

## 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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✓	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)				

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.

- **OGP member companies who have not been involved in the detail of the pre-legislative process will require additional time to understand the new requirements. It would be unfair and impractical to expect these companies to implement a new process on what would be extremely short notice. Indeed, a large number of companies have not so far been involved in the policy discussions. A requirement for extremely rapid implementation is also likely to increase implementation costs for OGP member companies.**
- **Even for a first payment reporting period starting on 1 January 2015, the time between the implementing legislation being approved by a resolution of each house of Parliament (and then coming into force, it would appear, on 1 October 2014) and the date on which affected companies will need to have implemented their internal tracking**

**systems for payment data will be highly compressed by normal standards. It is for this reason that we believe that Article 53 of the Accounting Directive allows Member States to delay the start of the first payment reporting period and application of other provisions of the Accounting Directive until 2016.**

- **OGP believes that the administrative burden involved in publishing a report for a single quarter of 2014 is disproportionate to any benefit. The numbers disclosed, because of the short reporting period, might also have the unintended consequence of providing a distorted picture of a given company's payments to a host government. In addition, any data from a single quarter reporting period will not be capable of direct comparison with whole year data from subsequent reporting periods.**

**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.....**January 2016**.....

Reasons for preferred date:

- **OGP believes that Article 53 of the Accounting Directive allows Member States to delay the start of the first payment reporting period and application of other provisions of the Accounting Directive until 2016.**
- **Any effective revenue transparency scheme must involve recognising equivalent reporting requirements in other jurisdictions in order to avoid the burdens and costs (to governments, companies, civil society, and the public) of duplicative reporting. No equivalence finding has yet been made with respect to Dodd Frank, which will lead to companies**

having to report similar information under two regimes – indeed three if one includes EITI. A later start for the first payment reporting period creates a window for a finding of equivalency to be made.

- In addition, as noted in the response to Question 1.1, even for a first payment reporting period starting on 1 January 2015, the time allowed for affected companies to implement their internal tracking systems for payment data will be highly compressed by normal standards.
- Moreover, by delaying the reporting period as suggested, the Accounting Directive can be brought into line with the Transparency Directive, thus avoiding this problem of overlap.

**(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?

**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.

- **A later transposition of the Transparency Directive will have the effect of requiring affected companies to report their second set of data a mere seven months after the first set, e.g. a November 2016 report followed swiftly by a June 2017 one. Condensing the timelines in this way shortens the reporting period between the first and second reports and may give rise to misleading data and an additional reporting burden, though we recognise listed companies facing this issue can file early to get into a 12 month cycle from their first report.**

**(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.

- **Starting the first reporting period in January 2016 allows UK-registered subsidiaries of EU-registered companies to be in full compliance with the Accounting Directive, because by then all EU member-states must have implemented the Directive. UK-registered subsidiaries of EU-registered companies will also be able to fully exercise the exemptions in 2015.**

**(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.

- **OGP supports the UK government establishing a common reporting mechanism which meets the relevant Chapter 10 requirements, overseen by Companies House, which is user-friendly, not overly-prescriptive and not over-engineered or over-designed – as this would create unnecessary cost. Relatively few companies will submit reports to Companies House as part of this process, and as those companies are expected to meet part of the cost, it is important that the filing fee is proportionate and not subject to increase year-on-year.**



**(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.

- **Chapter 10 of the Accounting Directive is not intended to serve as a statutory, and therefore externally audited, financial procedure to be relied upon by investors and the City in the same way that statutory annual reports are.**
- **OGP believes that failure to deliver reports to Companies House carries the threat of reputational damage which ultimately is likely to prove more of a deterrent than other forms of sanction. OGP also believes that an overly-strict approach by Government in any review of industry submissions in the initial years of compliance should be avoided.**
- **The penalty regime should allow for flexibility in applying penalties for compliance failures, taking into account the materiality of any reporting errors, ambiguities that may emerge in the practical application and interpretation of the payment reporting requirements and any other extenuating circumstances.**

**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.

- **The proposed penalty regime, involving criminal liability for company directors and civil liability for companies, does not appear to take into account considerations of materiality.**
- **In countries hosting the extractive industries where reporting payments are found to contravene domestic law or existing contractual requirements, OGP member company executives based in those countries and the companies they represent run the risk of prosecution or legal proceedings in local law courts, a scenario which appears disproportionate to the objectives (as against its legal basis, and stated purpose, as an accounting harmonisation measure) of the legislation, which according to the Accounting Directive are:**

**"to provide for enhanced transparency of payments made to governments..." (Recital (44)).**

**"to help governments of resource rich countries to implement the EITI principles and criteria and account to their citizens for payments such governments receive..." (Recital (45)).**

- **The EITI standard, which the Accounting Directive expressly seeks to implement, does not require transparency at the expense of existing contractual and criminal laws of countries where extractive companies operate. EITI Principle 6 provides that the companies, civil society organisations and governments who agreed the principles, "recognise that achievement of greater transparency must be set in the context of respect for contracts and laws".**
- **Establishing the prospect of heavy penalties along these lines will not only disadvantage companies with existing operations in these countries, it will also act as a deterrent to companies looking to start a business in such countries. Foreign investment is a powerful influence for the promotion of anti-corruption business practices, economic reform and capacity building on the part of governments, and it would be unfortunate if the penalty regime for payment reporting compliance failures were to diminish the extent of its influence.**

- **OGP notes that the penalty framework under the existing UK taxation regime is an example of a proportionate regime. Any new penalty regime within the scope of Chapter 10 implementation should be similarly proportionate, rather than based on criminal and civil law, as these are not appropriate frameworks in this context.**

**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?

- **OGP believes the UK Government should take into account conflict of law concerns, as the current provisions run the risk of leading UK listed or registered companies to break host-government law, with unknown consequences for locally based employees, as well as for the legitimate overseas business interests of UK companies and their competitive position when bidding for new interests in countries where such conflicting laws exist.**
- **In addition to the difficulties posed by conflicting laws, OGP member companies also have existing contracts with certain host governments that contain confidentiality obligations which would be in conflict with the proposed reporting requirements in the UK. Breaching such contractual confidentiality obligations could lead to similarly adverse consequences for the reporting company and its subsidiaries, their legitimate business interests and competitive position.**
- **Under the proposed framework, EU law would take precedence over the laws and regulations of third party sovereign states. Where there is conflict between two sets of law and policy – e.g. between the EU framework and those of a host government – resolving such conflict should be a matter for international diplomacy, rather than simply a coercive approach at the expense of UK listed or registered companies - who may be forced into the unattractive position, under the new requirements, of breaching host government law, undermining their competitive position in so doing.**

- **It should be possible to identify a case by case exemption procedure that addresses the harm identified above.**

**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.

- **As noted in the response to Question 6.1, the Government should allow for flexibility in applying penalties for compliance failures, taking into account the materiality of any reporting errors, ambiguities that may emerge in the practical application and interpretation of the payment reporting requirements and any other extenuating circumstances.**
- **It should also recognise that the Chapter 10 payment reporting process is not intended to serve as a statutory, and therefore externally audited, financial procedure to be relied upon by investors and the City in the same way that statutory annual reports are, and that in fact the payment reporting process has entirely different objectives.**
- **Aligning UK implementation of Chapter 10, including its penalty regime, with the regulations transposing similar reporting requirements under the Transparency Directive should be considered. The same principles as set forth in our response to Question 6.3 also apply to the penalty regime under the Transparency Directive. Were BIS to take account of the industry's concerns regarding the penalty regime, it would be important for HM Treasury to do likewise in relation to the penalty regime under the Transparency Directive, in order to ensure consistency between the two frameworks.**

**(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.

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

- **OGP believes any effective revenue transparency scheme must involve recognising equivalent reporting requirements in other jurisdictions in order to avoid multiple reporting. Multiple reporting formats are also likely to prove less helpful for civil society than a more unified approach.**
- **OGP believes that the benefits of the impacts arising from this new reporting obligation will only be achieved once there is a single global level playing field, rather than a multiplicity of inconsistent reporting regimes, which is the prospect now facing the industry. With equivalence yet to be declared between Dodd Frank and Chapter 10 of the Accounting Directive, there will be fewer benefits not just for industry but for governments, civil society, and the public as a whole, because these stakeholders would face the confusion of having to refer to multiple reports, each containing different frameworks and requirements. There should be a universal and co-ordinated approach to reporting payments, rather than the UK establishing a framework on its own that may in due course conflict with Dodd Frank and other regimes, leading to confusion and undermining the revenue transparency goals that all stakeholders agree on.**
- **One of the key elements in the UK government's preference for rapid implementation of Chapter 10 was the need to establish a level playing field with Dodd Frank. However, with the SEC rules now having been vacated in a US court and no clear timeline in place for the publication of new rules, the UK would stand alone in introducing such reporting requirements under the proposed timeline. Moreover, it is conceivable that any new SEC rules will acknowledge the need to respect host country law. Given the direction of debate in the US, there is a strong case for using the time allowed under the Accounting Directive to**

**monitor developments in the US so as to help ensure a level playing field, rather than introducing a multiplicity of reporting frameworks at different times but all with similar objectives.**

**(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:

Legal implications:

Practical implications:

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



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

**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.

- **Regarding Questions 5.1 and 5.2, OGP agrees that industry should be encouraged to lead in the production of guidance to support the production of extractive reports and encourage consistency. Such guidance should recognise the many different scenarios and structures that OGP member companies experience as owners and operators of extractive assets in an industry that is global in nature, and avoid an overly prescriptive approach. Nonetheless there appear to be a number of areas in which guidance could assist industry in meeting its payment reporting obligations under the Accounting Directive (for example, payments by non-operators in a joint venture).**
- **Consideration should be given to the mechanism by which reports submitted under an ‘equivalent’ jurisdiction in another part of the world are published and refiled in the UK.**
- **OGP looks forward to working with BIS as part of the OGP-ICMM-BIS implementation guidance working group on these areas.**

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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