

# EXPLORING THE EFFICACY OF THE EU LAW CONCERNING REPORTS ON PAYMENTS TO GOVERNMENTS: REFLECTIONS FROM THE EU

A report prepared by the STAR Collective, an academic group from across the EU acting to enhance SOCIAL well-being through TRANSPARENCY and ACCOUNTABILITY RESEARCH. Names of all the collective members are listed in the full report available at <http://www.publishwhatyoupay.org/resources/eu-law-academics-report>

## The research involved:

- Creation of the STAR Collective of academics to gather and analyse reports across EU jurisdictions.
- Design and usage of a disclosure checklist to benchmark disclosures, building on the findings of earlier work (Chatzivgeri et al., 2017).
- Interviews with stakeholders.

## Countries and companies analysed:

- Reports were found in 19 EU Member States.
- 245 reports analysed, 92 relating to the financial year beginning on or after 1/1/2015 (mainly published in 2016) and 153 relating to the financial year beginning on or after 1/1/2016 (mainly published in 2017).
- Drawing on findings from interviews with regulator, legislator, preparer, industry representative, advisor/auditor, investor and civil society stakeholder groups.

## Findings:

- Reports are being used and found useful by civil society as intended. There is evidence of support for the EU reporting requirements in the corporate world.
- Lack of precision over payment recipients. 24% (2015) and 19% (2016) of companies do not report the name of the government entity to which payments are made.
- Member States' statutory obligation to monitor compliance is mainly not met.
- There is no EU central repository for retrieving reports; access to reports in different countries varies and is not straightforward.
- There is evidence of variability across countries in the way companies interpret types of payments to government, reporting requirements for joint operations and substantially interconnected projects.

## Recommendations:

- Better filing, preferably at a central repository at the EU level, to improve accessibility.
- The creation, updating and publication by the EC of a list of in-scope companies at EU level.
- Enhanced regulation, requiring at least limited assurance audits of the reports and/or their reconciliation to audited figures.
- More effective government monitoring of compliance with the provisions.
- Clarification in terms, consistent with the spirit of the law, of the reporting principle to apply under joint operations, the meaning of 'substantially interconnected' with regard to project-level aggregation, the categories of payments and the specificity of payment recipients.
- A general requirement to disclose the basis of preparation of numbers in the reports.
- Enhancing format consistency and machine- as well as human-readability.
- Alignment with and development of other laws and regulations would be additionally helpful: further prescribing of public country-by-country reporting and increased disclosures would enhance accountability/transparency in respect of tax, consistent with OECD recommendations.

## Executive Summary

*“The “resource curse”, [is] a phenomenon by which countries rich in natural resources (such as oil, gas and minerals) – “resource-rich” countries – tend to have less economic growth, worse development outcomes, higher inequality and weaker institutions than countries with fewer natural resources...[P]romoting the transparent, accountable and sustainable management of oil, gas and minerals can contribute to prosperity for all” (PWYP, 2018).*

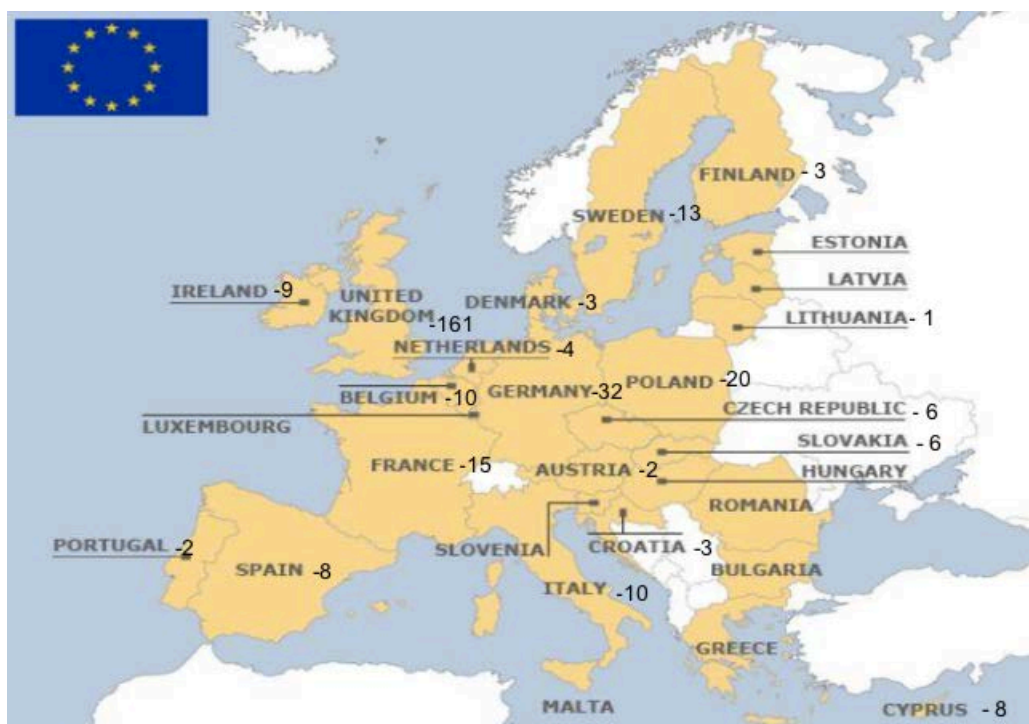
## INTRODUCTION

The EU's requirements for country-by-country reporting of payments to governments by oil, gas and mining (extractive) and forestry companies consist of the Accounting Directive's Chapter 10 provisions and the equivalent provisions of the Transparency Directive (collectively 'the Directives'). The provisions require in-scope companies in the extractive and forestry sectors to publicly report details of payments they make to governments on an annual and per-country basis, including at project level. The reasoning behind the provisions was that by increasing transparency concerning substantial payments made to governments of resource-rich countries by significant corporations in the extractive and forestry sectors, these governments would become more accountable for the usage of the revenues they receive. The need for greater accountability arises from the concern to see improved socio-economic development of these countries. Hence, the provisions could help overcome the 'resource curse'.

The provisions require that payments be broken down: into categories such as taxes, royalties, bonuses and licence and other fees as well as on a country-by-country basis and into payments made in respect of specific projects as well as entity-level payments such as corporate income tax. The Chapter 10 provisions apply to companies registered within EU Member States. The Transparency Directive provisions apply to in-scope companies from both within and outside of the EU, listed on EU-regulated stock exchanges.

The study reported here follows on from an earlier study into the early transposition and implementation in the UK of the provisions of the Directives (Chatzivgeri et al., 2017).<sup>1</sup>

**Figure 1: Number of reports found in each country**



Map adapted from BBC News (2014)

This report reflects an attempt to survey all EU Member States. This required collaboration across the EU. The UK researchers involved thus co-ordinated expansion into a larger research team, forming the collective authoring this report. Particular attention was given to analysing Reports on Payments to Governments (RPGs) published after implementation of the law. Insights from the UK specific study – which, for instance, drew attention to how the EU provisions were transposed and what interpretations

<sup>1</sup> <https://openair.rgu.ac.uk/handle/10059/2700>

of the law were possible - informed the EU-wide analysis. There was also an interest in learning more about stakeholder views as to the nature, content and usefulness of the RPGs.

This report reflects an attempt to respond to civil society's request for an independent study in a way that is timely in relation to the EU review of the law. The 245 RPGs analysed here were located in 19 EU countries (Figure 1). 92 reports were found for the financial year beginning on or after 1/1/15 (these being mainly published in 2016) while 153 were found in the subsequent financial year (these mainly published in 2017). Some reports were found for the financial year beginning on or after 1/1/17, however, since many reports for this financial year have not yet been published they were excluded from this analysis.

## OUR FINDINGS

We found substantively positive findings in terms of the usage of the reports and how the EU's reporting requirements in practice were perceived by the corporate world.

**Usage and usefulness** Civil society is using the published RPGs and finding them useful. This includes local usage by NGOs in resource-rich countries, with global and local civil society co-operating: for instance, Publish What You Pay has a Data Extractors programme to help train users to access and develop best-practice usage of available data in conjunction with other resources.<sup>2</sup>

**Support from the corporate world** Interviews and observations indicate that among compliant companies the provisions of the Directives are not resisted but substantively accepted in the corporate world and costs are seen as not overly burdensome. Further, industry representatives have sympathy with the underlying aims. Consistent with this, there is evidence of some good reporting practice which is compliant with both the spirit and the letter of the law and in some cases goes beyond what is required.

### **At the same time, there is scope for improvement in terms of issues highlighted below.**

**Issues of accessibility and the monitoring of in-scope companies** There are serious issues of accessibility of the reports. Those reports that are filed in a national central repository or business register (as in 15 of 19 countries reviewed at the time of writing) are not always machine-readable and formats are very inconsistent between companies. In 4 of the 19 countries RPGs can only be found in media such as on the Web or embedded in companies' annual reports and accounts – in the latter case making RPGs difficult to identify.

More basically, one cannot easily determine which companies are meant to comply with the law. There is no maintained list of in-scope companies. States' obligations to monitor compliance with the law are mainly not met, and thus under-resourced non-governmental organisations (NGOs) are effectively given the responsibility to monitor. It is difficult to maintain good practice compliance in this context.

**Informativeness and consistency** There is a lack of precision about which specific government authorities the payments are made to. For instance, one finding is that 24% (2015) and 19% (2016) of companies do not report the name of the government entity to which payments are made.

There was an indication that different ways of interpreting payment categories might be operational in practice, which weakens analysis possibilities in respect of detailed breakdowns of types of payments. Not many companies disclosed comprehensively on payments-in-kind including their volume as well as value and how they have been valued.

There was evidence of a few companies in effect using the lack of attention to joint operations in the law to in effect limit disclosure, although no evidence that companies were changing their inter-organisational arrangements to limit transparency. Evidence was found of a more significant number of companies

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<sup>2</sup> <http://www.publishwhatyoupay.org/our-work/using-the-data/data-extractors-programme/>

interpreting the expression ‘substantially interconnected’ – referring to project agreements – to arguably overly aggregate payments at the ‘project-by-project’ level. The project level disclosures of payments are a very important aspect of the transparency as they help to illuminate payments from particular operations in particular areas, facilitating a comparison between amounts paid in respect of these operations and the relative neglect of these particular areas in terms of social spending of the monies received by governments, as well as enabling better-informed cost-benefit analysis in terms of revenues vs frequently documented negative social and environmental impacts of extraction.

**Auditing and reconciliations** Few companies voluntarily gave enhanced validation to published reports by subjecting them to independent audit or reconciling them to other audited (or non-audited) figures. Some voluntary reconciliations and limited assurance audit practices were found.

## **IN SUMMARY**

We conclude that the law in practice is progress. Reporting has not been perfect in the senses indicated. Nevertheless, various forces at work, including best-practice usages of reports and company incentives to adopt good reporting practices in relation to the provisions, mean that greater transparency has been achieved compared to the situation before the provisions were in place. More companies are now disclosing more payments and the disclosures are more current and timely than under the voluntary Extractive Industries Transparency Initiative that previously dominated payments to governments’ information provision in the extractive sector. The usage of the reports is already a strong indicator of their added value. At the same time, improvement is possible.

## **RECOMMENDATIONS**

- Better filing, preferably in a central repository at the EU level, to improve accessibility.
- The creation, updating and publication by the EC of a list of in-scope companies at EU level.
- Enhanced regulation, requiring at least limited assurance audits of the reports and/or their reconciliation to audited figures.
- More effective government monitoring of compliance with the provisions.
- Clarification in terms, consistent with the spirit of the law, of the reporting principle to apply under joint operations, the meaning of ‘substantially interconnected’ with regard to project-level aggregation, the categories of payments and the specificity of payment recipients.
- A general requirement to disclose the basis of preparation of figures in the reports.
- Enhancing format consistency and machine- as well as human-readability.
- Alignment with and development of other laws and regulations would be additionally helpful: further prescribing of public country-by-country reporting and increased disclosures would enhance accountability/transparency in respect of tax, consistent with OECD recommendations.

**Full report available at**

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