TRANSPARENCY INTERNATIONAL EU

Under the Surface:

Looking into payments by oil, gas and mining companies to governments

BACKGROUND

In 2013, the EU passed new transparency and accountability legislation requiring large oil, gas, mining and logging companies that are listed and registered in the EU to disclose their revenue payments 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. This is the case for each country where a company operates and for each project to which payments have been attributed. A similar provision in the EU Transparency Directive targets publicly listed companies.

The European Commission (EC) is currently reviewing this legislation and is set to conclude the process in the first half of 2019. At this pivotal moment, Transparency International EU (TI EU) has looked at the evidence regarding implementation and enforcement of legislation that was adopted five years ago. The goal of this report is to help the EC make an informed review of current practice.

The report assesses project-level Payments to Governments by oil, gas and mining companies in four different countries of operation.

Company	Country of operation	Project
Tullow Oil	Equatorial Guinea	Block G (Ceiba and Okume fields) – oil
Repsol	Bolivia	Margarita/Huacaya – gas
Vedanta	India	Rampura Agucha – zinc mine
Joint venture between ExxonMobil (as the operator), Statoil, BP and ENI	Angola	Block 15 – oil

KEY FINDINGS

The Accounting Directive has significantly improved transparency in the extractives sector:

The EU **legislation has significantly improved transparency and accountability in a highly opaque sector.** The new requirements for companies have undoubtedly increased the information available to citizens to help them hold governments and companies to account for public revenue derived from natural resource extraction. Previously these payments were made largely in secret, making it impossible for citizens to scrutinise them and track them into government accounts.

Our research highlights the **value of the EU's new revenue transparency rules, in particular in traditionally secretive countries**, such as Angola and Equatorial Guinea. The research also demonstrates the value of the EU Directive **when it comes to shedding light on companies that are**

neither headquartered nor listed in the EU and are currently not subject to any mandatory disclosure laws in the jurisdictions where they are headquartered. This is the case of ExxonMobil which has two European subsidiaries in Germany and Luxembourg reporting under the Directive's requirements.

Nevertheless, legislative and implementation loopholes persist:

The report finds areas of concern in companies' reporting and a **number of significant weaknesses, both in the legislation itself and in the practice of implementing companies and the discrepancies between the way companies report.** These weaknesses represent **limitations in terms of achieving the overall objective of the adopted transparency and accountability measures**, which is to enhance public understanding of extractive companies' activities and payments.

This is particularly evident with regard to

- Joint venture reporting
- Companies' interpretation of payments categories
- Reporting of payments in kind
- Reporting on tax payments
- Identification of payments recipients

RECOMMENDATIONS

We make the following recommendations to the EC to help close the legislative gaps in Chapter 10 of the Accounting Directive as well as clarify the requirements for Payments to Governments:

Reporting on joint venture payments

- Require companies to include joint venture payments, whether made directly by the company or indirectly via the operator or another entity on the reporting company's behalf, on a proportionate basis in their reports on payments to governments, regardless of whether the company has a controlling or non-controlling interest.

Interpretation of payment categories

- Require that companies explain their interpretation of payment categories in a narrative note to their reports on Payments to Governments, consistent with Article 41 (definitions) and Article 43.4 (principle of substance rather than form).
- Provide further guidance to companies on how to categorise and report on different types of payments.

Reporting on payments in kind

- Clarify that whenever 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 each payment.
- Clarify that companies must not aggregate cash payments with payments in kind, or several types of payments in kind that relate to different revenue streams or commodities, such as oil and gas.

- Clarify that using company-wide average sale prices to value in-kind payments is insufficient without disaggregated payment-specific value and volume data.

Reporting on tax payments

- Require that companies separate corporate income tax (when reported at the entity level) from the other revenue streams reported under the "tax" payment category – such as withholding taxes on dividends, interest and royalties, capital gains taxes or resource rent taxes – and disclose each of the other revenue streams independently at the project level.

Identification of recipient government entities

- Require companies to improve clarity and consistency regarding payment recipients, stressing that, as well as naming the countries to which payments have been made, companies are also 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, such as state-owned enterprises, controlled by those authorities.

METHODOLOGY

Key steps of the research approach included:

a. Identification of the following criteria guiding subsequent project selection:

    - Projects illustrating the contribution of the Accounting Directive to expanding transparency in some of the most opaque jurisdictions (non-EITI countries, such as Equatorial Guinea, where payment transparency depends solely on the EU legislation, and Angola).
    - Projects providing transparency to companies domiciled outside the EU (such as ExxonMobil and Hindustan Zinc Limited).
    - Projects in countries where extractive sector revenues hold great potential to contribute to wider development outcomes.
    - Projects with availability of good quality project data.

b. Identification of projects included in the resourceprojects.org database, where companies were reporting under the Accounting Directive. Projects in the exploratory or development phase were excluded from the selection.

c. Preliminary review of 40 projects and research of available public domain project-level data necessary for revenue data analysis.

d. Selection of the four above-mentioned projects.

For further details on the methodology used for the development of this publication, see our Methodology Annex.