BIS | Department for Business Innovation & Skills

# Consultation response form: The Future of Narrative Reporting

A copy of the consultation available at: http://www.bis.gov.uk/consultations.

Responses to the Consultation by be received by 19 October 2010

**Name: Jane Allen**

**Organisation (if applicable): Publish What You Pay**

**Address:** Publish What You Pay, C/O Open Society Foundations, Cambridge House, 100 Cambridge Grove, W6 0LE

**Email:**

**Return completed forms to:**
Jane Leavens
Corporate Law & Governance Directorate
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 1686
Narrativereporting@bis.gsi.gov.uk

**Please tick the box from the following list of options that best describes you:**

| | |
|---|---|
| | **Quoted company** |
| | **Other company** |
| | **Investor or investment manager** |
| | **Business representative organisation** |
| | **Investor representative organisation** |
| X | **Non governmental organisation (NGO)** |
| | **Trade Union** |
| | **Lawyer or accountant** |
| | **Other (e.g. consultant or private individual)** |

**Background**

Publish What You Pay (PWYP) is a network of over 600 civil society organisations from resource rich developing countries and international non-governmental organizations working to ensure that oil, gas and mining revenues are used for economic development and poverty reduction.

Revenues from oil, gas and mining industries are an important source of income for governments of over 50 countries around the world. A lack of transparency in these payments has lead to corruption, widespread poverty and conflict. Detailed, country specific financial and narrative reporting by extractive industry companies is essential to allow citizens and civil society organisations to investigate and monitor the use of government receipts for energy and mineral extraction. In countries that suffer from chronic high levels of corruption and state-capture this information is rarely available.

In framing our response to the consultation on narrative reporting, we would like to draw your attention to historic legislation passed by the United States Congress on 15 July 2010.

Provision 1504 (Disclosure of Payments by Resource Extraction Issuers) contained in the new Dodd-Frank Wall Street Reform and Consumer Protection Act requires oil, gas and mining companies that file an annual report to the Securities and Exchange Commission (SEC) to publicly report how much they pay each government for access to their oil, gas and minerals[1]. This information must be presented annually on a country- and project-specific basis.

This new listing requirement was passed because it is seen to be of value both to investors (in valuing companies and assessing risk) and to citizens in producing countries who will be able to use this information to scrutinize the collection and use of revenues generated by natural resource extraction. The US government has announced that it is actively seeking to work with other jurisdictions to ensure similar requirements are enacted and will make this a priority in the year ahead.[2] The Hong Kong stock exchange had already updated its stock listing rules in June 2010 to require new applicant oil, gas and mining companies to disclose "payments made to host-country governments".[3]

**The PWYP coalition urges the UK Government to introduce an equivalent transparency requirement for all extractive industry companies, UK and foreign, listed on the London Stock Exchange. Most significant UK domiciled extractive companies are covered by the US law, but many of their competitors are not because they list only in the UK. A UK law would plug this hole and help to level the playing field for UK companies.**

---

[1] http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf
[2] http://www.whitehouse.gov/the-press-office/statement-press-secretary-transparency-energy-sector
[3] http://www.hkex.com.hk/eng/rulesreg/listrules/mbrulesup/Documents/mb96_miner.pdf

## Value of narrative reporting

**<u>Question 6:</u> What other sources of company information do you use and how valuable are they (e.g. information provided on the website, analysts' briefings, dialogue with the company, corporate social responsibility report)?**

| Comments |
| --- |
| Civil society organisations, parliamentarians and individuals in resource-rich countries can hold their governments to account for the tax receipts, royalties and fees gained from resource extraction when these are publically disclosed. A lack of transparency in the natural resource sector has led to a 'resource curse' – high levels of poverty, corruption, conflict and economic decline in countries with an abundance of oil, gas or mineral resources. Paradoxically, two thirds of the world's poorest people live in resource-rich developing countries. Financial transparency in the natural resource sector is a fundamental condition to improving governance and economic management in over 50 of the world's poorest countries. |

**<u>Question 8:</u> Is there scope to arrange the information in a more useful way?**

| Comments |
| --- |
| If oil, gas and mining companies published details of the payments they make to foreign governments on a country- and project- specific basis, hundreds of civil society organisations, NGOs, individuals and parliamentarians from around the world would use the reports to hold their governments to account for the extractive revenues received. This information should be online and easily accessible to allow NGOs, civil society groups and individuals to make use of it. |

## Business Review

**<u>Question 10</u>: The business review provisions require quoted companies to report, to the extent necessary, on:**

- **main trends and factors likely to affect the future development, performance and position of the company's business**
- **information on environmental matters**
- **information on employees**
- **information on social and community matters**
- **persons with whom the company has essential contractual and other relationships**
  - **i) is this information useful to you? How do you use it?**
  - **ii) Could disclosure be improved? If so, how?**
  - **iii) Are there key issues which are missing? If so, please explain?**

**Comments**

PWYP welcomes the fact that the Department of Business, Innovation and Skills consultation on the future of narrative reporting is "exploring all options - regulatory and non regulatory - for driving up the standards of company narrative reporting to the level of the best and thereby enabling stronger and more effective shareholder engagement."

PWYP also notes that the Department for Business, Innovation and Skills is considering creating a "powerful companies regulator" that would have responsibilities for regulating corporate governance, corporate information and its disclosure, the stewardship of companies by institutional shareholders and the UK Listings Authority (Treasury consultation on financial regulation, paragraph 5.22).

PWYP calls on the UK government to extend reporting requirements for all extractive industry companies operating in the UK to cover country-by-country and project-by-project financial reporting of payments made to foreign governments, including taxes, fees, royalties, bonuses and other financial transactions. These disclosure requirements are good for business, investors and the UK Government:

**Good for business:**

- Major British companies listed with the US SEC like BP would benefit from a level playing field. Some of the world's largest energy and minerals companies, such as Gazprom, Anglo American and Xstrata, would only be captured via a rule change on the London Stock Exchange.

- Transparency provides a stable investment climate for business. Investors are more able to assess the risk of investing in a company if they know where it is paying taxes and how much it is paying. In a world of growing competition between companies from North America, Europe, Asia and other regions, transparency favours the best companies and deters their less scrupulous

competitors.

- Companies in the extractive industries need to protect themselves from false or unfair accusations and blame-shifting by host governments that can tarnish their reputations and lead to hostile operating environments, litigation and loss of investment.

- When disclosure of payments leads to better management of government resources, companies will receive fewer demands from host communities for 'social services' and may see less need for corporate philanthropic projects in developing country contexts. Shell and Exxon spent $64 million combined on community development projects in Nigeria in 2001. Payment transparency is a low cost way to reduce the amount of such programs.

- Properly managed resource-rich economies feature higher and broader-based economic growth. This would increase the stability of developing countries and create new markets for investors and companies, including in the non-natural resource sectors.

**Good for investors:**

- Investors need to be able to assess the risks of their investments. They need to know where, in what amount, and on what terms their money is being spent in often very high-risk operating environments- often poor developing countries, that may be politically unstable, corrupt, with a history of civil conflict fuelled partly by natural resources. Secrecy of payments carries bottom-line risks for investors. F&C Asset Management states, "Investors have a strong interest in ensuring that the oil, gas and mining companies in which they invest have access to resources and can operate in a stable and predictable business climate, especially at a time when the most attractive reserves are often in politically unstable regions."[2]

- Investors should know how much money is being invested "up front" in oil, gas and mining projects. Oil companies often pay large "signature bonuses" to secure the rights for an oil field, long before the first oil is produced - in addition to the capital investment. In Angola, $500 million is not unusual for a signature bonus and single fields can cost over $2 billion to develop. These costs take years for companies to recoup through their production sharing arrangements with host companies. It is in the interest of investors to know the amount and timing of payments in high-risk operating environments.

- In countries where there is a history of mismanagement of extractive industry revenues, new governments may come to power on platforms of nationalization or expropriation of foreign assets. Where revenue payments *are* disclosed, there is a better chance that natural resource wealth will be better managed for the benefit of all, reducing risks.

- Reputational risk for companies could affect investors – for instance, by holding an extractive industry company in a portfolio that could be target of campaigning. Companies need to protect themselves from false or unfair accusations and blame-shifting by host governments that can tarnish their

reputations with the investor community and the general public. Disclosure of payments is one way to address reputational risk. Extractive companies are less likely to be asked to pay bribes, and transparency over payments is less likely to leave them open to allegations of bribe paying.

**Good for the UK government:**

- Money from natural resources often dwarfs money from ODA. In the UK the burden on our aid budget could be reduced if developing countries were able to achieve sustainable growth by mobilising their own natural resources. Transparency would help by making sure these resources are better-used and countries move beyond aid dependency.

- UK energy security will benefit from the fostering of stable, long-term, and mutually-beneficial relationships with oil producing nations.

- The British people want to know that their government and corporations are not contributing to the corruption, poor governance, and unmitigated poverty that too often afflict resource-rich countries in the developing world.

- The UK (along with the USA) will establish itself as a world leader in the movement to promote transparent business practices as part of the fight against corruption and poverty.

**Question 13: Are there non-regulatory solutions to increasing quality through better guidance or publicising excellence in business reports? If so, what?**

| Comments |
| --- |
| Non-regulatory solutions for extractive industry transparency have proved insufficient. The UK government has played a key role in the development of the Extractive Industries Transparency Initiative (EITI), the multi-stakeholder initiative that encourages resource-rich country governments to put in place a framework for the disclosure and auditing of payments and revenues. However, the voluntary approach underpinning EITI has meant that progress has been painfully slow. For example, only five countries are EITI compliant to date. PWYP believes that a mandatory approach to financial reporting standards is required to create consistent global standards of information disclosure.<br><br>The EITI and legislative routes compliment and re-enforce one another. Whilst we support the EITI and the critical voice it gives to civil society in discussions over revenue transparency, it is not a substitute for legislation. Companies and countries who endorse the principles and standards as set out in the EITI have no reason to resist legislation.<br><br>The consultation document states that “UK companies are rightly considered to rank among the best in the world in their standards of corporate governance and reporting”. These companies will benefit from a level playing field. PWYP asks the UK Government to continue showing leadership in promoting high standards of business reporting and transparency by introducing a requirement for all extractive industry companies operating in the UK to include country-by-country and project-by-project financial reporting of payments made to foreign governments, including taxes, fees, royalties, bonuses and other financial transactions, in their annual reports. |