

Improving transparency in the oil, gas and mining sectors: the European Union's payments to governments legislation

In 2013, the European Union (EU) passed game-changing new transparency legislation requiring large oil, gas, mining and logging companies listed and registered in the EU to disclose their revenue payments to governments around the world. The objective of companies disclosing payments to governments is to strengthen transparency and fight corruption, misuse of public money and illicit financial flows from resource-rich countries by enhancing the accountability of governments of host countries where extractive companies operate and of the companies themselves. The legislation also plays a critical role in encouraging greater stability in resource-rich countries, benefitting both citizens and investors. We believe that "payments to governments" reporting is essential for a number of reasons:

- **Empowerment of citizens in resource-rich countries**, by improving public understanding of extractive companies' activities and payments;
- **Deterrent function**, because enhanced scrutiny makes it harder for governments and companies to hide corrupt or dubious payments and misallocated revenues;
- **Increased information for investors**: disclosure requirements help protect investors by maintaining fair, orderly, and efficient markets, and facilitate capital formation;
- **Conflict prevention**, as transparency can help reduce corruption, which can drive conflict and terrorism;
- **Business and government reputation, and an improved social licence**, as improved transparency can help increase citizens' trust in both governments and companies.

As the European Commission's review of Chapter 10 of the [EU Accounting Directive](#) approaches, this briefing sets out a number of recommendations which would further strengthen the legislation, including its application to publicly listed companies under the EU Transparency Directive, in line with its original objectives. Here are three areas that must be improved to make the law fit for purpose:

1. Accessing data

Only a single free-to-access EU-wide central online repository containing both EU-registered and EU-listed extractive companies' disclosed data in open data format can provide adequate citizen access to companies' reports, and enable the necessary data machine-readability, analysis and comparability.

What are the current requirements?

The Accounting Directive (AD) requires EU-registered companies to publish their reports on payments to governments on an annual basis in a form and manner "*as laid down by the laws of each Member State.*" The AD does not require that the reports are published in a central repository or freely available. In some cases, users have to pay to access reports. The information is not required to be published in any particular format, and is seldom machine-readable open data. There is a central EU portal connecting Member States' business registers, but not all Member States are currently connected, and the portal is unsearchable by report type. With the partial exception of reports by UK-registered extractive companies (which are published in a central repository in open data), it is therefore challenging to locate, access, analyse and compare data, diminishing the overall effectiveness of the AD.

EU-listed companies are required under the Transparency Directive (TD) to report their payments to governments in accordance with Chapter 10 of the Accounting Directive, again "*as laid down by the laws of each Member State.*" Article 21a of the Transparency Directive requires the European Securities and Markets Authority (ESMA) to develop and operate a European electronic access point (EEAP) to provide access to all regulated information filed under the TD and to be accessible through ESMA's website. The EEAP was due to be established by 1 January 2018 but has been postponed. Article 21a also requires Member States to ensure there is access to their national storage mechanism/officially appointed mechanism (OAM) of listed company regulated information via the EEAP once established. Under the Commission's regulatory technical standards

(RTS) on access to regulated information (May 2016), once established, this system will enable users to access regulated information by legal entity identifier (LEI) and type of regulated information from listed companies across the EU/EEA in a central location.

What needs to change?

Measures to make it easier to find, analyse and compare reports must be included under the Directive. This can be achieved by:

- Requiring companies covered under both the Accounting Directive and the Transparency Directive to publish their reports directly to a central online repository, hosted and maintained by the European Commission, freely accessible to the public.
- Ensuring the European Securities and Markets Authority (ESMA) develops and operates the European electronic access point to provide access to companies' information as per the Transparency Directive's requirements.
- Requiring EU Member States to set up officially appointed mechanisms as per their obligations under the Transparency Directive.
- Requiring companies to publish their reports both in PDF or HTML and in an open, machine-readable data format.

2. Clarifying existing data

Clarifying several requirements of the legislation, particularly those that set out how and when payments should be reported, would ensure clearer, more harmonised data is reported, strengthening the Directives' original objectives.

What are the current requirements?

Currently the Accounting Directive lacks clarity in several of its definitions and requirements. This has led in some cases to over-aggregation of projects by certain companies, which reduces the level of detail of company reports, preventing users from fully understanding the data. This may result in specific payments of interest to citizens and civil society being obscured from view. With regard to the disclosure of joint venture payments, the Directive does not specify whether and under what circumstances extractive companies have to disclose them in their reports. Moreover, companies are required to disclose the value of their in-kind payments but only required to disclose the volume of those payments "*where applicable*". The volume of in-kind payments is necessary to establish whether payments are appropriately valued. In addition, it is important to clarify the requirement to identify each recipient government entity, require more clarity around currency conversion, and require companies to clarify how they have interpreted potential differences in the definition of payment categories. By refining and strengthening the definitions and requirements included in the Directives, the legislation can provide additional clarity to reporting companies and ensure better-harmonised and more transparent reporting standards.

What needs to change?

To ensure an appropriate degree of transparency, several improvements in data quality are needed. This can be achieved by:

- Clarifying the definition of *substantially interconnected legal agreements* in the Accounting Directive, to avoid artificial aggregation of projects.
- Specifying that companies include all joint-venture payments larger than €100,000, whether made directly by the company, indirectly via the operator or by another entity on the reporting company's behalf, on a proportionate basis (relative to the company's ownership stake), regardless of whether the company has a controlling or non-controlling interest.
- Clarifying that when a payment in-kind is made in the form of oil, gas or another mineral, companies must report both the value and the volume of such payment, and include supporting notes to explain how the value has been determined.
- Clarifying that companies should avoid aggregating cash payments and payments in kind in a single figure, and avoid aggregating payments in kind for differently valued commodities, such as oil and

- gas.
- Clarifying that companies are required to state the name of the national or subnational government entity or other government body receiving each of their payments, including departments, agencies or undertakings controlled by those authorities.
- Requiring companies to disclose the exchange rate applied between the reporting currency and the currency in which the payment was made.
- Requiring companies to explain their interpretation of payment categories, consistent with Article 41 (definitions) and Article 43.4 (principle of substance rather than form).

3. Increasing data availability and guaranteeing its quality

In order to have a more comprehensive picture of extractive companies' payments to governments, further reporting requirements and payment categories need to be included in the legislation, and greater assurance is needed on data quality.

What are the current requirements?

Currently, the Accounting Directive does not include payments to governments for the sale of oil, gas and minerals as a payment category on which companies should report, or other relevant payment categories. It does not explicitly require companies to mention projects for which no single payment or series of related payments reached the €100,000 reporting threshold within a financial year. The lack of a legal requirement to mention all projects regardless of whether above-threshold payments are being reported means that some entities fail to report one or more projects in their reports. The Directive also omits to require companies to disclose contextual information on their extractive projects. It does not require any form of audit or reconciliation with annual reports. Nor does it require disclosure of additional tax-related information on a country-by-country basis, which is crucial to increase corporate and government transparency and accountability.

What needs to change?

Additional information and a degree of audit and reconciliation are needed to address the gaps in the current legislation. This can be achieved by:

- Including additional categories of payments to governments on which companies have to report, in particular, payments related to the sale of oil, gas and minerals, as well as payments for transportation and export activities, for social expenditures and to state security forces for security services.
- Requiring companies to name all projects even where payments during the reporting period were less than €100,000.
- Requiring companies to provide contextual data per project including: status (exploration, development, production), partners (if any, and the name of the operating partner), date of first production, production volumes and explanatory notes about payments linked to infrastructure improvements.
- Requiring a limited assurance report on the disclosed data from independent auditors, together with a statement that reconciles at least the aggregate of all payments with the sum of corresponding accrued figures in the annual report.
- Requiring companies to disclose additional country-by-country tax-related data based on the information included in the European Parliament's [final report](#) on *disclosure of income tax information by certain undertakings and branches*.

More information is available in a joint civil society [position paper](#) on the review of the EU legislation.

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