



## International Association of Oil & Gas Producers

June 2012

### **Effective transparency of extractive industry payments to government within the Accounting and Transparency Directives**

OGP believes that good governance in resource-rich countries is crucial for the delivery of long-term development. OGP supports the public disclosure of payments made by industry and revenues received by governments as one important element in our industry's comprehensive commitment to transparency, fighting corruption and improving governance. Building on our experience, such as participation in the Extractive Industries Transparency Initiative (EITI), OGP supports Country by Country reporting. This provides the most useful information for those seeking to identify who receives payments and to hold them to account.

OGP weighed two major considerations in arriving at this position:

1. *Focus on the goals of increased transparency and disclosure to make sure that directives are effective and purposeful.*

The longstanding goal of government revenue transparency is to improve budget accountability in resource rich countries as a means to reduce the opportunity for corruption and to foster engagement with civil society to improve governance. This has been the focus of the Extractive Industries Transparency Initiative (EITI) since it was created ten years ago. EITI is now active in 35 countries and reaching out to dozens more. OGP believes that disclosure of payments by individual companies to governments will keep the focus on the information necessary for citizens to hold governments to account. We also believe that this level of disclosure will provide investors with an accurate picture of the global distribution of an upstream oil and gas company's direct financial contribution to the public sector.

OGP does not believe that detailed disclosure of complex information on a "project by project" basis would help improve governance or provide relevant information that would help investors assess financial risk as some in the Commission and civil society believe.

Every investment in the extractive industries is entered into in the context of a unique mixture of geological, industrial, economic and political risk with a considerable pay-out period. Each investment will therefore necessarily result in a different cost and revenue structure for both the public and private sector. So disclosure on this level would certainly show large differences both between companies in a given country and between countries within a given company's portfolio. Furthermore, given the significance of corporate taxes paid at national level, "project" level reporting would therefore require either the artificial allocation of data, or the publication of an incomplete picture since it is impossible to determine how much individual "projects" have contributed to the overall amount of corporate income tax paid. This reduces, rather than increases, transparency.

Based on our experience of working in third countries and through EITI, OGP members believe it makes most sense for payments to be disclosed on the basis of the governments to whom they are made. We believe the reporting of tax and other payments of EUR1 million or more in single year to a single level of government (for example Federal or regional)



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makes the most sense in terms of meeting the stated objectives of the Accounting and Transparency Directives.

We remain to be convinced that many of the concerns expressed by civil society groups can be adequately addressed via either the Accounting or Transparency Directives. There is danger that the Directives become so complex that they will fail to find the best way to achieve their ultimate objective. OGP members believe that EITI plays a crucial role in addressing some of these concerns and will continue to work with civil society groups to find effective solutions. The roll-out of EITI should not be undermined by EU legislation.

### *2. Maintaining the competitiveness of European extractive industries*

The extraction of oil and gas is part of a global, highly competitive industrial sector. Competitiveness is built through technology, management systems, R&D, attracting and retaining the best talent and also by the ability to maintain contract, regulatory and fiscal compliance and to put together the most competitive bids to obtain new business.

OGP believes that any disclosure requirements should be carefully balanced in order to avoid the real risk of revealing sensitive information to competitors that are not subject to the same disclosure requirements. This could undermine the ability of Europe's oil and gas sector to retain existing contracts or win new business, giving advantage to new entrants and non-EU based competitors not subject to such disclosure. This would be an unwelcome distortion of competition against European companies.

OGP members are responsible for the minority of global oil production. This means the vast majority of oil production is carried out by state-owned, non-EU or US-based companies who will not be subject to Dodd-Frank, EITI or the Accounting and Transparency Directives.

Likewise, to protect employees and companies themselves, both criminal and civil law provisions (including regulations and norms), in place in third countries must be taken into account. Companies should not be forced to disclose where these rules exist, a fact recognised under OECD Guidelines for Multinational Enterprises which clearly state that respect for local law should come first. Whilst state secrecy laws that would prohibit the disclosure of revenues from the production of oil and gas may exist in a number of countries, a more pervasive issue would be conflict with the terms of Production Sharing Contracts (PSCs) that require the approval of all signatories (including the host government) for any disclosure of information to take place.

Finally, OGP members believe a review clause is a necessary part of good policymaking and welcome the focus on protecting the competitiveness of the sector. However, the outcome of such a review should not be pre-judged.



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### ANNEX

#### Setting a global agenda while learning from Dodd-Frank: three necessary elements for an effective Country by Country reporting system at EU level

1. *It has been reported that Dodd-Frank does not apply to payments made from oil and gas production within the United States.*

Under Section 1504 of Dodd-Frank, “resource extraction issuers” are legally required to report payments to both foreign governments and the US Federal government. Intra-US reporting will be required for any extractive activities taking place under, for example, federal leases onshore, or offshore, such as the Gulf of Mexico.

To remain consistent with the approach under both Dodd-Frank and EITI, OGP believes payments to Member State governments should be included within the scope of the Accounting and Transparency Directives.

*Solution: Payments to Member State governments from the production of oil and gas should be reported under the Accounting and Transparency Directives. This would provide the level playing-field needed to create a global payment reporting system for the extraction of oil and gas.*

2. *Overcoming the “project” roadblock*

More than a year and a half after the passage of Dodd-Frank, the difficulties in finding a workable definition of “project” have become clear, resulting in significant delays to full implementation via rules from the US Securities and Exchange Commission (SEC).

Lack of any consistent or conventional definition of the term “project” as used by oil and gas producers would make implementation of EU legislation difficult and likely yield widely disparate data. Rather than being a universally applicable term, within the upstream oil and gas industry, the term “project” is most commonly used during the earliest, planning stages in the life of an oil or gas development. It is not a “fixed” term. The term most often refers to the engineering design and production elements but is also used more loosely to refer to other stages in the production process.

Neither are accounting systems necessarily currently designed to capture all financial data on a “project” level during production operations. Each company would have to go its own way to redesign and install new global systems to keep track of detailed, artificial “project” data elements through the entire financial reporting process. This would be a large undertaking, would be confusing, not yield comparable data between companies and would not contribute to meeting the objectives of the Directives.

The rulemaking process for the Dodd-Frank act is still a work in progress, with an uncertain outlook, and should not form the basis for what the EU chooses to direct its member states to do in this area. The SEC has announced it will be performing a detailed cost/benefit



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analysis of the Dodd-Frank Act with newly hired PhD economists under a new set of guidelines, making the direction of the final regulations very difficult to predict.

To reiterate, there is no single definition of “project” that works within and across sectors and jurisdictions amongst OGP’s global membership, leading to inconsistent and incomparable data.

The current focus on “project” is actually undermining the very objectives EU legislation is trying to achieve. If the Accounting and Transparency Directives are to be the standard-setting legislation the Commission envisages, OGP believes that country-level reporting should be the goal. Country-level reporting would also best complement and safeguard the significant achievements of EITI, notably in building capacity amongst civil society groups and for creating structured dialogue between government, industry and civil society on the issue of natural resources and economic development.

*Solution: It is possible to meet both the stated objective of the Accounting and Transparency Directives (reduction of risk for investors) and the broader political desire (to increase the amount of information available to the public regarding payments to governments) through country level reporting. A focus on which parts of government are responsible for receiving tax and other payments would be an effective and efficient means to do this.*

### 3. Oil and gas companies operate in a global environment

Companies falling under both Dodd-Frank and EU legislation face a double burden of reporting without creating any additional benefits for investors or civil society.

*Solution: OGP calls on EU policymakers to ensure that a mutual recognition clause is entered into both the SEC implementing rules, as well as EU legislation. Such a joint approach could then form the basis for a global template, strengthening an EU-led push for mandatory reporting requirements.*