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Response to: Business Frameworks Directorate Transparency and Trust Team,
Department for Business, Energy & Industrial Strategy,
transparencyandtrust@beis.gov.uk

CORPORATE TRANSPARENCY AND REGISTER REFORM

Consultation on options to enhance the role of Companies House and increase the transparency of UK corporate entities

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Publish What You Pay (PWYP) UK welcomes this opportunity to respond to the Department for Business, Energy & Industrial Strategy (henceforth “BEIS”) and Companies House (henceforth “CH”) consultation on new proposals to enhance the role of CH, increase the transparency of UK corporate entities and help combat economic crime.¹

PWYP UK is the United Kingdom chapter of the global Publish What You Pay civil society coalition, which comprises more than 700 member organisations and 50 national coalitions around the world campaigning for an open and accountable extractive (oil, gas and mining) sector. PWYP UK is a membership coalition of 30 UK-based civil society organisations.²

Executive summary

Responding to widespread concerns about the “resource curse” that affects many countries that produce oil, gas and solid minerals, the UK has implemented mandatory annual reporting of payments to governments by 90-100 UK-incorporated and/or London Stock Exchange-traded extractive companies.³ Canada, the rest of the European Union and Norway implement equivalent laws.

Approximately 70 extractive companies have publicly filed one or more payments reports with Companies House’s online Extractives Service (ES) on financial years since 2015. Although the ES is not the prime focus of the present BEIS and CH consultation, PWYP UK has been encouraged by government officials to submit

¹ <https://www.gov.uk/government/consultations/corporate-transparency-and-register-reform>

² https://www.pwyp.org/pwyp_members/united-kingdom/

³ UK legislation: <http://www.legislation.gov.uk/uksi/2014/3209/contents/made> (Reports on Payments to Governments Regulations 2014); <http://www.legislation.gov.uk/uksi/2015/1928/contents/made>; <http://www.legislation.gov.uk/uksi/2014/3293/contents/made>; http://media.fshandbook.info/Legislation/2014/FCA_2014_63.pdf

via this consultation comments on the functioning and effectiveness of the ES and how it can be improved.

While the ES is in many ways a very useful mechanism, this submission describes limitations and weaknesses in the way the ES operates and how these can be usefully addressed. PWYP UK makes 15 specific recommendations below.

Recommendations

Late reporting and non-filing

Companies House (CH) should:

1. Rapidly implement its commitment to deliver an IT solution for publishing extractive company explanations for not filing in any given year, with such statements preferably organised alphabetically and/or by financial year to facilitate user searches. See also recommendation 15c.
2. Create an internal automated system to trigger reminder/inquiry letters to companies that have reported in previous years if they have not submitted a report four weeks after their reporting deadline each year.
3. Establish and implement unambiguous public protocols for the way any company that fails to report, file an equivalent report or provide a valid exemption statement will be dealt with, consistent with the 2014 Regulations Part 4, including a standard time limit after the company's reporting deadline, after which regulation 19 of the 2014 Regulations,⁴ which provides for the serving of a court order, will be invoked.

Naming of recipient/payee government entities

CH should:

4. Hold discussions with the FCA as soon as possible to better understand the need for, and consequent legal obligation on companies to provide, the name of each recipient/payee government entity to be included in payments reports, consistent with the policy intention underlying the law and with best practice as shown by the EITI. See also recommendation 15a.
5. (Assuming CH reaches agreement with the FCA that recipient/payee government entities should be named) Work with civil society groups PWYP UK and the Natural Resource Governance Institute (NRGI)⁵ to develop a new algorithm and/or other automated or manual solution to enable it to identify payments reports that fail to name recipient/payee government entities or that use the catch-all term "other" for such entities, and establish a clear protocol/system for the rejection of such reports with notification to the filing company of the omission that it is required to correct in order to have its filing accepted.

Project-level payments

CH should:

6. Work with civil society groups PWYP UK and NRGI to develop a new algorithm and/or other automated or manual solution to enable it to identify payments reports where companies have omitted to include project-level data, have been inconsistent in disaggregating payments below entity level or have used the catch-all term "other" in the project name field, and establish a clear protocol/system to inform the company that it is required to confirm that no payments were made that can be attributed to specific projects as defined in the 2014 Regulations, or it should disaggregate payments below entity level consistently, in order to have its filing accepted.

Proportionate reporting of joint venture payments

CH should:

⁴ http://www.legislation.gov.uk/uksi/2014/3209/pdfs/uksi_20143209_en.pdf

⁵ PWYP member organisation NRGI, which has created and maintains at considerable cost the widely used and highly praised www.resourceprojects.org online repository for mandatory extractives payment data, has informed PWYP UK that it is willing in principle to be part of any such discussions/collaboration.

7. Convene a joint working group with industry and civil society to explore whether and why companies should or should not be required to include their proportionate share of joint venture payments made on their behalf by joint venture operators, and if necessary what explanatory notes may be required. See also recommendation 9.

Valuation of in-kind payments

CH should:

8. Work with civil society groups PWYP UK and NRG1 to develop a new algorithm and/or other automated or manual solution to enable it to identify payments reports that fail to state the volume as well as the value of in-kind payments, and establish a clear protocol/system for the rejection of such reports with notification to the filing company of the omission that it is required to correct in order to have its filing accepted.

Project aggregation for reporting purposes

CH should:

9. Convene a joint working group with industry and civil society to explore disagreements about the circumstances under which companies may aggregate two or more legal agreements and report them as a single project, and if necessary what explanatory notes may be required. See also recommendation 7.

Introducing a “Report it now” function for the ES

CH should:

10. Extend the online “Report it now” function (consultation document, para 9) to the ES as a simple mechanism enabling users to notify concerns about any payments report, thereby contributing to quality control.

Alphabetical index of ES filing companies

CH should:

11. Place on the ES home page at <https://extractives.companieshouse.gov.uk/> an alphabetical index of companies filing reports, with links to each company’s ES reports.

Statistical reports on the ES

CH should:

12. Publish on <https://extractives.companieshouse.gov.uk/> or elsewhere regular reports on ES visit and visitor numbers, data downloads, feedback received, reports filed on time and late, complaints received/investigated, submission/publication of valid explanations for non-filing, incomplete/non-compliant reports sent back for completion/amendment (with reasons for initial rejection) and subsequently accepted within/outside the reporting deadline, and failures to report in full compliance with action taken and outcomes.

Keeping reporting companies and other stakeholders informed

CH should:

13. (With each recommendation above that is implemented) Introduce explanations progressively on the guidance page at <https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries> about any changes made and any new protocols and systems introduced.
14. Place a prominent link on the ES homepage at <https://extractives.companieshouse.gov.uk/> to the guidance page <https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries>.

Addressing policy and implementation divergences between BEIS / CH and the FCA

CH should:

15. Address policy and implementation divergences between BEIS / CH and the FCA by:
 - a. Resolving with the FCA different interpretations of the requirement to name recipient/payee government entities. See also recommendation 4.
 - b. Exploring with the FCA – potentially with civil society groups PWYP UK and NRGi involved – automated approaches to cross-checking the data consistency of dual-obligation company payments reports to the ES and the NSM and development of a system to notify companies with data inconsistencies and instruct them to file amended reports with data that is entirely consistent between the ES and NSM versions of the report.
 - c. Seeking the FCA’s agreement that it too will commit to publish company responses to requests for an explanation for not filing in any given year. See also recommendation 1.
 - d. Exploring with the FCA – potentially with civil society groups PWYP UK and NRGi involved – possibilities for joint coordination between CH, the FCA and the NSM to provide users with a single access point for all extractive payments reports submitted under the 2014 Regulations, enabling all companies filing reports under UK law to file with one mechanism only, and report users to access reports via a single UK online repository.

While making this submission, PWYP UK also wishes to express its general agreement with the consultation submission made by PWYP member organisation Global Witness. On this, please see page 5 below.

Introduction

The international extractive (oil, gas, mining) industries, which generate hundreds of billions of US dollars of payments and revenues each year, have long been recognised as at particular risk of corruption and financial mismanagement.⁶ Approximately 90 to 100 large and/or publicly listed oil, gas and mining companies are incorporated in the UK and/or have securities traded on the London Stock Exchange Main Market. This makes the UK one of the major home jurisdictions for the extractive industries worldwide.

The UK Government has championed international measures to bring greater transparency and accountability to this high-corruption-risk sector. The UK co-founded the voluntary-for-governments Extractive Industries Transparency Initiative (EITI) in 2002/3 and has been a leader in implementing laws to require oil, gas and mining companies to disclose their payments to governments in every country of operation in annual mandatory country- and project-level reports.

The UK Reports on Payments to Governments Regulations 2014 (henceforth “2014 Regulations”), implementing chapter 10 of the 2013 European Union Accounting Directive, require large and/or publicly listed UK-incorporated extractive companies (and large non-registered undertakings) to file an annual payments-to-governments report with the CH Extractives Service, <https://extractives.companieshouse.gov.uk/> (henceforth “ES”). Consistent with the UK’s high-level political commitments in 2013,⁷ companies must file payments reports to the ES’s online repository in open and machine-readable XML data format, which provides users with free-to-access data in the form of CSV files

⁶ For literature on the “resource curse”, see e.g. https://resourcegovernance.org/sites/default/files/nrgi_Resource-Curse.pdf

⁷ See <https://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communicue>;
<https://www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex>;
<https://www.gov.uk/government/consultations/open-government-partnership-uk-national-action-plan-2013/open-government-partnership-uk-national-action-plan-2013-to-2015#natural-resource-transparency-ensuring-natural-resources-and-extractive-revenues-are-used-for-public-benefit>

and via an application programming interface (API).⁸

PWYP UK has been in dialogue with the Department for Business, Innovation & Skills (2012-16) and BEIS (2016-), and with CH, since the ES was first conceived, designed and came into use regarding the timing, content and format of extractive company reporting under the 2014 Regulations. During 2019 BEIS and CH officials have encouraged PWYP UK to engage with the current consultation on Corporate Transparency and Register Reform as an appropriate opportunity to comment on the operation of the ES and to make proposals to improve it.

Issues of monitoring, quality control and enforcement that arise with the ES are in many ways similar to those arising with the PSC (people with significant control) register, company accounts and other aspects of CH's role as the UK companies registrar. We therefore hope to see the Government's ideas for improved checks on the information held by CH, and reform of its enforcement powers, extended from mainstream company registration and reporting to the ES. This in our view will enhance the quality of information held by the ES and improve extractive companies' compliance with their reporting obligations. This in turn will improve the usefulness to stakeholders of the ES data, whose intention the 2014 Regulations' Explanatory Memorandum states as "to give citizens of resource-rich countries the information they need to hold their governments to account" for moneys paid by extractive companies.⁹

Our response below therefore relates broadly to these parts and chapters of the consultation:

- Part B: Improving the Accuracy and Usability of Data, particularly Chapter 6 on Reform of powers over information filed: in this case relating to extractives payments data filed with the ES repository under the 2014 Regulations.
- Part D: Ensuring Compliance, particularly Chapter 12 on Compliance ... and data sharing: again, in relation to extractives payments data filed with the ES under the 2014 Regulations.

While making this submission, PWYP UK also wishes to endorse its member organisation Global Witness's proposals to the consultation. In light of Global Witness's recent analysis of the UK register of People with Significant Control (PSC),¹⁰ PWYP UK considers that Global Witness's proposals in its submission will help BEIS and CH improve both the PSC register and other elements of the UK company disclosure regime, especially with regard to enlarging CH's mandate and increasing its role and capacity in checking information submitted. Please see Global Witness's submission for full details.

Extractive companies' payments reporting to CH to date and issues arising

According to PWYP UK's analysis, 71 oil, gas and mining companies, including several non-UK-incorporated companies, have so far filed payments-to-governments reports with the ES for at least one financial year since 2015.¹¹ Of these, more than 50 companies have filed reports on either three or four financial years, up to 2018. PWYP UK is aware of a small number of companies that it believes should have filed one or more reports and have not filed any.

⁸ See Guidance: Filing reports for the extractives industries, <https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries>

⁹ http://www.legislation.gov.uk/ukxi/2014/3209/pdfs/ukxiem_20143209_en.pdf, para 7.1.

¹⁰ Global Witness, The Companies We Keep, July 2018, <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/#chapter-0/section-1>, and Getting the UK's House in Order, May 2019, [https://www.globalwitness.org/documents/19717/Getting the UKs House in Order_xZZxobR.pdf](https://www.globalwitness.org/documents/19717/Getting%20the%20UKs%20House%20in%20Order_xZZxobR.pdf)

¹¹ Some forestry companies have also filed payments reports under the 2014 Regulations. PWYP UK does not monitor these.

Late reporting, non-filing, other compliance issues and ill-defined requirements

PWYP UK, as far as time and resources allow, monitors extractive companies' compliance with the payments reporting requirements. Since 2018 we have submitted three batches of complaints to CH where we believe companies have not met their obligation to file within 11 months of the end of their financial year¹² or otherwise not fully met the requirements (see the table below).¹³

PWYP UK complaints to CH re extractive companies' filing to the ES

<i>Date of complaint</i>	<i>Subject of complaint</i>	<i>Outcomes</i>
March 2018	10 companies with payments reports to ES apparently more than two months overdue (financial years ending in 2017)	CH acknowledged complaint; 6 companies subsequently filed reports; 2 stated they had a valid exemption; ¹⁴ other 2 outcomes unknown
February 2019	14 companies with payments reports to ES apparently more than two months overdue (financial years ending in 2018)	CH and BEIS acknowledged complaint and provided subsequent updates; 9 companies subsequently filed reports at least five months late; 2 stated they had a valid exemption; 1 appeared to be in liquidation; other 2 outcomes unknown
	5 companies' most recent payments reports had not identified recipient/payee government entities	BEIS has agreed to "discuss with FCA to better understand their view" on the need to identify recipient/payee government entities; ¹⁵ PWYP UK has ceased notifying CH of such instances until BEIS and CH have clarified their policy position on this point
July 2019	4 companies with payments reports to ES apparently more than two months overdue, and one apparently 7 weeks overdue (financial years ending in 2018)	Not yet acknowledged; one of these 5 companies may be in liquidation; another probably made no in-scope payments in the period
	4 companies with payments reports to ES that appear to omit required project-level disaggregation	Not yet acknowledged

BEIS and CH accept that CH should publish companies' responses to complaints that they have not filed a

¹² As required by the 2014 Regulations, <http://www.legislation.gov.uk/ukxi/2014/3209/contents/made>, Part 4.

¹³ PWYP UK has also submitted complaints to the UK financial regulator, the Financial Conduct Authority (FCA), relating to late or non-compliant reporting by London Stock Exchange-traded extractive companies, which are required to file payments reports within 6 months of the end of their financial year and via a different mechanism, <http://www.morningstar.co.uk/uk/NSM>. See requirements at <https://www.handbook.fca.org.uk/handbook/DTR/4/3A.html>

¹⁴ The usual valid exemption is not having made payments above the materiality threshold of £86,000 during the period (regulation 5(3) at <http://www.legislation.gov.uk/ukxi/2014/3209/contents/made>). Other valid exemptions are when the company's parent company has filed a consolidated report in the UK or in another EU member state (regulations 6, 7) or an equivalent report outside the EU (regulations 12, 13), such as in Canada under Commission Implementing Decision (EU) 2016/1910, <https://publications.europa.eu/en/publication-detail/-/publication/15dd7c39-9d9a-11e6-868c-01aa75ed71a1>

¹⁵ BEIS email communication with PWYP UK, July 2019. PWYP UK has asked BEIS and CH to clarify whether extractive companies are required to identify each government entity receiving payments, which BEIS/CH currently do not recognise as a requirement. The FCA has formally recognised this as a requirement for LSE extractive companies as inherent in the policy intention behind the 2014 Regulations and EU law: see PWYP UK and NRGi news item and comment at <https://www.pwyp.org/pwyp-news/uk-financial-regulator-oil-gas-mining-companies-government-entities-payments/>

report that appears to be due.¹⁶ CH has undertaken to publish such statements and has informed PWYP UK that it is working on an IT solution to enable this.

Percentage compliance rates for extractive companies filing reports to the ES no more than two months overdue would therefore be approximately 90% for financial years ending in 2017 (≈ 7 non-compliant out of 71) and 83% for financial years ending in 2018 (≈ 12 non-compliant out of 71). This may be reasonably satisfactory for only the fourth year of mandatory payments reporting, although the apparent trend if it persists would be in the wrong direction. This also assumes that there are no other companies required to file payments reports with the ES that PWYP UK does not know about.

Publication of company reasons for not filing

PWYP UK welcomes BEIS and CH's recognition of the usefulness of publishing companies' explanations for not filing in any given year (see table) but regrets the fact that some months have passed since CH first indicated that it was working on an IT solution to publish these. This is surely not an over-complex task.

Failure to identify government entities

From a citizen's perspective, companies' failure to identify recipient/payee government entities can be a serious hindrance to using the payments data to hold governments to account as the law intends. PWYP UK has notified CH about companies that state merely "Government of [Country]" or name only the country as the recipient of payments. The 2014 Regulations state that for reporting purposes "'government' means any national, regional or local authority of a country, and includes a department, agency or undertaking that is a subsidiary undertaking where the authority is the parent undertaking" (regulation 2) and that reports should state "the government to which each payment has been made, *including the country of that government*" (regulation 5, emphasis added). The ES XML reporting template provides two columns: one to identify the government and the other for the country code. This is fully consistent with the EITI, on which EU mandatory requirements are based, whose template explicitly asks reports to state "the name of the receiving government entity".¹⁷

If citizens in producer countries are to effectively hold their governments to account for payments made by extractive companies, they need and have a right to know the precise government entity receiving each payment. They should not be forced to guess or to seek this information elsewhere. Similar points made by PWYP UK to the UK financial regulator, the Financial Conduct Authority, preceded the FCA's published confirmation that extractive companies are required to identify each government entity receiving payments as inherent in the policy intention behind the law.¹⁸

Other reporting omissions/inconsistencies and ill-defined requirements

Concerns arise relating to several companies' failure to report any payments at project level (or their inconsistent reporting of project-level payments)¹⁹ or others' failure to report proportionate shares of payments made on their behalf by joint venture operators. Joint venture payments, which are a "grey area" in the regulations, can be very large and risk being unreported where the operator is out of scope of European or Canadian transparency laws and the EITI.

¹⁶ BEIS, *The Reports on Payments to Governments Regulations 2014, Post Implementation Review*, PIR No. BEIS024(PIR)-18-BF, Feb. 2018, http://www.legislation.gov.uk/ukxi/2014/3209/pdfs/ukxi0d_20143209_en.pdf, para 72, page 20: "The Regulations require a response [from companies to requests from CH regarding why they have not filed a payments report for a given financial year] ... within a set period, and the reply to the request from Companies House will be published on the CH website. This would discourage further questions from other parties if the company had filed elsewhere, or will show where a report was necessary but had not been provided."

¹⁷ See <https://eiti.org/document/eiti-summary-data-template>

¹⁸ See <https://www.fca.org.uk/publication/newsletters/primary-market-bulletin-20.pdf>, page 8, and footnote 15 above.

¹⁹ Omission of project-level payments is valid where all payments are genuinely made at entity level.

One major oil company has for four years not provided sufficient disaggregated volume data to enable valuation of all its in-kind payments, which in the form of barrels of oil (or oil equivalent) are common in the sector, often very large and offer opportunities for corruption. There are also disputed grounds for companies aggregating two or more legal agreements as a single project for reporting purposes.²⁰

All the above omissions, inconsistencies and ill-defined requirements potentially enable companies to hide or disguise corrupt payments, which the legislative intention was to deter and prevent by informing and empowering citizens. Lack of time and resources has prevented PWYP UK from so far systematically analysing all such patterns and variances that would be necessary to submit more formal complaints.

Need for an alphabetical index of filing companies with links to filed reports

The ES is in many ways a very good resource for payments report users and probably the most accessible online extractive reports repository of any in the EU. It lacks one obvious feature, however, which is an alphabetical index of filing companies with links to filed reports. Unless users have the specialist capacity to explore the portal's developer page and use the API, or know how to "toggle" the ES's home page,²¹ they must search for reports manually by company name or number. A user who searches by a marginally different company name or number from the one under which a company has filed may not find a report.

The ES needs a clear alphabetical index by company name, linking to the reports, so that users can see at a glance which companies have filed and quickly access the reports for each year. In Canada, implementation of equivalent legislation, the Extractive Sector Transparency Measures Act (henceforth "ESTMA"), by the governmental Natural Resources Canada provides a sortable alphabetical and date-order index on the home page linking to extractive companies' payments reports.²²

Statistical reporting on the ES

CH has in recent weeks shared with PWYP UK monthly visit and unique visitor statistics for the ES covering November 2017 to June 2019.²³ CH has also informed PWYP UK that there has been little or no use to date of the ES user feedback link.²⁴ Currently, however, there is no public statistical reporting on the ES.

Assuming that CH's powers are enlarged as indicated in the consultation document, CH could publish monthly and/or annual online statistical reports on ES visit and visitor numbers, data downloads, any feedback received, complaints received and investigated, and enforcement activity, to provide stakeholders with a clearer understanding of how CH delivers on this element of its remit. Periodic statistics could include number of reports filed on time, number of late reports accepted, submission and publication of valid explanations for non-filing (e.g. no above-threshold payments made in the last financial year, or filing by a parent company in the UK, in another EU member state or under equivalence provisions in Canada), incomplete or otherwise non-compliant reports sent back for completion or amendment (including reasons

²⁰ For an explanation of the 2014 Regulations requirements in detail, see PWYP UK's fact sheet at <https://www.pwyp.org/wp-content/uploads/2019/04/PWYP-UK-fact-sheet-UK-regulations-rules-for-reports-on-payments-to-governments-EU-Directives-updated-October-2016.pdf>

²¹ By inserting a space in the search box and pressing the return key.

²² <https://www.nrcan.gc.ca/our-natural-resources/minerals-and-mining/mining-resources/extractive-sector-transparency-measures-act/links-estma-reports/18198>. However, the Canadian site does not host the reports but links externally to company websites, which in this regard makes it less useful than the ES, because links will break if the location of a report moves on a company's website.

²³ Visit and unique visitor numbers for both filing and accessing reports average a combined total of several hundred each month.

²⁴ User feedback is invited via the link near the top of the page at <https://extractives.companieshouse.gov.uk/> to <https://www.research.net/r/chextractives>

for initial rejection) and subsequently accepted within and outside the reporting deadline, failures to report with action taken and outcomes (e.g. number of court orders served under regulation 19 of the 2014 Regulations, and prosecutions for misleading, false or deceptive reporting and any penalties imposed under regulations 16, 17 and 18).

Policy and implementation divergences between BEIS / CH and the FCA

As noted above (footnote 13), London Stock Exchange- (LSE-) traded extractive companies are required to file payments reports within 6 months of the end of their financial year to the FCA not CH and via a different online mechanism, <http://www.morningstar.co.uk/uk/NSM> (henceforth “NSM”).²⁵ In all the details of reporting except for the formats and mechanism, in-scope LSE companies must follow the 2014 Regulations.²⁶ Companies with a dual UK reporting obligation must file with both CH and the FCA.

Overdue, difficult-to-locate and in other ways non-compliant reports have so far been more common with LSE reporting to the FCA via the NSM than with reporting to CH via the ES. PWYP UK has also identified several reports to the NSM that are inconsistent with reports to the ES, such as lacking certain categories of data. In addition, as noted above, BEIS / CH and the FCA currently have contradictory interpretations of the requirement to name recipient/payee governments, which the FCA recognises while BEIS / CH do not. A further difference relates to CH’s recognition of a legal duty to publish companies’ valid exemption statements (see table above), about which PWYP UK currently awaits a response from the FCA as to its own view or policy.

Unlike the ES, moreover, the NSM, which is a contracted-out service provider to the FCA, receives a vast amount of other regulated information about LSE companies in all sectors, which makes extractive payments reports often hard to identify and locate.²⁷ In the past year PWYP UK has noted that some company payments reports from earlier years are no longer accessible at their original URL location on the NSM. We have raised this with the FCA and our concern that, if URL links on the NSM cannot be relied on to remain unchanged, mistrust will grow among users of the UK system regarding the availability of LSE extractive payments reports. The legal requirement is for LSE-listed companies to ensure their reports are publicly available for at least 10 years, yet there are instances of companies moving their reports from the original page on their own website to new locations, or possibly removing them entirely, and reports may potentially also disappear from company websites when one company is taken over by another or liquidates. This makes having a reliable permanent online government-sponsored repository of LSE companies’ payments reports all the more important.

Overall, users may currently have to search two separate repositories for UK-reporting companies’ reports, may not easily find what they seek and may find inconsistencies between the same company’s data filed in both places.

²⁵ See Payments to Governments and Miscellaneous Provisions Regulations 2014, implementing article 1(5) of the 2013 EU Transparency Directive Amending Directive, the Disclosure and Transparency Rules (Reports on Payments to Governments) Instrument 2014 and <https://www.handbook.fca.org.uk/handbook/DTR/4/3A.html>

²⁶ For formats and mechanism, see <https://www.handbook.fca.org.uk/handbook/DTR/4/3A.html>, <https://www.the-fca.org.uk/markets/ukla/regulatory-disclosures/national-storage-mechanism> and <https://www.fca.org.uk/publication/newsletters/primary-market-bulletin-20.pdf>

²⁷ LSE extractive companies filing payments reports are required to use either of two drop-down classifying menus to identify their reports on the NSM, but many omit to do so.

Conclusions and recommendations

The UK Government has shown commendable leadership in championing and implementing country- and project-level payments-to-governments reporting by oil, gas and mining companies as a means to promote transparency and accountability and combat corruption in the sector. The more so for providing two online repositories where open and machine-readable data is freely available for public access.²⁸ However, as described in section 2 above, challenges remain in ensuring that complete, accurate, up-to-date and fully compliant data is properly accessible to stakeholders.

Here PWYP UK offers recommendations to BEIS and CH to improve the system. We frame these recommendations in the spirit of the consultation document, where we welcome the following statements:

- “proposed reforms that would deliver better quality information ... extending the powers of Companies House to query and seek corroboration on information before it is entered” (para 22);
- “powers to seek further information before accepting a filing” (para 125);
- “Companies House has been moving in this direction already ... to help ensure inaccurate or fraudulent information is spotted as early as possible” (para 130);
- a “‘risk engine’ will incorporate machine learning and use new analysis techniques to assess information provided by companies at point of delivery to identify information that may be fraudulent or incorrect” (para 132);
- “Where [compliance] cannot be achieved by other means, Companies House takes action to enforce the legal obligations to disclose information” (para 203);
- “a ‘Report it Now’ feature was introduced ... which allows anyone to notify concerns to Companies House” (para 204);
- “Companies House has been working with civil society groups to develop new algorithms to allow it to identify cases of non-compliance ... [and has undertaken] exercises to identify and correct areas of non-compliance” (para 205);
- “The proposed reforms ... will see Companies House develop new responsibilities to verify and investigate the data it receives, to assess risks and share intelligence, and to strengthen its work with other agencies to ensure robust enforcement” (para 250);
- “Companies House will be a truly digital organisation, inside and out, its services will be simple and easy to use, allowing customers to interact with it using the latest technology” (para 255).

Consistent with the above consultation document statements, many of the recommendations below propose that CH enhances its monitoring, quality control and enforcement protocols and systems relating to the acceptance and publishing of extractives payments reports on the ES. Such systems may be manual, automated or both and will be in keeping with CH’s current statement that “If a report [to the ES] does not meet the specified requirements, it will be returned for correction, with an indication of the areas which need amendment.”²⁹ There is precedent supporting the recommendations below in CH’s current approaches to data quality control, compliance and enforcement, as well as encouragement in the new powers being envisaged.

There is also precedent in Natural Resources Canada’s monitoring and compliance enforcement of extractive companies’ payments reports under equivalent Canadian law, ESTMA. Natural Resources Canada has a small

²⁸ And in the FCA’s case, “human-readable” data as well – see <https://www.fca.org.uk/publication/newsletters/primary-market-bulletin-20.pdf> – although currently many companies fail to comply with the FCA’s requirement for reports in XML as well as in HTML or PDF format.

²⁹ <https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries/guidance-for-the-companies-house-extractives-service>, para 11.

team of officials who monitor payments reports and have in the past rejected and required companies to submit amended reports where they have found deficiencies.³⁰

Recommendations

Late reporting and non-filing

CH should:

1. Rapidly implement its commitment to deliver an IT solution for publishing extractive company explanations for not filing in any given year, with such statements preferably organised alphabetically and/or by financial year to facilitate user searches. See also recommendation 15c.
2. Create an internal automated system to trigger reminder/inquiry letters to companies that have reported in previous years if they have not submitted a report four weeks after their reporting deadline each year.
3. Establish and implement unambiguous public protocols for the way any company that fails to report, file an equivalent report or provide a valid exemption statement will be dealt with, consistent with the 2014 Regulations Part 4, including a standard time limit after the company's reporting deadline, after which regulation 19 of the 2014 Regulations, which provides for the serving of a court order, will be invoked.

Naming of recipient/payee government entities

CH should:

4. Hold discussions with the FCA as soon as possible to better understand the need for, and consequent legal obligation on companies to provide, the name of each recipient/payee government entity to be included in payments reports, consistent with the policy intention underlying the law and with best practice as shown by the EITI. See also recommendation 15a.
5. (Assuming CH reaches agreement with the FCA that recipient/payee government entities should be named) Work with civil society groups PWYP UK and the Natural Resource Governance Institute (NRGI)³¹ to develop a new algorithm and/or other automated or manual solution to enable it to identify payments reports that fail to name recipient/payee government entities or that use the catch-all term "other" for such entities, and establish a clear protocol/system for the rejection of such reports with notification to the filing company of the omission that it is required to correct in order to have its filing accepted.

Project-level payments

CH should:

6. Work with civil society groups PWYP UK and NRGI to develop a new algorithm and/or other automated or manual solution to enable it to identify payments reports where companies have omitted to include project-level data, have been inconsistent in disaggregating payments below entity level or have used the catch-all term "other" in the project name field, and establish a clear protocol/system to inform the

³⁰ See Natural Resources Canada, Extractive Sector Transparency Measures Act (ESTMA) FAQs, August 2017, <http://www.nrcan.gc.ca/node/18802/>, section on compliance: "All incoming reports will be reviewed based on a validation checklist ... as well as with the Technical Reporting Specifications. If a report does not meet the requirements of the checklist, NRCan will request corrections ... All reports may be subject to further ESTMA compliance verification and corrective measures may be ordered at any time following the report being published ... NRCan will ... assess ESTMA reports based on an internal risk assessment framework to ensure ESTMA compliance and data integrity. Companies found to be at a higher risk of non-compliance may be flagged for further compliance verification, including requests for information/documents or audits ... If an entity is found to be willfully not compliant with reporting requirements or corrective measures, obstructs an audit, knowingly provides false or misleading information, or fails to comply with any other provisions ... of the Act, NRCan may recommend prosecution." PWYP Canada has confirmed to PWYP UK that NRCan does sometimes reject deficient reports and ask companies to file amended ones.

³¹ PWYP member organisation NRGI, which has created and maintains at considerable cost the widely used and highly praised www.resourceprojects.org online repository for mandatory extractives payment data, has informed PWYP UK that it is willing in principle to be part of any such discussions/collaboration.

company that it is required to confirm that no payments were made that can be attributed to specific projects as defined in the 2014 Regulations, or it should disaggregate payments below entity level consistently, in order to have its filing accepted.

Proportionate reporting of joint venture payments

CH should:

7. Convene a joint working group with industry and civil society to explore whether and why companies should or should not be required to include their proportionate share of joint venture payments made on their behalf by joint venture operators, and if necessary what explanatory notes may be required. See also recommendation 9.

Valuation of in-kind payments

CH should:

8. Work with civil society groups PWYP UK and NRG1 to develop a new algorithm and/or other automated or manual solution to enable it to identify payments reports that fail to state the volume as well as the value of in-kind payments, and establish a clear protocol/system for the rejection of such reports with notification to the filing company of the omission that it is required to correct in order to have its filing accepted.

Project aggregation for reporting purposes

CH should:

9. Convene a joint working group with industry and civil society to explore disagreements about the circumstances under which companies may aggregate two or more legal agreements and report them as a single project, and if necessary what explanatory notes may be required. See also recommendation 7.

Introducing a "Report it now" function for the ES

CH should:

10. Extend the online "Report it now" function (consultation document, para 9) to the ES as a simple mechanism enabling users to notify concerns about any payments report, thereby contributing to quality control.

Alphabetical index of ES filing companies

CH should:

11. Place on the ES home page at <https://extractives.companieshouse.gov.uk/> an alphabetical index of companies filing reports, with links to each company's ES reports.

Statistical reports on the ES

CH should:

12. Publish on <https://extractives.companieshouse.gov.uk/> or elsewhere regular reports on ES visit and visitor numbers, data downloads, feedback received, reports filed on time and late, complaints received/investigated, submission/publication of valid explanations for non-filing, incomplete/non-compliant reports sent back for completion/amendment (with reasons for initial rejection) and subsequently accepted within/outside the reporting deadline, and failures to report in full compliance with action taken and outcomes.

Keeping reporting companies and other stakeholders informed

CH should:

13. (With each recommendation above that is implemented) Introduce explanations progressively on the guidance page at <https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries> about any changes made and any new protocols and systems introduced.
14. Place a prominent link on the ES homepage at <https://extractives.companieshouse.gov.uk/> to the guidance page <https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries>.

Addressing policy and implementation divergences between BEIS / CH and the FCA

CH should:

15. Address policy and implementation divergences between BEIS / CH and the FCA by:
 - a. Resolving with the FCA different interpretations of the requirement to name recipient/payee government entities. See also recommendation 4.
 - b. Exploring with the FCA – potentially with civil society groups PWYP UK and NRG1 involved – automated approaches to cross-checking the data consistency of dual-obligation company payments reports to the ES and the NSM and development of a system to notify companies with data inconsistencies and instruct them to file amended reports with data that is entirely consistent between the ES and NSM versions of the report.
 - c. Seeking the FCA’s agreement that it too will commit to publish company responses to requests for an explanation for not filing in any given year. See also recommendation 1.
 - d. Exploring with the FCA – potentially with civil society groups PWYP UK and NRG1 involved – possibilities for joint coordination between CH, the FCA and the NSM to provide users with a single access point for all extractive payments reports submitted under the 2014 Regulations, enabling all companies filing reports under UK law to file with one mechanism only, and report users to access reports via a single UK online repository.