International Association of Oil & Gas Producers

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Q&A / Briefing:
Legislation on Extractive Industry Payments to Governments

1. What does the upstream oil & gas sector do to improve the transparency of payments to governments?

The upstream oil & gas companies support transparency and good governance in resource-rich countries as an essential element for the delivery of long-term social and economic development.

In this context, IOGP believes that government-level reporting will produce meaningful transparency regarding the revenues that governments earn. Such reporting will allow citizens to hold their governments to account and inform debates on the equitable sharing of those revenues.

Disclosure requirements should though be carefully balanced to avoid the real risk of revealing sensitive information to competitors or third parties that are not subject to the same disclosure requirements. They should also be assessed against how well they serve their purpose.

For this reason, IOGP members provided constructive input to the EU debate around the country-by-country reporting provisions for extractive industries within the EU Accounting and Transparency Directives which took place in 2012-2013.

This input had been based on the upstream sector's considerable experience of operating in producing countries and, above all, on its experience of building civil society and government capacity in the context of the Extractive Industries Transparency Initiative (EITI).

2. What is EITI? How is the upstream oil & gas sector engaged in EITI?

The Extractive Industries Transparency Initiative (EITI) is a global initiative to promote the open and accountable management of oil, gas and mineral resources. The EITI Standard seeks to address the key governance issues of the oil, gas and mining sectors.

The EITI was set up by governments, companies and civil society organisations in the shared belief that natural resource wealth should benefit citizens and that this requires high standards of transparency and accountability. It is the government of each country that decides whether to implement the EITI, and to be compliant under the EITI Standard, all relevant companies must report their payment, no matter where they are registered.

These principles are at the heart of the EITI Standard, which requires countries to publish timely and accurate information on key aspects of their natural resource management, including how licences are allocated, how much tax and social contributions companies are paying and where this money ends up in the government at the national and regional level.

Through the EITI companies, governments, and citizens increasingly know who is operating in the sector and under what terms, how much revenue is being generated, where it ends up and who it benefits.[1]

IOGP members have been working for many years through the Extractive Industries Transparency Initiative (EITI), establishing a global disclosure standard focused on improving good governance and host government accountability.

[1] https://eiti.org/who-we-are

3. Accounting Directive (Chapter 10) – what is it about?

In 2013, the European Union (EU) passed new transparency legislation requiring large oil, gas, mining and logging companies listed and registered in the EU to disclose their revenue payments (and payments made by their subsidiaries) to governments around the world.

The EU Accounting Directive requires reporting of EU-registered companies' payments to governments on a country-by-country and a project-by-project basis (for each country a company operates in and for each project to which payments have been attributed) as does a similar provision in the EU Transparency Directive for publicly listed companies.

This includes disclosure of taxes paid, production entitlements, royalties, bonuses and other payments of EUR 100,000 and over. The legislation does not provide a reporting exemption in cases where a recipient government allegedly prohibits disclosure of payments.

4. What are the latest developments in the context of reporting requirements at the global level?

In 2012-2013, some organisations sought to align the EU approach with provisions then laid out in the US Securities and Exchange Commission's (SEC) implementing rules for Section 1504 of the Wall Street Reform and Consumer Protection Act 2010 (also known as the Dodd-Frank Act). The rationale for such an alignment was that a global approach to the reporting of payments is preferable to the fragmented approach that is now in danger of further harming the competitiveness of Europe's natural resources sector.

However, due to legal action undertaken against the first version of the SEC implementing rules in the US, that version of the SEC rules was vacated by the US courts in 2013. A second version of the SEC rules was adopted by the SEC in 2016 but repealed pursuant to the Congressional Review Act in early 2017. The SEC is still required to issue new rules, yet there is no clear indication when these will be published. Therefore, at this stage, companies operating in the European Economic Area (EEA) and Canada are the only ones subject to such a reporting obligation.

5. Does this create a competitive disadvantage?

Any disclosure requirements should be carefully balanced to maximise the relevance of the information provided, minimise any unnecessary administrative burden and avoid the risk of revealing sensitive information to competitors or third parties.

Certain oil & gas companies have expressed concerns about the increased level of disclosure regarding payments to governments as part of a revision to the EU Accounting and Transparency Directives, given the commercial sensitivities of such information and the impact that sharing such information may have on the competitive position of such companies.

Competitor companies registered outside the EU - e.g. Indian and Chinese oil and gas companies, and US oil and gas companies following the 2017 repeal implementing rules for section 1504 of the Wall Street Reform and Consumer Protection Act 2010 do not need to disclose the data or face the compliance costs imposed by the reporting obligations (so long as they do not have EU subsidiaries and are not registered in the EU). This is relevant in the context of the ongoing review of the EU Accounting Directive which is required to take into account international developments, including issues of competitiveness. These same companies do however have to report under the EITI Standard if they are active in countries implementing the EITI.

6. Is there any value added from the Accounting Directive?

The EU country-by-country reporting requirements and U.S. Dodd-Frank rules (once the latter will be implemented) will together capture only 7% of global reserves of oil and gas. EITI requirements, which are binding on all operators in an implementing country, already capture 14% of global reserves of oil and gas. The "value add" of the EU provisions is, therefore, not readily apparent. It

would have been more efficient for the EU to use its considerable 'soft power' to influence some of the largest resource-rich countries of the world to implement the EITI Standard.

7. How did the transposition phase go?

The EU Accounting Directive has only recently been transposed into national law by all EU Member States. Transposition by Member States has taken some time. Most Member States implemented this Directive close to the implementation deadline. This means reporting obligations stemming from Chapter 10 of the EU Accounting Directive and the Transparency Directive for EU-listed companies remain in their infancy.

To date reports have been published, for instance, for companies based in the UK, France, the Netherlands, Austria, Spain, Romania and Italy. In case of the UK and France, the reports were published in relation to the reporting periods 2015, 2016 and 2017. For the NL, Spain and Italy, the reports were published only in relation to the reporting periods 2016 and 2017. More time is needed to allow lessons to be learned from initial reports, and from obligations stemming from other international reporting legislation.

To support a more harmonised interpretation of the Accounting Directive (Chapter 10) in the UK, IOGP developed the industry guidance "The Reports on Payments to Governments Regulations 2014 (as amended)"[2].

8. What are the compliance costs of the reporting requirements?

We understand that the costs of compliance for some companies went up to several €-millions per year, and a multiple amount for the first-time set-up. As reporting can fall under the scope of state secrecy laws in some countries, concerns remain that material risks may arise in the future from conflicts with domestic law.

9. What are the next steps at the EU level?

Right now, consultants are finalizing a report as input for the Commission's review (as required by Article 48 of the EU Accounting Directive) of the implementation and effectiveness of the EU Accounting Directive, which is now expected to be completed in Q2 2019. Any proposal for further amendment to payment reporting requirements under the EU Accounting Directive is likely to be published only once the new European Commission is settled.

10. Does the oil & gas industry support the review of the Accounting Directive?

Article 48 requires a review of the implementation and effectiveness of the EU Accounting Directive. However, as this is a very young Directive, more time is needed to allow lessons to be learned from the initial reports submitted on the basis of the already applicable rules. There is very little evidence to date as to the effectiveness of the reporting requirements under the EU Accounting Directive in achieving their objective, namely, as stated in Recital 45 the accountability of governments.

For this reason, we would advise against adding further reporting requirements and would suggest review of the reporting obligations at a later stage, when more experience is acquired under the current rules. The European Commission should be mindful of the potential effect that any broadening of the reporting obligations may have on the competitiveness of EU based companies.

Moreover, some of the potential additional reporting requirements (e.g. the average number of employees / the use of subcontractors) are essentially unrelated to the legislative goals of diminishing host government corruption or improving good governance. In addition, some of these additional reporting requirements are within scope of an existing EU proposal to amend the EU

[2] http://www.iogp.org/bookstore/product/the-reports-on-payments-to-governments-regulations-2014-industry-guidance/

Accounting Directive as regards disclosure of income tax information by certain undertakings and branches and under the Non-Financial Reporting Directive; the EU Accounting Directive review should not be 'misused' to lead that EU proposal.

11. **What are the key policy recommendations by the oil & gas industry?**

    The European Commission could also promote the EITI rules and the provisions of Chapter 10 (Accounting Directive) in existing fora such as the G7, the G20 and the UN as well as bilaterally and multilaterally. Additionally, the European Commission could explore how to create linkages between the allocation of EU development aid and funds to countries joining the EITI system.

12. **Does the oil & gas industry support a central register for the reports?**

    Improved transparency of payments to governments can only be achieved through accessible and comparable data. Therefore, we support the establishment of a centralized registry which could contribute to the improvement of users' ability to find, analyse and compare reports. This should be capable of being developed at a reasonable cost, and the cost should be borne by the European Commission services.

    The use of electronic structured data for reporting of payments to governments by listed and non-listed companies could lead to simplification of the reporting process for companies and make analysis of the reported data less cumbersome. However, the success of any such exercise would depend significantly on the implementation phase (e.g. avoiding a proliferation in the reporting languages (languages = IT programmes) used).

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About IOGP

The International Association of Oil & Gas Producers (IOGP) is the voice of the global upstream industry. Oil and gas continue to provide a significant proportion of the world's energy to meet growing demands for heat, light and transport.

Our members produce 90% of European oil & gas, and 40% globally. They operate in all producing regions: The Americas, Africa, Europe, the Middle East, the Caspian, Asia and Australia.

We serve industry regulators as a global partner for improving safety, environmental and social performance. We also act as a uniquely upstream forum in which our members identify and share knowledge and good practices to achieve improvements in health, safety, the environment, security, efficiency, and social responsibility.