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## All eyes on extractives legislation review

Alessandro · Thursday, June 20th, 2019

In 2018, the European Commission (EC) launched a public consultation on its *'Fitness check on the EU framework for public reporting by companies'*. As part of the fitness check, the EC is currently reviewing Chapter 10 of the Accounting Directive – the section setting out the requirements for “payments to governments” reporting by large EU-registered and listed oil, gas and mining companies.

As part of Transparency International EU and the Publish What you Pay coalition's *advocacy* efforts for strong transparency rules for extractives industries, the reporting requirements for extractives companies are natural point of focus. Increased disclosures in corporate reporting are crucial to improving the accountability of both governments of resource-rich-countries and companies in the extractives sector, which often operate in corruption-prone environments.

As the fitness check looks into transparency and anti-corruption legislation, among other issues, it is ironic that the consultation process itself followed a somewhat opaque procedure. According to the *EC's summary report of the consultation*, 338 stakeholders responded to the consultation. However, as the EC provided respondents with the possibility of either publicly disclosing their submission or keeping it confidential, only 272 of those responses were originally published on the EC's website, leaving 66 responses undisclosed.

### Public consultation with undisclosed responses

Following a request made by civil society, the remaining 66 responses were eventually disclosed to the requesters, but without data that would allow identification.

The original nondisclosure of the responses raises concerns around the reasons as to why respondents would seek to escape public scrutiny. As one of the pieces of legislation under consideration specifically focuses on publicity requirements, the need for open decision making procedure is particularly relevant.

The initial lack of access to the consultation responses added confusion to the EC's interpretation of the consultation outcomes stating that private sector stakeholders were generally unsupportive of the EU's policy on payments to governments disclosure. Transparency International EU and the Publish What You Pay coalition looked into these claims more in detail and found that they were not completely backed-up by the *submissions to the consultation*.

### No support for the claims of inefficiency of extractives transparency

The EC's consultation summary states: *"The industry generally saw the policy as inefficient and called either for the repeal of the policy or, at least, for maintaining the status quo but with reduced complexity."*

There is little evidence for this claim. In fact, only one respondent, the French multi-sector industry association representing large companies, AFEP (*Association Française des Entreprises Privées*), explicitly calls for the repeal of the legislation. This call is based on an erroneous claim that the legislation would put European companies at a competitive disadvantage due to similar legislation in the US, the Dodd-Frank Act, being repealed. This is not the case, as only the implementing rule by the US Securities and Exchange Commission (SEC) has been vacated – and is required to be issued again – not the Dodd-Frank Act itself.

Civil society's main challenge in analysing the responses was the mentioned lack of publicly available private sector responses. Only two companies and industry associations from the extractives sector publicly disclosed their responses – the Italian transnational ENI and the International Association of Oil and Gas Producers (IOGP).

Once civil society received the responses, it became evident that claims that industry wanted to repeal the legislation, as pointed out by the EC, did not actually reflect the consultation outcomes. According to our own analysis, over two thirds (70%) of the respondents either totally or mostly agreed that the EU mandatory public requirements for extractive and logging industries were efficient, relevant and coherent. This is demonstrated by the [joint letter](#) sent by civil society organisations and leading extractive companies to the European Commission calling for enhanced reporting standards instead of rejection the legislation

The disparity between the EC summary's statement and our analysis demonstrates the need for a more transparent consultation process.

### **Fine tuning of the existing disclosure requirements**

Civil society also looked into the main findings of the [review commissioned by the EC](#) to a consortium of consultants (VVA, Ecorys and Deloitte). What clearly emerges from both the public consultation and the consultants' review is, on the one hand, the significant benefits of EU reporting requirements and, on the other, the need to improve the framework to make it more effective, which [civil society has been flagging](#) for a long time.

Next month the EC is expected to publish its final Communication and Staff Working Document on the outcome of this review process. We therefore call on it to ensure that these findings are well reflected in its final assessment while reiterating our main policy recommendations:

- Require the publication of payments to governments reports in an open, human-readable and machine-readable format on an EU-wide online repository, maintained by the European Commission and freely accessible to the public.
- Clarify the definition of substantially interconnected legal agreements in the text of the Directive, to avoid artificial aggregation of projects.
- Specify that companies include all joint-venture payments to governments larger than €100,000, whether made directly by the company, indirectly via the operator or another entity on the reporting company's behalf, on a proportionate basis (relative to the company's ownership stake) in their reports, regardless of whether the company has a controlling or non-controlling interest.

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You can find our response to the European Commission's consultation [here](#).

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