems, extract the data, verify it and obtain necessary Board approvals to publish the data.

Such a requirement will also disproportionately affect our smaller members with fewer resources, whose systems may not be as sophisticated as the very large oil and gas companies, but nonetheless our members are still having to report because of the definition of a 'large' entity (which is easily met by oil and gas companies because of the expensive nature of the assets held).

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 **on or after 1 January 2016**

Reasons for preferred date:

BRINDEX companies do not have the staffing levels to easily take on this reporting requirement and will struggle to complete the additional compliance burden in the proposed timeframe. Extending the deadline to on or after 1 January 2016 will give our members time to absorb the requirements and ensure systems are robust enough to meet the reporting requirements.

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

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

☒ Yes ☐ No ☐ Not sure

If no, please indicate:

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

Maximum period.....

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

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

Many of our members will only report existing financial data on an annual basis; therefore any shorter period could interfere with existing audit/statutory account preparation/financial reporting timelines. This will require additional resource, resulting in an additional administrative and costly burden for our members to comply with the Directive.

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.

Too difficult to determine and will vary amongst our members.

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.

A later transposition of the Transparency Directive may have a significant effect on some of our members by compressing the timetable for disclosure. If there is no concession to allow these members to publish the information through a delayed first timetable a significant cost of compliance will arise. This is unquantifiable but for our members who do not have staffing levels to cope with this requirement the cost of consultants at short notice may be significant.

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

Question 4.1 Please provide information on any issues that arise for UK-registered subsidiaries of EU-registered companies. If appropriate please provide details of any costs that arise as a consequence of being unable to (fully) exercise the exemption in 2015. (All EU Member States are required to implement the reporting requirements by July 2015.) Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Does not impact our members.

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

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

☒ Yes ☐ No ☐ Not sure

If no, please provide supporting reasons for your view.

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

☒ Yes ☐ No ☐ Not sure

If no, please provide supporting reasons for your view.

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

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

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

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

☒ Yes ☐ No ☐ Not sure

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

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

☒ Yes ☐ No ☐ Not sure

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

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

Question 6.3 Are there any special circumstances that the Government should take 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?

In some instances our members may have commercial agreements in place which prohibit publication of certain information. The penalty regime should respect these agreements and not result in a member receiving a financial or criminal penalty if they make the decision not to breach such commercial agreements.

Consideration should be given to circumstances where the penalty can be reduced or eliminated where there is a “reasonable excuse”.

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.

Government may wish to consider a ‘light touch’ approach to penalties in the first year of implementation to give companies time to get used to the new requirements.

An appropriate materiality threshold before penalties applied would be welcome by our members.

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

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

☐ Yes ☒ No ☐ Not sure

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

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

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

In responding to this question, please note:

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

There appear to be very few benefits to our members of publishing the new extractive report, but instead it is imposing another administrative and unnecessary burden on our sector at a time of other similar transparency initiatives (EITI and Country by Country reporting).

The cost of the additional reporting is difficult to estimate across our members as a result of their varying size and complexity, though the expectation is that the additional cost will be significant on the basis of a very low payment threshold and the very wide coverage of payments to national, regional and local Governments. Obviously, the more the reporting requirements can be integrated with EITI and Country by Country reporting the lower the incremental cost will be.

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

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

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

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

Economic impacts:

Not quantifiable.

Legal implications:

Our members have not fully considered the legal ramifications of the Directive, but this will require, in some instances careful examination of contracts to ensure no breach of commercial or confidentiality arises. There will be costs associated with such a review.

Practical implications:

There will, in some instances, be significant system changes and resource requirements to comply with the Directive. Data flows may not currently be set up to provide the required information and as such systems will need to be changed to provide the data and careful verification of the information will also be required. The burden on our members of such work should not be underestimated, but is particularly hard to quantify at this stage.

Competitiveness impact including the position of the UK as a centre for international listings

Unlikely to have any impact on our members.

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

None

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.

None

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

Please acknowledge this reply ☒

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

☒ Yes

☐ No

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