



Review of country-by-country reporting requirements for extractive and logging industries

Final report

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DOI: 10.2874/73979

ISBN: 978-92-79-97001-6

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Table of contents

Table of contents.....	4
Tables.....	6
Figures.....	6
Boxes.....	7
Acronyms.....	8
Abstract.....	9
Executive summary.....	10
Implementation of the reporting requirements.....	10
Effectiveness and efficiency of the reporting requirements.....	11
Impacts of other international regimes.....	12
Impacts of EU reporting requirements on competitiveness and energy supply.....	13
Recommendations.....	13
1. Introduction to the report.....	16
2. Methodology.....	17
2.1. Overview and research questions.....	17
2.2. Data collection and analysis tools.....	17
2.3. Challenges encountered and risk mitigation measures.....	19
3. Findings.....	20
3.1. Implementation.....	20
3.2. Effectiveness.....	33
3.3. Impacts of other international regimes.....	47
3.4. Competitiveness.....	54
3.5. Energy security.....	60
4. Recommendations.....	64
4.1 Improve compliance by clarification of requirements and other steps.....	64
4.2. Extension of reporting requirements to other sectors.....	66
4.3. Benefits and costs of a compulsory audit of the reports.....	68
4.4. Relevance of additional payment information.....	69
4.5. Other relevant information or recommendations.....	71
ANNEX 1 Case studies.....	74

A1.1	Case study 1: Potential impacts of obligatory audits for the report on payments to governments	74
A1.1.1	Problem description	74
A1.1.2	Objectives	74
A1.1.3	Policy options	75
A1.1.4	Assessment of impacts.....	75
A1.1.5	Comparison of impacts.....	79
A1.2	Case study 2: The potential impacts of an obligatory disclosure of additional payment information.....	79
A1.2.1	Problem description	79
A1.2.2	Objectives	80
A1.2.3	Policy options	82
A1.2.4	Assessment of impacts.....	83
A1.2.5	Comparison of impacts.....	87
ANNEX 2	Methodological approach.....	89
A2.1	Desk research.....	95
A2.1.1	Desk research at EU/international and national level.....	95
A2.1.2	Research of companies reports	96
A2.2	Stakeholder interviews and survey	97
A2.3	Case studies	99
A2.4	Workshops with stakeholders.....	100
A2.5	Challenges encountered and risk mitigation measures.....	101
ANNEX 3	Literature List	103
ANNEX 4	List of examined companies.....	120
ANNEX 5	List of stakeholders interviewed	122
ANNEX 6	Interview questionnaires	123
A6.1	EU / International organisations	123
A6.2	National authorities	130
A6.3	NGO / civil society	137
A6.4	Sector associations.....	142
A6.5	Companies	149
ANNEX 7	Survey questionnaire.....	156
ANNEX 8	Summary of workshops' discussions	162
	Comments on findings:	164
	Working group on auditing the reports:	164
	Working group on additional requirements:	165

Comments on findings:	169
Working group on auditing the reports:	170
Working group on additional requirements:	170
ANNEX 9 National transposition measures.....	172
Access to the reports	172
Payments in-kind.....	172
Project	172
Joint-venture	173
Penalties	173

Tables

Table 1: Focus countries.....	17
Table 2: Examples of issues in the reports of some UK extractive companies	33
Table 3: Examples of use of reports	38
Table 4: Drivers of compliance costs (ordered by impact)	42
Table 5: Review grid	90
Table 6: Focus countries.....	95
Table 7: Relevant information identified in the reports	96
Table 8: Semi-structured interviews.....	98
Table 9: Interviews for case studies	100

Figures

Figure 1: Reports examined (per number of reports).....	23
Figure 2: Sources of accessibility of the selected extractive companies' reports per country (per number of reports)	24
Figure 3: Reports disclosing the overall total amount of payments made to governments (per number of reports)	25
Figure 4: Reports disclosing total amount of payments made per project (per number of reports)	27
Figure 5: Reports disclosing payments to governments through joint-ventures (per number of reports)	28
Figure 6: Example of country page from the Resource Projects Initiative	36
Figure 7: Percentage of costs related to different reporting activities.....	42
Figure 8: 2017 Resource governance index country scores and ranking.....	45

Figure 9: Share of European companies involved in extractive contracts before and since the reporting requirements (in percentage of the international companies involved in contracts) 58

Figure 10: Energy dependency rate, EU-28 (percentage of net imports in gross inland consumption and bunkers, based on tonnes of oil equivalent) 61

Figure 11: Extra-EU imports of natural gas, shares in value of main trading partners 62

Figure 12: Extra-EU imports of petroleum oil, shares in value of main trading partners 63

Figure 13: Petroleum oil and crude imports to the UK – share of value by trade partner 63

Boxes

Box 1: Agenda with report users 100

Box 2: Agenda with report preparers 100

Acronyms

Acronyms	Meaning
BEIS	The UK Department for Business, Energy and Industrial Strategy
BEPS	The Base Erosion and Profit-Sharing Action Plan
CBCR	Country-by-country reporting
DG FISMA	The Directorate-General for Financial Stability, Financial Services and Capital Markets Union
EEA	The European Economic Area
EEAP	European Electronic Access Point
EITI	The Extractive Industries Transparency Initiative
ESMA	The European Securities and Markets Authority
ESTMA	The Canadian Extractive Sector Transparency Measures Act
ETR	Effective Tax Rate
EU FLEGT	The Forest Law Enforcement, Governance and Trade Action Plan
EUTR	The EU Timber Regulation
FDI	Foreign Direct Investments
GHEITI	Ghana's EITI
IASB	The International Accounting Standards Board
IFRS 8	International Financial Reporting Standards
IOGP	The International Association of Oil & Gas Producers
ISAE 3000	Standards for assurance over non-financial information issued by the International Federation of Accountants
LSE	The London Stock Exchange
OAM	The Officially Appointed Mechanism
OECD	The Organisation for Economic Cooperation and Development
PWYP	Publish What You Pay
SEC	The Securities and Exchange Commission
SME	Small and Medium Enterprises
SOE	State-Owned Enterprises
SVLK	Sistem Verifikasi Legalitas Kayu- Indonesia's timber legality assurance system
UNCOMTRADE	The United Nations Commodity Trade Statistics Database
UNCTAD	The United Nations Conference on Trade and Development
VPA	Voluntary Partnership Agreement

Abstract

This report presents the results of the study 'Review of country-by-country reporting requirements for extractive and logging industries'. The objectives of the reporting requirements are to increase transparency on payments to government by companies active in the extractive and logging industries and to provide relevant information to civil society in order to hold governments accountable on receipts from multinational companies for exploiting natural resources. The study aims to review the implementation and assess the effectiveness of the EU reporting requirements, assess the impacts of other international reporting regimes on the competitiveness of EU companies, and on security of energy supply for the EU. The report also discusses potential amendments or recommendations to improve the compliance, effectiveness and efficiency of the reporting requirements. The study used desk research, a review of company reports, semi-structured interviews with industry representatives and users of the reports and a company survey to derive its conclusions. Two further case studies on extended information and audit were elaborated and discussed in workshops with company representatives and report users.

Executive summary

The study 'Review of country-by-country reporting requirements for extractive and logging industries' **provides an assessment of the implementation** of the country-by-country reporting (CBCR) requirements for companies from logging and extractive industries stemming from Directive 2013/34/EU¹ and Directive 2013/50/EU.

The study aims to:

- Review the implementation and assess the effectiveness of the European reporting requirements;
- Assess the impacts of other international regimes on the EU reporting requirements and on the activity of European companies;
- Assess the effects of the EU reporting requirements on the competitiveness of European companies and the security of energy supply for the EU; and
- Discuss potential amendments/policy recommendations to improve the compliance, effectiveness and efficiency of the reporting requirements.

The findings of the study are based on:

- An extensive desk research and a review of more than 248 sources both at EU/international and national level;
- A focus on a sample of nine countries of origin and 12 countries of operation;
- An in-depth analysis of 83 reports (81 reports from extractive companies and 2 from logging companies) with payments to governments from EU companies in 12 Member States³⁷ semi-structured interviews with NGOs, sector associations, companies, national authorities and academia completed with a company survey;
- Two case studies that assess the potential of introducing a compulsory audit of the report and adding further reporting requirements; and
- A workshop with **representatives of the industry and reports' users to discuss** the preliminary findings of the study.

Implementation of the reporting requirements

The study found that in the extraction sector a considerable amount of reporting is conducted. Although the study could not verify whether all companies in the scope of the Directives report their payment to governments, there is no evidence of widespread non-compliance either.

On the other hand, even though an extensive search for reports of logging companies was conducted only two reports could be identified. According to experts and stakeholders interviewed, the low rate of reporting in the logging sector could be explained by the following factors:

- The scope of the Directive is restrictive as it specifically targets primary forests and an important share of logging companies operate outside primary forests;
- Very few companies in the European logging industry fall in the scope of the Directive due to their small size and thus the payments to governments in this sector are frequently under the required threshold; and
- If logging companies sub-contract their operations to local entities, which is often the case in the sector, the reporting requirements are not applicable to the latter.

In the sample of reports examined, most companies have provided the required information, namely the payments to each government by project and by type of payment. The main errors and inconsistencies identified in the reporting related to unclear definitions of specific requirements such as the definition of projects, types of payments and the approach on joint-ventures. Due to the lack of implementation guidelines, companies have adopted different interpretations. For example, companies have adopted different approaches regarding the reporting of the payments of joint ventures: some report only payments when they are the controlling party while others report the payments even if they are not the controlling party; some companies report payments to governments in full, proportionally or do not report such payments. With these different interpretations, important sums may be completely excluded from the reporting or be reported several times in different **companies' reports**.

The study established that there is limited monitoring and oversight of the different national authorities on the compliance with the reporting requirements. Therefore, issues with the reporting requirements were identified mostly through the efforts of civil society organisations, focused on transparency and accountability, and of academics.

Our findings show that companies' reporting processes are deeply embedded in the data collection process of other financial reports. Accounting teams at a central or local level collect the necessary data and consolidate it for reporting, using corporate/governmental/sectorial guidelines and templates. While audit or assurance is not mandatory in the reporting requirements and their national transpositions, certain large multinational companies already use the services of independent auditors or provide additional assurance on a voluntary basis.

Effectiveness and efficiency of the reporting requirements

Public awareness of the reports from civil society is still low in most countries. Civil society organisations are optimistic that the influence of the reports will increase over the next three to five years, once more reports are available. Due to different national rules for the publication of the reports (national registry, company website), access to the reports can be challenging. The UK centralised repository for disclosures established by Companies House is a best practice example as it provides central free access to all the CBCR reports of UK-registered companies within the scope of the legislation, and the payments data are provided in XML format that outputs as a CSV spreadsheet, allowing the extraction and use of data. Some companies also provide additional methodological and contextual information in a separate PDF file.

Civil society from both countries of origin and countries of operations is using the information provided by the reports, mainly to compare figures with other sources, and to request clarifications from governments or companies. The extent of their use is dependent on the openness of the political system in the country of operation. The use of the reports can also be hampered by the lack of contextual information or the lack of comparability across reports, due to different interpretations of the requirements.

There are several examples of civil society using the reports to raise awareness with reports and infographics or to request clarifications to governments and companies, thus holding both governments and companies to account, which is an unintended impact of the Directive. However, it is still too early to notice significant changes in government accountability and resource governance in resource-rich countries. In

addition, the impacts depend on the freedom of the civil society to use the reports to hold their governments accountable. Indeed, unless civil society and media can use the information disclosed for public debate and to query governments, transparency cannot automatically translate into accountability and in equitable revenue sharing. In comparison with other existing reporting schemes, the CBCR is found to be more reliable and thus effective than data published by some governments and more up to date than EITI in the extractive sector. However, in the logging sector, stakeholders consider that the EU Timber Regulation and Voluntary Partnership Agreements are more relevant and with that effective in increasing transparency.

Overall, in line with their main objective, the reporting requirements have been deemed effective in increasing the transparency of payments made by companies to governments for the exploitation of natural resources. The EU CBCR, which provides data that were not available before, offers a new source of information that enables the civil society to compare data on payments to governments across several sources and therefore make it better equipped to hold government representatives to account.

The long-term impacts of the reporting requirements on reducing illegal logging and extractive operations also remain limited since the disclosure is still recent. As very few logging reports have been identified, the impact on illegal logging is even more limited. Where progress was noted, it was also due to the EITI, the EU Timber Regulation or national initiatives.

The reporting requirements entail additional compliance costs, but the companies did not consider that they represent a disproportionate burden.

Impacts of other international regimes

The EU reporting requirements present similarities with the following other international reporting schemes:

The Extractive Industries Transparency Initiative (EITI):

The EITI is a voluntary regime while the EU CBCR is compulsory. The EITI reports the payments received by governments, as reported by each government whereas the EU reports are prepared by companies and cover their payments to governments. The EITI reports provide more contextual information but are usually published two years after the payments occurred, while the EU reports are published annually. The EITI only targets the extractive sector. EITI was there before the EU requirements and has thus eased the adoption of the latter, however there is no concrete example of countries joining the EITI due to the EU CBCR. The EU requirements have also influenced the EITI with the adoption of project-by-project reporting. There is potential for mainstreaming extractive industry transparency with more synergies between the two regimes.

The Canadian Extractive Sector Transparency Measures Act (ESTMA):

The EU and the Canadian reporting requirements are equivalent and fully substitutable with each other. The extractive industry welcomed this equivalence because it will avoid double reporting for companies operating in Canada and the EU. The ESTMA does not cover the logging sector.

The US Dodd-Frank Wall Street Reform and Consumer Protection Act:

The Dodd-Frank Act has many similarities with the EU CBCR, although it is focused solely on the extractive sector. Since the implementation rule of Section 1504 of

Dodd-Frank Act has been invalidated by the current US administration. American, US companies no longer have reporting obligations, until a new rule is adopted by the Securities and Exchange Commission (SEC).

Overall, extractive companies would favour the adoption of a unique reporting standard applicable to all stakeholders in the sector, for instance one designed by an international organisation. However, companies deem unified standards to be unrealistic and favour equivalence between the reporting standards.

Impacts of EU reporting requirements on competitiveness and energy supply

EU Member States are heavily dependant on a few supplying countries for both crude oil and gas. Therefore, any limitations of the operations of EU companies in strategic resource-rich partner countries due to the reporting requirements would have an impact on energy security.

There is no evidence that competitors from third countries benefit from substantial competitive advantages by not being required to report on payments to governments. In addition, so far European companies have not reported that they suffered material damages or losses of opportunity due to the introduction of the reporting requirements. The requirements entail compliance costs, but they are not seen as highly disproportionate by the industry. Similarly, companies did not find it harder to operate in third countries. An analysis of recent contracts in the extractive sector in some country of operation shows that EU companies have maintained or increased their presence in countries where they were operating.

Despite the shared opinion that EU reporting requirements do not represent a competitive disadvantage, some European companies nevertheless expressed concern about the absence of similar reporting requirements for US companies. It is too early to tell whether this has created an unlevel playing field, but some EU stakeholders suggested that this risk could materialise if EU companies remain the only ones complying with such reporting requirements.

On the other hand, a number of stakeholders interviewed believe EU reporting requirements may even present a competitive advantage. These requirements may enhance the reputation of the company, making them attractive to civil society and investors.

Overall, stakeholders have not noted cases of third countries limiting the operation of EU companies due to reporting requirements. Thus no impact can be reported on the energy security of Member States.

Recommendations

The findings of the study led to a set of recommendations and an assessment of their added value.

Improve the unclear aspects of the requirements and additional steps to improve compliance

The industry and NGOs agree that the lack of clarity of some definitions in the reporting requirements can lead to different interpretations. The main issues in terms

of interpretation are the definitions of project and of payment types, as well as the approach on joint-ventures. Thus, there are discrepancies in the way companies report their payments for similar operations. On a similar note, in the logging sector, the definition of primary forest is often interpreted in a restrictive way. One consequence is that very few logging companies consider themselves to be in the scope of the Directives.

In the absence of EU guidelines, extractive companies have used several strategies: while some have defined their own interpretation, others have discussed their interpretation with other companies in informal working groups. Given this room for interpretation, most stakeholders would welcome the following measures:

- Guidelines at EU or national level to clarify, in particular, the definitions of projects, types of payments, the approach on joint-ventures and the scope of logging activities;
- Obligation for **companies to include a "basis of preparation" section, to explain their interpretation of the reporting requirements;**
- Better national authority oversight and more effective sanctions to improve compliance; and
- Awareness raising in the logging sector of the reporting requirements among forestry associations and companies in the scope.

Extension of reporting requirements to other sectors

While government representatives remain cautious about extending the CBCR reporting requirements of the extractive and logging sectors to other sectors, NGOs are generally in favour of adopting similar requirements in other sectors involving national resources or substantial payments to governments (e.g. agriculture, fisheries, telecoms, construction). Some logging stakeholders are also in favour of having all logging operations in the scope instead of only logging operations in primary forests, or at least extending the scope to forests that have been commercially logged once or twice since their official natural state. It is worth noting though that the lack of reporting in forestry is also linked with the industry structure as EU companies are very often not the holder of the logging concession. If reporting requirements were to be extended to other sectors, they need to be tailored to the sectors in question as both the effectiveness and the costs of the measure depend heavily on the size of operating firms and the extent to which the sector has direct financial interactions of large firms in the EU with governments.

Benefits and costs of a compulsory audit of the reports

A full audit of the reports could increase the confidence of users in the accuracy of the figures and the compliance of the reports with the reporting requirements. However, an independent audit would also increase significantly the compliance costs. National authorities advise that costs and benefits should be carefully assessed before introducing any compulsory auditing. To strike a balance between the current absence of formal verification and a full audit, introducing limited assurance is more likely to be found acceptable by the industry, and could also improve the reliability of reports as advocated by NGOs. The framework regarding limited assurance would however need to be tailored to the specific reporting regime to define the scope. Another option would be to include the payment reports in annual reports or corporate social responsibility reports, which would carry more weight and imply some consistency checks with the financial statements by the auditors.

Relevance of additional payment information

The potential addition of new payment information to the requirements, namely the average number of employees, the use of subcontractors, the pecuniary penalties

administered by a country, the effective tax rates and the recipient's details such as bank account information received mixed support. While NGOs would welcome the introduction of all above items to increase accountability and contextual information, companies are reluctant to add any more information, arguing that it would incur additional compliance costs and is not necessary to achieve the objectives of the Directives. National authorities also do not see added value in adding these extra items. Overall, adding information requirements which help users to assess the total size of the operations in a country (e.g. subcontractors or effective tax rate) would provide some added value to users as they would get a better comparator for the payments that the government receives. However, civil society representatives do not deem the above items to be the most important ones and noted that each additional requirement on its own would not be sufficient to provide a comprehensive **picture of the company's activities**. On the other hand, the compliance costs are likely to be highest for the disclosure of the number of employees and the use of subcontractors, since information systems vary greatly across countries and company accounting systems are not consistently set up to gather information centrally.

Other relevant information or recommendations

To facilitate access and use of the reports, NGOs call for a central repository of reports, either at Member State or EU level, with machine-readable data. There could be further synergies between the EU reporting requirements and other initiatives to enhance consistency and increase transparency on payments to governments such as EITI, the EU Timber Regulation and the EU FLEGT, and more awareness raising in countries of operation.

NGOs propose to include information on trading activities of commodities, the clear identification by name of the government entity that received payment, the exchange rate used by currency, the name of all projects (even below EUR 100,000 payments) and contextual information on the projects. In the logging sector, payment information for connected operations could be included. This extra information would improve understanding of the reports and facilitate their use in holding governments accountable.

1. Introduction to the report

This final **report presents the results of the study 'Review of country-by-country reporting requirements for extractive and logging industries'**. The study is commissioned by Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) and is carried out by VVA in consortium with Deloitte and Ecorys.

Directive 2013/34/EU1 ('the Accounting Directive') introduced in 2013 Country-by-country reporting ('CBCR') requirements for logging and extractive industries of their payments to governments. Directive 2013/50/EU2 ('the Transparency Directive') introduced similar reporting requirements for companies from logging and extractive industries with securities admitted to trading on a regulated market. The primary objective of the reporting requirements was to bring increased transparency to the operations of multinational enterprises active in the extractive and logging industries by increasing the amount of information to be reported. The specific objectives were to provide relevant information to civil society in order to hold governments accountable on receipts from multinational companies for exploiting natural resources (oil and gas, minerals and primary forests). Such reporting should also help governments of resources-rich countries to implement the Extractive Industries Transparency Initiative (EITI) principles and criteria.

The aim of this study is to comply with the review obligation referred to in Article 48 of the Accounting Directive. This study reviews the implementation and the effectiveness of the reporting requirements by assessing their results and impacts, including the impacts of others international regimes, the effects on competitiveness and the impacts on security of energy supply. In addition, the study considers the need to amend the reporting requirements, in particular the extension of the requirements to additional sectors, whether the reports should be audited, and the inclusion of additional information requirements. The report follows the following structure:

- Section 2 presents an overview of the methodological approach of the study, the data collection tools and the challenges encountered so far.
- Section 3 provides the results of the review based on the interview series, the literature review, the case studies and the workshop with stakeholders.
- Section 4 presents the recommendations of this study.
- The Annexes include the case studies (Annex 1), the full methodological approach (Annex 2), the list of literature (Annex 3), the list of examined companies (Annex 4), the list of stakeholders interviewed (Annex 5), the questionnaire for interviews (Annex 6), the survey questionnaire (Annex 7), the summary of workshop discussions (Annex 8) and an overview of key transposition measures (Annex 9).

2. Methodology

The following section presents a summary of the research questions structuring the study, as well as the data collection tools used, and challenges encountered. ANNEX 2 presents more comprehensive information on the methodological approach.

2.1. Overview and research questions

The overall methodology was structured around the main six review questions below:

1. *Implementation*: review of the implementation of the reporting requirements by companies in the different Member States.
2. *Effectiveness*: analysis of the progress made towards achieving the **requirements' original** specific and operational objectives in terms of effectiveness, with a focus on the factors driving and hindering the process.
3. *Impacts of other international regimes* (foreign regulations and private initiatives such as the EITI) on the existing ongoing practices within the EU.
4. *Effects on competitiveness*: identifying possible advantages/disadvantages for the companies which are not being required to report on payments to governments, providing evidence for material damages or losses of opportunity.
5. *Effects on security of energy supply*: listing obstacles for business development in third countries following the introduction of the disclosure measure, identifying domestic law infringements claims by companies in the scope of the obligation.
6. *Need to amend/extend the reporting requirements* to improve their compliance, effectiveness and efficiency.

Our review grid is included in ANNEX 2, presenting the interrelation between the review areas, the review questions, judgement criteria, indicators and data sources. The review grid guided the study team throughout the project and was used to structure the data collection and to draft the questionnaires for the interviews and the survey.

2.2. Data collection and analysis tools

2.2.1. Desk research

The study team conducted two main desk research activities. On the one hand, the team carried out a literature review at EU/international and national level to collect literature and information addressing the different review questions. The desk research at national level focused on a sample of countries of origin and countries of operations selected during the inception phase, based on preliminary desk research and feedback from experts (see Table 1 below).

Table 1: Focus countries

Activity	Countries of origin	Countries of operation
Extracting	Spain, France, Italy, Netherlands, UK	Algeria, Angola, Democratic Republic of Congo, Gabon, Malaysia, Nigeria, Tanzania, Sudan, Venezuela
Logging	Belgium, Finland, France, Italy, Portugal, Sweden	Democratic Republic of Congo, Gabon, Cameroon, Congo Brazzaville, Indonesia, Malaysia

Overall, more than 248 sources were reviewed (see the full list of EU and national literature in ANNEX 3), including reports and studies from NGOs, sector associations and national authorities, academic articles, statistics, as well as repository websites and news articles.

On the other hand, the team proceeded with the mapping of companies that could be in the scope of the reporting requirements and searched for companies' reports in order to address mainly the research questions regarding Implementation. The full list of reports examined is included in ANNEX 4. When analysing the reports, the team examined the following list of information:

- Country of origin of the reporting company;
- Countries of operation of the reporting company;
- Countries where payments actually occurred (if different from the countries of operation);
- Report year;
- How the reports were accessed – through company website, business registry or other;
- Presentation of information – a separate report or were payments to governments data incorporated in another annual report?
- Was the total amount of payments made to governments presented and if yes, what was the amount?
- Was the total amount per type of payment disclosed?
- Was the total amount per project provided? and
- Was there payment information about joint-ventures?

More information on the search and selection of the reports as well as on their analysis is available in ANNEX 2 and Section 3.1.

2.2.2. Stakeholder interviews and survey

The stakeholder consultation consisted of two streams: semi-structured interviews and a company survey. The final version of the interview questionnaires and of the survey questionnaires can be found respectively in ANNEX 6 and ANNEX 7.

In total, 37 semi-structured interviews were completed, including international and local NGOs, international and national extractive industry associations, individual companies, national authorities and academia. The full list of stakeholders interviewed can be found in ANNEX 5. The interviews at national level focused on the same sample of countries of origin and countries of operations as the desk research (see Table 1).

The company survey complemented the information collected in the semi-structured interviews, and targeted companies and industry associations. The purpose was to not only receive additional responses on the themes mentioned, but also to measure the costs of compliance and competitiveness of EU companies subject to the reporting requirements.

2.2.3. Case studies

The study team carried out two case studies to assess further the relevance and impact of potential amendments to the reporting requirements.

Two sets of recommendations were agreed with the Commission for the case studies:

- Case study 1: Potential impacts of obligatory audits for the report on payments to governments
- Case study 2: Potential impacts of an obligatory disclosure of additional payment information, such as:
 - 1) the average number of employees
 - 2) the use of subcontractors
 - 3) the pecuniary penalties administered by a country
 - 4) the effective tax rates
 - 5) the recipient details, such as bank account information

Further information on the methodological approach for the case studies is available in ANNEX 2. The full case studies are included in ANNEX 1.

2.2.4. Workshops with stakeholders

Two workshops with stakeholders were organised to present the preliminary findings of the study.

The first workshop took place with users of the reports (i.e. representatives of civil society, academics and national authorities) to discuss their experience with using the reports and their recommendations for further development of the reporting requirements.

The second workshop gathered representatives of the industry, in order to test the recommendations from the study and users and discuss the feasibility and the costs of those proposals for companies.

A summary of the workshops' discussions can be found in ANNEX 8.

2.3. Challenges encountered and risk mitigation measures

The main challenge encountered was that while the study team collected many reports, information and feedback on the implementation of the reporting requirements in the extractive industry, nearly no report or information was available regarding the logging sector. Reasons for the low reporting in the logging sector include the restrictive scope **of the definition of "logging in primary forests"**¹, the structure of the value chain composed of many medium or small companies, and the threshold of payment which is considered too high in the logging sector.

Another implementation challenge was the limited response rate to the company survey (six answers). Industry associations and individual companies invited both to an interview and to fill in the survey often focused on providing comprehensive responses during the interview without filling in the survey in parallel. However, the comprehensive responses received during the interviews, and the involvement of the main international industry associations ensured the representativeness of the answers.

It was also challenging to reach out to representatives of local NGOs in countries with resource governance issues and lack of transparency (e.g. Venezuela) or limited freedom of speech (e.g. Angola). To mitigate their lack of responsiveness, we completed with information from national and international reports, and with information provided by international NGOs.

The last challenge was the limited information collected in relation to the impacts of the reporting requirements on competitiveness and energy security of supply. The main reason is that the implementation of the reporting requirements is still recent and that such impacts have not materialised yet.

More detailed information on the challenges encountered and mitigation measures is presented in ANNEX 2.

3. Findings

The section below presents the findings of the study across the five main review areas. Each subsection starts with an overview of the detailed review questions covered, before presenting the findings for the study.

3.1. Implementation

Review questions

- *Are companies in the scope generally complying with the reporting requirements?*
- *Can notable variances in compliance be identified? Is compliance in some Member States, sectors or for specific reporting requirements significantly better or worse than the average?*
- *What are the reasons for the identified lack of compliance in Member States, sectors or for specific reporting requirements?*
- *Please describe the internal processes and controls at the company level that ensure compliance with the reporting requirements.*
- *How are companies complying with the requirements to report at project level?*
- *How do companies address the reporting requirements with regards to joint-venture operations?*

3.1.1. Reports accessibility for the purposes of the research

To review the implementation of the reporting requirements, we first mapped companies that could be in the scope of the Directive. It should be noted that neither the European Commission nor the national authorities have drawn up a comprehensive list of extractive and logging companies obliged to report. During the stakeholder consultation, the study team was informed in some countries about the numbers of companies in the scope or that have submitted reports. For example, in France the impact assessment preceding the transposition of the reporting requirements² estimated that around 30 companies (both from extractive and logging sectors) would be in the scope of the obligation. However, after the first reporting year, the national authority collected around 15 reports of extractive companies only and did not investigate further why the other companies did not report, estimating that the latter may have considered that they were actually not in the scope of the obligation.

Based on these considerations, we compiled an extensive list of the most influential industry players following the recommendation of DG FISMA and expert opinions, using the following criteria:

- Large companies
- With active status
- Established in the EEA, with an accent on EU28

As a result, we identified a sample of 114 extractive and 71 logging companies and searched for their reports on payments to governments. Out of these companies, researchers could not identify any reports from 44 of the extractive companies and for 69 of the logging companies. However, the study team could not clarify the reasons for not finding these reports and whether they were simply not prepared or not accessible. It was also not the aim of the research to verify whether a company was in scope of the Directive or not. Instead, this section presents an overview on the accessibility of reports and an assessment of the information presented in the reports that have been identified.

The ratio of found/not found reports varied in different sectors and countries, sometimes significantly. It must be noted that only two logging company³ reports have been identified, including one of a company operating only in its country of establishment (Sweden). Several reasons explaining this low number of reports were pointed out by experts and stakeholders⁴:

- The scope of the Directive is restrictive as it specifically targets logging in primary forests and commercial logging operations usually take place in forests which, by definition, are not primary forest in the sense intended by the Accounting Directive;
- An important share of the companies sampled are involved in logging in plantation forests or in wood processing instead of logging in primary forests;
- Part of primary forests are protected as national parks, and certain certification schemes prevent companies from logging in these areas, which may have an impact on the level of activity of logging companies in primary forests;
- The European logging industry is mostly composed of small and medium-sized companies (except the pulp and paper sector), with only very few companies **falling in the category defined in the Directives as "large companies"**;
- Payments to government in the logging sector are frequently under the threshold of EUR 100,000 within a financial year;
- If logging companies sub-contract their operations to local entities, which is often the case in the sector, the subcontractors make payments to the government and the reporting requirements are not applicable.

Given that only two logging company reports were retrieved, only a detailed breakdown regarding the extractive companies was made.

The factors that influenced the number of found reports include notably, but not exclusively:

- The stage of implementation of the EU Accounting and Transparency Directives;
- The development of clear administrative processes (e.g. designated publicly accessible registry, reporting/compliance guidelines) laid down by the competent national authority; and
- The level of proactivity of the companies established in the relevant Member States.

The UK, France and Sweden stand out from the rest of the panel in terms of number of available reports found. For the first two countries, this was an expected outcome from the research due to the early implementation of the reporting requirements. The number of reports analysed in Sweden is connected to the responsiveness of its competent national authority, which manages the Swedish Companies Registration Office.⁵ The former provided the study team with reports, although they are normally not accessible for free.

The reports submitted in the UK were significantly easier to identify, also because they were complemented by well-organised administrative procedures, a transparent registry and national authorities willing to collaborate with the researchers. In other countries, the success of the findings depended sometimes on the corporate strategies of the companies, i.e. their willingness to prepare payments to governments reports and to publish them on their websites (e.g. in Italy and France). In some countries, the study team could freely access the reports on the national registers (e.g. Netherlands and Portugal). In other cases though, our research team could not access them directly and the authorities had to provide them upon request. For example, in Finland the business register provides details about companies, but **the companies' financial and accountable** documents are not available for free. In Sweden, information such as the annual accounts are accessible only to registered and paying users of the registry.

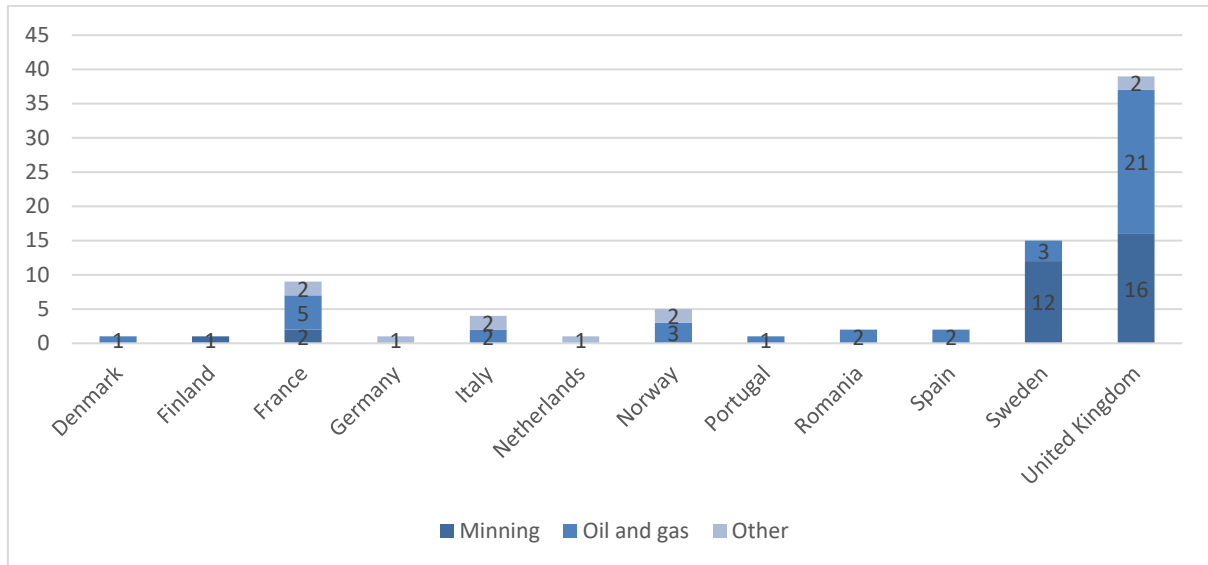
Out of the collected reports, the study team selected 81 extractive company reports (submitted by 52 extractive companies) and two reports submitted by two logging companies for examination. The reports reflected payments to governments for the years 2015, 2016 and 2017. Out of the total number of EU registered and listed companies selected, 51 operate in third countries while three companies conduct activities only in EU Member States. The latter were selected because two of them are the only ones to report in their countries of origin⁶ (namely, Finland and the Netherlands) and one is the author of one of the two logging reports consulted (in Sweden). Overall, it should be noted that the company selection was also based on stakeholder recommendations.

The selected extractive companies belong to the following sectors:

- Mining (metals, minerals and uranium);
- Oil and gas; and
- Other (building materials, sand dredging and chemicals) companies.

The figure below presents the reports we selected, broken down by sector (mainly oil and gas and mining) and by country:

Figure 1: Reports examined (per number of reports)



Some explanations should be added about the inclusion of some company reports. The study team had selected Finland as a focus country for logging during the inception phase, but, during interviews, we established that the only reporting company was in fact an extractive one. It is almost entirely owned by the Finnish government and is thus subject to additional transparency requirements. Although its report does not present any payments to governments -they are all below the threshold of EUR 100,000⁷-, we included it in **the study’s quantitative analysis** since it was the only report issued in the country.

Similarly, in the Netherlands, the competent national authority confirmed that only one entity has reported its payments to governments. Although this company operates only within the territory of the EU, the report has been analysed for the purpose of the study.

Furthermore, we have identified large multinationals from Canada, Russia, Australia and Switzerland with subsidiaries in the EU and that report to EU Member State authorities under the EU requirements. For the purpose of the study they have been attributed to the respective Member State (in fact, UK or Sweden) where they reported. In Sweden, almost half of the reporting companies submitted directly the report under the Extractive Sector Transparency Measures Act (ESTMA) applicable in Canada, using the equivalence rule. Another case was identified in Portugal, where a subsidiary of a Canadian mining company operates but does not produce its own reporting. The mother company, however, as it is registered in Canada, reports its payments under ESTMA to the Canadian government.

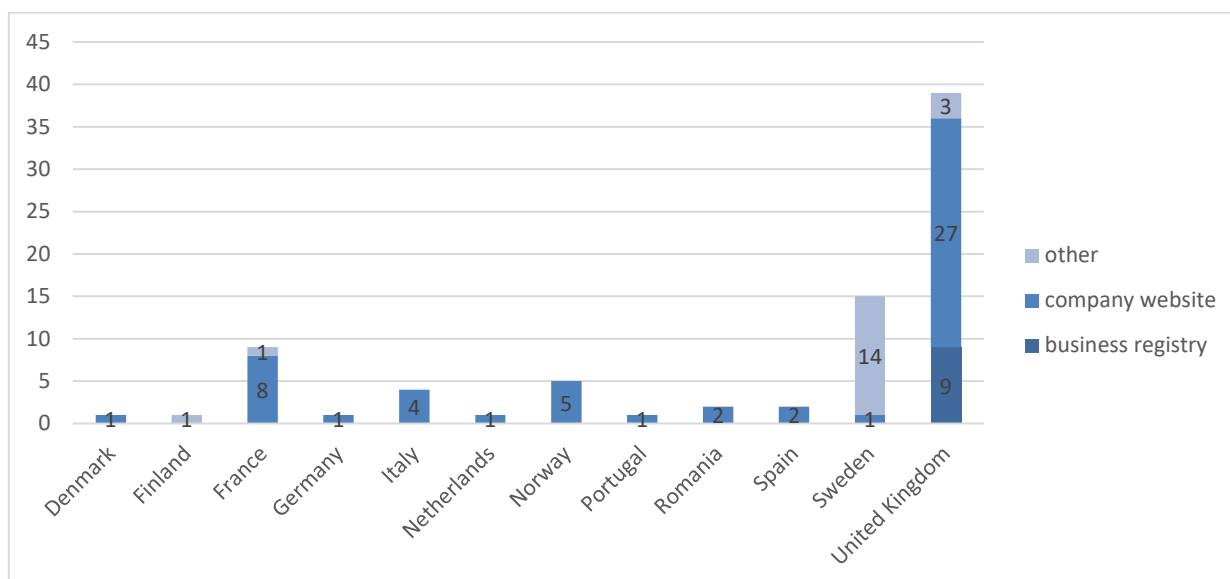
Among the reports examined, the study team established that:

- Nine reports were found in business registries – in fact, apart from the Companies House Register⁸ and the London Stock Exchange in the UK, commercial registers were generally not easily accessible. We faced particular difficulties in accessing the reports in commercial repositories in countries such as Germany, Finland, Spain, Sweden and the Netherlands (detailed breakdown is presented in Figure 2);
- 53 reports were available on company websites;

- 19 reports were located in other sources, such as financial information websites or directly provided by the contacted competent national authority or reporting companies; and
- Out of the two reports for logging, one was provided by a national authority⁹ and the other by a stakeholder.¹⁰

The different sources where the transposition measures of the Member States require undertakings to publish their reports are further detailed in ANNEX 9.

Figure 2: Sources of accessibility of the selected extractive companies' reports per country (per number of reports)



Looking more closely at some countries, in the UK, which was an early implementor, nine of the reports examined were found in business registries, 27 were found on company websites and three from other sources. It should be noted that nearly all the companies that published reports on their websites also submitted reports to Companies House under the mandatory XML schema (for more details, see Section 3.1.3.2). However, only UK-incorporated companies are able to submit their reports to Companies House. Since 2017, non-UK incorporated companies must also report their payments under an XML schema, but to the National Storage Mechanism rather than Companies House. Some reports on company websites were more comprehensive and provided additional information (e.g. Tullow Oil). All these reports were presented in the form of separate reports. It should be noted that the panel of reports examined only represents a sample of all the companies that report in the UK. The reports reviewed were selected because of certain criteria (e.g. size of the company, accessibility, countries of operation). However, for the financial year of 2015, civil society monitoring has identified publications of payments to governments by 92 UK registered companies and/or companies registered to the London Stock Exchange market.¹¹ 71 similar reports have been identified for the financial year of 2016.¹²

We collected nine reports of the other early implementor, France, out of which eight were available on company websites. Seven were presented in the form of separate reports, and two of them were part of annual reports.

3.1.2. Main categories of information covered in the reports

When the study team analysed the selected reports, the focus fell on a number of categories of information, namely the total amount of payments, the total per type of payments, and the breakdown of payments per project. These categories of information reflect the requirements from the Directives. For the purpose of quantitative analysis, the team created graphs comparing the different categories.

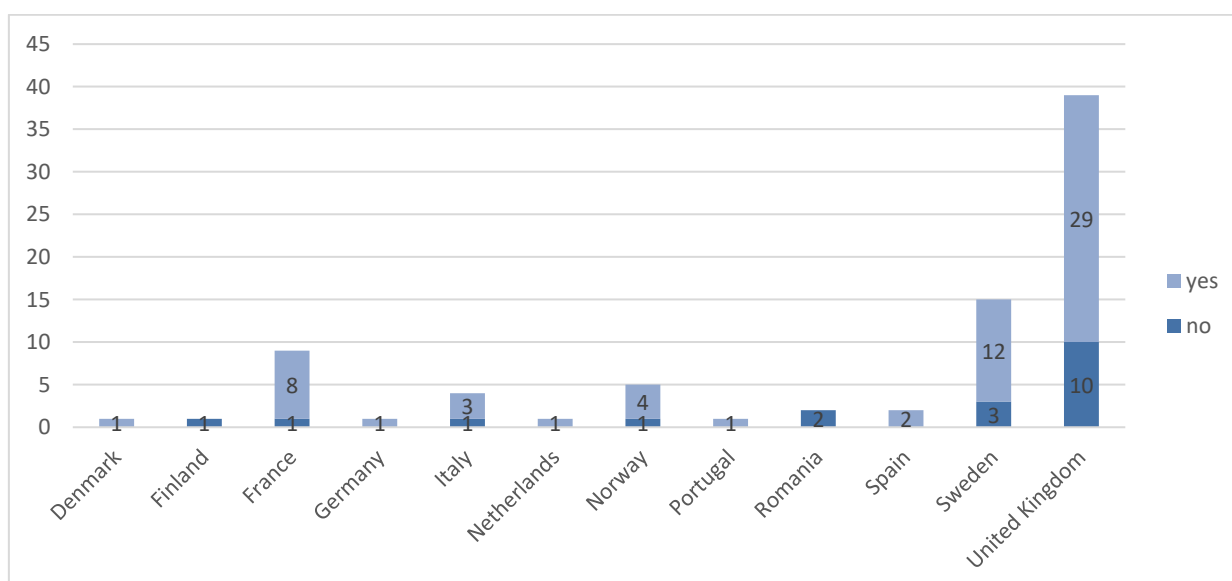
In addition to quantitative assessments, the study team analysed the reasoning **behind companies' approach on the different categories and potential missing information**, which is voluntarily presented by companies in the "Basis of preparation" section of the reports. This chapter was identified in almost every report, available on company websites. Usually this section provides information on:

- Applicable national legislation;
- Methodology used to prepare the report and reporting principles;
- Types of payments covered (e.g. tax, royalties, dividends, fees, production entitlements);
- Activities included in the report;
- Definitions of certain terminology (e.g. government, project, joint-venture, payment);
- Reporting currency;
- Voluntary disclosures, if applicable; and
- Independent audit/limited assurance, if applicable.

3.1.2.1. Total amount of payments made to governments

Although not required in the Directive, 62 company reports out of the 81 selected for analysis provide information on the overall total amount of payments to governments. The study team has estimated that the average total amount of payments to governments declared in the reports was EUR 371,850,521. Breakdown by country is presented in the graph below:

Figure 3: Reports disclosing the overall total amount of payments made to governments (per number of reports)



Out of the 19 reports not reporting the overall figure, 14 report at least the total for each government in line with the Directive, and four only provide a breakdown of each type of payment by country without the total by country. Finally, the only report from Finland does not report any payment (as they were all below the EUR 100,000 threshold), and hence no total.

The two reports for logging activities also provide information about the total amount of payments made to the governments. The report issued by the company from the UK provides the total amount paid to the Russian government while the Swedish company provides the total broken down by the different Swedish county administrations that received the payments.

In the course of our desk research we have established that 18 companies list more countries of operation than countries for which they report payments to governments. However, this study did not seek to obtain reasons for this situation (e.g. actual lack of activities in certain countries of operation, total amount of payments done in the country of operation below the EUR 100,000 threshold, absence of payments in the country of operation or potential absence of report due to the **company's interpretations of certain definitions**). In general, the understanding adopted by our researchers is that the number of reports submitted should be taken solely as one limited indicator for compliance without placing an equation sign between reporting and compliance.

3.1.2.2. Total amount per type of payment

The types of payments include (as per the Accounting Directive): production entitlements, taxes levied, royalties, dividends, signature/discovery/production bonuses, fees and payments for infrastructure improvements. According to the Accounting Directive, when such types of payments are made in-kind they must be reported in value and when applicable in volume. As shows ANNEX 9, in general Member States respect these requirements.

Almost every report we examined has declared the total amounts per type of payment (80 reports). The only report that did not provide such a total was the one issued by the Finnish company (see section 3.1.1). However, in some reports there were differences regarding the types of payments reported.

For example, in France some companies followed their own accounting definitions (e.g. for royalties, which are sometimes included in taxes) or used the interpretations of the French transposition. For instance, due to the non-transposition of the obligation to report the volume of payments in kind, some French companies do not mention the volume of their payments in barrels (e.g. Total) (see ANNEX 9). Some companies also created an extra category of payment named 'other', whose content is not always defined and varies across companies.¹³

In the UK, the majority of companies disclosed the totals per type of payments made to each government. The total amount of payments made for each project and the total amount per type of payment made for each project were also commonly disclosed. An independent study showed that in the few cases where there was no disclosure, it is unclear whether this indicates non-compliance with the regulations or simply that the disclosure is not relevant to the reporting entity.¹⁴ Although most of the UK companies covered the minimum reporting of types of payments, some of the high profile companies chose to disclose additional payments, unrequired by the

EU Directives (e.g. First Quantum Minerals, Glencore, South32 and Rio Tinto). Some reports presented **the breakdown of payments by 'regions and commodity'**. Furthermore, additional information appeared in some more general economic contributions reports and are disclosed by the company on a voluntary basis (e.g. detailed information about the limited use of **companies in 'low-tax' jurisdictions or subsidiaries in tax havens**).¹⁵ The main reason for this approach was to demonstrate to users and governments of current/potential countries of operation the value and benefits provided by the company and to show to **the company's stakeholders and investors** that the enterprise is socially responsible.¹⁶ Additionally, several companies submitting their reports by using the XML schema to Companies House complied with the requirement to report the value and where applicable, the volume of payment in kind, with supporting information about how the value has been calculated.¹⁷

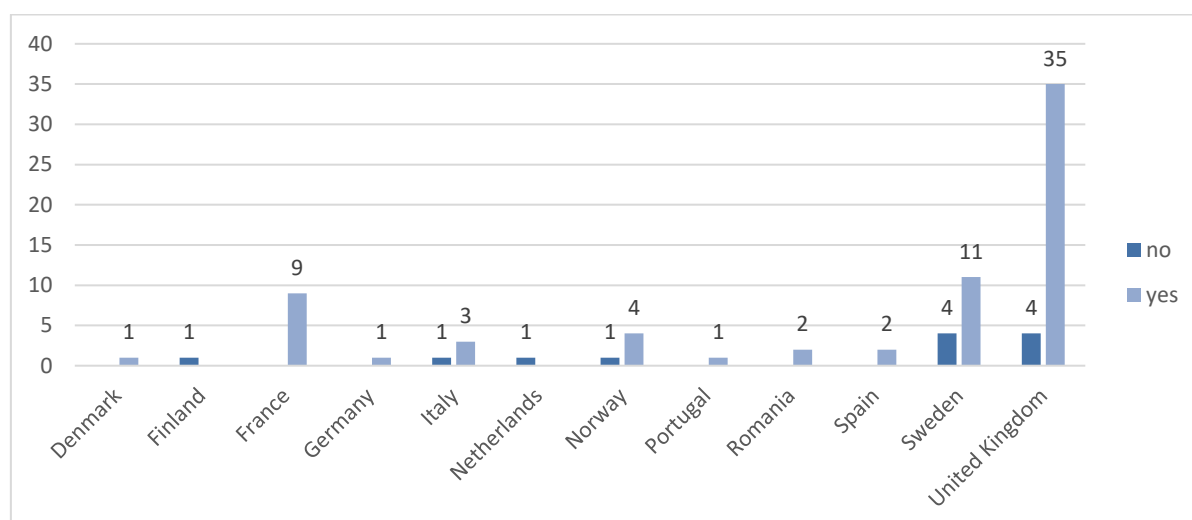
Only one out of the two reports from the two logging companies has included the breakdown per type of payment.¹⁸

3.1.2.3. Total amount per project

The study team has established that 69 out of the 81 analysed reports disclosed the total amounts of payments to governments per project. All the national transposition measures reviewed by the research team require undertakings to report the total amount per project (see ANNEX 9). However, a few do not require the disclosure of the total amount per type of payments for each project as requested in the Accounting Directive.

Detailed breakdown by country is available below:

Figure 4: Reports disclosing total amount of payments made per project (per number of reports)



The majority of the remaining 12 reports do not provide any explanation regarding why the companies did not include total amounts per project. According to several companies, the definition of a project can be difficult to interpret and can lead to several understandings.¹⁹ In particular, the **ambiguity of the term 'operationally and geographically integrated', was mentioned as** challenging to interpret. It should be noted that in general the national measures transposing the Directives do not provide more information about how to interpret this definition (see ANNEX 9). This may lead

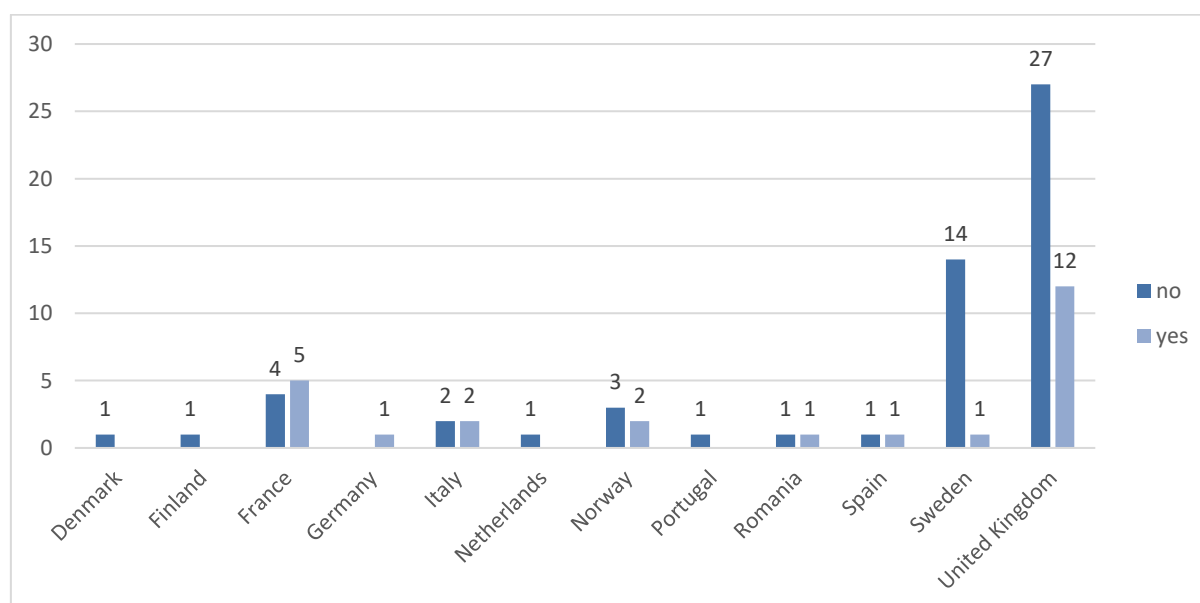
to different interpretations of the definition and different ways of reporting at a project level which in turn hinders the comparability of reports as well as the transparency of financial flows.²⁰ For example, in France, a mining company considers one site as one project²¹ and others specify that a **project is every "single contract, license, lease, concession or similar agreement that form the basis for payment liabilities with a government"**.²² Furthermore, some companies present payments by entity (i.e. subsidiary) when not specifically attributable to a project (e.g. in the UK)²³ and other completely exclude payments by project altogether (e.g. in France).²⁴

Only one of the two logging reports retrieved provided details about the payment per project.²⁵

3.1.2.4. Payment information about joint-ventures

Only 25 out of the 81 analysed reports contain quantitative information regarding payments from joint-ventures. The breakdown of companies by country is presented below:

Figure 5: Reports disclosing payments to governments through joint-ventures (per number of reports)



When analysing the national legislative measures transposing the EU Accounting Directive (see ANNEX 9), the study team concluded that none of the Member States has included an obligation for the disclosure of such information. Therefore, in the course of the study, researchers found it difficult to conclude whether the reports lacking joint operations information was proof of non-compliance or whether they only lacked actual payments to be reported.

Therefore, several companies reported that they had difficulty in interpreting the requirements on reporting for the joint ventures, which led to different reporting approaches.²⁶ The leading factor that defined companies' approaches was whether they are the main operator of the joint-venture. In fact, companies stated in the 'basis of preparation' that they explicitly exclude joint-venture payments in 11

analysed reports. The main reason provided was that the reporting entity does not participate in joint ventures as a main operator.

For example, in France one of the companies specified that it reports only when it is the leading operator and another stated that it reports in proportion of its interest in each joint operation regardless of whether it is the main operator or not.

In Italy, one of the interviewed companies did not report joint-venture payments at all and another one distinguishes incorporated²⁷ and unincorporated²⁸ joint ventures. In that case, **the company's** strategy is to report the payments to governments in relation to activities conducted through unincorporated joint ventures, when the company is the leading operator or has direct payment obligation.

In Spain, the contacted company has not included payments to governments through joint-ventures in its report.

In the UK, two types of challenges have arisen from the literature and interviews: the degree of control or involvement of the company in the joint venture and the type of payment and methods to report. In particular, the forms of unincorporated and incorporated joint venture may lead to different understanding about the identity of the party responsible (if any) to report the payments to governments.²⁹ For instance, in cases of unincorporated joint venture, companies may consider that if they have appointed an operator to conduct the operations on their behalf they cease to have the responsibility to report the payments to government and reliance is on the operator.³⁰ However, some payments may not be reported if the operator is outside the scope of the Directives for instance.³¹ For incorporated joint ventures, which are particularly common in the mining sector, where such entities are equity-accounted (i.e. they are not fully consolidated subsidiaries within a reporting group), their payments may be completely excluded from CBCR and, as a result, large sums may remain undisclosed. The category of payment and the methods to report them may also be misleading. Some companies interviewed for the study have reported their payments to governments in full regardless of whether they are the main operator of the joint venture or have reported such payments proportionally. Some of the companies have even stated that any full amount they pay to a government as a joint-venture operator has been reported, including where they are proportionally reimbursed by non-operating joint-venture partners via a cash call.³² In the case of payments declared by the operator that are later reimbursed by the non-operating partner there is a risk of double counting (e.g. if the non-operating partner reports the sum reimbursed to the operator).³³ Finally, some payments made to national companies are sometimes reported under the 'cash calls' category. It may become difficult to distinguish them while they may be close to payments made to government.³⁴

To illustrate these different ways of reporting, a UK branch of an international NGO has highlighted that some UK companies omit to report the following categories of payment:

- Payments by non-subsidiary joint-ventures
- Payments by joint-ventures over which they have joint control
- Payments by entities that are accounted for using the equity method³⁵
- Payments where they are not the operator or do not make payments on behalf of the operation³⁶

That said, when analysing the UK extractive market, the study team established that more than half of the UK companies examined have not presented information about joint-ventures. Several companies have explicitly excluded joint-ventures from their reports due to their interpretations, but the majority has not included any information. It remains unknown whether they participate in joint-ventures or if they do, whether and how payments are reported. Furthermore, due to these different interpretations, large sums may remain unreported.³⁷

Having noted these concerns, it should be underlined that during the study, no evidence was found of companies altering structures to avoid disclosing payments.³⁸

3.1.3. Means of implementation

This section covers the different steps of companies to ensure compliance with the reporting requirements.

3.1.3.1. Company units responsible for implementation and use of external audit/assurance

There are limited variances among the entities, but in general, compliance is usually the responsibility of **the companies' accounting units**, which normally consolidate the reporting on group level before submitting the reports.

Overall, the approaches used by different European companies are not notably different.

- For example, according to the interviewed industry representatives of the UK market, the chosen methodology for reporting normally included a separate team (usually, accounting) that extracts the payments data from the relevant system and then allocates the payments to categories, splitting it by country and by project. This information is normally sent to other teams based in the countries of operation to verify the allocation and cross check with other data sources.³⁹ Another system used is the development of a template by the central office, which **reflects the company's interpretation of the reporting requirements**. This template is then sent to the separate business units in other countries, to fill it in and to submit to the group, which consolidates the information from a tax and accounting point of view.⁴⁰
- In France, some companies consolidate the reporting payments in their headquarters and results are cross-checked with other available data from other units (e.g. finance and production).⁴¹ Sometimes, the preferred methodology is to retrieve the information on taxes via the internal reporting system of the company and to send questionnaires to all sites around the world to ask about the other types of payment.⁴²

Furthermore, the study team has established that certain high profile large multinational companies have used the services of independent auditors or provided additional assurance. Such audit or assurance is not mandatory in the reporting requirements and their national transpositions, but prominent examples of companies taking this additional step were identified in Italy, Spain and the UK.

In the UK, a few companies reported using the services of independent auditors for their published payments to governments reports (e.g. BHP Billiton and Tullow Oil). For the moment, no such requirement exists in the UK Regulation, which is the main

argument given by companies for not having their reports audited or assured. It should be also noted that before the introduction of CBCR, some companies in the UK already had their tax or economic contribution reports audited or assured, while in some cases the new CBCR reporting was incorporated in these assurance opinions.

In France there is no obligation in the transposition to audit the reports, but the reports have to be approved by the board of directors. Some companies (e.g. Total) submit their report to external auditors and their audit committee before submitting it to the board of directors.

Section 4.3 provides further information on the relevance of introducing obligatory auditing or limited assurance of the reports.

3.1.3.2. Formats and platforms used by the companies

When preparing the country-by-country reports, industry players within the EU used different formats and platforms. In general, the reports were published mainly in PDF or through XML or CSV format in a central national registry as required by the Directive. In addition to this legal obligation, certain companies also publish their reports on their website.

For instance, in the UK the prescribed XML schema – which outputs to CSV for users – is commonly used with few or no additional disclosures, and submitted to Companies House, the official business registry for reports on payments to governments by UK-incorporated extractive companies. Some higher profile companies produce an additional long PDF that includes tables explaining the different payments to governments and detailed information on how the national regulations have been interpreted. They also include infographics and data tables, and sometimes details of economic contributions not captured by the regulations, while in **one case (BP) a 'limited assurance' report.**⁴³ These reports are often published on the company websites. In general, most of the UK companies covered only the minimum (XML / CSV) reporting requirements content-wise.⁴⁴ However, the majority of the high-profile industry players chose to prepare simultaneously the mandatory schema report and the PDF one.

In France, most of the companies prepared PDF format reports, either in the form of a separate document or as part of the annual report. Companies must publish in the business register, but there is no central platform for publishing the reports that would enable central access like in the UK. The national authority considered that the cost of setting up a similar platform in France would be too high compared to the low number of reports and the lack of demand from civil society and companies.

3.1.3.3. Available guidelines

For the purposes of the reporting, very often the responsible units in the companies follow corporate or governmental guidelines.

For example, **in the UK internal guidelines are often issued by the companies' headquarters** to direct the accountants in the different countries of operation and to facilitate the organisation of data.⁴⁵ Such guidelines usually explain how the report should look, its parameters, how it should be populated and the deadline. Some

companies use the Reports on Payments to Governments Regulations 2014 Industry Guidance, published by the International Association of Oil & Gas Producers (IOGP).⁴⁶ Rather limited guidelines for the qualifying extractive companies have been published by the UK national authority.⁴⁷ The UK companies prefer to use the industry-generated guidelines probably due to the absence of comprehensive guidelines from the national authority.⁴⁸

In France several stakeholders call for implementation guidelines to be issued by the government on the reporting requirements to clarify some interpretations and ensure harmonisation. According to the national authority, a good example was the guidelines from the European Commission for Directive 2014-95 EU on the disclosure of non-financial information, which were prepared following a series of workshops with stakeholders.⁴⁹ However, no actual reporting guidelines were published, so some companies took the initiative and prepared their own. For example, a company developed a reporting guideline to detail the requirement for their affiliates together with a reporting template. In addition, it conducted an awareness session with its affiliates and organised a 'dry run' in 2014.⁵⁰

In the course of its research, the study team could not identify other notable examples of guidelines similar to the ones mentioned above.

3.1.4. Assessment of the compliance

Overall, based on our review of the reports and on the interviews conducted, the European companies in the scope of the reporting requirements tend to be compliant.⁵¹

However, the national authorities in the different European countries provide rather limited monitoring and oversight.⁵² Few inspection campaigns or deliberate checks imposed on companies subject to the reporting requirements have been carried out so far. Moreover, national authorities usually rely on the proactivity of civil society, sectorial associations or diligent industry players to inform them about potential non-compliance or to seek protection through means of litigation.⁵³ Often the authorities limit their role to ensuring that information is filed, do not seek out irregularities and rely on complaints for non-compliance raised against companies before starting enforcement proceedings. For example, in the UK only one complaint had been received and followed to date.⁵⁴

In general, contacted stakeholders specified that the limited oversight provided by the national authorities is due to a lack of resources to monitor and enforce the implementation of the requirements.⁵⁵ Therefore, issues with the reporting requirements were mainly raised by civil society organisations and academics. Where existing or potential non-compliance was pointed out, the reasons for it varied from country to country. However, through the conducted desk research and stakeholder consultation, the study team obtained more specific information on non-compliance in France and the UK.

In France, a local branch of an international NGO noted that companies have reported **the value but not the volume of their "payments in kind", which was due to** transposition of the provision of the EU Accounting Directive concerning these payments (see ANNEX 9). The national authority made a legal verification and considered that the Directive had not been under-transposed.

In the UK no definite conclusion could be established regarding non-compliance. According to the Post Implementation Review, conducted by the national authority on the applicable national legislation, companies have largely complied with the national regulations.⁵⁶ However, cases of non-reporting and late-reporting have also been identified. For example, at least four UK-registered companies or LSE main market-traded extractive companies had not reported to Companies House for the Financial Year of 2015 or had been late in reporting by several months or even almost a year.⁵⁷

However, UK civil society and academia have listed through independent studies, position papers submitted to the government and interviews, a number of quantitative and qualitative reporting inaccuracies (see examples in Table 2).

Table 2: Examples of issues in the reports of some UK extractive companies⁵⁸

- Identifying various subsidiary legal entities as 'projects' where there is good reason to believe that at least some of these subsidiaries operate more than one distinct project;
- Not identifying some or all the government entities they pay;
- Providing opaque or incomplete 'payments in kind' data that prevents users from calculating the value per unit;
- Incomplete reporting (e.g. omitting project-level reporting); and
- Reporting after deadline.

Among the various reasons for these reporting issues, the UK national authority mentioned the lack of guidance for the industry, the complexity of the processes involved and technical difficulties with the Companies House repository.⁵⁹ Possible solutions to these concerns and the issues mentioned above are presented in Section 4.1.

3.2. Effectiveness

Review questions

- *To what extent have the objectives of the reporting requirements, namely the increased transparency of operations of logging and extracting companies and better information to civil society, been achieved?*
- *Are the users using the information provided by extractive and logging companies?*
- *Do the reporting requirements help governments in resource-rich countries to implement the EITI principles and criteria?*
- *Do the reporting requirements help EU wood importers to comply with the EU Timber Regulation (due diligence to prevent illegal activities in the timber value chain)?*

- *To what extent did the reporting requirements contribute to the broader objectives of reducing illegal logging and extractive operations, corruption and deforestation?*
- *Where expectations have not been met, what factors have hindered their achievement?*
- *Are there any aspects that render the CBCR more or less effective than other sources of information (EITI, financial statements, other...), and – if there are – what lessons can be drawn from this?*
- *Are there any unintended effects of reporting requirements?*
- *What are the compliance costs of the reporting requirements and do the costs significantly differ for some groups (e.g. SMEs)?*
- *Are the users of the reports able to access and use the information? If not, what are the barriers to access?*
- *Is the information contained in the report reliable and useful to the user? What type of information is missing?*
- *To what extent have the different implementations of the requirements in Member States impacted the effectiveness of the reporting requirements on the objectives?*

3.2.1. Ease of access for the users

Across Member State legislation, the rules of publication of the reports are not harmonised. Several national legislations indicate that the reports should be submitted to a national registry where accounting and financial information about companies can be consulted (e.g. Belgian National Bank, Finnish Board of Patents and Registration, French registry of the Commercial Court, register of the company in Italy, Dutch Authority for the Financial Markets and Trade Register, Portuguese Institute of Registries and Notaries, Swedish Companies Registration Office, centralised repository by UK Companies House). Several legislations mention that the reports should be accessible to the public within and for the duration of a specific timeframe (e.g. Belgium, France, Italy and the Netherlands), but only the French and Italian legislations mention explicitly that the reports should be published on the company website. Finally, it should be noted that several Member States require that **the reports disclosing the payment must be enclosed in the companies' annual report** (e.g. Cyprus and Belgium). More information on the transposition measures on access to reports is available in ANNEX 9. The level of ease to access the reports thus varies, especially given that reports that are by all means submitted to national accounting authorities may not be published on the company's website in parallel and business registries sometimes charge a fee to access the reports or limit the access to members.

There is a central EU portal connecting Member State business registers⁶⁰ (for EU-registered companies), but not all Member States are currently connected, and the portal is unsearchable by report type, according to NGOs. For listed companies, the Transparency Directive requires the European Securities and Markets Authority (ESMA) to develop and operate a European electronic access point (EEAP) to provide access to all regulated information filed under the Directive, the establishment of which was due by 1 January 2018 but has since been postponed. Article 21a also

requires Member States to ensure that there is access to their national storage mechanism/officially appointed mechanism (OAM) of listed company regulated information via the EEAP once it is established. However, this system for providing public access to listed company reports does not yet exist or function.

The UK centralised repository⁶¹ for disclosures established by Companies House is a best practice example in two respects:

- It provides free access to the reports of UK-registered companies within scope.
- The information on payments to governments is provided in XML format that outputs as a CSV spreadsheet, allowing the extraction and use of data. Some companies also provide additional methodological and contextual information in a separate PDF file.

A limitation of the UK Company House repository is that it does not provide a comprehensive list of reporting companies, but one has to type the name of the companies to search for potential reports.

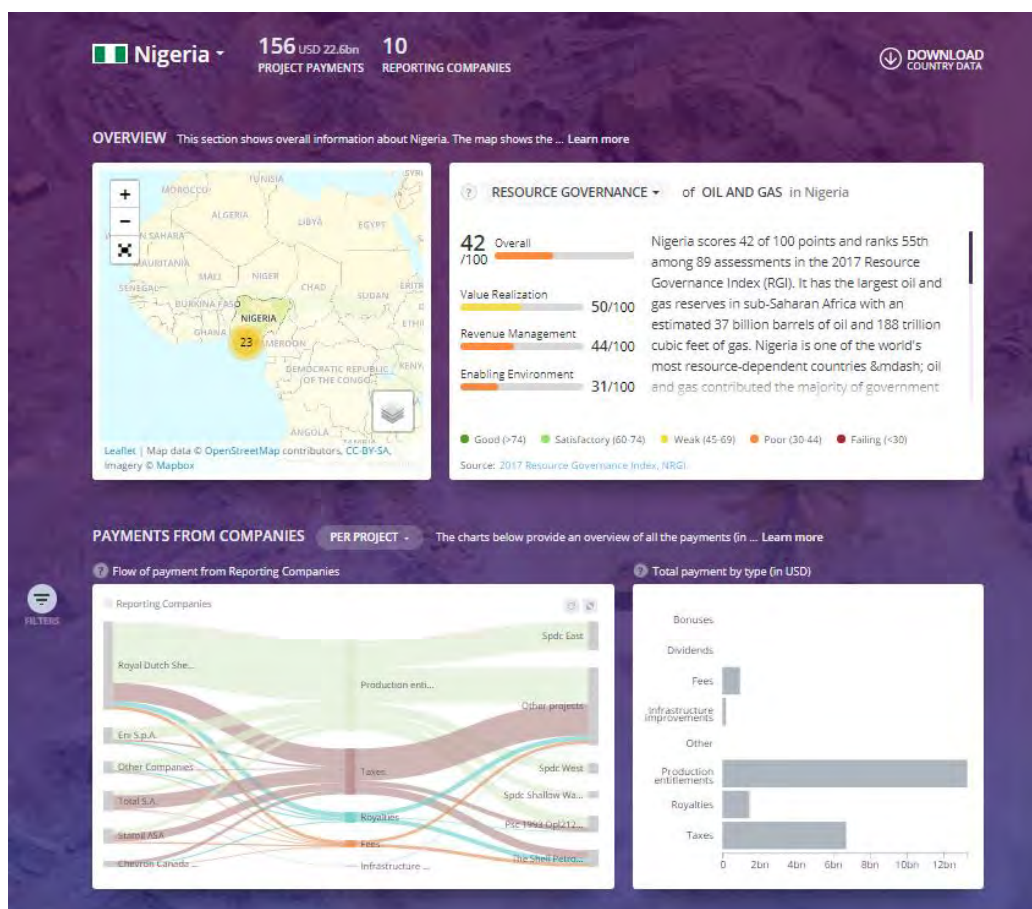
The Companies House repository is only available for UK-registered companies, but since 2017, non-UK incorporated companies are required to submit a report under XML schema to the National Storage Mechanism as an alternative repository.⁶² In Canada, the government also provides a central webpage with links to ESTMA reports, published in PDF or XLS formats.⁶³

In the absence of a common approach to the publication of reports and to different reporting templates across Member States and companies, NGOs and based on the best practices from the UK, NGOs call for an centralised repository of reports from both registered and listed extractive companies at Member State or EU level, based on the UK best practice, with machine-readable data format (see recommendations in Section 4.5).

Interviews with NGOs from countries of operation showed a low level of awareness of the reports from EU companies, except in some countries (e.g. Nigeria, Tanzania), and from some large civil society actors. According to a civil society representative, the low level of awareness can be explained by the Directives being recent, and they expressed the need to increase the visibility of the instruments, for example with EU awareness raising activities in countries of operation (see recommendations in Section 4.5).

It should be noted that other independent initiatives can currently help users to access information on payments and contracts in the extractive and logging sectors. The most useful example is the Resource Projects Initiative⁶⁴ run by the Natural Resource Governance Institute, which provides information on oil, gas and mining payments to governments from EU, Norwegian and Canadian companies subject to reporting requirements. The initiative currently presents the information sourced from 1,038 disclosure reports covering payments from January 2014 to December 2017 in 141 countries of operation.⁶⁵ However, there is no information about countries where no EU, Norwegian or Canadian companies are operating (e.g. Afghanistan, Central African Republic, Saudi Arabia, South Sudan). The information is provided by country and is downloadable in Excel, indicating company payments to each project, company payments to government recipients and total payments by type. Country pages also include a ranking in resource governance. The screenshot below shows an example of information for Nigeria.

Figure 6: Example of country page from the Resource Projects Initiative



Source: Resource Projects Initiative

The advantage of this database is that users can have an overview of the payments to the government in a specific country from companies subject to different mandatory disclosure regimes (EU, Norway and Canada).

In addition, the Natural Resource Governance Institute also created a summary database of payments reported under EITI,⁶⁶ where data are provided by country, by company payment and by revenues received by government agencies. The database currently contains information from the 51 EITI member countries about payments between 1999 and 2016.⁶⁷ The database offers the option to preview the information online or to download the data in CSV format.

In parallel, several initiatives provide information on contracts, which can help users cross-check the information with reports on payments to governments. The Natural Resource Governance Institute is running ResourceContracts.org,⁶⁸ a repository of publicly available investment contracts for oil, gas and mining projects, with summaries of key provisions and tools for searching and comparing contracts. The database currently contains 1,585 documents across 93 countries⁶⁹ from 1901 until 2018. A similar initiative is the OpenOil Repository,⁷⁰ which contains 806 oil contracts in 73 countries around the world, including some that are also included in the ResourceContract repository. However, the OpenOil Repository is less complete and was last modified in 2015. Moreover, it does not include some countries (e.g. Burkina Faso, Ethiopia, Niger, Mali, Sierra Leone). The advantage of these contract

databases is that they also cover countries where no EU companies operate, so for instance, it is possible to find contracts in Afghanistan with Chinese companies.

Finally, in the logging sector, a sister site to ResourceContracts.org is OpenLandContracts.org,⁷¹ launched by the Columbia Center on Sustainable Investment. This is a repository of publicly available contracts for large-scale land, **agriculture and forestry projects, with plain language summaries of contract's key** social, environmental, human rights, fiscal and operational terms. The repository currently contains 218 documents across 15 countries⁷² from 1949 to 2016.

3.2.2. Extent of use and usefulness of information

Despite the issues of accessibility and awareness described in the previous section, there is evidence of interest in and use of the reports by civil society organisations both in the countries of operation and in EU countries.

In countries of origin, major civil society organisations monitor the publication and content of reports, directly contact companies to request clarifications and publish articles, infographics and reports to raise awareness about the reports and the practices of EU companies. In addition, international or EU-based NGOs exchange information with local branches in countries of operations. For example, a representative of the French branch of an international NGO reported being contacted by several local NGOs from countries of operations about the reports of French companies.

To increase awareness of the reports from EU companies in countries of operation and to develop the capacity of local NGOs to access and use the data, Publish What You Pay's International Secretariat has established the Data Extractors programme⁷³, which trains PWYP members and allies from both countries of origin and countries of operation. The PWYP Data Extractors work with each other to use the data through peer learning, twinning, mentoring, workshops and case studies, in order to learn how to access, use and present the data to raise public awareness and establish better informed dialogue with companies and governments.

In addition, Global Witness published a handbook⁷⁴ in August 2018 featuring 10 **different methods to use the data from the extractive companies' payments reports. Each method features 'real life' case examples** to illustrate how this can be done. The handbook aims to show users how to:

- Calculate how much communities should receive from extractive projects in their local area, and track the money into local authority bank accounts;
- Monitor payments over time to check for sharp deviations;
- Check a company is making all the requisite types of payments;
- Verify high risk one-off payments;
- Check whether companies are paying the correct amount in royalties; and
- Calculate whether companies are paying the correct amount in profit during the early years of a project.

In countries of operation, local civil society organisations that are aware of the reports use them mainly to detect inconsistencies between payments reported by companies and payments received by governments. Local NGOs analyse the data from the reports and use it to request clarifications from government bodies and to hold them accountable for their resource governance. They also use the analysis to raise public awareness by publishing briefings, infographics, articles and using social

media. The following table lists examples for the use of reports in countries of operation.

Table 3: Examples of use of reports

Country	Use of the reports
Angola	A study by PWYP France found that the amounts declared by the Angolan authorities differ by more than USD 100 million from the data available from Total's report . ⁷⁵ While the discrepancy could be attributed to different methods used to value each payment in kind, the Angolan government has dismissed these inconsistencies by saying that they are a result of incompetence and errors in accounting, which did not convince civil society organisations. ⁷⁶
Indonesia	Based on reports from EU and Norwegian companies, PWYP Indonesia created, as a public resource for citizens, an interactive online map of the companies, ⁷⁷ their operational sites and the payment data disaggregated by payment type. The data was also incorporated into their Android 'Open Mining' mobile application for wider accessibility. PWYP Indonesia plans to update the information annually to allow citizens better access to and understanding of the data.
Niger	In 2014, Niger and Areva announced that they had signed a strategic partnership agreement which renewed their uranium exploitation contracts. The new contract included a new royalty fee which was expected to boost Areva's contribution to Niger , a country included in the top five poorest countries in the world. However, since the agreement came into effect, Areva's payments to Niger have decreased. Through analysis of the data in Areva's 2016 report on payments to governments, PWYP Data Extractors noted that while the amount of uranium Areva extracts from Niger has stayed relatively the same, Areva's royalty fee payments have decreased considerably. This was partly due to the decrease in the value of uranium, but Oxfam France and PWYP Niger believe that uranium exported by Areva's operated joint venture subsidiary Somair from Niger to France may be undervalued by up to EUR 11 500 per tonne compared with other Nigerien uranium exports. Areva has refuted this conclusion, stating that the agreed price 'reflects uranium market conditions'. Local civil society including PWYP Niger has used this information to raise media and government awareness about the outcome of the contract renegotiations.
Nigeria	The Natural Resource Governance published a briefing ⁷⁸ , describing potential usages of the CBCR for media and civil society stakeholders. The briefing includes an overview of Nigeria's oil and gas sector as well as company-level, project-level, payment-level and government entity-level analyses. The institute also published an overview⁷⁹ of how Nigerian media covered the first publication of Shell's reports. Moreover, the institute runs a project in Nigeria, called Media for Oil Reform Fellowship, which trains local journalists with the aim of promoting reporting that deepens knowledge of the Nigerian oil sector ⁸⁰ . The local NGO BudgIT is running a Fix Our Oil campaign and publishes infographics based on the EU payment reports to help citizens gain a clearer view of their government's oil and gas revenues. PWYP Nigeria used the information contained in Shell's first report and an infographic created by the UK branch to ask several Nigerian national authorities for confirmation of the payments received. ⁸¹ In parallel, PWYP UK contacted Shell to enquire about in-kind payments to the Nigerian government; the company explained its methodology but declined to provide the respective volumes and to put a price on the in-kind gas payments.
Tunisia	PWYP UK and a Tunisian-affiliated NGO Coalition for Transparency in Energy and Mines analysed the 2015 payment reports of BP Group and Petrofac. They produced infographic summaries and asked questions to the Tunisian

Country	Use of the reports
	government relating to revenue receipts, subnational revenue allocations and company social responsibility payments to local authorities.
Uganda	By comparing the reports of Tullow and Total with the data disclosed in the Bank of Uganda Annual Reports, civil society representatives found USD 14 million not included in government reports. This information has been used in direct dialogue with government officials, to ask them to explain the discrepancy and to demand financial accountability.
Zimbabwe	PWYP Zimbabwe used payment data disclosed by Anglo American for its Unki platinum mine to empower citizens. Workshops were held with 20 representatives of the Marange and Shurugwi communities to develop their skills in assessing local mining tax revenue alongside local government budget and financial statements, and to support their calls for better funding of local economic and social development from the proceeds of mineral extraction. PWYP Zimbabwe also started sharing company payment and government revenue data with community organisations in diamond-producing but impoverished eastern Zimbabwe. This has helped to make data a tool that communities can use in organising their grassroots advocacy and has enhanced PWYP Zimbabwe's participation in national budget consultations and dialogue with senior government officials. Given that Zimbabwe is not a part of the EITI and that its domestic transparency measures reveal little, mandatory disclosure reports form a hugely important source of data for Zimbabwean civil society.

Sources: BEIS (2018) *Post Implementation Review*; PWYP Coalition (2017) *Improving transparency in the European Union's oil, gas and mining sectors*; interviews with NGOs.

Although the objective of the reporting requirements is to enable civil society to hold their governments accountable for the receipt of payments linked to the exploitation of natural resources, it emerges that NGOs also use the reports to hold companies accountable. A trend can be noted where NGOs from countries of operation request clarifications to their governments while international NGOs or NGOs from countries of origin ask questions to the companies themselves.

While civil society representatives find the reporting by project and by payment type useful for comparing payments declared by companies and governments and for gaining an overview, they noted two significant limits to the use of reports:

- Comparability of reports: NGOs consider that some definitions and categories of payment are not clear enough in the Directive, which leads to different interpretations from companies (e.g. on project, joint-venture, payment in-kind – see Section 3.1.2) and can hinder the comparability of information across reports (see recommendations in Section 4.1).
- Contextual information: NGO representatives noted that the raw data in the reports did not allow them to fully understand the context and that they would welcome additional information, such as the name of the payment recipient, the exchange rate used, more information on the project status and operations and for some NGOs also the disclosure of contracts and of information on social payments (see recommendations in Section 4.5) .

3.2.3. Differences in effectiveness across reports and reporting schemes

As described in Section 3.2.2, users seek comparability of the reports, which may not have necessarily been foreseen by the legislator and can be limited by the different interpretations of the definitions and payment categories by companies. Since the lack of clarity of the Accounting Directive was not mitigated by the national

transpositions or by any national guidelines, users find it useful when companies clearly detail their methodological approach (**e.g. in a 'basis for preparation'**) or add explanatory notes in their payment reports.⁸² Civil society organisations also welcome any additional information provided by companies that can clarify the context of the project (e.g. status, partners, starting date, production volumes and explanatory notes about payments linked to infrastructure improvements) or of the company operations, in order for users to better understand the report without previous knowledge of the **company's activity and the countries' fiscal systems**.⁸³ For example, the report of EDF provides information on the context of its activities (history of establishment, main sites, details of participation in joint-ventures, volumes of production, subsidiaries) for each country where the company reports payments.⁸⁴

Civil society organisations use the company reports to compare the payments data with other sources, including government sources and EITI reports. NGOs welcomed the introduction of the EU reporting requirements as it provides a new source of information and, for the extractive sector, can be considered more reliable compared to the other sources below.

The information disclosed by governments of resource-rich countries is often limited (i.e. restricted or outdated) according to several civil society representatives. It is therefore challenging to compare the data from the **EU companies' reports with governmental data**. For example, government agencies in Nigeria did not reply to the requests for clarification of the local PWYP branch in 2015. After a long period without response, the NGO asked the government agencies to reveal the actual payments received through a Freedom of Information Act request. Although the agencies answered that second request, they did not agree to make the requested information available.⁸⁵

Another useful source of information is formed by the EITI reports. A detailed comparison of the EU reporting requirements with EITI is provided in Section 3.3.6. In member countries of EITI, where stakeholders were not aware of the EU reporting requirements, the EITI reports are usually considered the main tool for transparency of payments from extractive companies to governments. Stakeholders that are aware of both the EU reports and EITI use them both for comparison, in order to check whether the same amounts of payments were reported. When differences are observed, NGOs usually follow up with the concerned parties, though they are aware that the differences mainly result from different interpretations. Overall, NGO representatives noted that the EU reporting requirements were more reliable because they are compulsory, while the participation to EITI is voluntary and a member country may withdraw. In addition, the EU reports provide more recent data since they are published annually while the EITI reports are usually published two years after the payments concerned. Finally, EITI has only 51 members⁸⁶, while the EU CBCR offers access to payment information in countries that are not or no longer part of EITI. NGOs estimate that 80% of payments reported by UK-based or listed companies were made to non-EITI country governments in 2015. NGOs appreciate the reporting of payments by project in the EU reports, but the EITI reports provide more comprehensive information as they include not only information relating to payments made, but also the reporting of government receipts and the reconciliation of government and company information. Moreover, the EITI reports contain a great deal of contextual information and provide an overview of the payments made by all extractive companies (EU and non-EU) in the country, while the EU reports only provide company-based information.

In the logging sector, nearly no EU reports were identified and awareness of the requirements among stakeholders is very low. In this sector, the main instruments for transparency are the EU Timber Regulation and the Voluntary Partnership Agreements (VPA).

Entering into force in 2013, the EU Timber Regulation⁸⁷:

- Prohibits the placing on the EU market for the first time of illegally harvested timber and derived products;
- Requires EU traders that place timber products on the EU market for the first time to exercise 'due diligence', i.e. undertake a risk management exercise to minimise the risk of placing illegally harvested timber on the EU market; and
- Requires EU traders to keep records of their suppliers and customers to facilitate the traceability of timber products.

An evaluation report⁸⁸ after two years of implementation noted that there is progress made by EU operators in taking steps to ensure the legality of their suppliers and more awareness of the problem of illegal logging among EU consumers. The Regulation has also encouraged producer countries to develop systems assessing compliance with the requirements of the legislation. However, more effort is needed from both the Member States and the private sector to ensure its effective and efficient application.

A VPA – voluntary partnership agreement – is a legally binding trade agreement between the EU and a timber-producing country outside the EU, supporting the implementation of the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. The aim of a VPA is to ensure that timber and timber products exported to the EU come from legal sources, and to help timber-exporting countries stop illegal logging by improving regulation and governance of the forest sector.⁸⁹ A total of six countries have signed a VPA with the EU (Cameroon, Central African Republic, Ghana, Indonesia, Liberia, Republic of the Congo) and are currently developing the systems needed to control, verify and license legal timber. Nine more countries are in negotiations with the EU (Ivory Coast, Democratic Republic of the Congo, Gabon, Guyana, Honduras, Laos, Malaysia, Thailand, Vietnam). However, in some cases the negotiations are stalling according to NGO interviewees. In addition, in Cameroon, for example, the VPA signed in 2011 included provisions on financial information to be disclosed, but due to delays in implementation, no information has been published yet according to a civil society representative.

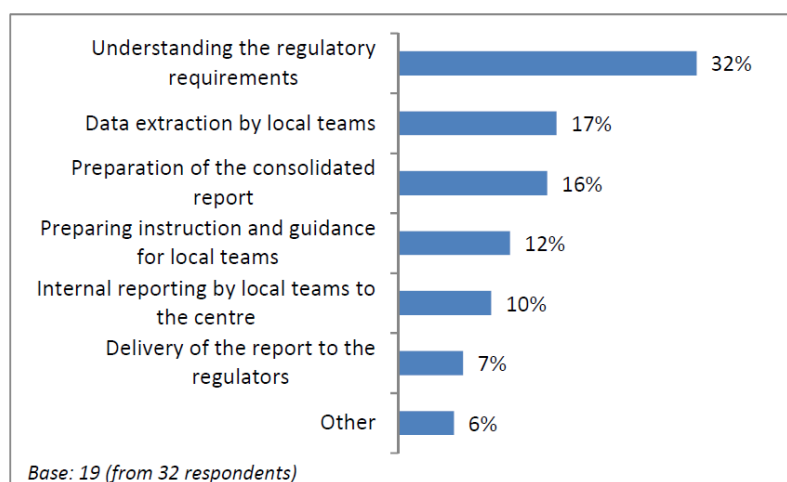
Logging activities are not part of EITI, although some member countries (e.g. Liberia, Democratic Republic of the Congo) included forestry activities in their EITI reports.⁹⁰ Civil society representatives would favour the inclusion of reporting obligations for the logging industry in the EITI or in the EU timber regulation as they would see a positive spill-over between the different mechanisms to enhance transparency and counter illegal logging.

3.2.4. What are the costs of complying with the directive?

The overall compliance costs are usually reported as relative or not too high by companies. According to the UK Post-Implementation Review, the total costs (one-off and recurring costs) range between EUR 190,000⁹¹ for small companies and EUR 9.8 million⁹² for large companies, while respondents to our company survey indicated a low range of costs (between EUR 12,000 and EUR 36,000 per report).

The figure below shows the percentage of the compliance costs allocated to the different reporting activities for the first year of reporting of UK companies.

Figure 7: Percentage of costs related to different reporting activities



Source: BEIS (2018). Post Implementation Review

The compliance costs of the reporting requirements include initial one-off costs and recurring costs.

The initial one-off costs are related to the interpretation of the requirements, the setting up of a reporting template and related definitions, training of staff and sometimes adaptation of accounting and IT systems. Based on answers from 17 companies,⁹³ the one-off costs ranged between EUR 800 and EUR 34,300⁹⁴ for small (listed) companies and EUR 4,500 and EUR 6 million⁹⁵ for large companies.

The recurring costs are related to the collection of information and production of the reports. These costs can be extensive when the company headquarters must collect data from all the local sites of operations. Based on answers from 17 companies,⁹⁶ the recurring costs range between EUR 570 and EUR 28,500⁹⁷ for small (listed) companies and EUR 5,700 and EUR 1.4 million⁹⁸ for large companies. One important reason for these large discrepancies could be the linkage of this reporting with other reporting systems. Reporting systems, however, have a substantial fixed costs component that can vary across companies depending on the accounting system used.

The level of compliance costs varies depending on the size, scale, type of operations and number of countries in which the companies operate. It should be noted that the reporting requirements target large companies but that small companies that are listed and satisfy the payment threshold criteria are also in the scope.⁹⁹ Overall, there was no evidence that small companies were facing disproportionately high burdens from this mandatory reporting requirement. The table below presents the drivers of compliance costs based on the UK Post Implementation Review.

Table 4: Drivers of compliance costs (ordered by impact)

Impact	Factor
1	Number of payment types
2	Number of projects on which they report
3	Number of countries in which they report
4	Number of government payees

Impact	Factor
5	Scale of payments
6	Types of country
7	The size of projects on which they report

Source: BEIS (2018). *Post Implementation Review*

Most companies indicate that they have not externalised the reporting but added this task to existing roles and hence absorbed the costs into business-as-usual. According to the UK Post-Implementation Review, 90% of companies indicated that they have adjusted their ways of working in order to gather information on payments and compile the final report. Where companies indicated external costs, these included external legal fees (EUR 1,100 – EUR 11,400)¹⁰⁰, advisory fees (EUR 570 – EUR 2,850)¹⁰¹ and assurance fees (EUR 6,850 – EUR 320,000).^{102,103}

Overall, while the reporting requirements entailed additional compliance costs, these were not too burdensome for companies and were generally integrated in the internal work streams.

3.2.5. Achievement of the objectives of the Directive

The main objective of the reporting requirements, described in Recital 44 of the Accounting Directive, is to provide for enhanced transparency of payments made to governments by companies active in the extractive and logging industries. This information is expected to help civil society to hold governments accountable for the receipt of payments from companies for exploiting natural resources (oil and gas, minerals and primary forests) and should help governments of resource-rich countries to implement the EITI principles. More broadly, the reporting requirements are complementary to other initiatives such as the EITI (for the extractive sector), the EU Timber Regulation and the EU Flegt VPAs (for the logging sector) to combat corruption and illegal activities in the extractive and logging sector in resource-rich countries.

The main finding, confirmed by civil society and industry representatives, is that the EU reporting requirements have increased the level of transparency on payments to governments in the extractive sector. As noted by NGO representatives, the EU CBCR provide data that were not available before and therefore offer a new source of information to compare the data on payments to governments across several sources (e.g. governmental data, EITI, financial statements). On the one hand, revenue transparency provides civil society with important information to hold their government representatives accountable and to advance good governance. On the other hand, the requirements can be a deterrent against corruption since companies and governments know that the payments will be disclosed and open to public scrutiny.

Yet, although civil society is starting to use the reports to hold some governments accountable (see Section 3.2.2), the impact on reduction of corruption and illegal logging is not yet tangible. However, this is not the main objective of the reporting requirements, which focus on increasing transparency of payments to governments for the exploitation of natural resources, in order to trigger discussions on resource governance.

The first explanation provided by stakeholders is that the implementation of the requirements is still too recent, but that when more time-series data become

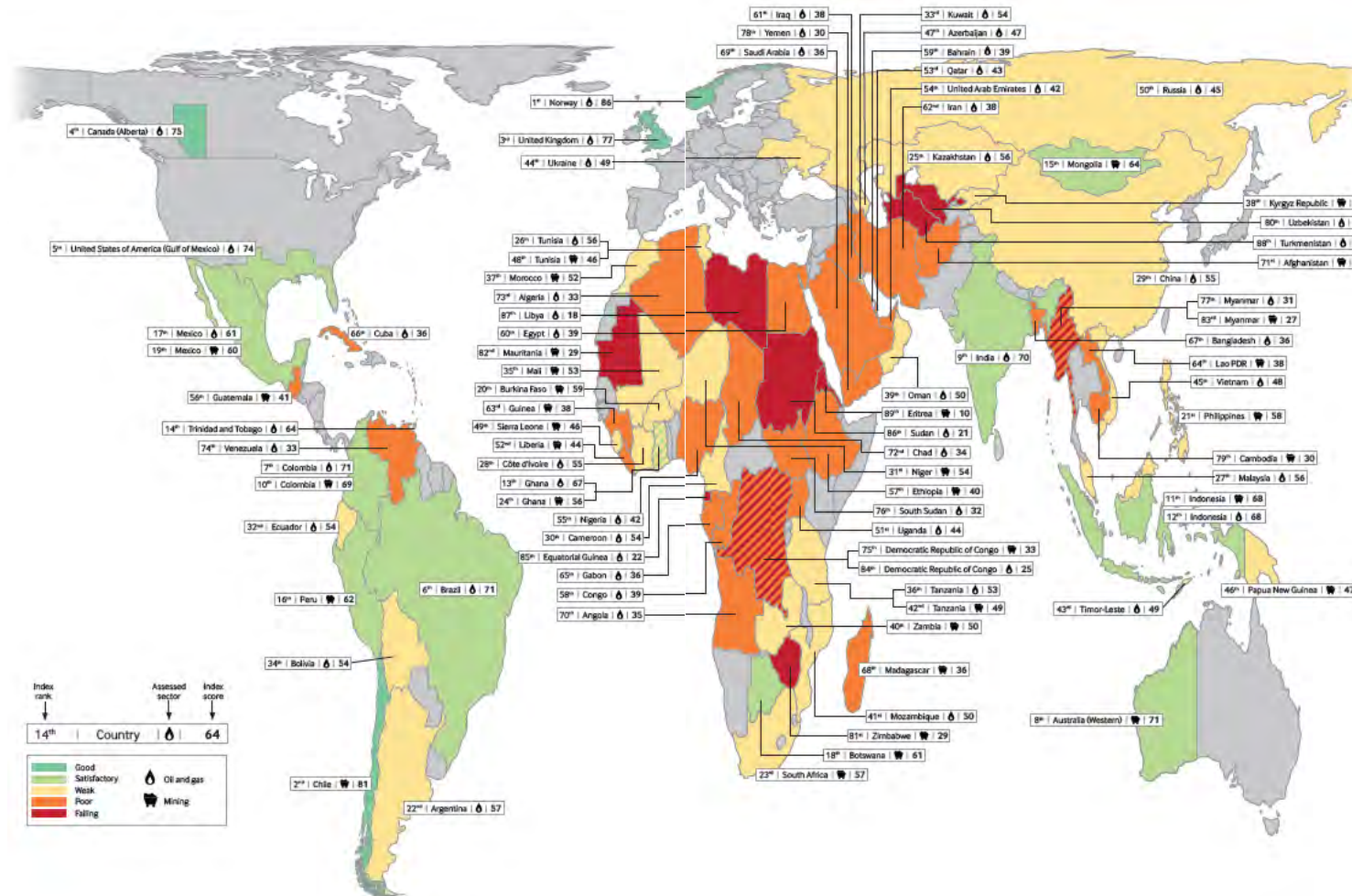
available, analysts will be able to track payments throughout project lifecycles, including assessing whether projects are actually producing the revenues promised at the prospecting stage.¹⁰⁴ Over time, civil society organisations will be able to observe any evolution and to develop public awareness and dialogue with governments.

The second important factor is that transparency is necessary but insufficient in itself to curb corruption and ensure more equitable revenue sharing of the wealth generated by natural resources.¹⁰⁵ The Resource Governance Index measures two important elements for civil society to hold governments accountable: transparency and 'civic space', the freedom and ability of citizens to influence the political and social structures around them. Indeed, without an active and well-informed civil society to monitor and evaluate the information, the impact of payment disclosures, and those of contracts and licenses, is somewhat neutralised.¹⁰⁶ According to the Natural Resource Governance Institute, some governments of resource-rich countries (e.g. Azerbaijan, China, Vietnam) have made some progress in technical disclosures, but heavily restrict the possibility for citizens to participate in selecting their government, as well as freedom of expression, freedom of association and freedom of the press. For example, in Angola although the government has increased disclosure of the received revenues from the extractive industries¹⁰⁷, senior officials are often the target of allegations of corruption by international and domestic media, and the few journalists who have been able to reveal details about corruption are the target of intimidation, violence or lawsuits.¹⁰⁸

Thus, unless civil society and media can use the information disclosed for public debate and to query governments, transparency cannot automatically translate into accountability and in equitable revenue sharing. The index results suggest that, on average, governments that facilitate civic space perform better in terms of governance, particularly concerning resources value realisation and revenue management.¹⁰⁹

Error! Reference source not found. below displays the 2017 Resource Governance Index of resource-rich countries, which shows that countries with the lowest resource governance scores are found in Africa, the Middle East and Central Asia. In most resource-rich countries, governance challenges persist, including high levels of corruption and secrecy. 32 out of 54 countries at the bottom of the 2016 Corruption Perception Index are resource-rich.¹¹⁰

Figure 8: 2017 Resource governance index country scores and ranking



Source: Natural Resource Governance Institute, 2017 Resource governance index

Logging

Illegal logging generates illicit earnings of around EUR 9-13 billion annually worldwide,¹¹¹ with underpayment of royalties and taxes on legally sanctioned logging amounting to an additional EUR 4 billion.^{112,113} Illegal harvesting represents about 35-72% of logging in the Brazilian Amazon, 22-35% in Cameroon, 59-65% in Ghana, 40-61% in Indonesia and 14-25% in Malaysia.¹¹⁴ However, in the absence of reports on payments to governments from logging companies, illegal logging is currently tackled mainly by the EU Timber Regulation and the EU Flegt VPAs.

Transparency International's 2017 Corruption Perception Index shows that the majority of countries are making little or no progress in ending corruption, while further analysis shows that journalists and activists in corrupt countries are risking their lives every day in an effort to speak out.¹¹⁵ While the score of some resource-rich countries from the bottom of the Index has decreased between 2012 and 2017 (e.g. Angola, Eritrea, Central African Republic, Republic of Congo, South Sudan, Yemen), others have slightly improved (e.g. Burkina Faso, Indonesia, Ivory Coast, Myanmar, Saudi Arabia, Vietnam).

Research and interviews in some of the resource-rich countries show that despite some progress in government disclosure, the level of corruption remains high and where civic space is restricted, civil society cannot use the EU companies reports to hold governments accountable (e.g. Angola, Venezuela). However, some countries show small steps in the right direction, although it is likely that this progress is rather due to other international (e.g. EITI, VPA) or national initiatives than to the EU CBCR, especially in the logging sector due to the limited number of reports.

- In Cameroon, illegal logging levels have dropped by 50-75 % in the last decade partly due to national independent monitoring¹¹⁶, but illegal logging practices and the level of corruption are still high and there is a delay in the VPA implementation.
- In Congo, the recent developments of the VPA between Congo and the EU show that the country is making progress in its fight against illegal timber trade. In addition, a Code for the Transparency and the Responsibility in the Management of the Public Finances has been adopted in 2017, whereby the government must publish the revenues collected from logging activities. Congo has also adopted a national strategy for the exploitation of forests which emphasises the need to develop a more sustainable and transparent management of the resources¹¹⁷.
- The Democratic Republic of Congo joined EITI in 2008, and although the assessment of the progress towards the 2016 EITI standards is ongoing¹¹⁸, the EITI has acknowledged the improvements achieved in the governance of the extractive industry since the country joined.¹¹⁹
- Gabon joined the EITI in 2004 but lost its member status in 2013 because of failures in its reporting obligations.¹²⁰ The VPA negotiations initiated with the EU in 2010 have also reached a deadlock.¹²¹ The Gabonese authorities have expressed their willingness to reintegrate EITI¹²² and have secured a USD 18 million deal with the Central African Forest Initiative to better plan and monitor the use of land and protect part of its tropical rainforest in 2017.¹²³ However an interviewed NGO did not notice any improvement in the transparency and governance of logging and extractive activities.
- In Indonesia, a certification mechanism (SVLK¹²⁴) to assure timber legality under the VPA with the EU is in place. Despite progress in the fight against illegal logging, corruption persists. In 2013, an Indonesian NGO reported that 14

companies were involved in corruption cases, some of which had already received the SVLK certificate¹²⁵.

Stakeholders consider that the EU reporting requirements complement EITI although the provisions differ slightly and no material efficiency in the reporting process is experienced (see Section 3.3.7). EITI representatives mentioned working with civil society organisations to use the EU reports in order to help a broader implementation of the EITI standard. The implementation of the EU Directives has the potential of supporting mainstreaming extractives industry transparency in EITI countries, for instance Norway is currently attempting to use their CBCR for their mainstreamed EITI approach.¹²⁶ Moreover, the timely publication of company reports can support the EITI reporting (see Section 3.3.7). There is no concrete example of countries joining the EITI due to the EU reporting requirements, although it may have contributed to the decision of Germany to join in 2016, or the Netherlands in June 2018. There are currently 51 EITI implementing countries, and Australia and France have announced their commitment to join the EITI.

Overall, while the EU reports have increased the level of transparency on payments to governments, it is still too early to observe an impact on the level of corruption and illegal logging in resource-rich countries. Where progress was noted in the extractive sector, it was also due to the EITI and national initiatives, while in the logging sector, where nearly no reports were identified, any improvement is most likely to be connected to the EU Timber Regulation, VPAs and national initiatives. However, civil society organisations are optimistic that the influence of the reports will increase over the next three to five years, once more reports are available and public awareness increases.¹²⁷

3.3. Impacts of other international regimes

Review questions

- *How do companies react to the potential proliferation of reporting standards (EITI, EU, Canadian, US, possibly soon Australian, among others)? Would they favour equivalence regimes or rather unified standards?*
- *What reporting requirements do EU companies need to comply with that US companies need not (and the other way around)?*
- *What reporting requirements do EU companies need to comply with that Canadian companies need not (and the other way around)?*
- *Have companies benefited from the Canadian Extractive Sector Transparency Measure Act (ESTMA) and the Commission Implementing Act on its equivalence?*
- *What other national reporting requirements might be important for competitors of EU companies?*
- *What reporting requirements do EU companies need to comply with that those competitors need not (and the other way around)?*
- *What are the impacts of the Extractive Industry Transparency Initiative (EITI) framework on the EU reporting requirements (e.g. in terms of project definition, de minimis thresholds, reporting templates (including electronic))? Are third countries with a significant proportion of EU companies in resource*

extraction more likely to comply with EITI standards? What reporting requirements of EITI are facilitated by EU reporting requirements?

3.3.1. ESTMA and EU requirements

On 1 June 2015, Canada amended the Extractive Sector Transparency Measures Act (ESTMA) with the aim of meeting Canada's international commitment to participate in the fight against corruption through the imposition of measures applicable to the extractive sector.¹²⁸ Since then, reporting entities are required to prepare a report for the financial years used by each company. As of July 2015, the Canadian government announced that EU reporting requirements meet the purpose of ESTMA and are an acceptable substitute for the requirements. Therefore, country-by-country reports that have implemented the EU requirements at a national level may be submitted to the Canadian minister of natural resources as a substitute for a report prepared under ESTMA, thereby establishing equivalence between the two reporting standards. Likewise, the EU decided in 2016 to consider the reporting requirements of Canada as equivalent.¹²⁹

There are several similarities and differences between ESTMA and EU requirements, including:

- **Target undertakings.** ESTMA has a narrower scope. The Canadian provisions concern solely undertakings in the extractive sectors and do not cover undertakings in the logging industries. Regarding undertakings in the extractive industries, ESTMA captures more companies as the Canadian size threshold is lower than in the EU requirements and is based on figures from consolidated financial statements.
- **Target recipient of payment.** A 'payee' is defined by ESTMA as (a) any government in Canada or in a foreign state; (b) a body that is established by two or more governments; (c) any trust, board, commission, corporation or body or authority that is established to exercise or perform a power, duty or function of government. As regard this criterion, both legislations have substantially similar types of target recipients of payment.
- **Payments captured.** Both ESTMA and EU requirements retain similar types of payments captured as well as a *de minimis* threshold, which in Canada is set at CAD 100,000, while in the EU it is EUR 100,000. At the current exchange rate, the **Canadian threshold is slightly lower than the EU's.**
- **Attribution of payment captured.** Under ESTMA, payments must be broken down to the project level before being attributed to a specific project. Where a payment is not attributable to a specific project, it may be disclosed in the report without splitting or disaggregating the payment to allocate it to a specific project. If multiple **agreements are "substantially interconnected", this shall be considered a project. "Substantially interconnected" means forming a set of operationally and geographically integrated contracts, licences, leases or concessions or related agreements with substantially similar terms that are signed with a government and give rise to payment liabilities.** Regarding this criterion, both legislations have substantially similar attribution of payments by projects. The definition of a project is similar in both legislations.
- **Breakdown of payment captured.** Regarding this criterion, both requirements have substantially comparable breakdown of payments captured. Payments must be broken down by governments (payee), by types of payment (payment category) to each government and per total amount for each project.
- **Triggers for reporting on a consolidated basis.** ESTMA defines an entity subject to the reporting requirements as a corporation or a trust, partnership or other unincorporated organisation that is: (a) engaged in the commercial development of oil, gas or minerals in Canada or elsewhere; or (b) controls a corporation or a trust, partnership or other unincorporated organisation that is engaged in the commercial

development of oil, gas or minerals in Canada or elsewhere. Regarding this criterion, both legislations have substantially similar triggers for reporting on a consolidated basis. Furthermore, the size criterion of the undertaking (entity) is based on figures from consolidated financial statements.

- Reporting medium. Under ESTMA, reporting entities are required to publish their reports online, so they are available to the public in either XLS format or PDF format. Furthermore, reports must be publicly available for a period of no less than five years from the date they were published and initially provided to the Canadian government. Regarding this criterion, both requirements ensure that the information is made publicly available. However, according to ESTMA, the report shall remain publicly available for no less than five years. This period is at least 10 years for issuers in European requirements, while no limit is specified for companies that are not issuers, leaving such decision to the Member States.
- Frequency of reporting. Both ESTMA and EU legislations require a report on payments made to governments on an annual basis, no later than a certain date after the balance sheet. The deadline to provide the report is shorter in the case of the Canadian legislation (150 days) than in the case of the Transparency Directive (six months) or the Accounting Directive (12 months).
- Anti-evasion measures. ESTMA has enforcement provisions. Each report should include an attestation statement which may be either an attestation by a director or officer of the reporting entity or an attestation through an independent audit. Moreover, it foresees the possibility for the minister or designated person to require information. Corrective measures are foreseen to ensure compliance. Fines are also foreseen for persons or entities failing to comply. In the EU, the Member States are **free to choose other means of ensuring compliance "within the competences assigned to them by national law"**.¹³⁰ For instance, they can choose anti-evasion measures or additional functions for their registers or competent authorities. In addition, the Accounting Directive in Article 33 assigns collective responsibility on the members of administrative, management and supervisory bodies of an enterprise for ensuring that the report and statements are published according to the requirements of the Directive.¹³¹

In conclusion, ESTMA and the EU standards can be considered as having very similar reporting requirements. The major difference is that Canadian provisions concern solely undertakings in the extractive sectors, while the EU also includes undertakings in the logging industries.

3.3.2. US and EU requirements

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) was signed into law on 21 July 2010 and primarily focuses on financial regulatory reform.¹³² Section 1504 of the Act concerns the reporting of financial payments to governments and government agencies made for the purpose of the commercial development of oil, natural gas and minerals. Any company that is engaged in the commercial development of oil, natural gas, or minerals, is required to file annual reports with the Securities and Exchange Commission (SEC), including a subsidiary of that company, or an entity under the control of the company. The categories of payments to be reported should be consistent with the EITI guidelines. The reports should be filed in an interactive data format and should include the type and amount of payments per project and per country. The reporting should specify the government that received the payments and the currency used to make the payments.

The SEC rule which is mandated by Section 1504 is mandatory to enable US companies to report. The SEC adopted a rule on 22 August 2012 to implement Section 1504 of the Dodd-Frank Act but it was subsequently vacated by the U.S. District Court for the District of Columbia, following a lawsuit filed by US oil, gas and mining companies on 2 July 2013. The ruling mentioned that the SEC should better substantiate the need to include information regarding foreign governments that prohibit disclosure. The SEC adopted new implementing rules effective on 26 September 2016, close in content to the previous rules but with a better explanation of the rationale and giving equivalence to the EU directives. However, these new rules were invalidated on 14 February 2017 by a joint resolution of disapproval enacted pursuant to the Congressional Review Act.¹³³ The SEC is now working on a third rule and US companies are currently not under reporting obligations until the rule is adopted.

3.3.3. Other national standards

In the interviews Australia and South Africa were mentioned as having passed country-by-country reporting standards. The two countries are early implementors of the Action 13 of the OECD/G20 Base Erosion and Profit Sharing (BEPS) action plan. BEPS 13 requires large multinational companies to disclose country-by-country information relating to corporate tax to tax authorities. The EU as well as many third countries have adopted this standard in 2016 in their legislation.¹³⁴ The BEPS Action 13 reporting is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field.¹³⁵

The IFRS 8 rules are also worth mentioning in the sense that they set out requirements for the disclosure of certain financial information. IFRS 8 is a set of standards issued by the IFRS Foundation and the International Accounting Standards Board (IASB) to provide a common global language for business affairs so that company accounts are understandable and comparable across international boundaries.¹³⁶ IFRS 8 requires an entity whose debt or equity securities are publicly traded to disclose information to enable users of its financial statements to evaluate the nature and financial effects of the different business activities in which it engages and the different economic environments in which it operates. It specifies how an entity should report information about its operating segments in annual financial statements and in interim financial reports. It also sets out requirements for related disclosures about products and services, geographical areas and major customers.

The interview partners did not consider the above standards to be relevant. They are mainly focused on reducing tax evasion by large companies in the BEPS 13 case and providing a global set of accounting standards in the case of IFRS, and not providing transparency on payments to governments. In addition, they do not target specific industries such as mining, extraction and logging.

3.3.4. Relative burden

It can be concluded that the ESTMA requirements are not more or less burdensome than the EU requirements (see the costs of compliance in the section on Effectiveness). The reporting requirements and their effects are very similar between the two regimes. In addition, the equivalence has been officially established between the Canadian and European requirements. This has been welcomed by the industry and benefited companies subject to both regimes because they do not need to report twice. The following section discusses the responses of the companies in more detail.

3.3.5. The reaction of companies

Mining companies understand that achieving unified global standards is not very realistic in the short and medium terms, thus, they fully support equivalence between reporting regimes.¹³⁷ Currently, full equivalence is achieved between ESTMA and European requirements. In a company survey, most respondents also considered that ESTMA provides the same transparency and is equivalent to the EU reporting requirements. While the survey includes a small number of individual responses, they in general reflect the views of the mining and oil and gas producers. The main international associations in both sectors were interviewed on this question. They provided aggregated answers from their members, confirming that ESTMA and the EU requirements are seen as broadly equivalent in transparency and reporting requirements.¹³⁸

Similarly, extractive companies would ideally prefer one global reporting standard, applicable to all in the sector, workable, proportionate, and helping to improve the ability to compare payments accurately across companies.¹³⁹ Such a global standard should preferably come from an international organisation, such as the OECD. However, it may not be possible to achieve it in the near future due to the proliferation of regimes and the failure to achieve fully consistent reporting legislation among Member States even while adhering to EU requirements. Thus, in the absence of a global standard, companies support equivalence to minimise compliance costs. Some mining representatives are also concerned that Brexit may have an impact on the scope of companies concerned by the reporting requirements, since many companies currently reporting are registered in the UK.

3.3.6. Comparison of EITI and EU requirements

At a conference in London in June 2003, a Statement of Principles to increase transparency of payments and revenues in the extractive sector was agreed.¹⁴⁰ These 12 EITI Principles focused on the need for transparent management of natural resources. Over 40 institutional investors signed a statement of support for EITI, which argued that information disclosure would improve corporate governance and reduce risk. The EITI Standard was formalised in 2013 and consists of seven broad areas where it improves on previous EITI rules and constitutes current principles:

1. Country-Specific EITI Objectives. Each country develops an 'EITI Work Plan' that details implementation objectives.
2. Contextual information. Production, ownership, revenue allocations and fiscal regime information is included.
3. Disclosure Requirements: full government disclosure of received revenues, disaggregated reporting (i.e. payment type, company, government agency, project), required SOE reporting, subnational transfers, social expenditures (by company), disclosure of revenues from commodities trading and payments from transportation services.
4. Annual Activity Reports. All implementing countries are required to publish annual activity reports.
5. Validation Procedures. Validation is managed by the International Secretariat rather than by implementing countries, with compliant countries being revalidated every three years.
6. Machine Readable Data. Countries are encouraged to make data available in standard machine-readable formats.

A revised EITI Standard was adopted in 2016, which adds beneficial ownership reporting, encourages implementing countries to mainstream transparency by making the information required by the EITI Standard available through government and corporate reporting systems, and provides a new system to assess implementing **countries' performance against the EITI requirements.**¹⁴¹ The process of validation of EITI implementing countries against the 2016 EITI Standard is ongoing, with **31 validations already completed (including five countries under "significant progress", 21 under "meaningful progress" and five with "inadequate progress/suspended").**¹⁴²

There are several similarities between the EITI and the EU requirements, including:

- **Reporting of Company Payments.** Both requirements are focused on improving information transparency with respect to cross-border financial transfers through the reporting of company-to-government payments.
- **Basis of Information (Company Payments).** **Companies' tax payments are reported under the two standards, which might create a burden of double-reporting for companies.** But it is without cost if the information comes from a single source, with little effect on reporting efficiency. However, if this information comes from two separate sources, then the reporting burden is likely to increase.
- **Data Availability.** The EITI reports are publicly available via their website, with no barriers to access. The EU requirements reports are also publicly available. However, there is no single database or unified format.

However, there are also several differences between the EITI and EU requirements:

- **Voluntary versus Binding Reporting Requirements.** EITI is a voluntary reporting standard in which countries participate, whereas the EU requirements are focused on firm-level participation and are legally binding, without exemptions.
- **Reporting of Government Receipts.** The EITI reports the payments received by governments, as reported by each government. The EU reports are prepared by companies and cover their payments to governments.
- **Analysis of Information.** The EITI reports contain analysis aimed at improving **users' understanding of the data and how this data fits within the larger country-level context.** Based on EITI's rules, the scope and structure of EITI Reports are determined by the national EITI Multi-Stakeholder Group to ensure local ownership of the EITI process. As a result, EITI Reports between countries can vary in terms of the sectors covered, aggregated or disaggregated data, regularity of the reporting cycle and the reporting currencies.¹⁴³ The EITI reports also include contextual information on the developments in the sector, the process of reporting, reconciliation of reported payments, lessons learned and recommendations. EU requirements, in comparison, do not contain an additional analytical layer and are solely concerned with the dissemination of fundamental company information.
- **Observation Unit / Data Granularity.** **By definition, EITI's main observation unit is the country-level, with individual payments/transfers summarised (aggregating all firms) under this level.** EITI reports have reported company level information (e.g. Norway), but such disaggregated detail is more of an exception than the norm. **EU requirements' main observation unit is the parent company, with individual payments/transfers summarised (by country and firm) under this level.** In addition, there is no specific/clear EITI *de minimis* reporting threshold, compared to EU's EUR 100,000 level.
- **Focus.** EITI focuses on countries with extractive industries, whereas the EU requirements also cover companies logging in primary forests.
- **Scope.** EITI is limited to participating countries, whereas the EU requirements cover all countries where EU-registered companies operate.

- Ramifications of Non-Compliance. Non-compliance with the EITI standards has no formal legal ramifications, whereas non-compliance with the EU requirements can be dealt with under applicable EU law or the relevant laws in other jurisdictions.
- Coverage of State-Owned Enterprises. EITI covers all payments to governments, including those by state-owned enterprises (SOEs). EU requirements, on the other hand, consider SOEs as they are treated as governments, i.e. as payee.

In conclusion, there are key differences between EITI and EU standards: the former is voluntary, while the latter is mandatory; EITI focuses on countries, while EU focuses on companies (including in logging); and **EITI reports are more contextual than EU's**. The differences between the two standards could be supplementary, providing a more complete picture if used together. However, given the possibility of double-reporting for companies, it is unlikely that countries using EU requirements will also adopt EITI. Currently, only Germany, the UK and most recently the Netherlands, are members of EITI and implement the EU requirements. Norway, a member of EITI, adopted country-by-country reporting requirements starting for the accounting year 2014.¹⁴⁴ The Norwegian CBCR for extractive and logging industries has a dual objective and goes beyond the EU reporting requirements. On top of enhancing transparency on revenues from the extraction of non-renewable resources, the Norwegian CBCR also aims to **increase transparency on companies' tax planning**. To reach this second objectives, large undertakings, companies issuing securities with Norway as their home country and public limited companies that operate in the extractive industries and logging industries are also required to publish key information about subsidiary undertakings, their activities and tax payments, as well as interest costs and turnover between undertakings within the same group.

3.3.7. Reactions on the relationship between EITI and EU requirements

Stakeholders in the mining industry believe EITI has been very helpful because it has been in place for much longer than the EU requirements.¹⁴⁵ The former eased the adaptation to the latter, since companies in the sector were used to reporting under EITI. Consequently, they 'knew what to do already'. A French company considered that EITI offers more complete information as it includes payments from all EU and non-EU companies, and thus ensures a level-playing field between companies. As mentioned by this company, due to their unilateral origin and extra-territorial application the EU reporting requirements might cause legal conflict, unlike the EITI.

In the view of companies in oil and gas, the EITI approach also has several merits, including reporting of all operating companies in a given country, participation of the government of the country in question and reconciliation of payments from companies against government receipts, and does operate at a prominent level as a unified standard.¹⁴⁶ Nevertheless, the introduction of the EU reporting system has created duplications as some companies now report under the EITI standard and according to the slightly different provisions of the Accounting Directive (Chapter 10). The anecdotal experience is that reporting in relation to a country under the EU reporting obligations does not materially assist with reporting under the EITI standard in relation to the same country.¹⁴⁷ The EITI standard allows for considerable variation in and adaption of the specifics of the EITI reporting process for different countries. While at a broad level the same kinds of payments are covered, there will usually be sufficient variation between the EU reporting regime and the EITI reporting regime for a specific country that no **substantial efficiency in the reporting process is experienced**. **In the industry's view**, while the ultimate reports are broadly duplicative in scope, the differences in the final reports may be the source of confusion for civil society. Despite this concern, the EITI

standard is the only reporting scheme that gives the local population access to the full **picture of governments' revenues**.

Some initiatives are emerging to streamline the reporting and avoid duplication. Norway is currently attempting to use their country-by-country-reporting for their mainstreamed EITI approach, as approved by the international EITI Board.¹⁴⁸ In addition, an analysis of NREGI in Ghana shows that the mandatory disclosures from companies under ESTMA are more timely than the EITI reports and calls **on Ghana's EITI (GHEITI) to "consider utilizing the payments to-governments data to streamline and speed up project-level reporting in Ghana"**.¹⁴⁹ Similar analysis could be done in countries where there is a majority of oil, gas and mining companies that are required to report payments to government in line with the EU Directives.

According to stakeholders in the non-governmental sector, EITI inspired the content of some of the language in the directive – e.g. the types of payments to be reported.¹⁵⁰ Similar to the position of the industry, NGOs thought EITI also helped to ensure industry backing for the adoption of the EU requirements, as many of the companies concerned were already reporting this type of information in their EITI reports. According to one prominent stakeholder, the EU requirements were designed to complement and reinforce EITI reporting requirements, and developments in the EITI, such as the **UK's and Germany's decision to implement the initiative**, have helped strengthen political commitment to, and the relevance of, the EU requirements.¹⁵¹ Similarly, another major stakeholder thought EITI was not only important in leading to stronger legal requirements of the EU, but that the EU requirements are likely to become a de facto new global standard, as more countries are considering adopting standards based on them.¹⁵²

Furthermore, EITI has helped ensure a level playing field by imposing similar requirements on companies operating in its member states that are not affected by the EU requirements. In addition to EITI influencing EU requirements, the latter also inspired further development of the EITI standard, for example, by introducing project level reporting. In the near future, project-by-project reporting will be rolled out, which will enable EITI to capture more companies.¹⁵³ Thus, the EU requirements, together with ESTMA, have given EITI actual practice for creating guidance on project-level reporting. EITI representatives mentioned that in revisiting the language of the EITI standard to reflect the current global reporting frameworks, they were taking into account the EU reporting requirements to determine the specific language. They however admitted that they were facing similar challenges in clarifying how to streamline the reporting of **joint-ventures and how to define 'substantially interconnected' activities**.

Overall, both the EU reporting requirements and EITI are leading towards greater extractive industry transparency and add to the global momentum.¹⁵⁴ There is room for the EU Directives to support the EITI reporting although no clear evidence of countries joining the EITI following the EU requirements can be established.

3.4. Competitiveness

Review questions

- *Is there evidence that competitors not subject to the reporting requirements benefit from competitive advantages from not being required to report on payments to governments? On the other hand, is there evidence that companies*

in the scope of the reporting requirements suffered material damages or losses of opportunity caused by such disclosure? If so, which ones?

- *Do the requirements cause compliance costs that do not apply to key competitors? (cost competitiveness)*
- *Do the requirements have a differential impact on international trade or general competitiveness (asymmetry in information available to competitor) for EU companies (international trade competitiveness)?*
- *Do the requirements have a differential impact on innovation in the sector for EU companies (innovation competitiveness)?*
- *Do important competitors use weak governance systems in third countries to gain a competitive advantage? Do these impacts differ in different types of third countries?*
- *Are there any reporting requirements which are especially harmful to the competitive position of EU companies?*
- *What are the impacts of the non-implementation of section 1504 of the Dodd Frank Act in United States?*
- *What are the consequences of an unlevel-playing field?*
- *Do the reporting requirements create competitive advantages for companies by boosting their reputation for transparency? Are EU consumers sensitive to the transparency of the companies?*

3.4.1. Impact of EU requirements on competitiveness

According to the views of the extractive industry, both in mining and in oil and gas, there is no evidence that competitors not subject to the EU reporting requirements benefit from substantial competitive advantages from not being required to report on payments to governments.

This position is largely shared by respondents in Member States. In Spain, an expert mentions that oil companies use initiatives and frameworks such as EITI to boost their corporate image and that the argument of loss in competitiveness through the publication of payments, which thus reveals their corporate strategy, does not hold. The main drivers of competitiveness are efficiency, innovation, creativity, quality and technology, while the respondent does not consider the publication of payments an issue of releasing sensitive data.

In the view of industry stakeholders, the only competitive advantage could be the lower cost of compliance, in particular the time and resources needed to produce the reports.¹⁵⁵ Similarly, stakeholders from oil and gas acknowledge that competitor companies registered outside the EU (e.g. Indian and Chinese oil and gas companies, and US oil and gas companies following the currently idle Section 1504 of the Dodd-Frank Act) do not face the compliance costs imposed by the reporting obligations.¹⁵⁶ When asked whether EU reporting requirements cause compliance costs that do not apply to their competitors, 50% of companies responding to our survey said that they do. Due to low response rate, it is not possible to provide a more general conclusion on this question. However, it indicates that at least some companies express concerns over compliance costs. One enterprise from Spain mentioned that the costs of implementation in terms of adaptation of IT systems, collection of information and

training of the staff have been high.¹⁵⁷ However, the cost of compliance with EU requirements is not seen as sufficiently burdensome or disproportionate to constitute a real competitive disadvantage (see Section 3.2.4 for more details on compliance costs).

In the UK, the situation was slightly different than in the other Member States because the British government implemented the EU requirements one year earlier than the rest of the EU. In order to gauge the impact of the early implementation, the UK Department for Business, Energy and Industrial Strategy (BEIS) conducted a post-implementation review.¹⁵⁸ Most companies in the review (72%) indicated that the early implementation of the regulation in the UK (relative to the rest of the EU) did not impose additional costs.¹⁵⁹ Only two companies (6%) indicated that they did incur some costs due to the timing of implementation, but they were unable to provide any idea of the magnitude of these costs. While previous IA indicated the potential for inadvertent disclosure of confidential business data, the review found that companies may not face any damaging loss of competitiveness as a result. The only concerns about competitive disadvantage were voiced within the context of the timing of implementation and not the existence of the regulation itself. Some companies indicated that due to early implementation, UK companies in general were put at a relative disadvantage to their peer companies that were not subject to similar reporting requirements. However, no indication of the degree of that disadvantage or its potential costs were provided. Beyond early implementation concerns, no further issues regarding competitive disadvantage were flagged. Around 69% of companies (22 out of 32) indicated that they expect the disclosure of the payments to government to have no impact on their competitive position over the next three to five years, while only 3% (one company) indicated that they did.

In addition, companies are concerned that, depending on the level of detail and the number of projects in the country of operation, competitors may be able to use the information disclosed to identify the terms of contracts and margins, and adapt their strategy when negotiating contracts. In particular, a company mentioned that for production-sharing contracts, taxation is a competitive consideration. Given that each contract has its own taxation regime, competitors could use the disclosed figures on taxation for their own bids. However, it is too early to tell whether such a risk has materialised.

One of the companies interviewed in Italy indicated that there is the risk that in certain third countries, EU companies could lose competitiveness, especially in those countries where agreements with local partners (mainly national oil companies) may envisage the establishment of joint-ventures whose payments would then have to be reported as payments to the governments. At the same time, no negative impact on competitiveness has been signalled to the national authorities.

For a company from Spain, as these reporting requirements can fall under the scope of state secrecy laws in some third countries, concerns remain that potential material risks may arise in the future from conflicts with domestic laws. While the respondent did not provide concrete examples of this occurring in practice, the enterprise nevertheless believed that this is a critical issue which must be considered in a future revision of the EU reporting requirements, in order to protect the competitiveness of EU companies and to avoid obstacles emerging for business development in third countries.

The stakeholders from the NGO sector and companies consulted¹⁶⁰ do not know of companies that were refused licenses due to EU requirements or suffered material damages or losses of opportunity. Similarly, companies did not find it harder to operate in third countries following the introduction of the EU requirements nor have evidence that third countries restrict the operations of companies that are subject to the reporting

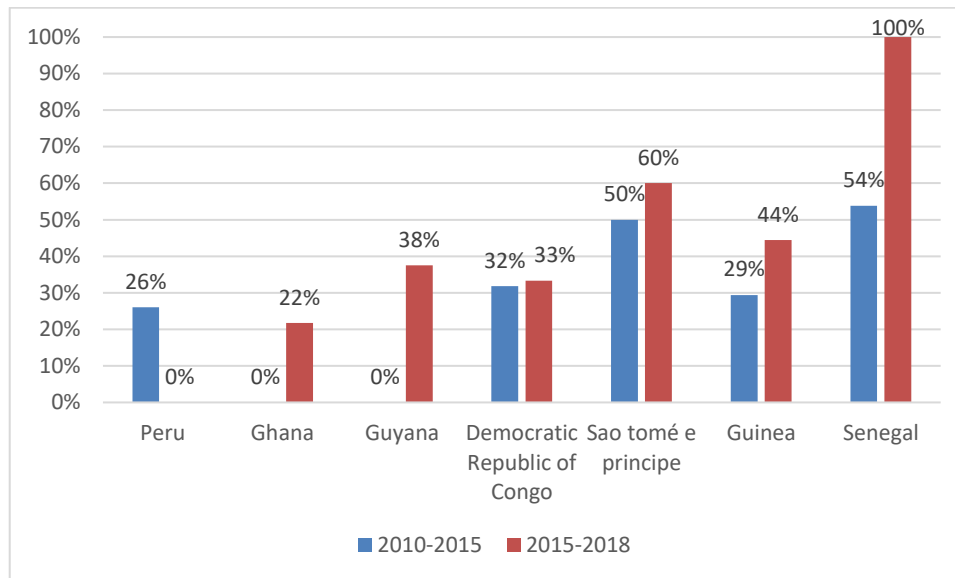
requirements.¹⁶¹ Some companies mentioned that they had to explain to host governments in the Middle East, Southern Africa or Asia that they would have to comply with reporting requirements, and one company sent the data that would be published to the governments of countries where it operates for information. These companies indicated that this did not affect their operations in the concerned countries. Also, industry representatives did not think the EU requirements have a differential impact on international trade and innovation. However, as industry stakeholders point out, given that the current EU requirements have been implemented recently, it might be too early to ascertain their real effect on competitiveness and more time is needed.

It was not possible to analyse the potential changes in Foreign Direct Investments (FDI) flows from the EU Member States towards countries of operation, since the main databases (UNCTAD¹⁶², the OECD¹⁶³ and the UNCOMTRADE¹⁶⁴) do not provide the possibility to cross-check the geographic origin of the FDI with the countries of operation. However, an analysis of the penetration rate of EU extractive companies in countries of operation, based on a small number of available recent contracts, shows that EU companies maintain or increase their presence in countries of operation where they were operating. This penetration rate of the EU companies represents the percentage of EU companies out of the total number of international companies involved in contracts into the extracting sector in a given country. We used the Resource Contracts¹⁶⁵ database, which provides access to different types of contract related to the extractive sector:

- Concession agreement;
- Amendment to previous contracts;
- Production or profit-sharing agreement;
- Agreements related to infrastructures;
- Service contract;
- Exploitation permit/licence;
- Exploration permit/licence;
- Joint-venture agreement; and
- Investment agreement.

All the types of contracts have been taken into account as some contracts not directly linked to concession or exploitation activities may lead to further involvement of the company (e.g. a service contract awarded to a company may later lead to the award of an exploitation permit for the same company). Information on contracts with international companies concluded both before and since the entry into force of the reporting requirements was only available in the Democratic Republic of Congo, Ghana, Guinea, Guyana, Peru, Sao Tome e Principe and Senegal. Figure 9 compares the participation of EU companies out of all international companies involved in contracts in the 2010-2014 period (pre-implementation) and the 2015-2018 period (post-implementation).

Figure 9: Share of European companies involved in extractive contracts before and since the reporting requirements (in percentage of the international companies involved in contracts)



Source: VVA, based on the Resource Contracts Database

The figure above shows that among international extractive companies active in resource-rich countries, EU companies tend to maintain their presence or increase it. In the case of Ghana and Guyana, EU companies which were not present in 2010-2014 period have even concluded contracts since 2015. However, in the case of Peru, EU companies held contracts before 2015 but since then only contracts with domestic companies have been disclosed.

Concerning the possibility of competitors using weak governance systems in third countries to gain a competitive advantage vis-à-vis European companies, stakeholders from the industry did not have evidence of this occurring. Mining representatives commented that some companies have different risk profiles, for instance depending on the stability of the country.¹⁶⁶ While their members do not operate in areas where risk is too high, some international companies do adopt higher-risk strategies. To that extent, the high-stakes companies might have an advantage, but it does not mean that these companies are exploiting or using weak governance systems.

In a similar fashion, representatives from the industry and the NGO sector do not believe competitors have a competitive edge due to non-reporting.¹⁶⁷ For one NGO, this is fundamental because payment reporting is not a deciding factor in a commercial deal for the recipient.¹⁶⁸ The key aspects are price, access to finance and other economic aspects of the project, and the competence and expertise to carry out the project. Whether a company reports its payments simply does not matter to the recipient. Furthermore, more progressive companies agree with civil society that greater openness helps secure their social licence to operate in host countries and therefore provides a competitive advantage (see the following section below).

Despite most stakeholders having the opinion that EU reporting requirements do not place European companies at competitive disadvantage, most expressed concern about the invalidation of the implementation rule for the reporting requirements under the US Dodd-Frank Act and believe that it is nevertheless important to have a level-playing

field. Experts in the UK consider that the unlevel-playing field fosters corruption, leads to regulatory costs for some companies being higher than for others, prevents the full picture of government receipts being known and therefore makes it harder to hold governments to account for the right amounts. Moreover, according to the industry, a level-playing field ensures that all companies disclose on the same basis and reduce the reporting burden for those operating in multiple jurisdictions. In addition, the delay in implementing the Dodd-Frank Act is considered by experts to have some significance regarding competition between the US and the EU, but, more importantly, it prevents government receipts from becoming more visible. The US regulatory regime is considered by some companies as not being suitable in the long-term, since it is beneficial solely for US companies. Overall some industry representatives consider that it is too early to tell whether the EU reporting requirements have created a competitive disadvantage for EU companies, but this risk could materialise in the future if the EU remains the only trading block with such requirements.

3.4.2. Transparency as competitive advantage

Previous research shows that there are multiple benefits of payment transparency for **companies. First, it enhances a company's 'social licence to operate'**.¹⁶⁹ According to Ernst & Young, among the top 10 business risks facing mining and metals industry, social licence to operate is at number four.¹⁷⁰ In order to maintain strong social licence to operate, it is important for companies to be transparent about key performance indicators, productivity outcomes and remuneration structures, and operate in tandem with communities. Loss of social licence, on the other hand, can lead to delays in production and, in extreme cases, additional risks and costs due to conflicts with local communities. A Harvard study of 50 situations of company-community conflict found that the underlining causes of the conflict related to the distribution of project benefits **and companies' consultation processes**.¹⁷¹ Payment disclosure improves both, making the distribution and consultation processes more transparent. In the worst case scenarios, the loss of the social licence to operate might lead to temporary shutdowns and delays, costing their mining project roughly USD 20 million per week in delayed production, largely due to lost sales.¹⁷² Research from Publish What You Pay shows that leading oil, gas and mining companies recognise these risks, including the fact that payment transparency helps protect companies and their investors from bribe-seeking government officials.¹⁷³ They have acknowledged publicly that they favour country- and project-level reporting for these reasons, even if the benefits may not be immediately quantifiable.¹⁷⁴

Most stakeholders interviewed for this project confirm these findings. They are not only sceptical that EU requirements present substantial competitive disadvantage, they believe reporting can have competitive advantages. Stakeholders from mining industry think that to a certain extent, EU requirements create competitive advantages in the form of enhanced reputation in the eyes of investors.¹⁷⁵ Because EU requirements are mandatory, and companies simply must comply with the law, reputational advantages are smaller for individual companies than adherence to a voluntary standard. Nevertheless, enhanced reputation might come from being registered in the EU, which is seen as being a well-regulated and transparent region. Investors see EU-registered companies as being well managed, with sound corporate governance. Thus, it is difficult to say whether a specific company has reputation advantages, but the EU has a good reputation on the whole.

Stakeholders from the NGO sector also think that EU requirements create competitive advantages for companies.¹⁷⁶ Reporting increases trust and reduces suspicion among

citizens. Disclosure is also associated with better performance.¹⁷⁷ Lack of transparency might potentially lead to stoppages due to protests, for example. Reporting also demonstrates the economic contribution of the company to the country, which some companies want to highlight.¹⁷⁸ Citizens and civil society are known to view more favourably companies that show themselves to be transparent and whose payments to governments can be seen to represent fair value for the resources they extract. Some companies have indicated their agreement with this perspective.¹⁷⁹ EU citizens are also sensitive to reputational issues surrounding particular companies, and as widespread concerns about tax justice indicate, citizens are very concerned to know whether EU-based extractive companies contribute fairly to the countries where they operate. Transparency is also appreciated not only by citizens, but by investors too, who are more likely to invest in transparent companies.¹⁸⁰ This is supported by research from Publish What You Pay, which finds that numerous UK and EU investors – including Allianz Global Investors, CCLA Investment Management, Cooperative Asset Management, F&C Asset Management, Henderson Global, Hermes, ING, Legal & General, the Local Authority Pension Fund Forum, RPMI Railpen, Scottish Widows, SNS, the Swedish National Pension Fund, UBS and USS – are on record as supporting country- and project-level reporting by extractive companies under EU law.¹⁸¹

The view that EU requirements can actually provide competitive advantage is also widely shared across stakeholders from the Member States. Some companies in the UK view the reporting requirements as a competitive advantage and beneficial for their reputation.¹⁸² For example, some large mining companies promote the existence of this information in their annual publications so some of them believe that the information is welcomed by citizens in the communities in which they do business. An industry stakeholder in Spain mentioned that becoming an EITI in a third country could lead to advantages in terms of transparency, as the EITI process includes the local government as well, which is therefore fully involved in the collection of data.¹⁸³ Relations with local communities are of paramount importance for many extractive companies, and they are increasingly aware that they need to engage more proactively with their workforce and local communities to articulate the economic (and wider social) benefits that their operations bring. This forms part of the company accountability which was not foreseen by the Directive but can be a result of the reporting requirements. However, given that the formal EU reporting requirement comprises a series of numerical tables, some form of wider contextual explanation is generally considered to be critical in engaging with these communities. In addition, it is worth noting that most of the positive impacts noted above are dependent on the existence of a free civic society in the countries of operation as described in more details in the effectiveness chapter.

3.5. Energy security

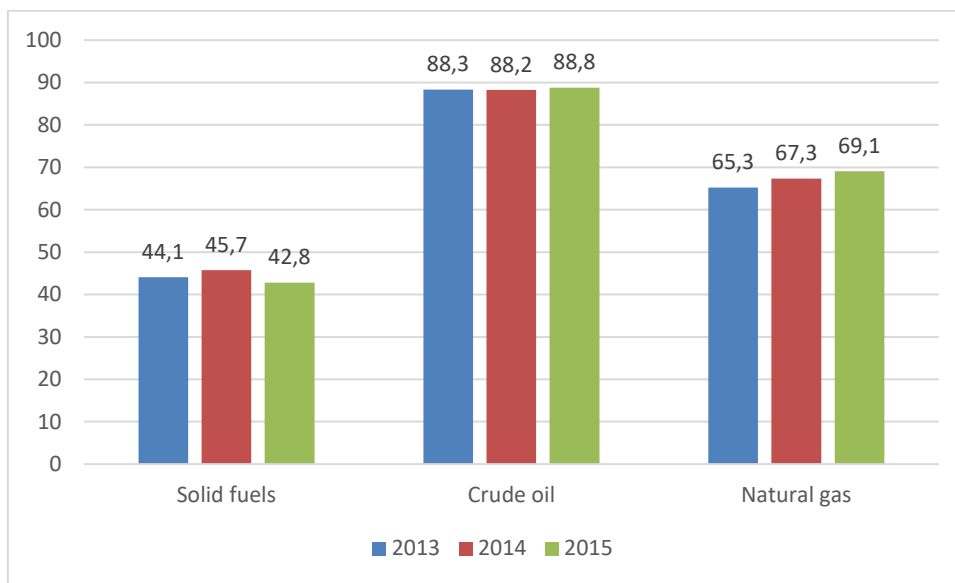
Agreed review questions

- *Is there evidence that companies in the scope of the reporting requirements found it harder to operate in third countries following the introduction of the disclosure measure? Is there evidence that third countries would restrict the operations of companies subject to the reporting requirements? Is there evidence of any impacts on contractual terms, price or volume?*
- *In the case that a third county restricts the operations of EU companies due to the reporting requirements, has the decrease of imports posed a threat to energy security of supply in some EU countries?*

- *Have the energy imports of the EU become more concentrated due to the reporting requirements?*
- *Is there evidence that companies claimed infringements of their domestic law following the introduction of the reporting requirements?*

In the impact assessment of the Accounting Directive, a concern emerged that the reporting requirements may lead some resource-rich countries governments to claim infringements on their domestic laws to prohibit payment disclosure, or restrict the access and operations of EU companies.¹⁸⁴ EU Member States are currently heavily dependant on a few suppliers both for crude oil and gas, with 54% of EU energy consumption sourced from imports in 2015.¹⁸⁵ Therefore, if resource-rich countries limit the operations and imports from EU companies due to the reporting requirements, this may affect the energy sources available to Member States and may threaten security of energy supply. The figure below shows a high EU dependency on energy imports for solid fuels, crude oil and natural gas, although the dependency rate has been relatively stable in recent years.

Figure 10: Energy dependency rate, EU-28 (percentage of net imports in gross inland consumption and bunkers, based on tonnes of oil equivalent)



Source: Eurostat

While it was a concern of the industry during the negotiations of the Directive, overall stakeholders have not noted cases of third countries raising infringement actions or limiting the operation of national companies due to reporting requirements. UK companies surveyed by national authorities confirmed that the reporting requirements are not preventing them from winning contracts.¹⁸⁶ An NGO mentioned that they have compared the results of calls for tenders in countries of operations and have not noticed any particular changes.

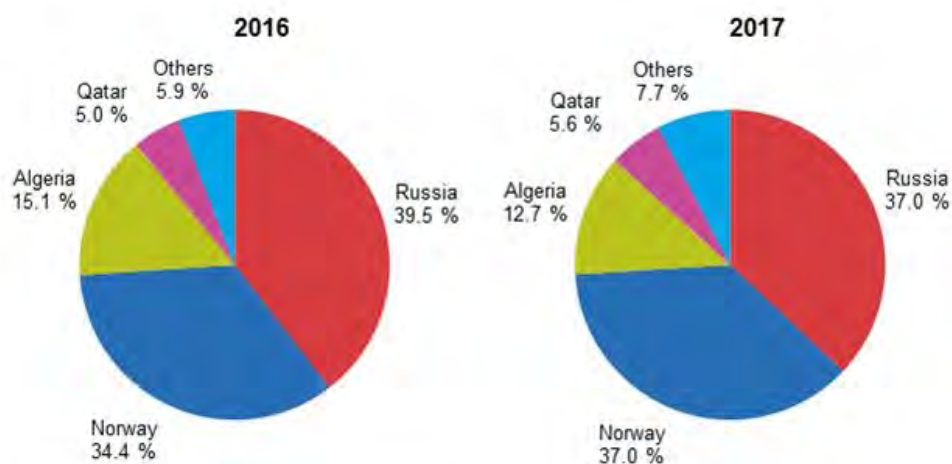
However, some companies have indicated that in some cases, there was a need to assess any conflict of law around disclosure in different jurisdictions, and to manage relationships in host countries. While two-thirds of the UK companies surveyed stated that they faced no resistance or concerns from governments about payment disclosures, a quarter reported that they did, which required negotiations with

those governments to seek permission to publish payment data. In these cases, companies incurred some costs in terms of the time required to alleviate potential conflicts.¹⁸⁷ It was also underlined that if non-European companies were more likely to win contracts in countries bordering Europe to extract and exploit energy resources in their countries, this could have an impact on where pipelines are built in the future. Competitors could thus gain a competitive advantage by knowing what price European companies had previously offered in winning bids.¹⁸⁸

Since there is no evidence of countries restricting the operations and imports of EU companies due to the reporting requirements, no impact can be reported on the diversification and concentration of imports and on energy security. A company noted that in any case, energy trading is disconnected from exploration-production given that companies sell depending on demand, not specifically to their home country. The monthly average value of energy products decreased from 2012 to 2016 but increased by 31 % between 2016 and 2017. These changes were mainly due to the rise in prices on world markets, as the imports in net mass remained relatively stable, increasing only by 5 % between 2016 and 2017.¹⁸⁹

The figure below displays the share between countries of origin of the EU's natural gas imports in the last two years. A slight decrease in imports from Algeria and Russia can be noted, countries which are also considered to have poor or weak resource governance¹⁹⁰ and to be in the lowest tier of the Transparency International corruption perception index.¹⁹¹ However no link can be established between the evolution of import sources and the introduction of the reporting requirements.

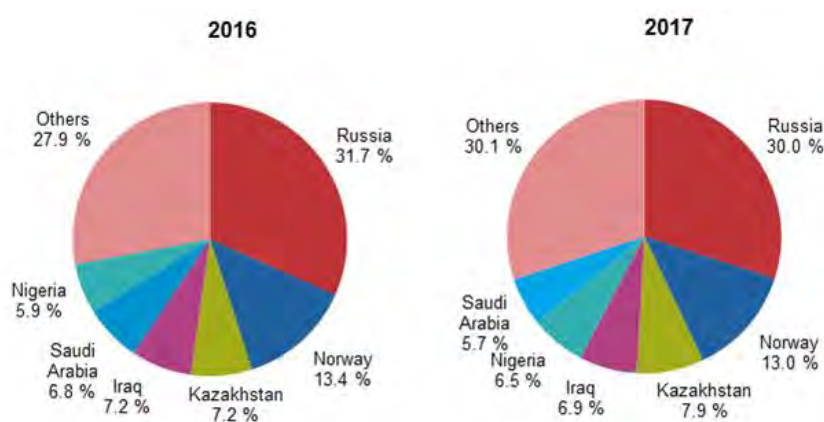
Figure 11: Extra-EU imports of natural gas, shares in value of main trading partners



Source: Eurostat database (Comext) and Eurostat estimates

The next figure displays the share of imports of petroleum oil from third countries. The shares of Iraq, Norway and Russia have slightly decreased while Nigeria has replaced Saudi Arabia as fifth largest partner. Except for Norway and Saudi Arabia, all main import partners below are ranked in the lowest tier of the Transparency International corruption perception index¹⁹², with weak or poor resource governance.¹⁹³ No link could be established between the evolution of import partners and the introduction of the reporting requirements.

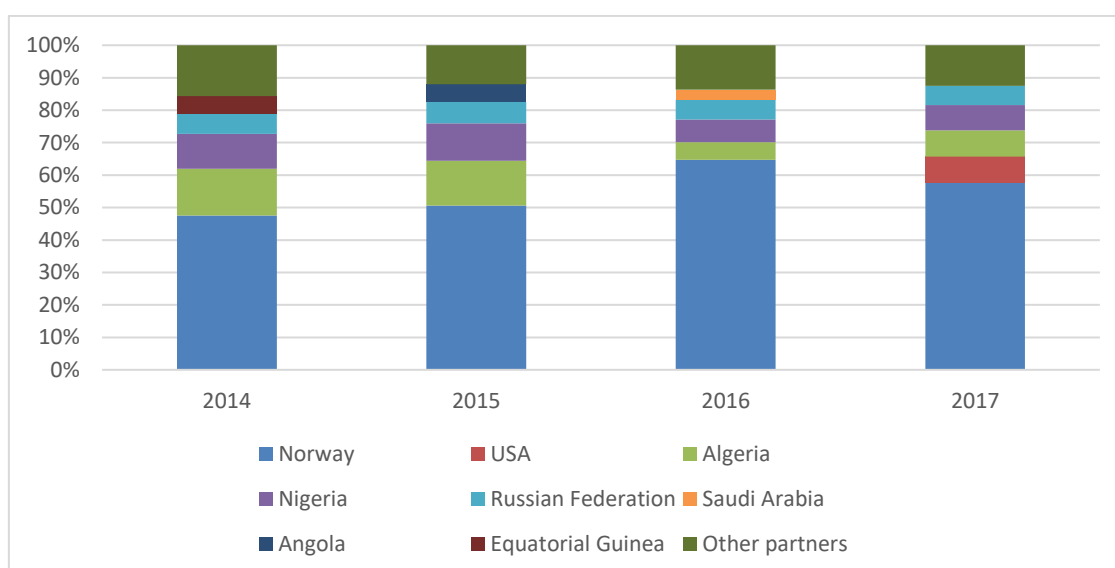
Figure 12: Extra-EU imports of petroleum oil, shares in value of main trading partners



Source: Eurostat database (Comext) and Eurostat estimates

Looking more specifically at the situation in the UK, where many of the EU extractive companies which should report are based, the figure below indicates that Norway remains the first trade partner for imports of petroleum oil and crude between 2014 and 2017, while Algeria, Nigeria and Russia remain in the top four. It should be noted that in 2017, the US has become the second import partner though it was not even in the top five in previous years. On the contrary, Angola, Equatorial Guinea and Saudi Arabia disappeared from the top five in 2017. One could comment that this shift shows closer energy trade relations with more transparent countries, however no link could be established between the evolution of import partners and the introduction of the reporting requirements.

Figure 13: Petroleum oil and crude imports to the UK – share of value by trade partner



Source: UN Comtrade

Note: The top five countries are indicated for each year. The category of "other partners" may include countries that were in the top five in another year.

In general, the main threat to the EU energy security of supply is the concentration of energy imports among few trade partners¹⁹⁴, and the consequences of instability in these countries or in the trade relations. It is worth noting that any impact on energy security would almost certainly occur following a significant time lag, if at all. The reporting requirements in that case might have an impact on the competitions for new concession rights or renewal of those rights, and as a result limit the ability of European companies to secure the EU energy imports over time.

4. Recommendations

Review questions

- *What could be the (additional or alternative) working steps needed for companies to comply with the reporting requirements)?*
- *What aspects of the reporting requirements have companies found unclear, challenging to comply with or open to interpretation? How have companies addressed these uncertainties? Could companies benefit from further guidance on certain areas of the reporting requirements?*
- *Are there any relevant industry sectors where those requirements could contribute to the objectives? If so, what are the reasons? What would be the potential benefits and costs of such an extension?*
- *What would be the benefits to governments of auditing the report on payments? To what extent are companies already seeking independent assurance on their reporting?*
- *Would it be relevant to require the disclosure of additional payment information? For example:*
 - *the average number of employees*
 - *the use of subcontractors*
 - *the pecuniary penalties administered by a country*
 - *the effective tax rates*
 - ***the recipient's details such as bank account information***
- *What other information would be useful to users of the reports? What would be the costs and the benefits of that added information?*
- *What other amendments could improve compliance and the effectiveness and efficiency of the reporting requirements?*

4.1. Improve compliance by clarification of requirements and other steps

Overall, the industry and NGOs agree that the lack of clarity of some definitions in the reporting requirements can lead to different interpretations. Stakeholders noted that the elements of the reporting requirements that could benefit the most from clarification are the definitions of project and payment types, as well as the approach on joint-ventures.

On the requirements to report at project level, the industry representatives admit that **'the wording relating to "substantially interconnected agreements" is open to different interpretations'**.¹⁹⁵ The Accounting Directive defines "project" as the "operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and that form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, this shall be **considered a project**". As a consequence, the reporting per project varies across companies (see Section 3.1.2.3). NGOs consider that projects tend to be over-aggregated due to this open definition and suggest that **aggregating "substantially interconnected legal agreements" for project level reporting** should only be done when those agreements are both operationally and geographically integrated, have substantially similar terms and are signed with the same government, in line with Recital 45 of the Accounting Directive.

As presented in Section 3.1.2.4, the practices of companies vary regarding the reporting of joint-ventures. For example, some companies only report their own payments when they are the main operators of the joint-ventures, some companies also report their contribution to other joint-ventures and some other companies include all the payments from the joint-ventures they operate including those paid by the other companies.¹⁹⁶ As presented in Section 3.1.2.2, there are also discrepancies in the reporting of the different types of payments, due to differences in national transpositions (e.g. on payment in kind) or different accounting rules of companies (e.g. on royalties). In addition, it can be confusing for companies to determine whether a payment has been **made "for a relevant activity" and how closely aligned to the extractive activity** that should be.

Finally, in the logging sector, the definition of primary forest is often interpreted in a restrictive way and may not correspond to the local definitions in the countries of operation. As this definition has led very few companies to consider themselves in the scope, it may be useful to provide more guidance on the exact scope of logging activities in primary forest, map the existing primary forests,¹⁹⁷ and raise awareness about the reporting requirements among logging companies via logging associations.

It should be noted that overall the national measures transposing the EU Accounting Directive do not provide further indications on how to interpret the definitions or how to report (see ANNEX 9). In particular, the definitions of a project are quite similar to the one in the Directive and there are no requirements to report on joint-ventures. In the absence of EU and national guidance (except the industry guidelines from IOGP and the limited guidance from the Companies House in the UK, see Section 3.1.3.3), companies have adopted several strategies to interpret these requirements. According to industry representatives, some companies have developed their own internal template and guidelines, to direct their accountants in the different countries of operation and facilitate the collection of data. Some companies have discussed the interpretation of the reporting requirements with other companies in informal working groups. Finally, a company mentioned having resorted to external legal advice to adopt a position on specific requirements (e.g. the treatment of joint ventures and the definition of projects). Overall, a common approach across most companies is to document their adopted payment reporting methodology in their reports, in order to clarify the basis for preparation and the parameters used.

Given the room for interpretation of concepts and obligations such as joint ventures and projects, several companies and most NGOs would welcome further guidance on the reporting requirements. These guidelines could be drawn up at EU or national level and clarify, in particular, the definitions of projects, types of payments, the

approach on joint-ventures and the scope of logging activities concerned. A ministry representative pointed out that a good example is provided by the guidelines from the European Commission for Directive 2014-95 EU on the disclosure of non-financial information, which were prepared following a series of workshops with stakeholders.¹⁹⁸ However the Accounting Directive does not contain a requirement to prepare such guidelines.

Stakeholders also suggested that Member States could oblige companies to include a **“basis of preparation” section, to explain their interpretation of the reporting requirements and facilitate the understanding from users and the assessment of the reports’ compliance.**¹⁹⁹

An additional step to improve compliance would be a better oversight from national authorities as well as more effective sanctions. As explained in Section 3.1.4, national authorities currently monitor only to a limited extent the number of companies that should report as well as the quality and timeliness of the reports published. As a first step, national authorities could assess which companies should report within their jurisdictions.²⁰⁰ Considering the current low reporting in the logging sector, national authorities would also have a role to play in enhancing the visibility of the reporting requirements by raising the awareness of forestry associations. Secondly, in the absence of compulsory audit, national authorities should assess the compliance of the published reports in terms of completeness and timeliness.²⁰¹ This could be facilitated by the creation of a central depository of reports, either at national level (as in the UK) or at EU level (see Sections 3.2.1 and 4.5). Finally, the EU Accounting Directive prescribes **“effective, proportionate and dissuasive” penalties**, but NGO representatives noted that in some Member States, the level of sanctions could be considered as not high and dissuasive enough. In addition, the review of the national measures transposing the EU Accounting Directive shows that only two countries (France and Cyprus) have fines that specifically address cases of non-compliance with the reporting requirements (see ANNEX 9 for further details).

4.2. Extension of reporting requirements to other sectors

The reporting of country-by-country payments to governments was made mandatory for the extractive and logging in primary forest sectors due to the specific characteristics of the sectors. These characteristics include the size of companies, the scale of payments to governments and the impacts on the society, governments and the environment. Reporting requirements were introduced to increase government accountability in resource-rich countries for the income received from exploiting natural resources, which can lead to a reduction of corruption and illegal logging.²⁰² Article 48 of the Accounting Directive states that the review of the reporting requirements should consider the extension of the reporting requirements to additional industry sectors. Sectors mentioned in the discussions were agriculture or fishery, due to their use of natural resources but also telecoms or construction due to the scale of their payment to governments.

While government representatives remain cautious about extending the CBCR reporting requirements of the extractive and logging sectors to other sectors, NGOs are generally in favour of adopting similar requirements in other sectors involving national resources.

Some logging stakeholders recommended extending the scope to all legal commercial logging operations as defined in national forest laws, instead of restricting the scope to operations in primary forests. In a recent resolution²⁰³ on transparent and accountable management of natural resources in developing countries, the European Parliament also

“calls on the Commission to consider extending the [reporting] obligation to other industry sectors affecting forests, and to forests other than primary forests”. This would support the EUTR and FLEGT VPA effort in combating illegal logging as it would enlarge the scope of logging activities under scrutiny. In order to focus on forests most at risk, it could be recommended to extend the scope at least to forests having been **commercially logged once or twice since their official “natural” state**. However, experts note that only few EU logging companies are directly active in third countries, while the concessions rights and logging activities are often taken up by local subcontractors outside of the scope of the EU Directives. In addition, the amounts of payments remain often lower than the Directive threshold. Therefore, extending the scope to other forestry sectors and to forests other than primary forest alone would probably not significantly raise the scale of reporting. To increase the coverage of reporting in the logging sector it is likely that a tailoring the reporting requirements to the sector would **also be required, for example by clearly defining “active in the logging sector” depending** on whether subcontractors are involved or not, and lowering the threshold of payments to be reported. It is worth noting that such an extension would also significantly raise the costs of the reporting requirements as many more actors would be involved.

Some other stakeholders also proposed to include other natural resources ventures such as agriculture and fisheries, which in some countries are an important economic resource whose benefits may not be fairly distributed to local populations.²⁰⁴ In addition, conversion of forest for agriculture is a major driver of deforestation. This would increase transparency on the payments received by governments on (scarce) natural resources and can trigger discussions on resource revenue-sharing and governance. The EU imports on average annually around EUR 60 billion of agricultural products from developing countries, in particular oilcakes, tropical fruits and spices, coffee and tea, and animal and vegetable oils.²⁰⁵ Agriculture imports are not only used in the food sector, but also for the biofuel sector or the clothing industry (e.g. cotton). However, large EU companies or retailers importing these products are usually not directly active in third countries but import such products from local suppliers, and sometimes process the products also in third countries. Therefore, it would be challenging to extend the reporting requirements to EU companies involved in agriculture activities in third countries as they are usually only importing goods from local suppliers and do not make direct payments to governments. Considering the objective of increasing transparency on payments to governments of resource-rich countries, the current EU reporting requirements can make a difference only if EU companies (or companies listed in the EU) undertake significant direct operations in other countries. This is certainly the case in extraction but in other sectors this is less the case. The relatively high number of identified reports of extraction companies and the low number of identified reports for logging companies show that the industry structure matters for the effectiveness of reporting requirements.

In other sectors mentioned in the discussions (e.g. telecoms, construction) the industry structure would be more similar to the extraction sectors, as here large companies apply for government licences or construction contracts and the transparency of those decisions could be improved. Reporting requirements therefore need to be tailored to the sectors in question as both the effectiveness of the measure and the costs of the measure depend heavily on firm size and the internationality of the sector.

In the NGOs’ view, extended country-by-country reporting in other sectors will help mitigate societal and investor risks, prevent and deter illegality, corruption and fiscal mismanagement. However, some experts and NGOs recognise that a one-size-fits-all solution would not be effective and consider that if similar reporting requirements were to be introduced in other sectors, a pragmatic approach would be needed with tailored requirements for the sectors considered.

4.3. Benefits and costs of a compulsory audit of the reports

Article 48 of the Accounting Directive foresees that the review of the reporting requirements shall consider whether the report on payments to governments should be audited. While auditing is currently not prescribed by the Directives and some companies already have their report audited or assured on a voluntary basis (see Section 3.1.3.1), stakeholders provided mixed feedback on the suggestion to make auditing compulsory.

NGOs consider that, given the lack of monitoring from national authorities and the difficulty to challenge the reports, there would be benefits to auditing the reports to **establish the reports' reliability and avoid errors and inconsistencies**. A full audit of the reports would make users of the reports more confident that the figures are accurate and that the reports fully comply with the reporting requirements. It would also ensure a better comparability **across companies' reports**. The added value of introducing a mandatory audit of the report, however, would depend on the clarity of the definitions and indicators in the requirements from the Directives. Indeed, if some definitions remain unclear for the reporting companies (such as the definition of project and some payment categories), the potential added value of the auditing exercise would be weakened.

National authorities agree that auditing the reports would increase confidence in the reliability and accuracy of the information provided, but they advise considering also the related costs. Industry representatives consider that an independent audit would increase compliance costs and that the accountability of companies is already ensured by the sanctions for non-compliance. For instance, one interviewee²⁰⁶ estimates that the full cost of a mandatory audit would amount to between EUR 450,000 and EUR 1.5 million, and between two full-time equivalents for a week to one full-time equivalent on a permanent basis, or between 25 and 200 working days across 30 locations. Moreover, some companies emphasised that the EUR 100,000 threshold for reporting is much lower than the materiality threshold applied by auditors of large companies to express an auditor opinion, thus inducing a significant increase in auditor fees. However, this assertion is based on the assumption that auditors would not use their own materiality gauge but the 100,000 threshold, which would depend on how the involvement of an auditor would be framed by the legislation.

To strike a balance between the current absence of formal verification and a full audit, as well as between added value and compliance costs, NGOs and some experts have suggested the possibility of introducing at least a limited assurance on the disclosed data from independent auditors. Overall, introducing limited assurance is more likely to be found acceptable by the legislators and industry than a full audit and could improve the reliability of reports.²⁰⁷ The International Federation of Accountants has established standards for auditing and for assurance engagement (ISAE 3000), however the framework regarding limited assurance is very general and would need to be tailored to the specific reporting regime to define the scope.

Such limited assurance could be based on agreed upon procedures, such as those used for the control of subsidies granted by the European Commission or those recently set up by Belgian authorities for European Market Infrastructure Regulation (648/2012) reporting.²⁰⁸ An alternative to full and limited assurance audits is reasonable assurance reports, which provide additional credibility to the reports while representing limited costs and burden for companies.

Another option would be to include the payment reports in annual reports. This would carry more weight and imply that there are no inconsistencies between the reports and

the audited financial statements. The report could also, or alternatively, be included in corporate social responsibility reports.

A case study on the benefits of auditing the reports is included in Annex A1.1 and explores in greater depth the added value and costs of a compulsory audit of the reports.

4.4. Relevance of additional payment information

Article 48 of the Accounting Directive foresees that the review of the reporting requirements shall consider the disclosure of additional information on the average number of employees, the use of subcontractors and any pecuniary penalties administered by a country. In addition, Recital 52 of the Accounting Directive mentions that the review should take the experience of preparers and users of the payments information into account and consider whether it would be appropriate to include additional payment information such as effective tax rates and recipient details such as bank account information.

It should be noted that a European Commission proposal for full public country-by-country reporting by large multinationals from all sectors is undergoing the EU's legislative process (Proposal for a Directive amending Directive 2013/34/EU). The information required by companies in this proposal is the following: name and nature of activities, turnover, number of employees, profit or loss before tax, income tax paid, income tax accrued and accumulated earnings.

The disclosure of the average number of employees would, in combination with other data (such as turnover, profit or loss before income tax, income tax paid and accrued, tangible assets), provide a better picture of the economic activity of a company in a given jurisdiction. NGOs would favour a reporting of the number of employees on a full-time equivalent basis – in line with the European Parliament amendment of the Commission proposal – as it would provide a clearer picture of the allocation of those working half time or on several projects at the same time. It would also be relevant to report this number at project level, as that is where contract terms are often agreed and where corruption, mismanagement and misallocation of resources take place. However, industry representatives and experts argue that providing headcount data in the reporting requirements could amount to over EUR 1 million of internal costs and 500 working days at regional and headquarter level for a company with subsidiaries in multiple locations. The reason for this is that the information exists at country level but is **not directly available centrally in companies' IT systems** and companies would therefore need to buy a scoring software requiring a licence. Furthermore, reporting on a project basis would be extremely complex as many employees work in time-sharing arrangements on several projects at once.

NGOs estimate that, depending on the subsector, project life cycle phase and company, between 50% and 90% of extractive (oil, gas and mining) project costs are outsourced to contractors or subcontractors, for a total payment amount of up to USD 1 trillion per year globally. Disclosing information on the use of subcontractors (e.g. number of subcontractors and number of employees provided by subcontractor per project) would provide more transparency on areas overlooked by the reporting requirements and offer a more complete picture of the activities performed and their economic impact. It would also inform users about the involvement of local companies in the exploitation of natural resources and in local economic development. The information requested on subcontractors could include, for each subcontractor above a minimum subcontract

materiality threshold, at least the number of subcontractors and number of employees provided by subcontractor per project. However, most companies are not equipped with an IT system set to track reliably all individual subcontractors across their scope of activity and to provide an assurance on the number. Therefore, the information would be extremely difficult and costly to find. Moreover, industry representatives highlighted that a significant share of the subcontractors are providing services rather than goods and that mapping the whole value chain in a country would provide little added value as the payments to governments of those subcontractors would still not be known.

The disclosure of pecuniary penalties administered by governments would inform civil society and investors on whether companies have breached local laws in countries of operations. Moreover, given that pecuniary penalties are also a type of payment to government, it would provide a more complete picture of the revenues that governments receive from companies for the exploitation of natural resources. However, the added value of this requirement is substantially limited by the materiality level and the scope of penalties. Pecuniary penalties could, for example, be defined as the fines relating to the existing seven categories of reporting. Moreover, systems vary greatly across countries and companies' accounting systems are not consistently set up to gather this information. Therefore, companies consider that setting up or harmonising the systems would entail compliance costs out of proportion to the added value of this requirement. Companies also questioned the rationale for this added information requirement as in countries with governance problems a pecuniary penalty is not always a sign of a company misbehaving.

Effective tax rate (ETR) is generally understood to mean income statement tax charge divided by profit before tax. While the general tax terms and rules may be available at national level, in many cases, tax terms applied to a specific project may differ if they are based on negotiations between companies and governments on tax rates and tax incentives, which can impact the effective tax rate. The results of these negotiations are rarely publicly available for natural resource projects. Therefore, NGO representatives claim that disclosing the effective tax rate at project level would allow civil society to assess whether the government negotiated a fair deal with companies and whether they receive a fair share for the natural resources. It would also enable users to compare the effective tax rates across projects in the same country or across countries, to assess whether the tax rate was undervalued for some projects or companies.

However, taxes are generally paid at the level of the company, not the project. ETR data could bring added value for corporate tax because it is measured by reference to profit. However, since profits are often not calculated on a country basis by multinational companies, another option could be to use the volume extracted as a comparator to calculate the effective tax rate, using for example the amount of tax paid by volume extracted. This would provide users of the report a comparator to assess the size of the payment to governments. Industry representatives argue that the effective tax rates are already disclosed in statutory accounts and in fiscal country-by-country reporting, but that the level of detail requested would determine the extent of compliance costs.

The main added value of disclosing recipient details such as bank account information would be to indicate clearly the name of the government entity that received payment to hold the right authority to account. Currently, several companies provide only the country name or generic indications of the government level. Consulted industry representatives agreed that naming the government entity could be done quite easily and is already advised in the IOGP guidance. Moreover, this disclosure would act as a deterrent against corruption in future negotiations. However, making bank account information public would raise concerns about legal liability issues and companies are likely to be uncomfortable with providing this information as some governments could

consider it a breach of trust. In addition, the bank information is not always known when payments are made by cheque. For companies which are not organised to collect this information on an aggregated basis, costs would be entailed by the modification of the information system, the production of the data and its collection. It is estimated that between one week and two full-time equivalents from the accounting department would be necessary according to the stakeholders interviewed. The requirement to check the accuracy of the information would lead to far greater compliance costs.

Overall, while NGOs favour additional disclosure, they do not deem the above items to be the most important ones and noted that each additional requirement on its own **would not be sufficient to provide a comprehensive picture of the company's activities.** Adding a combination of information requirements which help users to assess the total size of the operations in a country (e.g. subcontractors or effective tax rate) would provide some added value to users as they would get a better comparator for the payments that the government receives.

On the other hand, the compliance costs are likely to be the highest for the disclosure of the number of employees and the use of subcontractors. Sector associations and individual companies are generally reluctant to add reporting requirements, although some companies already disclose additional elements and payments to those required by the EU Directives on a voluntary basis or to comply simultaneously with the EU and Canadian CBCR requirements.²⁰⁹ They consider that the current level of information is adequate to hold governments accountable, and that adding these requirements would imply costs for companies while there is limited knowledge of the current use of the reports and of the benefits that additional items would bring for civil society.

According to national authorities and experts, any amendment to extend the reporting requirements should be based on a cost-benefit analysis to determine the added value of additional items. At present, national authorities are not convinced that these extra items are necessary to better achieve the objectives of the reporting requirements.

Overall, while NGOs support the disclosure of additional information, companies and national authorities do not consider that they are necessary to achieve the Directives' objectives. A clear definition of the additional requirements, their scope and materiality would be needed to better estimate the added value and costs. A case study on the relevance of adding more information in the reporting requirements is included in Annex A1.2.

4.5. Other relevant information or recommendations

Beyond clarifications on the current reporting requirements (e.g. definition of project, approach on joint-venture, clarification of the types of payments and the scope of primary forest)²¹⁰, civil society representatives suggested several additional information items to fully achieve the accountability objectives and provide more contextual information to the payments to governments:²¹¹

- Include information on commodities trading activities (i.e. payments related to the sale of oil, gas and minerals), since payments from physical commodity trading companies to governments and state-owned enterprises (SOE) for the sale of oil, gas and minerals remain largely opaque.²¹² A large part of payments to governments are made in-kind and are reported under production entitlements or other in-kind payments, however civil society does not have access to the value and volume of payments made by the government or SOE for the sale of these assets. Corruption risks associated with commodity trading can occur at three stages, including the selection of buyers, establishing the

value and volume sold, and the collection and revenues of transfer of revenues to the national treasury.²¹³ In 2016, the EITI included commodities trading payments among its requirements. EITI countries, including SOE, are now required to disclose the volumes of commodities sold and the revenues received, broken down by buyer.²¹⁴ The EU reporting requirements could include the requirement for oil and gas companies with commodities trading divisions to disclose information on these payments. However, this would require a shift in the scope of the Directive.

- Mention the name of the government entity that received payment, since currently most companies only mention the name of the country, which prevents civil society from effectively holding the right government entities to account.
- Clearly disclose the exchange rate used per currency for the payments reported in order to better estimate the value of payments.
- Name all projects even where payments during the reporting period were less than EUR 100,000. Naming all projects would enable users to know about the different activities in the countries of operation and to compare a company's data from one year to the next.
- Add contextual information per project, since raw data only allows for a limited understanding of the payments and can leave many questions from users unanswered. Suggestions of contextual items per project include the project status (exploration, development, exploitation), partners (if any, and the name of the operating partner), start date, production volumes, and explanatory notes about payments linked to infrastructure.
- In the logging sector, add payment information for connected operations that are closely linked to the logging activity, such as fees for land rental, payments under social responsibility agreements, bid premiums, fees paid for the development of a forest area (forest management, reforestation, surveillance), timber transport taxes, customs and export taxes (e.g. log export fees, timber export licence fees).

In general, most of the industry representatives interviewed were against expanding the reporting requirements, claiming that they are not necessary to achieve the objectives of the Directive and that they would bring additional costs. Moreover, it should be noted that the OECD BEPS initiative Action 13 and the European Parliament proposal regarding the disclosure of income tax information by certain undertakings and branches will bring additional transparency and should be taken into consideration if the reporting requirements were to be expanded.

In addition, civil society organisations call for a central EU or Member State registry of the reports²¹⁵ to provide an overview of reporting companies and facilitate access and use of the data. This registry could be run and maintained by national authorities like in the UK example, or by the European Commission at EU level. Having a central repository could lay the foundations for a clear administrative procedure that the companies could follow, with more consistent reporting templates. For instance, NGOs advocate the use of open machine-readable data formats.²¹⁶ Advertising this procedure, combined with clear guidelines (at national or/and EU level) could prevent non-compliance and increase accessibility and comparability. Currently, several countries use central repositories to store the reports on payments to governments, but they are not always freely accessible (e.g. Sweden, Finland). Additionally, creating a central repository at Member State level will allow the competent national authorities to conduct more effective monitoring of the level of compliance and to assess whether they should proceed with enforcement.

Finally, there could be more synergies between the reporting requirements and other reporting regimes or other initiatives to increase transparency on payments to governments. In the extractive sector, EITI, Member States and companies could explore further synergies to harmonise the reporting content and timeline and enable users to better compare the EU reports and EITI reports. Stakeholders call on the EU to promote the EITI rules and the provisions of Chapter 10 (Accounting Directive) in existing fora such as the G7, the G20, the UN as well as bilaterally and multilaterally, to encourage more countries to adopt reporting standards. In addition, logging experts interviewed recommended improving synergies among the Accounting Directive and the EU FLEGT as well as with the EU Timber Regulation. The EU could also carry out more awareness raising activities about the EU reporting requirements in countries of operation to inform civil society, for example in collaboration with the EU delegations in the concerned third countries and the relevant national ministries and authorities (e.g. ministries for extraction or forestry and the authorities in charge of producing the EITI country reports in countries which are EITI members).

ANNEX 1 Case studies

A1.1 Case study 1: Potential impacts of obligatory audits for the report on payments to governments

A1.1.1 Problem description

As the Accounting and Transparency Directives currently do not prescribe the auditing of the reports, practices vary significantly among companies. Some companies already undergo an external assurance opinion, while some reports are submitted to internal assurance processes or are presented to the Shareholder Board. However, the assurance process followed, if any, is not always clearly indicated and users of the reports may not have a clear picture of which companies already seek independent assurance to their reports.

Users of the reports have perceived several errors and inconsistencies which undermine the accuracy, completeness and comparability of several reports. Some of these issues stem directly from the lack of clarity of the Directive and the lack of guidance from the Commission and national authorities, leaving companies room to interpret the requirements. The main areas of concern are:

- Whether an appropriate level of project aggregation was chosen;
- Whether relevant information from joint ventures was included or not in the report;
- Whether in-kind payments, and/or aggregation of cash with in-kind payments were included in the report or not; and
- Which government entity was the beneficiary of the payments.

In addition, stakeholders note that it is currently difficult to reconcile the payment figures of the reports with audited annual financial statements or other publicly available accounting information on the company in order to obtain further assurance on the accuracy of the reports. The figures do not reconcile for several reasons that were listed in an independent study.²¹⁷

Moreover, the published reports lack compliance monitoring and quality control from national authorities. NGOs directly contact companies and national authorities when they consider that the reports are deficient, incomplete or late. While in some cases, companies contacted correct the information or commit to improved reporting the following year, there is not much reaction from the national authorities or registrars contacted.²¹⁸

A1.1.2 Objectives

The first objective of auditing the report would be to increase confidence of users in the accuracy of the figures and the compliance of the reports with the Accounting and Transparency Directives. Auditing the reports would ensure that the reports have been correctly prepared by companies and would prevent the persistence of errors. It would ensure the completeness of information provided and assess whether appropriate definitions and aggregations have been used.

The second possible objective would be to ensure that the payment figures reported in the country-by-country reports can be reconciled with revenues in government accounts. An audit in itself would not ensure reconciliation; therefore such a

reconciliation would need to be added to the requirements to formally become an objective.

The overriding goal would be to increase the credibility and reliability of the reports for users. Certified reports would inspire greater confidence among users and would provide reliable information on what companies pay for the natural resources they exploit. Auditing the reports and correcting inaccuracies would also enhance the comparability of the reports as it could correct diverging interpretations of the requirements and provide more accurate compliance criteria.

A1.1.3 Policy options

- Option 0: Status quo

No audit or assurance are required, and companies continue to publish the reports on payments to governments under the current national rules transposing the Accounting and Transparency Directives. Enforcement of the reporting requirements is ensured by Member States oversight, a sanction mechanism and monitoring from the civil society.

- Option 1: Full audit

A full audit of the reports is made compulsory. Reports must be audited by an independent external auditor, which delivers an opinion on the accuracy and fairness of financial statements.

- Option 2: Limited assurance

A limited assurance from external auditors is made compulsory.

A1.1.4 Assessment of impacts

Option 0: Status quo

Added value

The industry underlined that the extractive sector has already undergone stringent quality assurance processes, especially as a significant share of the information provided in the reports is provided in the statutory accounts submitted to national governments, which are audited. Moreover, many companies active in the extractive and logging sectors are listed on US stock exchanges, therefore subject to additional scrutiny. However, in the absence of monitoring and quality control from Member States authorities²¹⁹, users of the reports can only rely on the integrity of companies as an assurance of the quality and accuracy of the information and have no means of knowing whether the cash-based payments reports are consistent with the accruals-based audited financial statements in the annual reports and accounts. The lack of user confidence in the accuracy of the reports currently undermines the possibility of using them.

Costs

The current process entails some administrative burden as three to four days are necessary on average to go through all payments to governments, according to interviewed companies. There is no evidence that compliance costs would increase under the current policy scenario.

Option 1: Full audit

Added value

A full audit of the reports would bring added value to their users by providing some assurance of their accuracy, thus enhancing significantly the credibility and verifiability of the reports. Ensuring complete, evidence-based reporting of payments to governments would foster their use. This assurance would be of even greater added value in countries without auditing requirements. It should be noted however that there was no consensus between the producers (i.e. companies) and the users (i.e. civil society) on the added value of commissioning audits of the reports.

Auditing of the reports, and possibly incorporating the reports into the financial statements so they fall under the scope of statutory audit requirements, could address the issue of the lack of payment disaggregation by project and/or over-aggregation of projects and sums reported, which compromises the readability and comparability **of the reports. It could also be envisaged to include the reports in the companies' annual reports or corporate social responsibility reports in order for them to carry more weight and to imply that there are no inconsistencies between the reporting and the audited financial statements.** A defined statutory scope would guarantee the consistency of audit procedures and the auditing of information falling in that scope, and thus a similar quality of reporting across the sector.

It should be noted that the added value of introducing a mandatory audit of the report is strongly correlated to the clarity of the definitions and indicators in the requirements. The Directives leave significant room for interpretation to companies in the absence of clear guidance from the European Commission and monitoring by Member States authorities. Currently, auditors can check the compliance of reports **against the companies' interpretation of the requirements, but they would have no view on the European Commission's interpretation, which would limit their ability to assess the integrity and completeness of the data.**

Ensuring the quality and accuracy of reports through a mandatory audit would be all the more valuable since challenging the reports entails a complex and burdensome process in many countries. In the United Kingdom for instance, this requires a notice from Companies House based on a valid complaint that an undertaking has not delivered a report or that the information reported does not meet the requirements. The introduction of a full mandatory audit requirement would allow for an additional mechanism for redress. However, it was also underlined that audits cannot guarantee total accuracy, while errors are submitted to penalties. It was therefore argued that under current conditions, an audit would not constitute enough of an incentive for more disciplined and uniform reporting from companies. There were also concerns that a compulsory audit would require postponing the publication of reports.

Establishing a mandatory audit of the reports would also contribute to the mainstreaming of the reporting requirements with the EITI reporting, which they are intended to complement²²⁰. **The EITI requires that "payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards"**²²¹, and ensure compliance with EITI requirement 4.7 on the level of disaggregation. Each country defines the materiality level for reporting payments or company participation. Companies must provide fully disaggregated statements to their auditors, but the data can be published in an aggregated or disaggregated form in the **report published by the country's government.**

A mandatory audit of the reports on payments to government would thus facilitate a potential reconciliation of the reports with publicly available information on government revenues, as per EITI requirement 4.9 on data quality and assurance²²². **Reconciliation would help put the reports in context with the company's performance**

and add a degree of confidence in data integrity. Several stakeholders had reservations about the feasibility of such reconciliation within the framework of the Accounting Directive given that it would require detailed government revenue data disaggregated by project and payment type for every country where payments are made. This could add a burden for reporting companies and duplicate the reconciliation taking place under the EITI in EITI countries.

Civil society suggested that companies should provide a statement reconciling at least the aggregate of all payments with the sum of corresponding accrued figures in the **companies'** annual financial reports. The fact that the figures do not have the same basis, the former being cash-based and the latter, accruals-based, constitute a serious limitation to that kind of reconciliation.

In addition, there is a risk of duplication of quality assurances for payments made in countries with existing auditing requirements. This was a key issue in the discussion among EITI stakeholders in Norway on mainstreaming EITI disclosures by drawing on mandatory company reporting rather than conventional EITI reporting. This approach entails possible effects on data reliability, as including the total aggregate figure of actual taxes and fees paid in the notes to annual financial statements would legally require the auditing of the cash-based tax figure.

Finally, it should be noted that when the reporting requirements were first implemented, some companies used an external audit to assist them in complying with reporting requirements. After several exercises, companies report seeing a decreasing added value in assurance or audit.

Costs

A mandatory full audit of the reports would have to be organised in all locations with upstream activities, with the audit team based in the headquarters of the company. The total costs, including the cost of auditors and internal costs to collect data and answer questions and comments from the audit team, could amount to between EUR 450,000 and EUR 1.5 million, depending on the number of entities to be covered, according to the companies interviewed.²²³ Although the burden attached to working with external auditors would decrease over time as they become more familiar with the reporting, the recurring cost of auditing is not likely to decrease over time.

Such an audit would have to be included in **the companies'** regular auditing processes in order not to overlap with existing auditing and accounting processes. This would create additional costs, although to a limited extent. The registered auditor for the annual reports would likely be a candidate to be the auditor of the reports on payments to government. It should be noted that the materiality level for the audits, which are already provided by some companies is usually significantly higher than the EUR 100,000 threshold. Therefore, a mandatory audit of the reports at this level would induce a significant increase of compliance costs. It would require the external auditor to certify the completeness of a vast amount of payments rather than using sampling procedures to clarify which checks to apply. This could result in higher fees from the auditors. On the other hand, companies who already commit to high levels of transparency, beyond current legal requirements, would see no positive impact on their accounts. Although the precise cost of a full audit cannot be quantified without a specific requirement, the EUR 100,000 threshold is unlikely to allow the performance of a survey in the audit procedure, while creating a significant amount of extra work and introducing accuracy issues. A higher threshold (e.g. EUR 1 million)²²⁴ would be conducive to less additional compliance costs for large companies as it is closer to the level of materiality at which they usually report. Beyond the issue of the threshold, few

reviewers are likely to be willing to commit to guaranteeing the completeness of the reports and the accuracy of data, which would be extremely complex and costly. External reviewers are most likely to agree to state that they have applied certain procedures and present their results.

Estimates of the human resources necessary for the implementation of a full audit vary between two full-time equivalents for a week to one full-time equivalent on a permanent basis, or between 25 and 200 working days across several locations to produce a good audit trail, according to interviewed companies and experts. These would be included in the aforementioned cost estimates.

Therefore, the full cost estimate of a mandatory audit amounts to between EUR 450,000 and EUR 1.5 million and between two full-time equivalents for a week to one full-time equivalent on a permanent basis, or between 25 and 200 working days.

Option 2: Limited assurance

Added value

A limited assurance approach would also provide users of the report with some **assurance regarding the reports' credibility and verifiability by guaranteeing the appropriateness of the reports' preparation process. It would thereby increase confidence in the reports and their usability.**

However, limited assurance may lead to some inconsistencies in the reports across the sector as the scope of this type of audit may be open to negotiation between the company and the auditor on the basis of agreed upon procedures. In order to bring added value to users, it would be necessary to tailor the framework based on the general auditing and assurance engagement standards from the International Federation of Accountants (ISAE 3000) to this reporting regime.²²⁵

It should be noted that procedures agreed upon by an entity and a third party to report on factual findings, can also be applied in order to provide some assurance about the robustness of the reporting. If these do not constitute an audit, they can represent a first step towards limited assurance auditing. The same is true of reasonable assurance reports of payments to governments, which at least one consulted company commissions without reporting additional cost or burden. These refer to the level of confidence that financial statements are not materially misstated that auditors are expected to achieve from an audit.

Costs

The external costs of a limited assurance audit are estimated to vary between EUR 250 for small entities and EUR 450,000 for multinationals, according to the stakeholders interviewed.²²⁶ As a comparison, the reconciliation operating by the EITI multi-stakeholder group with a low monetary threshold costs GBP 240,000 (EUR 270,000) per year.²²⁷ However, internal costs would not necessarily increase for companies which already perform a limited assurance review, sometimes included in their annual report. The compliance costs could double, depending on the level of assurance required and the scope negotiated with the external auditors.

It was estimated that once all payment proofs have been gathered, a limited assurance audit would require roughly one day of work for each production branch and half a day for each non-production branch, which is included in the cost estimates provide above.

The total cost estimate of a limited assurance audit varies between EUR 250 and EUR 450,000 and roughly one day of work for each production branch and half a day for each non-production branch.

A1.1.5 Comparison of impacts

The cost and burden of a compulsory limited assurance would be significantly lower than that of a full audit but still relevant. In both cases, it was argued that the deadline for the submission of reports should be extended in line with the extension of the reporting exercise. However, limited assurance would not provide the same standard of quality and consistency of procedures and in-scope information across companies than a full audit, given the flexibility left to companies to negotiate its standards with reviewers. Moreover, the opinion expressed in a full audit on the accuracy and fairness of financial statements carries more weight than that of a limited assurance.

For these reasons, civil society would be more in favour of a mandatory full audit of the country-by-country reports. Nevertheless, limited assurance appears to be the best option for striking a balance between the current absence of formal verification and a full audit, as well as between added value and compliance costs. It is a less burdensome and costly option, and therefore the most likely to be acceptable for companies and would already improve the credibility of the reports.

Such limited assurance could be based on agreed upon procedures, such as those used for the control of subsidies granted by the European Commission or those recently set up by Belgian authorities for European Market Infrastructure Regulation (648/2012) reporting.²²⁸ These should be defined on the basis of the ISAE 3000 standards and tailored to the reporting regime.

An alternative to full and limited assurance audits is reasonable assurance reports, which provide additional credibility to the reports while representing limited costs and burden for companies.

The assurance thus provided on the quality of the reports could be further reinforced by **their inclusion in the companies' annual or corporate social responsibility reports.**

A1.2 Case study 2: The potential impacts of an obligatory disclosure of additional payment information

A1.2.1 Problem description

1. The average number of employees

Currently, NGOs consider that the reports lack contextual information that would put the payment figures disclosed into context. In particular, the lack of information on the workforce and assets of a company in a country of operation makes it very difficult to assess its real economic activity and presence in that country.

2. The use of subcontractors

Subcontractors generate a significant part of the added value in extractive operations, but their activities are overlooked by the reporting requirements. Indeed, NGOs estimate that, depending on the subsector, project life cycle phase and company,

between 50% and 90% of extractive (oil, gas and mining) project costs are outsourced to contractors or subcontractors, for a total payment amount of up to USD 1 trillion per year globally. The subcontractor activities are not under as much scrutiny as rights-holding companies.

In the logging industry, most of the payments to government are performed by subcontractors that do not report, which means there is very little information available on the payments to government from logging businesses.

3. The pecuniary penalties administered by a country

The reporting requirements provide information on payments to governments but do not indicate to what extent companies come into conflict with local laws. Since the reporting requirements are expected to increase transparency on natural resource management in resource-rich countries, it is regarded as useful to know whether companies have breached local laws in countries of operations, such as environmental or labour law.

Moreover, pecuniary penalties are also a type of payment to government, and therefore citizens should be aware of the amount of sanctions in order to gain a full picture of the revenues that governments receive from companies for the exploitation of natural resources. This would help civil society to hold their governments accountable and avoid incidences of unjustified penalties handed out by corrupted officials.

4. Effective tax rates

Tax is the largest government revenue stream from resource extraction. According to the Resource Project Database²²⁹, resource tax payments in resource-rich countries are twice as high as the second most valuable revenue stream for governments. However, the taxes category is a single category in the Accounting Directive, though it can include many different taxes (e.g. corporate income tax, withholding tax). Moreover, while the general tax terms and rules may be available at national level, in many cases, tax terms applied to a specific project may differ if they are based on negotiations between companies and governments on tax rates and tax incentives, which can affect the effective tax rate. These negotiated tax terms and tax rates are rarely publicly available for natural resource projects. According to NGO representatives, this makes it impossible for civil society to assess whether governments negotiated a fair deal for the exploitation of resources, since resource-rich governments often propose tax incentives to attract companies and investors, but do not always get fair deals with multinational companies due to an imbalance of expertise and bargaining power.

5. The recipient details such as bank account information

The Accounting Directive requires companies to report payments to governments and defines governments as any national, regional or local authority, including departments, agencies or undertakings controlled by an authority. However, a number of companies (a third of companies reporting in the UK according to NGOs) do not clearly identify by name the government entity to which they made payments. This prevents civil society from querying or holding the right government entity to account.

A1.2.2 Objectives

It should be noted that a European Commission proposal for full public country-by-country reporting by large multinationals from all sectors is **undergoing the EU's**

legislative process (Proposal for a Directive amending Directive 2013/34/EU). The information required by companies in this proposal is the following: name and nature of activities, turnover, number of employees, profit or loss before tax, income tax paid, income tax accrued, accumulated earnings.

Although some of the additional information examined below is also included in the EU proposal, the adoption of this proposal and a possible amendment of the Accounting Directive should be considered separately as their objectives and targeted sectors differ.

1. The average number of employees

The disclosure of the average number of employees would, in combination with other data put forward in the Commission proposal (such as turnover, profit or loss before income tax, income tax paid and accrued, accumulated earnings), provide a better picture of the economic activity of a company in a given jurisdiction. It would allow users of the reports to understand whether the economic activity and assets are aligned with the level of taxes paid.

2. The use of subcontractors

The objective of including information on the use of subcontractors would be to provide more transparency on overlooked areas and offer a more complete picture of the activities performed and their economic impact. Disclosing information on the use of subcontractors would enable an improved view on the true size and importance of the business operation involved. It would also inform users about the involvement of local companies in the exploitation of natural resources and in local economic development.

3. The pecuniary penalties administered by a country

The main objective of disclosing the pecuniary penalties would be to show whether a company comes into conflict with local laws and has a history of good corporate citizenship. It would inform government officials on the reliability of a company before concluding a contract. It would assist responsible investors in deciding whether to invest in a particular company. Finally, it would help civil society assess whether a company is reliable, their government is enforcing local laws and thus to what extent the relationship between the company and the host government is balanced. Civil society would be able to hold governments accountable for their unbalanced relationship with a company or for the revenues received from pecuniary penalties.

4. The effective tax rates (ETR)

The level of effective tax rate would allow civil society to assess whether the government negotiated a fair deal with companies and whether they receive a fair share for the natural resources. Should an effective tax rate be presented at project level (usually tax is levied at company level), it would also enable users to compare the effective tax rates across projects in the same country or across countries, to assess whether some projects or companies receive a more lenient tax treatment than others. ETR data could bring added value for corporate tax because it is measured by reference to profit.

5. The recipient details such as bank account information

The main objective would be to indicate clearly the name of the government entity that received payment. This would enable users to assess how the revenues from natural resources are shared among government entities and request clarification or hold the right authority into account.

Moreover, the disclosure of information on the recipients' identity and bank account will enable payments to be followed thus potentially deterring resource mismanagement and corruption as government officials will know that this information is being made public.

A1.2.3 Policy options

1. The average number of employees

Option 0: Status quo

Companies do not have to report the average number of employees.

Option 1: Average number of employees

Companies must report the average number of employees.

2. The use of subcontractors

Option 0: Status quo

Companies do not have to report the use of subcontractors.

Option 1: the use of subcontractors

Companies must report the use of subcontractors. This could include at least the number of subcontractors and the average number of persons provided by subcontractors per project.

3. The pecuniary penalties administered by a country

Option 0: Status quo

Companies do not have to disclose the pecuniary penalties administered by a country.

Option 1: pecuniary penalties administered by a country

Companies must disclose the amount and reason for pecuniary penalties administered by a country, related to the breach of tax obligation or other local laws.

4. Effective tax rates

Option 0: Status quo

Companies do not have to disclose the effective tax rates.

Option 1: Effective tax rates

Companies must disclose the effective tax rates (where meaningful) at the level where the tax is levied (e.g. entity level, project level). The effective tax rate could be presented based on the volume extracted (e.g. tax/per ton). The report should include an explanatory note on the categories of taxes included and possible reasons for fluctuations of tax rates or low rates. However, since profits are often not calculated on a country basis by multinational companies, a more meaningful option could be to use the volume extracted as a comparator to calculate the effective tax rate, using for example the amount of tax paid by volume extracted.

5. The recipient details such as bank account information

Option 0: Status quo

Companies do not have to provide specific recipient details such as bank account information.

Option 1: Recipient details such as bank account information

Companies must provide specific recipient details, including the name of the government entity that received payment and bank account information. The requirement could be also limited to the name of the recipient if disclosing bank account information is deemed to be too onerous or confidential.

A1.2.4 Assessment of impacts

0. Status quo

The problems outlined in the section above are likely to persist if the status quo is maintained. In terms of costs, the one-off investments necessary to comply with new reporting requirements are likely to increase if they are introduced one by one over time. Thus, there is an economic logic to introducing the requirements deemed effective in one go.

1. The average number of employees

Added value

Reporting on the average number of employees alone is unlikely to provide an accurate depiction of the economic activity of extractive and logging companies in a given jurisdiction given the variable amount of activities organised through joint venture agreements across companies, especially in the oil and gas sector. For some companies, one operator provides the bulk of the staff while that is not the case in others. As a result, there is no telling correlation between the scale of activities and number of staff members of a company in a given jurisdiction. There are concerns that this information provided without context could draw an incomplete picture of **a company's** tax presence and financial assets in a country. However, some representatives of NGOs²³⁰ mentioned that in case of any substantial difference between the number of employees and the profit of the company, this information could be used by them to investigate further the reasons of this gap (e.g. business model of the company, involvement in joint ventures or profit-shifting).

In order to accurately assess the resources generated by the exploitation of natural resources and the management of these resources, some NGOs emphasised the need to combine the numbers with country-by-country income tax paid and accrued, turnover, profit and loss before tax and tangible assets, as suggested in the European Commission proposal for the revision of the Accounting Directive.²³¹

As an example, under the Norwegian Regulation, companies must already disclose the number of their employees (as per EITI Requirement 6.3.d) as well as information related to subsidiaries in order to demonstrate the contribution of the extractive sector to the local economy and highlight undesirable tax planning. In addition, the number of local employees and their remuneration would provide an indication of the stability of the country to users of the reports, as under IFRS 9, boosting the reputation of companies as has been the case in Ghana.

The added value of this additional reporting requirement rests in a clear definition of its scope. In particular, it should be specified whether the reporting covers employees involved in upstream activities and back offices as well as those working in extractive

areas. Reporting on the number of employees on a full-time equivalent basis – as **suggested by the European Parliament’s amendment of the Commission proposal** – appears more informative than the average number of employees or a simple account, which would not provide a clear depiction of the allocation of those working half time or on several projects at the same time. It would also be relevant to report this number at project level, as that is where contract terms are often agreed and where corruption, mismanagement and misallocation of resources take place.

It should be noted that the objective of the reporting requirements for the extractive and logging sector, as stated in Recital 45 and Article 48 of the Directive, is the accountability of governments. Adding the average number of employees to the list of Chapter 10 reporting requirements would bring added value to holding companies to account and fighting corruption, which are only potential indirect results of the Directives.

Costs

It is common practice to report the number of employees in companies’ statutory accounts in several countries and the information can also be found in corporate social responsibility reports. However, providing headcount data in the reporting requirements could amount to over EUR 1 million of internal costs and 500 working days at regional and headquarter level for a company with subsidiaries in multiple locations, according to companies and experts interviewed. The reason for this is that the information exists at country level but is not directly available centrally in **companies’ IT systems** and companies would therefore need to buy a scoring software requiring a licence. Such licences are not very expensive, but their cost would be significantly increased by the number of users. There would be no additional external costs provided that the reports are not audited.

Reporting on a project basis would be extremely complex as many employees work on time-sharing arrangements on several projects at once. Companies do track their number of employees, but the difficulty would lie in providing it in a format **matching the Directives’ requirements**. The more precise the definition of the requirement, the more burdensome for companies to report. The timeline is an element to be taken into account: if it does not match that of other reporting requirements, companies would have to redo the calculations, therefore the deadline for the country-by-country reports should be posterior to the submission of other reports. Compliance costs would also depend on the materiality and accuracy requirements: providing bands of numbers (e.g. by ticking a box) rather than exact numbers would significantly facilitate the process for companies, especially if the reports were to be audited.

2. The use of subcontractors

Added value

Establishing the scope of this reporting requirement is of utmost importance in defining its added value. For instance, several stakeholders pointed out that the notion of subcontractor in itself was not clear for all the reports users.²³² A threshold could also be set to include the most significant subcontractors, although it would also be relevant to include all companies which are related parties or under the same corporate group. The information requested could include at least the number of subcontractors, the

average number of persons and the names of subcontractors²³³ per project. Information on joint ventures would also be important.

This information would provide more transparency²³⁴ **on companies' full economic contribution to local economies, which could facilitate users'** overview of the exploitation of natural resources and the profits generated along the value chain.

Despite the added value of this information for civil society, it does not relate directly to the objective of the Directives and companies would be reluctant to share this commercially sensitive information. In addition, some companies questioned the added value of adding new reporting requirements for the use of subcontractors since a significant share of the subcontractors are providing services rather than goods and their activity may not be extractive in nature and therefore not within the original intended scope of the rules.²³⁵ It is also worth noting that companies could only be asked to provide their payments to subsidiaries, but how much of those payments in turn are paid to governments by the subsidiaries would remain unclear.

Costs

Most companies are not equipped with an IT system set to reliably track all individual subcontractors across their scope of activity and to provide an assurance on the number. Thus, mapping the whole value chain in the country of operation would be extremely difficult and costly to find.²³⁶ Every branch of a company uses different systems and has no view on the use of subcontractors by others, which encompasses services such as cleaning. Adding this requirement would entail significant costs for companies since they are not required to provide this information under any reporting requirements. Costs would also depend on whether the reports would be audited and on whether criminal responsibility is foreseen: organising the reporting would then require a formalisation which would increase its cost.

3. The pecuniary penalties administered by a country

Added value

The added value of this requirement is substantially limited by a materiality level and a definition issue: it could include a wide range of payments, ranging from penalties for incorrect tax return and for breaches of environmental and labour laws to parking fees. Pecuniary penalties could be defined as the fines relating to the existing seven categories of reporting. Companies and governments having different understandings of what constitutes a pecuniary penalty might lead to inconsistent reporting which could undermine the credibility of the reports. Another question is whether it should apply only to the extractive part of the business or encompass all activities. Moreover, the information provided without context would be of limited added value. For instance, some companies pointed out that the existence of fines can also be an indication for bad governance on the side of the governments and not only of companies misbehaving.²³⁷

Although this additional requirement would increase the transparency of payments and bring reputational benefits to both companies and countries, it covers a limited source of government income in comparison with the main sources included in the reporting. It is also different in nature from the other requirements and is not a common practice. For instance, the (invalidated) implementing acts for the Dodd-Frank Act did not foresee the creation of a category with respect to the payment of penalties. The SEC document published in 2016 states that, with respect to payments for fines and penalties, they "do not believe they relate sufficiently to the commercial development

of natural resources to warrant inclusion".²³⁸ Furthermore, the ESTMA rule does not include fines or penalties as an explicit payment category.

Costs

In most European countries, companies must record and store the information. However, it is not necessarily easy to gather. Systems vary greatly across countries and **companies'** accounting systems are not consistently set up to gather this information. Accounting plans can include a fines account, but the level of detail and aggregation differs from one company to another. As this information is not concerned by any reporting requirement on an aggregated basis, even companies which are already organised to collect it would have to set up a system to collect and centralise the data from all their subsidiaries, which would entail compliance costs not in proportion to the added value of this requirement.

4. Effective tax rates

Added value

This data would bring most added value if presented at entity or project level, according to the volume extracted, as it could provide a better view of the level of tax paid per volume extracted. Using the volume extracted as a comparator would be easier than using the level of profit, which is usually calculated at company level and not at national or project level. According to NGO representatives, this reporting would enable civil society to compare the effective tax rates with that of other companies and to assess whether the government's share of natural resources revenues is fair. This would contribute to building trust between citizens and their government.

The numbers could be provided along with an explanatory note to provide contextual information on variations in the effective tax rates, which can be legitimate and appropriate when companies are recovering deductible or recoverable initial investment costs, when additional capital expenditure has reduced taxable income or commodity prices have decreased over the period under consideration. Providing such explanation would address concerns from the industry of misrepresentations of risky investment by civil society, which could pressure governments to introduce effective tax rates and hinder **companies'** development and extraction phases.

Costs

The effective tax rates are already disclosed in statutory accounts (accruals-based corporate income tax ETR – i.e. corporate tax charge divided by profit before tax) and in fiscal country-by-country reporting. The information is relatively easy to find as it is included in international accounting standards such as IAS12, although the level of detail requested would determine the extent of compliance costs. Corporate tax is only one part of the EU requirements **in the 'taxes' category, and it is on a cash basis in the reporting requirements** and therefore not directly comparable to the accounts basis of taxes. Furthermore, it can be burdensome to separate the effective tax rates for extractive and non-extractive activities. Another difficulty would be to artificially combine the taxes of several activities which can be treated as the same project but arise at different moments of the investment cycle.

5. The recipients' details such as bank account information

Added value

Providing information about the full name of account holders would operationalise the **Directives' principle of** accountability by ensuring that companies identify the recipient government entities, in line with EITI reporting²³⁹, thereby allowing civil

society to track the flow of extractive revenues to each government entity, ascertain the use made of these revenues and act as a deterrent against corruption in future negotiations. According to Article 43(2) of the Accounting Directive, companies are required **to report the amounts paid to "each government", meaning "any national, regional or local authority of a Member State or of a third country", including departments, agencies or undertakings controlled by these authorities (Article 41(3))**. Some companies have not consistently identified every recipient government entity by name in their reports, providing only the country name or generic indications of the government level.

Making bank account information public would raise concerns about legal liability issues and companies are likely to be uncomfortable with providing this information as some governments could consider it a breach of trust and they could be held accountable for the consequences of potential misuse of bank information. Other limits to the added value of this reporting requirement are that the bank information is not always known when payments are made by cheque; the Directive covers licit payments, therefore illicit payments to corrupt government officials theoretically do not fall under its scope; and this information holds governments accountable only to the extent that payments made by EU companies, which only represent a part of the jigsaw, are known. A potential alternative would be for companies to flag (in supporting notes for example) the fact that the payment was made to a bank account in a different country.

Costs

Naming the government entity is not seen as a burdensome requirement since a large number of companies already provide it and this is already advised in the IOGP guidance.²⁴⁰ This reporting requirement should not involve additional time and costs for companies which already report this type of information. However, the level of details available might vary across countries depending on legal and banking systems. For companies which are not organised to collect this information on an aggregated basis, costs would be entailed by the modification of the information system, the production of the data and its collection. It is estimated that between one week and two full-time equivalents from the accounting department would be necessary according to the stakeholders interviewed. The requirement to check the accuracy of the information would lead to far greater compliance costs.

A1.2.5 Comparison of impacts

Overall, while NGOs favour additional disclosure, they do not deem the above items to be the most important ones and noted that each additional requirement on its own **would not be sufficient to provide a comprehensive picture of the company's activities**. The additional reporting requirements that would bring most added value for the users according to civil society representatives would be the use of subcontractors in order to get a full picture of the economic activity, the effective tax rate to check whether governments negotiated a fair deal, and the **name of the payments' recipient** to hold the right authority to account. Additional reporting requirements would bring even more added value if they were combined. They would thus provide a complete picture of the resources generated by the exploitation of natural resources and the management of these resources in resource-rich countries. In particular, it would be necessary to combine the numbers of employees with country-by-country income tax paid and accrued, turnover, profit and loss before tax and accumulated earnings, as included in BEPS Action 13 CBCR rules and in the European Commission proposal for the revision of the Accounting Directive. Accompanying the data with contextual

information would be essential in order to address **companies' concerns about** misrepresentations of their activities, especially for effective tax rates.

On the other hand, the compliance costs are likely to be the highest for the disclosure of the number of employees and the use of subcontractors. For all additional requirements, compliance costs would depend on definition and materiality and accuracy requirements: for instance, providing bands of numbers (e.g. by ticking a box) rather than exact numbers of employees would significantly facilitate the process for companies, especially if the reports were to be audited. It should be considered that if all the information is already gathered by companies, systems vary greatly across **countries and companies'** accounting systems are not consistently set up to gather information centrally. Therefore, adding reporting requirements would add significant compliance costs, especially for information not requested under any regulation. The use of subcontractors would be the costlier option in that respect. In any case, the data would come from various streams within companies, even at headquarters level. It is therefore instrumental to request data that companies can produce by relying on existing information and infrastructures.

It should be noted that the objective of the reporting requirements for the extractive and logging sector, as stated in Recital 45 and Article 48 of the Directive, is the accountability of governments, not companies, while most of these requirements, **except for recipients' details, address** the latter. This needs to be **considered in order to overcome companies' reluctance to provide additional data when** most of them do not report on all existing categories and the obligations are yet to be spread to companies from third countries. In addition, changes to the Directive could threaten the equivalence gained with other reporting regimes such as the Canadian ESTMA regime, where this equivalence is highly valued by preparers.

ANNEX 2 Methodological approach

The main review questions have been refined during the inception phase. Table 5 presents our review grid with the interrelation between the review areas, the review questions, judgement criteria, indicators and data sources. The review grid is guiding the study team throughout the project. In particular, the review questions have been used to structure the data collection and to draft the questionnaires for the interviews and the survey.

The next sections describe the methodological tools used (desk research and stakeholder consultation via interviews and a survey, case studies, workshop), as well as the challenges encountered and risk mitigation measures.

Table 5: Review grid

Review area	Review question	Judgment criteria	Indicator	Data source
Implementation	Are companies in the scope generally complying with the reporting requirements?	Number of companies who reported on time Level of information provided	Proportion of reporting companies	Desk research Stakeholder interviews
	Can notable variances in compliance be identified? Is compliance in some Member States, sectors or for specific reporting requirements significantly better or worse than the average? (e.g. in Member States who adopted the requirements already in 2015)	Difference in level of reported information across MS, sectors and reporting requirements	Proportion of reporting companies by MS, sectors and by reporting requirement	Desk research Stakeholder interviews
	What are the reasons for the identified lack of compliance in Member States, sectors or for specific reporting requirements?	Reasons for non-compliance	Expert and stakeholder assessment and judgement	Stakeholder interviews
	How have the reporting requirements been implemented by companies?	Existence of process/rules for reporting (e.g. set out by law, industry guidelines)	Process description for implementation of the reporting	Desk research Stakeholder interviews
	How are companies complying with the requirements to report at project level?	Existence of process/rules for reporting (e.g. set out by law, industry guidelines)	Process description for implementation of the reporting	Desk research Stakeholder interviews
	How do companies address the reporting requirements as regards joint-venture operations? Is there a risk that payments from equity-accounted operations are being missed entirely across reporting companies?	Existence of clear process/rules regarding the case of joint ventures (e.g. set out by law, industry guidelines)	Process description for implementation of the reporting	Desk research Stakeholder interviews
Effectiveness	To what extent have the objectives of the reporting requirements, namely the increased transparency of operations of logging and extracting companies, and better information to civil society, been achieved?	Extent of completion of the objectives of the reporting requirements	Transparency of governments resource incomes in resource rich countries Use of the reports by civil society	Desk Research Stakeholder interviews
	Are the users using the information provided by extractive and logging companies?	Use of the information by users	Awareness raising activities Actions of civil society related to the reports	Desk Research Stakeholder interviews
	Do the reporting requirements help governments in resource-rich countries to implement the EITI principles and criteria?	Equivalence of reporting requirements with EITI principles	Reporting requirements and EITI principles and their overlap	Desk Research Expert interviews
	Do the reporting requirements help EU wood importers to comply with the EU Timber Regulation? (due diligence to prevent illegal activities in the timber value chain)	Link between reporting requirements and EU Timber Regulation	Implementation of EU Timber regulation and reporting requirements and their complementarities	Desk Research Stakeholder interviews

Review of country-by-country reporting requirements for extractive and logging industries

Review area	Review question	Judgment criteria	Indicator	Data source
	To what extent did the reporting requirements contribute to the broader objectives of reducing illegal logging and extractive operations, corruption and deforestation?	Reduction of illegal activities with the reporting requirements	Evolution of illegal extractive and logging activities, corruption and deforestation	Stakeholder interviews
	Where expectations have not been met, what factors have hindered their achievement?	Underachievement of the objectives of reporting requirements	Expert and stakeholder judgement on the reasons for underachievement	Desk Research Expert and stakeholder interviews
	Are there any aspects that render the EU CBCR more or less effective than other sources of information (EITI, financial statements, other...), and – if there are – what lessons can be drawn from this?	Difference of effectiveness between EU CBCR and other information sources	Expert and stakeholder judgement on the reasons for underachievement	Desk Research Expert and stakeholder interviews
	Are there any unintended effects of reporting requirements?	Unintended effects of reporting requirements	Expert and stakeholder judgement on the effects	Desk Research Expert and stakeholder interviews
	What are the compliance costs of the reporting requirements and do the costs significantly differ for some groups (e.g. SMEs)?	Compliance costs	Staff costs of added working steps and other costs	Desk research Stakeholder interviews Company survey
	Are the users of the reports able to access and use the information? If not, what are the barriers to access?	User access to information Barriers to access	Ease of access and usefulness of the information User assessment	Stakeholder Interviews
	Is the information contained in the report reliable and useful to the user? What type of information is missing?	Reliability and completeness of the information reported	Completeness of the information required to uncover bad practice User assessment Expert judgement	Expert and stakeholder Interviews
	To what extent has the different implementations of the requirements in MS impacted the effectiveness of the reporting requirements on the objectives?	Impact of the different implementations on the effectiveness of reporting requirements	Implementation gaps and differences User assessment Expert judgement	Desk Research Expert and stakeholder interviews
Impacts of other international regimes	How do companies react to the potential proliferation of reporting standards (EITI, EU, Canadian, US, possibly soon Australian and others?) Would they favour equivalence regimes or rather unified standards?	Proliferation of reporting standards Equivalence of reporting requirements	Reaction of companies to different reporting standards and to equivalence	Stakeholder interviews
	What reporting requirements do EU companies need to comply with that American companies need not (and the other way around)?	Equivalence of reporting requirements	Comparison of compliance costs and type of published information	Desk Research Expert and stakeholder interviews
	What reporting requirements do EU companies need to comply with that Canadian companies need not (and the other way around)?	Equivalence of reporting requirements	Comparison of compliance costs and type of published information	Desk Research Expert and stakeholder interviews
	Have companies benefited from the Canadian Extractive Sector Transparency Measure Act (ESTMA) and the Commission Implementing Act on its equivalence?	Equivalence of reporting requirements	Use of equivalence with ESTMA	Desk Research Expert and stakeholder interviews

Review of country-by-country reporting requirements for extractive and logging industries

Review area	Review question	Judgment criteria	Indicator	Data source
	What other national reporting requirements might be important for competitors of EU companies?	Equivalence of reporting requirements	Comparison of compliance costs and type of published information	Desk Research Expert and stakeholder interviews
	What reporting requirements do EU companies need to comply with that those competitors need not (and the other way around)?	Specificities of EU reporting requirements	Comparison of reporting requirements with other reporting regimes	Desk Research Expert and stakeholder interviews
	What are the impacts of the Extractive Industry Transparency Initiative (EITI) framework on the EU reporting requirements? (e.g. in terms of project definition, de minimis thresholds, reporting templates (including electronic)). Are third countries with a significant proportion of EU companies in resource extraction more likely to comply with EITI standards? What reporting requirements of EITI are facilitated by EU reporting requirements?	Assessment of synergies between EITI and the reporting requirements	Comparison of type of publishable information Comparison in compliance between EITI and reporting requirements	Desk Research Expert and stakeholder interviews
Impacts on Competitiveness	Is there evidence that competitors not subject to the reporting requirements benefit from competitive advantages from not being required to report on payments to governments? On the other hand, is there evidence that companies in the scope of the reporting requirements suffered material damages or losses of opportunity caused by such disclosure? If so, which ones?	Level of competitive advantage of competitors not subject to reporting requirements	Damages and losses of opportunities of EU companies Expert and stakeholder judgement	Desk Research Expert and stakeholder interviews
	Do the requirements cause compliance costs that do not apply to important competitors? (cost competitiveness)	Balance of compliance costs	Compliance costs	Desk Research Stakeholder interviews Company survey
	Do the requirements have a differential impact on international trade or general competitiveness (asymmetry in information available to competitor) for EU companies? (international trade competitiveness)	Impact of requirements on international trade competitiveness	Level of asymmetry of information Assessment of experts and stakeholders	Desk Research Expert and stakeholder interviews
	Do the requirements have a differential impact on innovation in the sector for EU companies? (innovation competitiveness)	Impact of requirements on innovation competitiveness	Comparison of innovation levels Assessment of experts and stakeholders	Desk Research Expert and stakeholder interviews
	Do important competitors use weak governance systems in third countries to gain a competitive advantage? Do these impacts differ in different types of third countries?	Impact of using weak governance systems on competitiveness	Comparison of market shares in weak governance countries Assessment of experts and stakeholders	Desk Research Expert and stakeholder interviews
	Are there any reporting requirements which are especially hurtful to the competitive position of EU companies?	Reporting requirements damaging the competitiveness of EU companies	Link between reporting requirements and competitiveness losses Assessment of experts and stakeholders	Desk Research Expert and stakeholder interviews

Review of country-by-country reporting requirements for extractive and logging industries

Review area	Review question	Judgment criteria	Indicator	Data source
	What are the impacts of the non-implementation of section 1504 of the Dodd Frank Act in United States?	Impacts of non-implementation of the Dodd Frank Act	Comparison of competitive advantages for American and EU companies	Desk Research Expert and stakeholder interviews
	What are the consequences of an unlevelled-playing field?	Impact of unlevelled-playing field	Comparison of competitiveness of EU companies vs third country companies	Desk Research Expert and stakeholder interviews
	Do the reporting requirements create competitive advantages for companies in terms of reputation due to the transparency? Are EU consumers sensitive to the transparency of the companies?	Competitive advantage of reporting requirements for EU companies	Sensitivity of EU customers to transparency Reputational gain of EU companies	Stakeholder interviews
Impacts on energy security of supply	Is there evidence that companies in the scope of the reporting requirements found it harder to operate in third countries following the introduction of the disclosure measure? Is there evidence that third countries would restrict the operations of companies subject to the reporting requirements? Is there evidence of impacts in terms of contractual terms, price or volume?	Impact of reporting requirements on access to markets in third countries	Evolution of market access and share in third countries Assessment of experts and stakeholders	Desk Research Expert and stakeholder interviews
	In case some third countries have restricted the operations of EU companies due to the reporting requirements, has the decrease of imports posed a threat to energy security of supply in some EU countries?	Impact of import restrictions on energy security of supply	Evolution of imports of EU companies active in third countries Evolution of energy security of supply	Desk research Market data Expert and stakeholder interviews
	Have the energy imports of the EU have become more concentrated due to the reporting requirements?	Change of trade patterns	Import statistics	Desk Research Market data Expert interviews
	Is there evidence that companies claimed infringements of their domestic law following the introduction of the reporting requirements?	Impact of reporting requirements on infringement actions	Infringement proceedings against reporting requirements Assessment of experts and stakeholders	Desk Research Expert and stakeholder interviews
Recommendations on amending reporting requirements	What aspects of the reporting requirements have companies found unclear, challenging to comply with or open to interpretation? How have companies addressed these uncertainties? Could companies benefit from further guidance on certain areas of the reporting requirements?	Relevance of guidance for reporting requirements	Provisions of reporting requirements unclear or challenging to comply with Existence of guidance	Desk research Stakeholder interviews Workshops
	What could be the (additional or alternative) working steps needed for companies to comply with the reporting requirements? Are the reports currently audited or verified, and if yes by whom?	Needs for additional or alternative working steps	Working steps needed to implement reporting (e.g. guidance, audit)	Stakeholder and expert interviews
	Are there any relevant industry sectors where those requirements could contribute to the objectives? If so, what are the reasons? What would be the potential benefits and costs of such an extension?	Industry sectors relevant for the objectives of reporting requirements and with the best cost / benefit ratio	Compliance costs analysis Assessment of implementation gaps Assessment of international frameworks	Analysis Expert interviews Workshops

Review of country-by-country reporting requirements for extractive and logging industries

Review area	Review question	Judgment criteria	Indicator	Data source
			Assessment of competitiveness impacts	
	What would be the benefits of auditing the report on payments to governments? To what extent are companies already seeking independent assurance on their reporting?	Benefits of auditing the reports	Benefits analysis Proportion of companies self-auditing their reports	Analysis Expert and stakeholder interviews Case studies Workshops
	Would it be relevant to require the disclosure of additional payment information such as: the disclosure of additional payment information such as: (1) the average number of employees, (2) the use of subcontractors, (3) the pecuniary penalties administered by a country, (4) the effective tax rates (5) the recipient details such as bank account information	Relevance of additional requirements	Compliance costs analysis Assessment of implementation gaps Assessment of international frameworks Assessment of competitiveness impacts	Analysis of tasks 1-3 Expert interviews Case studies Workshops
	What other information would be useful to users of the reports? What would be the costs and the benefits of that added information?	Relevance of additional requirements	Assessment of implementation gaps Assessment of international frameworks	Analysis Expert interviews Case studies Workshops
	What other amendments could improve compliance, effectiveness and efficiency of the reporting requirements?	Relevance of additional requirements	Compliance costs analysis Assessment of implementation gaps Assessment of international frameworks Assessment of competitiveness impacts	Analysis Expert interviews Case studies Workshops

A2.1 Desk research

The study team conducted two main desk research activities. On the one hand, the team carried out a literature review at EU/international and national level to collect literature and information addressing the different review questions. On the other hand, the team proceeded with a mapping of companies that could be in the scope **of the reporting requirements and searched for companies' reports in order to address** mainly the research questions regarding Implementation.

A2.1.1 Desk research at EU/international and national level

The core team conducted desk research at EU/international level as well as national level in countries of origin and countries of operation. The desk research at national level focused on a sample of countries of origin and countries of operations selected during the inception phase, based on preliminary desk research and feedback from experts. The list of logging countries includes those where most operations on primary forest occurs. In a similar way, countries for the extraction industry were selected where large international extraction businesses have headquarters, or where those companies have operations, with a particular focus on third countries with governance challenges.

Table 6: Focus countries

Activity	Countries of origin	Countries of operation
Extracting	Spain, France, Italy, Netherlands, UK	Algeria, Angola, Democratic Republic of Congo, Gabon, Malaysia, Nigeria, Tanzania, Sudan, Venezuela
Logging	Belgium, Finland, France, Italy, Portugal, Sweden	Democratic Republic of Congo, Gabon, Cameroon, Congo Brazzaville, Malaysia, Indonesia

Overall, more than 248 sources were reviewed (see the full list of EU and national literature in ANNEX 3). The different types of sources consulted included reports and studies from NGOs, sector associations and national authorities, academic articles, statistics, as well as repository websites and news articles. Researchers screened the different sources using key words such as: payments to governments by extractive and logging industries, reports on payment to governments, disclosure of payment information, application of EITI principles in resource-rich countries, transparency in resource-rich countries, equivalence of reporting requirements, impact of transparency on competitiveness, energy import of the EU, etc. Information regarding the implementation of reporting requirements in the logging sector was really limited, therefore in some cases researchers expanded their research to other mechanisms enhancing transparency in the logging sector (namely the EU Timber Regulation and the EU FLEGT Voluntary Partnership Agreements) or to available information regarding the extractive sector.

Researchers compiled the sources in a spreadsheet indicating the nature of the document and its publication information (title, author, date), time and geographical scope, coverage of extractive and/or logging activities, and their relevance to address the six review areas, with comments indicating which chapter or page is most relevant. A separate spreadsheet was completed for the literature review at EU/international level and for each focus country. For the focus countries, researchers established country fiches summarising the main information from the national desk research and interviews. The fiches for countries of origin focused on the legal process of implementation, implementation results and challenges, impact on the

competitiveness of companies and on energy security of supply. The fiches for countries of operation focused on awareness and use of the reports, reaction of governments, change in implementation of EITI principles if member and impact of the reporting requirements on illegal logging and extractive activities.

A2.1.2 Research of companies reports

As part of the desk research, the study team conducted an analysis of a number of reports of payments to governments, published by companies established in various European countries. This approach was adopted in order to assess:

- the extent of the reporting of companies,
- the completeness of the reports published, and
- the accessibility of the reports.

Following a suggested list of extractive and logging companies provided by DG FISMA and based on extra recommendations from the experts, we carried out a mapping of large companies in the scope. The list was expanded by additional desk research, conducted during inception and early interim stage. During the interviews at national level, the consulted stakeholders provided the study team with additional names of companies. The reports were mainly identified through desk research on company websites and business registries, set up by the authorities of the respective country. The reports of payments to governments were stored either in designated registries, maintained by a particular national authority or in the regular commercial repositories for company information. Another set of reports was provided to the study team by the national authorities responsible for monitoring the reporting or/and compliance of companies.

Out of the identified reports, the study team selected a number of reports most relevant for examination, namely those of companies operating in third countries. In some Member States, the only reports collected concerned exclusively domestic activities but were still considered for examination (see Section 3.1.1 for more detail). These selected reports were grouped by sector – extractive and logging. In addition, the extractive companies were broken down by different general fields – mining, oil and gas and ‘other’, which encompassed some relevant companies working with sand dredging, chemicals or building materials. Overall 98 reports were identified of which 81 reports were assessed in detail. A list of the companies for which reports were identified and analysed is provided in ANNEX 4.

When analysing the reports, we have looked at a set of information listed in the table below.

Table 7: Relevant information identified in the reports

<ul style="list-style-type: none"> ▪ Country of origin of the reporting company; ▪ Countries of operation of the reporting company; ▪ Countries where payments actually occurred (if differing from the countries of operation); ▪ Report year; ▪ How the reports were accessed – through company website, business registry or other; ▪ Presentation of information – was it a separate report or was payments to governments data incorporated in another annual report;
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- Was the total amount of payments made to governments presented and if yes, what was the amount (in EUR, using the exchange rate applicable for December of the respective report year)?;
- Was the total amount per type of payment disclosed?;
- Was the total amount per project provided?;
- Was there payment information about joint-ventures?

Wherever necessary, our researchers made additional comments on the examined reports, providing further useful information such as which were the important sections in the reports or how a particular matter of interest for the study team was addressed. For example, such comments were that certain companies have excluded joint-ventures from their reports and have explicitly justified (or simply mentioned) **it in their reports' narrative. This exercise provided the study team with a solid foundation for quantitative analysis and valuable insights for qualitative examination, discussed in the sections below. We have analysed the coverage of the main categories of information required in the reports. Moreover, we have examined where the reports could be accessed. For that reason, we assessed the availability of the different databases, and the ease of access to the reports.**

A2.2 Stakeholder interviews and survey

The stakeholder consultation consisted of two streams: semi-structured interviews and a company survey. Together with DG FISMA, we refined the questionnaires for stakeholders, adapting the questions to the types of stakeholders and to the type of consultation. The final version of the interview questionnaires can be found in ANNEX 6. Semi-structured interviews targeted EU / international organisations, national authorities, NGO / civil society, sector associations and companies. The purpose of the interviews was to receive qualitative and deep information about the state of implementation of the EU requirements, their effectiveness, the relationship with other reporting standards, effects on competitiveness and energy security, and recommendations on potential amendments. The interviews at national level focused on the same sample of countries of origin and countries of operations as the desk research (see Table 6).

Another stream included a company survey. The company survey complemented the information collected in the semi-structured interviews, in particular with companies and industry associations. The purpose was to not only receive additional responses on the themes mentioned, but also to measure the costs of compliance with the EU requirements. The survey targeted individual companies to supplement the information from the desk research and interviews and collect comparative information on the costs of compliance and competitiveness of EU companies subject to the reporting requirements. The survey questionnaire can be found in ANNEX 7. The dissemination of the survey relied on two-pronged approach:

1. The research team contacted individual companies, asking them to participate in the survey via an online link. The approach to contact individual companies usually faces the problem of low response rate. Thus, in parallel, another dissemination approach was used, aimed at maximising the response rate.
2. The research team contacted international and national sector associations, who were asked to provide the link to their member-companies. Using references from associations usually increases the response rate of their

members. However, two main international sectoral associations in mining and in oil & gas, instead of disseminating the survey to their members directly, were more comfortable in consulting with them and providing a unified answer via a semi-structured interview. Because the two associations combined cover more than 100 companies, this enhanced the reach out. The unified responses increased the representativeness of the position of both industries.

Based on preliminary desk research and feedback from the experts undertaken during the inception phase, the focus was put on specific countries of origin and of operations (Table 6). In the countries of origin, we consulted companies, sector associations and national authorities to assess how companies complied with the reporting requirements and what are the main impacts for the EU extractive and logging sectors. In the countries of operation, we consulted national authorities and representatives of NGOs and civil society to assess whether the reporting requirements have reached their objectives and whether the reports are used by civil society.

In total, 37 interviews were completed (Table 8). The full list of stakeholders interviewed can be found in ANNEX 5. Out of the 17 NGO / civil society stakeholders interviewed, six of them were among the most important actors in this topic area, including EITI, Publish What You Pay, Transparency international, Global Witness and Oxfam International. Consequently, the position on the topic from this stakeholder group was well-covered, particularly on issues of implementation, effectiveness, and the impacts of the other international regimes. In addition, 10 interviews with local NGOs in six third countries provided a good perspective about the local usage of the reports by the civil society.

Concerning industry representatives, nine interviews with individual companies were conducted, in addition to six answers to the company survey, and two interviews with the main international associations in both mining (International Council on Mining & Metals, which brings together 27 mining and metal companies and 30 national and regional associations²⁴¹) and oil & gas (International Association of Oil & Gas Producers, which brings together 79 members²⁴²). The associations deliberated with and aggregated the responses of their member-companies. Consequently, the position of the industry on reporting requirements is well-represented in the report, particularly on the questions of the impacts of other international regimes, competitiveness and energy security.

Table 8: Semi-structured interviews

Stakeholders	Completed
NGO / civil society	17
<i>International</i>	6
<i>Algeria</i>	1
<i>Cameroon</i>	2
<i>DR Congo</i>	2
<i>France</i>	1
<i>Nigeria</i>	2
<i>Sudan</i>	1
<i>Tanzania</i>	2
Company	9
<i>France</i>	2
<i>Italy</i>	2

Stakeholders	Completed
<i>Spain</i>	1
<i>UK</i>	4
National authority	5
<i>France</i>	1
<i>Italy</i>	2
<i>Sweden</i>	1
<i>UK</i>	1
Sector association	3
<i>International</i>	2
<i>Italy</i>	1
Academia	3
<i>Italy</i>	1
<i>Malaysia</i>	1
<i>UK</i>	1
Total	37

Most of the completed interviews were with stakeholders in extractive industries, except for two Cameroon-based NGOs who worked in the area of forestry and logging. While the research team contacted all types of stakeholders in the logging industry, most of them declined or were not able to contribute to the study. Even the two NGOs who agreed to participate in the interviews had very limited knowledge about the EU reporting requirements and focused on other measures ensuring transparency in the logging sector (please see more about the challenges related to logging sector in the next section).

A2.3 Case studies

The study team carried out two case studies to assess further the relevance and impact of potential amendments to the reporting requirements.

Two sets of recommendations were agreed with the Commission for the case studies:

- Case study 1: Potential impacts of obligatory audits for the report on payments to governments
- Case study 2: Potential impacts of an obligatory disclosure of additional payment information such as:
 - 6) the average number of employees
 - 7) the use of subcontractors
 - 8) the pecuniary penalties administered by a country
 - 9) the effective tax rates
 - 10) the recipient details such as bank account information

These two case studies have been selected because they cover recommendations that are explicitly mentioned in the Accounting Directive (Article 48 of Chapter 10 and Recital 52). The third recommendation mentioned in the Directive, extending the reporting requirements to other sectors or non-EU companies, would have been challenging to assess in a short case study since it would require consultation with a much larger set of stakeholders.

The case studies built on the data collection already completed and further desk research and interviews with preparers and users of the report as well as experts

were conducted to assess more in depth the costs, benefits and impacts of these recommendations. The table below presents the number of additional interviews performed for the case studies.

Table 9: Interviews for case studies

Type of stakeholder	of	Industry associations	Individual companies	NGOs	Experts
Number of interviews		4	4	5	4

The structure of the case studies follows those of a preliminary impact assessment. The case studies are included in ANNEX 1 of this report. The conclusions of the case studies are included in the recommendations chapter. They will provide an important input to the workshops and could also be used in the first stages of impact assessments in case the recommendations become fully fledged policy initiatives.

A2.4 Workshops with stakeholders

Two workshops with stakeholders took place on 19 September 2018 in order to present the preliminary findings of the study, hear feedback from stakeholders and discuss recommendations for potential amendments to the reporting requirements.

The first workshop took place in the morning with users of the reports (i.e. representatives of civil society, academics and national authorities). Users discussed their needs and what additional information, auditing or other provisions they would recommend. The agenda is presented below.

Box 1: Agenda with report users

09: 30–09: 35 Welcome & introduction to the workshop and its objectives (Commission)
 09: 35–10: 05 Presentation of the results of the case studies and draft recommendations (consortium)
 10: 05–10: 25 Short reaction of three user representatives to the recommendations
 10: 25–10: 55 Q&A session and plenary discussion with the participants
 10: 55–11: 10 Coffee break
 11: 10–12: 10 Working groups on different recommendations and their added value
 12: 10–12: 30 Presentation of the working group results and conclusion of the workshop

The second workshop took place in the afternoon with representatives of the industry, in order to test the recommendations from the study and the users and discuss whether these would be feasible for companies and what additional burden they would entail. The workshop followed a similar agenda:

Box 2: Agenda with report preparers

14: 00–14: 05 Welcome & introduction to the workshop and its objectives (Commission)
 14: 05–14: 35 Presentation of the results of the case studies and draft recommendations (consortium)
 14: 35–14: 55 Three short reactions of company representatives to the recommendations
 14: 55–15: 25 Q&A session and plenary discussion with the participants
 15: 25–15: 40 Coffee break
 15: 40–16: 40 Working groups on different recommendations
 16: 40–17: 00 Presentation of the working group results and conclusion of the workshop

The participants included representatives of EU/international NGOs, national authorities, academic experts, sectorial associations and industry companies. One week before the workshops, the participants received a briefing paper presenting the results of the two case studies to be discussed during the workshops. A summary of **the workshops'** discussions is presented in ANNEX 8.

A2.5 Challenges encountered and risk mitigation measures

The main challenge encountered was that while the study team collected a lot of reports, information and feedback on the implementation of the reporting requirements in the extractive industry, nearly no report or information was available regarding the logging sector. To date, only two reports from logging companies have been identified, including one concerning only activities and payments in the country of establishment. Sectorial experts and stakeholders pointed at several reasons explaining the lack of reports from logging companies:

- The restrictive scope of the definition of **"logging in primary forests"**²⁴³: operations in primary forests are usually limited and most logging companies operate in plantation forests or secondary forests²⁴⁴.
- The structure of the value chain: the European logging industry is dominated mostly by small and medium-sized companies. Moreover, a number of EU companies in the timber sector are not vertically integrated and do not carry out logging operations themselves, but use local sub-contractors, which are not captured by the Accounting Directive.
- The threshold of payments: the threshold of EUR 100,000 is considered too high in the sector since the amounts of payments received by governments are frequently below this threshold in the context of logging operations.

Therefore, the results presented in this report focus mainly on findings related to the extractive sector since information was available in terms of implementation, effectiveness and impacts.

Another implementation challenge was the limited response rate to the company survey (six answers). While the interviews targeted all categories of stakeholders (national authorities, sector associations and companies, NGOs and civil society representatives), the survey targeted specifically companies in order to assess more specially the compliance costs of the reporting requirements and the impacts on competitiveness.

- A first factor for the low response rate is the difficulty to identify companies in the scope since there is currently no overview of the number of companies that should report. Following the research for company reports, the study team has been able to identify reports from at least 52 companies in the scope, and about 60 companies have been invited to fill in our company survey. So the overall group of relevant companies is limited.
- The second factor is that companies received invitations for both a semi-structured interview and the company survey, and that where they responded **positively to the study team's invitation, they often preferred to focus** on the detailed questionnaire of the semi-structured interviews and most did not fill in the survey additionally. However, the responses to the interview questionnaire were usually comprehensive enough to also answer the questions from the company survey.
- A third factor for the low response rate is that, as mentioned above, only two logging report were identified.

It is worth noting that even though a relatively low number of individual companies have directly taken part in our consultation by interviews or survey, the international sectorial organisations consulted (namely the International Council on Mining & Metals and the International Association of Oil & Gas Producers) provided comprehensive answers in the name of their member companies, which strengthened the representativeness of their responses.

It was also challenging to reach out to representatives of local NGOs in countries with resource governance issues and lack of transparency (e.g. Venezuela) or limited freedom of speech (e.g. Angola). To mitigate their lack of responsiveness, we completed with information from national and international reports, and with information provided by international NGOs.

The last challenge is that the information collected in relation to the impacts of the reporting requirements on competitiveness and energy security of supply is limited. One of the reasons is that the implementation of the reporting requirements is still recent and that such impacts have not materialised yet. Stakeholders have not reported particular competitiveness disadvantages linked to the reporting requirements, and so far there is no evidence that third countries have limited the access and operations of EU companies in their territory, therefore there is no tangible impact on the concentration of energy import and security of supply. While it was possible to carry out a limited analysis of the penetration rate of EU extractive companies among international companies in recently awarded contracts (see Section 3.4.1), the research team could not assess the changes in Foreign Direct Investments (FDI) flows since the reporting requirements, since the main statistics databases consulted (the UNCTAD²⁴⁵, the OECD²⁴⁶ and the UNCOMTRADE²⁴⁷) do not provide the possibility to cross-check the geographic origin of the FDI with the countries of operation. In other words, we were not able to select the countries recipients of the FDI outflows from the EU Member States. Only, the Eurostat database²⁴⁸ provides the option to select these variables.²⁴⁹ However, no data could be retrieved with the selected variables.²⁵⁰

ANNEX 3 Literature List

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ANNEX 4 List of examined companies

Company	Country of establishment	Country where the company reports if different	Report year
Extractive			
Acacia Mining	UK		2015 + 2016
Africa Oil Corp.	Sweden		2016
Aggregate Industries UK Limited	UK		2015 + 2016
Anglo American	UK		2015 + 2016
Areva	France		2016
Auriant Mining AB	Sweden		2016 + 2017
BASF	Germany		2016
BDX Foretage AB	Sweden		2016
Bhp Billiton (in UK - Bhp Billiton Plc)	Australia	UK	2015 + 2016
Boskalis	Netherlands		2016
BP	UK		2015 + 2016
Buzzi Unicem SpA	Italy		2016
Cairn Energy Plc	UK		2015
Cementir Holding SpA	Italy		2016
Centrica Plc	UK		2015 + 2016
Cepsa	Spain		2016
EDF Group – Edison	France		2015 + 2016
ENGIE	France		2016
Eni	Italy		2015 + 2016
Enquest Plc	UK		2015 + 2016
Ferrexpo	Switzerland	UK	2015 + 2016
First Quantum Minerals Ltd.	Canada	UK	2016
Galp	Portugal		2016
Gazprom Pjsc (UK - Gazprom Marketing & Trading Limited and Gazprom Energy)	Russia	UK	2015 + 2016
Glencore	Switzerland	UK	2015 + 2016
Imerys	France		2016
KAZ Minerals	Kazakhstan	UK	2015
LafargeHolcim Ltd	France		2015 + 2016
Lucara Diamond Corp.	Canada	Sweden	2016 + 2017
Lukoil (in UK - Lukoil International UK Ltd)	Russia	UK	2015
Lundin Gold Inc	Sweden		2016 + 2017
Lundin Mining Corp.	Sweden		2016
Lundin Petroleum	Sweden		2016

Company	Country of establishment	Country where the company reports if different	Report year
Mærsk	Denmark		2016
Nexen (in UK - Nexen Petroleum UK Limited)	Canada	UK	2015 + 2016
NGEx Resources	Canada	Sweden	2016 + 2017
Nostrum Oil & Gas	Kazakhstan	UK	2016
Petroswede Aktiebolag	Sweden		2015 + 2016
Polymetal International	Russia	UK	2016
Premier Oil Plc	UK		2015 + 2016
Repsol	Spain		2016
Rio Tinto	UK		2015
Romgaz	Romania		2015 + 2016
Rosneft (in UK - Rosneft Marine UK Ltd)	Russia	UK	2015 + 2016
Royal Dutch Shell Plc	Netherlands	UK	2015 + 2016
South32	Australia	UK	2015 + 2016
Statoil	Norway		2014 + 2015 + 2016
Terrafame	Finland		2016
Tethys Oil AB	Sweden		2016
Total Sa	France		2015 + 2016
Tullow Oil	UK		2015 + 2016
Yara	Norway		2015 + 2016
Logging			
Svenska Cellulosa Aktiebolaget SCA	Sweden		2016
Mondi Group	UK		2017

ANNEX 5 List of stakeholders interviewed

Stakeholder type	Country	Stakeholder name
Academia	Italy	University of Genova
Academia	Malaysia	Teckwyn Lim
Company	Finland	Terrafame
Company	France	Total SA
Company	France	Imerys
Company	Italy	ENI
Company	Italy	Cementir
Company	Spain	Repsol
Company	UK	Independent consultant/BP
Company	UK	Rio Tinto
Company	UK	BHP Billiton
Company	UK	Tullow Oil
National authority	France	French Trésor
National authority	Italy	Ministero dell'Economia e delle Finanze
National authority	Netherlands	Dutch Authority for the Financial Markets (AFM)
National authority	Portugal	Comissão de Normalização Contabilística
National authority	Sweden	Swedish Companies Register (Bolagsverket)
National authority	UK	Department for Business, Energy & Industrial Strategy
NGO / civil society	Algeria	Association Algérienne de lutte contre la corruption
NGO / civil society	Cameroon	SAILD
NGO / civil society	Cameroon	CIFOR
NGO / civil society	DR Congo	Publish What You Pay Congo contact point
NGO / civil society	France	Publish what you pay France/ Oxfam France
NGO / civil society	Gabon	Mouvement ça suffit comme ça
NGO / civil society	International	EITI (Extractive Industries Transparency Initiative)
NGO / civil society	International	Global Witness
NGO / civil society	International	Oxfam International
NGO / civil society	International	Publish What You Pay
NGO / civil society	International	Transparency International
NGO / civil society	Nigeria	Environmental Rights Action
NGO / civil society	Nigeria	BudgIT
NGO / civil society	DR Congo	Office of PWYP
NGO / civil society	Sudan	Sign of Hope
NGO / civil society	Tanzania	HakiRasilimali
NGO / civil society	Tanzania	International Institute for Environment and Development
Sector association	International	IOGP (International Association of Oil & Gas Producers)
Sector association	International	ICMM (International Council on Mining and Metals)
Sector association	Italy	Fedecomlegno
Sector association	Italy	Assomineraria

ANNEX 6 Interview questionnaires

A6.1 EU / International organisations

Questionnaire

“Review of country-by-country reporting requirements for extractive and logging industries”

EU / International organisations



STUDY DESCRIPTION

The study covers the provisions of the Accounting Directive (2013/34/EU – Chapter 10) and the Transparency Directive (2013/050/EU – Article 6) regarding country-by-country reporting for extractive and logging industries. It assesses the reports by companies in the scope of the reporting requirements and the impact of the reporting regime for companies, civil societies and governments in resource-rich countries.

The objectives of the review are to:

1. Evaluate the existing reporting requirements in terms of implementation and functioning, including assessing their results and impacts.
2. Fulfil the requirement of Article 48 of the Accounting Directive, which foresees creation of a report to assess the implementation and effectiveness of the reporting requirements.

Part of the data collection are interviews with relevant stakeholders, including: EU / International organisations, national authorities, national sector associations, NGOs / civil society actors, companies in extraction and logging.

In the interview, attention will be placed on the following elements:

- *Implementation*: review of the implementation of the reporting requirements by companies in the different Member States.
- *Effectiveness*: analysis of the progress made towards achieving the **requirements' original specific and operational** objectives in terms of effectiveness, with focus placed on the factors driving and hindering the process.
- *Impacts of other international regimes* (foreign regulations and private initiatives such as the EITI) on the existing ongoing practices within the EU.
- *Effects on competitiveness*: identifying possible advantages for the companies which are not being required to report on payments to governance, providing evidence for material damages or losses of opportunity.
- *Effects on security of energy supply*: listing obstacles for business development in third countries following the introduction of the disclosure measure, identifying domestic law infringements claims by companies falling in the scope of the obligation.

- *Need to amend the reporting requirements to improve their effectiveness in the context of the market environment described through fulfilling the previous objectives.*

The output of the study will be the publication of a report by the Commission in the first quarter of 2019.

Basic information

0 Please provide the following information:

Name: Click or tap here to enter text.

Organisation: Click or tap here to enter text.

Position: Click or tap here to enter text.

E-mail: Click or tap here to enter text.

Phone: Click or tap here to enter text.

0.1 I wish my response to be confidential and not cited in the published report

1

Q.1 Implementation

1 Are companies in the scope generally complying with the reporting requirements?

Click or tap here to enter text.

2 Can notable variances in compliance be identified? Is compliance in some Member States, sectors or for specific reporting requirements significantly better or worse than the average? (e.g. in Member States who adopted the requirements already in 2015)

Click or tap here to enter text.

3 What could be the (additional or alternative) working steps needed for companies to comply with the reporting requirements (both on company and on project level)?

Click or tap here to enter text.

Q.2 Effectiveness

4 To what extent have the objectives of the reporting requirements, namely the increased transparency of operations of logging and extracting companies, and better information to civil society, been achieved?

Click or tap here to enter text.

5 Are the users using the information provided by extractive and logging companies?

Click or tap here to enter text.

6 Do the reporting requirements help governments in resource rich countries to implement the EITI principles and criteria?²⁵¹

Click or tap here to enter text.

7 Do the reporting requirements help EU wood importers to comply with the EU Timber Regulation? (due diligence to prevent illegal activities in the timber value chain)

Click or tap here to enter text.

8 To what extent did the reporting requirements contribute to the broader objectives of reducing illegal logging and extractive operations, corruption and deforestation?

Click or tap here to enter text.

9 Where expectations have not been met, what factors have hindered their achievement?

Click or tap here to enter text.

10 Are there any aspects that render the reporting requirements more or less effective than other sources of information (EITI, financial statements, other...), and – if there are – what lessons can be drawn from this?

Click or tap here to enter text.

11 Are there any unintended effects of reporting requirements?

Click or tap here to enter text.

12 Is the information contained in the report reliable and useful to the user? What type of information is missing?

Click or tap here to enter text.

13 To what extent has the different implementation of the requirements in MS impacted the effectiveness of the reporting requirements on the objectives?

Click or tap here to enter text.

Q.3 International regimes

14 What reporting requirements do EU companies need to comply with that American companies need not (and the other way around)?

Click or tap here to enter text.

15 What reporting requirements do EU companies need to comply with that Canadian companies need not (and the other way around)?

Click or tap here to enter text.

16 Have companies benefited from the Canadian Extractive Sector Transparency Measure Act (ESTMA) and the Commission Implementing Act on its equivalence?

Click or tap here to enter text.

17 What other national reporting requirements might be important for competitors of EU companies?

Click or tap here to enter text.

18 What reporting requirements do EU companies need to comply with that those competitors need not (and the other way around)?

Click or tap here to enter text.

19 What are the impacts of the Extractive Industry Transparency Initiative (EITI) framework on the EU reporting requirements?

Click or tap here to enter text.

20 What reporting requirements of EITI are facilitated by EU reporting requirements?

Click or tap here to enter text.

21 Are third countries with a significant proportion of EU companies in resource extraction more likely to comply with EITI standards?

Click or tap here to enter text.

Q.4 Competitiveness

22 Is there evidence that competitors not subject to the reporting requirements benefit from competitive advantages from not being required to report on payments to governance?

Click or tap here to enter text.

23 Do the reporting requirements create competitive advantages for companies in terms of reputation due to the transparency? Are EU consumers sensitive to the transparency of the companies?

Click or tap here to enter text.

Q.5 Security of energy supply

24 Is there evidence that companies in the scope of the reporting requirements found it harder to operate in third countries following the introduction of the disclosure measure? Is there evidence that third countries would restrict the operations of companies subject to the reporting requirements?

Click or tap here to enter text.

Q.6 Need to amend

25 What aspects of the reporting requirements have companies found unclear, challenging to comply with or open to interpretation? How have companies addressed these uncertainties? Could companies benefit from further guidance on certain areas of the reporting requirements?

Click or tap here to enter text.

26 Should the reporting requirements be extended to additional industry sectors?

Click or tap here to enter text.

27 Are there any relevant industry sectors where those requirements could contribute to the objectives? If so, what are the reasons?

Click or tap here to enter text.

28 What would be the benefits of auditing the report on payments to governments? To what extent are companies already seeking independent assurance on their reporting?

Click or tap here to enter text.

29 Would it be relevant to require the disclosure of additional payment information, such as:

- (1) the average number of employees,
- (2) the use of subcontractors,
- (3) the pecuniary penalties administered by a country,
- (4) the effective tax rates,
- (5) the recipient details such as bank account information.

Click or tap here to enter text.

30 What other information would be useful to users of the reports?

Click or tap here to enter text.

31 What other amendments could improve compliance, effectiveness and efficiency of the reporting requirements?

Click or tap here to enter text.

A6.2 National authorities

Questionnaire

“Review of country-by-country reporting requirements for extractive and logging **industries”**

National Authorities



STUDY DESCRIPTION

The study covers the provisions of the Accounting Directive (2013/34/EU – Chapter 10) and the Transparency Directive (2013/050/EU – Article 6) regarding country-by-country reporting for extractive and logging industries. It assesses the reports by companies in the scope of the reporting requirements and the impact of the reporting regime for companies, civil societies and governments in resource-rich countries.

The objectives of the review are to:

1. Evaluate the existing reporting requirements in terms of implementation and functioning, including assessing their results and impacts.
2. Fulfil the requirement of Article 48 of the Accounting Directive, which foresees creation of a report to assess the implementation and effectiveness of the reporting requirements.

Part of the data collection are interviews with relevant stakeholders, including: EU / International organisations, national authorities, national sector associations, NGOs / civil society actors, companies in extraction and logging.

In the interview, attention will be placed on the following elements:

- *Implementation*: review of the implementation of the reporting requirements by companies in the different Member States.
- *Effectiveness*: analysis of the progress made towards achieving the requirements' original specific and operational objectives in terms of effectiveness, with focus placed on the factors driving and hindering the process.
- *Impacts of other international regimes* (foreign regulations and private initiatives such as the EITI) on the existing ongoing practices within the EU.
- *Effects on competitiveness*: identifying possible advantages for the companies which are not being required to report on payments to governance, providing evidence for material damages or losses of opportunity.
- *Effects on security of energy supply*: listing obstacles for business development in third countries following the introduction of the disclosure measure, identifying domestic law infringements claims by companies falling in the scope of the obligation.
- *Need to amend the reporting requirements* to improve their effectiveness in the context of the market environment described through fulfilling the previous objectives.

The output of the study will be the publication of a report by the Commission in the first quarter of 2019.

Basic information

0 Please provide the following information:

Name: Click or tap here to enter text.

Organisation: Click or tap here to enter text.

Position: Click or tap here to enter text.

E-mail: Click or tap here to enter text.

Phone: Click or tap here to enter text.

0.1 I wish my response to be confidential and not cited in the published report

Q.1 Implementation

1 Are companies in the scope generally complying with the reporting requirements?

Click or tap here to enter text.

2 Can notable variances in compliance be identified? Is compliance in some sectors or for specific reporting requirements significantly better or worse than the average?

Click or tap here to enter text.

3 What are the reasons for the identified lack of compliance in sectors or for specific reporting requirements?

Click or tap here to enter text.

4 How have the reporting requirements been implemented by companies?

Click or tap here to enter text.

5 How are companies complying with the requirements to report at project level?

Click or tap here to enter text.

6 What could be the (additional or alternative) working steps needed for companies to comply with the reporting requirements (both on company and on project level)?

Click or tap here to enter text.

7 Are the reports currently audited or verified, and if yes by whom?

Click or tap here to enter text.

Q.2 Effectiveness

- 8 To what extent have the objectives of the reporting requirements, namely the increased transparency of operations of logging and extracting companies, and better information to civil society, been achieved?
- Click or tap here to enter text.
- 9 Are the users using the information provided by extractive and logging companies?
- Click or tap here to enter text.
- 10 Do the reporting requirements help governments in resource rich countries to implement the EITI principles and criteria?²⁵²
- Click or tap here to enter text.
- 11 Do the reporting requirements help EU wood importers to comply with the EU Timber Regulation? (due diligence to prevent illegal activities in the timber value chain)
- Click or tap here to enter text.
- 12 Where expectations have not been met, what factors have hindered their achievement?
- Click or tap here to enter text.
- 13 Are there any aspects that render the reporting requirements more or less effective than other sources of information (EITI, financial statements, other...), and – if there are – what lessons can be drawn from this?
- Click or tap here to enter text.
- 14 Are there any unintended effects of reporting requirements?
- Click or tap here to enter text.
- 15 Are the users of the reports able to access and use the information? If not, what are the barriers to access?
- Click or tap here to enter text.
- 16 Is the information contained in the report reliable and useful to the user? What type of information is missing?
- Click or tap here to enter text.
- 17 To what extent has the different implementation of the requirements in MS impacted the effectiveness of the reporting requirements on the objectives?
- Click or tap here to enter text.

Q.3 International regimes

- 18 How do companies react to the potential proliferation of reporting standards (EITI, EU, Canadian, US, possibly soon Australian and others?) Would they favour equivalence regimes or rather unified standards?

Click or tap here to enter text.

- 19 What reporting requirements do EU companies need to comply with that American companies need not (and the other way around)?

Click or tap here to enter text.

- 20 What reporting requirements do EU companies need to comply with that Canadian companies need not (and the other way around)?

Click or tap here to enter text.

- 21 Have companies benefited from the Canadian Extractive Sector Transparency Measure Act (ESTMA) and the Commission Implementing Act on its equivalence?

Click or tap here to enter text.

- 22 What other national reporting requirements might be important for competitors of EU companies?

Click or tap here to enter text.

- 23 What reporting requirements do EU companies need to comply with that those competitors need not (and the other way around)?

Click or tap here to enter text.

- 24 What are the impacts of the Extractive Industry Transparency Initiative (EITI) framework on the EU reporting requirements?

Click or tap here to enter text.

- 25 What reporting requirements of EITI are facilitated by EU reporting requirements?

Click or tap here to enter text.

- 26 Are third countries with a significant proportion of EU companies in resource extraction more likely to comply with EITI standards?

Click or tap here to enter text.

Q.4 Competitiveness

27

Is there evidence that competitors not subject to the reporting requirements benefit from competitive advantages from not being required to report on payments to governance?

Click or tap here to enter text.

- 28 Do the reporting requirements create competitive advantages for companies in terms of reputation due to the transparency? Are EU consumers sensitive to the transparency of the companies?

Click or tap here to enter text.

Q.5 Security of energy supply

- 29 Is there evidence that companies in the scope of the reporting requirements found it harder to operate in third countries following the introduction of the disclosure measure? Is there evidence that third countries would restrict the operations of companies subject to the reporting requirements?

Click or tap here to enter text.

Q.6 Need to amend

- 30 What aspects of the reporting requirements have companies found unclear, challenging to comply with or open to interpretation? How have companies addressed these uncertainties? Could companies benefit from further guidance on certain areas of the reporting requirements?

Click or tap here to enter text.

- 31 Should the reporting requirements be extended to additional industry sectors?

Click or tap here to enter text.

- 32 Are there any relevant industry sectors where those requirements could contribute to the objectives? If so, what are the reasons?

Click or tap here to enter text.

- 33 What would be the benefits of auditing the report on payments to governments? To what extent are companies already seeking independent assurance on their reporting?

Click or tap here to enter text.

- 34 Would it be relevant to require the disclosure of additional payment information, such as:

- (1) the average number of employees,
- (2) the use of subcontractors,
- (3) the pecuniary penalties administered by a country,
- (4) the effective tax rates,
- (5) the recipient details such as bank account information.

Click or tap here to enter text.

35 What other information would be useful to users of the reports?

Click or tap here to enter text.

36 What other amendments could improve compliance, effectiveness and efficiency of the reporting requirements?

Click or tap here to enter text.

A6.3 NGO / civil society

Questionnaire

“Review of country-by-country reporting requirements for extractive and logging industries”

NGO / Civil society



STUDY DESCRIPTION

The study covers the provisions of the Accounting Directive (2013/34/EU – Chapter 10) and the Transparency Directive (2013/050/EU – Article 6) regarding country-by-country reporting for extractive and logging industries. It assesses the reports by companies in the scope of the reporting requirements and the impact of the reporting regime for companies, civil societies and governments in resource-rich countries.

The objectives of the review are to:

1. Evaluate the existing reporting requirements in terms of implementation and functioning, including assessing their results and impacts.
2. Fulfil the requirement of Article 48 of the Accounting Directive, which foresees creation of a report to assess the implementation and effectiveness of the reporting requirements.

Part of the data collection are interviews with relevant stakeholders, including: EU / International organisations, national authorities, national sector associations, NGOs / civil society actors, companies in extraction and logging.

In the interview, attention will be placed on the following elements:

- *Implementation*: review of the implementation of the reporting requirements by companies in the different Member States.
- *Effectiveness*: analysis of the progress made towards achieving the **requirements'** original specific and operational objectives in terms of effectiveness, with focus placed on the factors driving and hindering the process.
- *Impacts of other international regimes* (foreign regulations and private initiatives such as the EITI) on the existing ongoing practices within the EU.
- *Effects on competitiveness*: identifying possible advantages for the companies which are not being required to report on payments to governance, providing evidence for material damages or losses of opportunity.
- *Effects on security of energy supply*: listing obstacles for business development in third countries following the introduction of the disclosure measure, identifying domestic law infringements claims by companies falling in the scope of the obligation.
- *Need to amend the reporting requirements* to improve their effectiveness in the context of the market environment described through fulfilling the previous objectives.

The output of the study will be the publication of a report by the Commission in the first quarter of 2019.

Basic information

0 Please provide the following information:

Name: Click or tap here to enter text.

Organisation: Click or tap here to enter text.

Position: Click or tap here to enter text.

E-mail: Click or tap here to enter text.

Phone: Click or tap here to enter text.

0.1 I wish my response to be confidential and not cited in the published report

Q.1 Implementation

1 Are companies in the scope generally complying with the reporting requirements?

Click or tap here to enter text.

2 Can notable variances in compliance be identified? Is compliance in some Member States, sectors or for specific reporting requirements significantly better or worse than the average? (e.g. in Member States who adopted the requirements already in 2015)

Click or tap here to enter text.

3 What could be the (additional or alternative) working steps needed for companies to comply with the reporting requirements (both on company and on project level)?

Click or tap here to enter text.

Q.2 Effectiveness

4 To what extent have the objectives of the reporting requirements, namely the increased transparency of operations of logging and extracting companies, and better information to civil society, been achieved?

Click or tap here to enter text.

5 Are the users using the information provided by extractive and logging companies?

Click or tap here to enter text.

6 To what extent did the reporting requirements contribute to the broader objectives of reducing illegal logging and extractive operations, corruption and deforestation?

Click or tap here to enter text.

7 Where expectations have not been met, what factors have hindered their achievement?

Click or tap here to enter text.

8 Are there any aspects that render the reporting requirements more or less effective than other sources of information (EITI, financial statements, other...), and – if there are – what lessons can be drawn from this?

Click or tap here to enter text.

9 Are there any unintended effects of reporting requirements?

Click or tap here to enter text.

10 Are the users of the reports able to access and use the information? If not, what are the barriers to access?

Click or tap here to enter text.

11 Is the information contained in the report reliable and useful to the user? What type of information is missing?

Click or tap here to enter text.

12 To what extent has the different implementation of the requirements in MS impacted the effectiveness of the reporting requirements on the objectives?

Click or tap here to enter text.

Q.3 International regimes

13 What are the impacts of the Extractive Industry Transparency Initiative (EITI) framework on the EU reporting requirements?

Click or tap here to enter text.

Q.4 Competitiveness

14 Do important competitors use weak governance systems in third countries to gain a competitive advantage? Do these impacts differ in different types of third countries?

Click or tap here to enter text.

15 Do the reporting requirements create competitive advantages for companies in terms of reputation due to the transparency? Are EU consumers sensitive to the transparency of the companies?

Click or tap here to enter text.

Q.5 Security of energy supply

- 16 Is there evidence that companies in the scope of the reporting requirements found it harder to operate in third countries following the introduction of the disclosure measure? Is there evidence that third countries would restrict the operations of companies subject to the reporting requirements?

Click or tap here to enter text.

Q.6 Need to amend

- 17 Should the reporting requirements be extended to additional industry sectors?

Click or tap here to enter text.

- 18 Are there any relevant industry sectors where those requirements could contribute to the objectives? If so, what are the reasons?

Click or tap here to enter text.

- 19 What would be the benefits of auditing the report on payments to governments? To what extent are companies already seeking independent assurance on their reporting?

Click or tap here to enter text.

- 20 Would it be relevant to require the disclosure of additional payment information, such as:
- (1) the average number of employees,
 - (2) the use of subcontractors,
 - (3) the pecuniary penalties administered by a country,
 - (4) the effective tax rates,
 - (5) the recipient details such as bank account information.

Click or tap here to enter text.

- 21 What other information would be useful to users of the reports?

Click or tap here to enter text.

- 22 What other amendments could improve compliance, effectiveness and efficiency of the reporting requirements?

Click or tap here to enter text.

A6.4 Sector associations

Questionnaire

“Review of country-by-country reporting requirements for extractive and logging industries”

Sector associations



STUDY DESCRIPTION

The study covers the provisions of the Accounting Directive (2013/34/EU – Chapter 10) and the Transparency Directive (2013/050/EU – Article 6) regarding country-by-country reporting for extractive and logging industries. It assesses the reports by companies in the scope of the reporting requirements and the impact of the reporting regime for companies, civil societies and governments in resource-rich countries.

The objectives of the review are to:

1. Evaluate the existing reporting requirements in terms of implementation and functioning, including assessing their results and impacts.
2. Fulfil the requirement of Article 48 of the Accounting Directive, which foresees creation of a report to assess the implementation and effectiveness of the reporting requirements.

Part of the data collection are interviews with relevant stakeholders, including: EU / International organisations, national authorities, national sector associations, NGOs / civil society actors, companies in extraction and logging.

In the interview, attention will be placed on the following elements:

- *Implementation*: review of the implementation of the reporting requirements by companies in the different Member States.
- *Effectiveness*: analysis of the progress made towards achieving the **requirements' original specific and operational objectives in terms of effectiveness**, with focus placed on the factors driving and hindering the process.
- *Impacts of other international regimes* (foreign regulations and private initiatives such as the EITI) on the existing ongoing practices within the EU.
- *Effects on competitiveness*: identifying possible advantages for the companies which are not being required to report on payments to governance, providing evidence for material damages or losses of opportunity.
- *Effects on security of energy supply*: listing obstacles for business development in third countries following the introduction of the disclosure measure, identifying domestic law infringements claims by companies falling in the scope of the obligation.
- *Need to amend the reporting requirements* to improve their effectiveness in the context of the market environment described through fulfilling the previous objectives.

The output of the study will be the publication of a report by the Commission in the first quarter of 2019.

Basic information

0 Please provide the following information:

Name: Click or tap here to enter text.

Organisation: Click or tap here to enter text.

Position: Click or tap here to enter text.

E-mail: Click or tap here to enter text.

Phone: Click or tap here to enter text.

0.1 I wish my response to be confidential and not cited in the published report

Q.1 Implementation

1 Are companies in the scope generally complying with the reporting requirements?

Click or tap here to enter text.

2 Can notable variances in compliance be identified? Is compliance in some Member States, sectors or for specific reporting requirements significantly better or worse than the average? (e.g. in Member States who adopted the requirements already in 2015)

Click or tap here to enter text.

3 What are the reasons for the identified lack of compliance in Member States, sectors or for specific reporting requirements?

Click or tap here to enter text.

4 How have the reporting requirements been implemented by companies?

Click or tap here to enter text.

5 How are companies complying with the requirements to report at project level?

Click or tap here to enter text.

6 How do companies address the reporting requirements as regards joint-venture operations?

Click or tap here to enter text.

7 What could be the (additional or alternative) working steps needed for companies to comply with the reporting requirements (both on company and on project level)?

Click or tap here to enter text.

8 Are the reports currently audited or verified, and if yes by whom?

Click or tap here to enter text.

2

Q.2 Effectiveness

9 To what extent have the objectives of the reporting requirements, namely the increased transparency of operations of logging and extracting companies, and better information to civil society, been achieved?

Click or tap here to enter text.

10 What are the compliance costs of the reporting requirements and do the costs significantly differ for some groups (e.g. SMEs)?

Click or tap here to enter text.

Q.3 International regimes

11 How do companies react to the potential proliferation of reporting standards (EITI, EU, Canadian, US, possibly soon Australian and others?) Would they favour equivalence regimes or rather unified standards?

Click or tap here to enter text.

12 What reporting requirements do EU companies need to comply with that American companies need not (and the other way around)?

Click or tap here to enter text.

13 What reporting requirements do EU companies need to comply with that Canadian companies need not (and the other way around)?

Click or tap here to enter text.

14 Have companies benefited from the Canadian Extractive Sector Transparency Measure Act (ESTMA) and the Commission Implementing Act on its equivalence?

Click or tap here to enter text.

15 What other national reporting requirements might be important for competitors of EU companies?

Click or tap here to enter text.

16 What reporting requirements do EU companies need to comply with that those competitors need not (and the other way around)?

Click or tap here to enter text.

17 What are the impacts of the Extractive Industry Transparency Initiative (EITI) framework on the EU reporting requirements?

Click or tap here to enter text.

18 What reporting requirements of EITI are facilitated by EU reporting requirements?

Click or tap here to enter text.

19 Are third countries with a significant proportion of EU companies in resource extraction more likely to comply with EITI standards?

Click or tap here to enter text.

Q.4 Competitiveness

20 Is there evidence that competitors not subject to the reporting requirements benefit from competitive advantages from not being required to report on payments to governance?

Click or tap here to enter text.

21 Is there evidence that companies in the scope of the reporting requirements suffered material damages or losses of opportunity caused by such disclosure? If so, which ones?

Click or tap here to enter text.

22 Do the requirements cause compliance costs that do not apply to important competitors?

Click or tap here to enter text.

23 Do the requirements have a differential impact on international trade or general competitiveness (asymmetry in information available to competitor) for EU companies?

Click or tap here to enter text.

24 Do the requirements have a differential impact on innovation in the sector for EU companies?

Click or tap here to enter text.

25 Do important competitors use weak governance systems in third countries to gain a competitive advantage? Do these impacts differ in different types of third countries?

Click or tap here to enter text.

26 Are there any reporting requirements which are especially hurtful to the competitive position of EU companies?

Click or tap here to enter text.

- 27 What are the impacts of the non-implementation of section 1504 of the Dodd Frank Act in United States?

Click or tap here to enter text.

- 28 What are the consequences of an unlevelled-playing field?

Click or tap here to enter text.

- 29 Do the reporting requirements create competitive advantages for companies in terms of reputation due to the transparency? Are EU consumers sensitive to the transparency of the companies?

Click or tap here to enter text.

Q.5 Security of energy supply

- 30 Is there evidence that companies in the scope of the reporting requirements found it harder to operate in third countries following the introduction of the disclosure measure? Is there evidence that third countries would restrict the operations of companies subject to the reporting requirements?

Click or tap here to enter text.

- 31 Is there evidence of impacts in terms of contractual terms, price or volume?

Click or tap here to enter text.

- 32 Have the energy imports of the EU have become more concentrated due to the reporting requirements?

Click or tap here to enter text.

- 33 Is there evidence that companies claimed infringements of their domestic law following the introduction of the reporting requirements?

Click or tap here to enter text.

Q.6 Need to amend

- 34 What aspects of the reporting requirements have companies found unclear, challenging to comply with or open to interpretation? How have companies addressed these uncertainties? Could companies benefit from further guidance on certain areas of the reporting requirements?

Click or tap here to enter text.

- 35 Should the reporting requirements be extended to additional industry sectors?

Click or tap here to enter text.

36 Are there any relevant industry sectors where those requirements could contribute to the objectives? If so, what are the reasons?

Click or tap here to enter text.

37 What would be the benefits of auditing the report on payments to governments? To what extent are companies already seeking independent assurance on their reporting?

Click or tap here to enter text.

38 Would it be relevant to require the disclosure of additional payment information, such as:

- (1) the average number of employees,
- (2) the use of subcontractors,
- (3) the pecuniary penalties administered by a country,
- (4) the effective tax rates,
- (5) the recipient details such as bank account information.

Click or tap here to enter text.

A6.5 Companies

Questionnaire

“Review of country-by-country reporting requirements for extractive and logging industries”

Companies



Deloitte.

STUDY DESCRIPTION

The study covers the provisions of the Accounting Directive (2013/34/EU – Chapter 10) and the Transparency Directive (2013/050/EU – Article 6) regarding country-by-country reporting for extractive and logging industries. It assesses the reports by companies

The objectives of the review are to:

1. Evaluate the existing reporting requirements in terms of implementation and functioning, including assessing their results and impacts.
2. Fulfil the requirement of Article 48 of the Accounting Directive, which foresees creation of a report to assess the implementation and effectiveness of the reporting requirements.

Part of the data collection are interviews with relevant stakeholders, including: EU / International organisations, national authorities, national sector associations, NGOs / civil society actors, companies in extraction and logging.

In the interview, attention will be placed on the following elements:

- *Implementation*: review of the implementation of the reporting requirements by companies in the different Member States.
- *Effectiveness*: analysis of the progress made towards achieving the **requirements'** original specific and operational objectives in terms of effectiveness, with focus placed on the factors driving and hindering the process.
- *Impacts of other international regimes* (foreign regulations and private initiatives such as the EITI) on the existing ongoing practices within the EU.
- *Effects on competitiveness*: identifying possible advantages for the companies which are not being required to report on payments to governance, providing evidence for material damages or losses of opportunity.
- *Effects on security of energy supply*: listing obstacles for business development in third countries following the introduction of the disclosure measure, identifying domestic law infringements claims by companies falling in the scope of the obligation.
- *Need to amend the reporting requirements* to improve their effectiveness in the context of the market environment described through fulfilling the previous objectives.

The output of the study will be the publication of a report by the Commission in the first quarter of 2019.

Basic information

- 0 Please provide the following information:
Name: Click or tap here to enter text.
Company: Click or tap here to enter text.
Position: Click or tap here to enter text.
E-mail: Click or tap here to enter text.
Phone: Click or tap here to enter text.
- 0.1 In which sector(s) does your company operate?
 Extraction
 Logging
- 0.2 What is the size of your company?
 Micro (Staff: <10; Turnover or Balance sheet total: ≤ € 2 m)
 Small (Staff: < 50; Turnover or Balance sheet total: ≤ € 10 m)
 Medium (Staff: < 250; Turnover or Balance sheet total: ≤ € 50 m)
 Large (Staff: > 250; Turnover or Balance sheet total: > € 50 m)
- 0.3 In which country is your company established?
Click or tap here to enter text.
- 0.4 In which countries does your company operate?
Click or tap here to enter text.
- 0.5 I wish my response to be confidential and not cited in the published report

Q.1 Implementation

- 1 Does your company comply with the reporting requirements?
Click or tap here to enter text.
- 2 How have the reporting requirements been implemented by your company?
Click or tap here to enter text.
- 3 How is your company complying with the requirements to report at project level?
Click or tap here to enter text.

4 How is your company addressing the reporting requirements regarding joint-venture operations?

Click or tap here to enter text.

5 What could be the (additional or alternative) working steps needed for your company to comply with the reporting requirements (both on company and on project level)?

Click or tap here to enter text.

6 Are the reports currently audited or verified, and if yes by whom?

Click or tap here to enter text.

Q.2 Effectiveness

7 What are the compliance costs of the reporting requirements for your company?

Click or tap here to enter text.

8 To what extent have the objectives of the reporting requirements, namely the increased transparency of operations of logging and extracting companies, and better information to civil society, been achieved?

Click or tap here to enter text.

Q.3 International regimes

9 What is your opinion on the proliferation of reporting standards (EITI, EU, Canadian, US, possibly soon Australian and others)? Would you favour equivalence regimes or unified standards?

Click or tap here to enter text.

10 What reporting requirements does your company need to comply with that American companies need not (and the other way around)?

Click or tap here to enter text.

11 What reporting requirements does your company need to comply with that Canadian companies need not (and the other way around)?

Click or tap here to enter text.

12 Has your company benefited from the Canadian Extractive Sector Transparency Measure Act (ESTMA) and the Commission Implementing Act on its equivalence?

Click or tap here to enter text.

13 What other national reporting requirements might be important for your competitors?

Click or tap here to enter text.

- 14 What reporting requirements does your company need to comply with that your competitors need not (and the other way around)?

Click or tap here to enter text.

- 15 What are the impacts of the Extractive Industry Transparency Initiative (EITI) **framework on your company's reporting requirements?**

Click or tap here to enter text.

- 16 What reporting requirements of EITI are facilitated by EU reporting requirements?

Click or tap here to enter text.

- 17 Are third countries with a significant proportion of EU companies in resource extraction more likely to comply with EITI standards?

Click or tap here to enter text.

Q.4 Competitiveness

- 18 Is there evidence that your competitors not subject to the reporting requirements benefit from competitive advantages from not being required to report on payments to governance?

Click or tap here to enter text.

- 19 Did your company suffer material damages or losses of opportunity caused by such disclosure? If so, which ones?

Click or tap here to enter text.

- 20 Do the requirements cause compliance costs to your company that do not apply to your competitors?

Click or tap here to enter text.

- 21 Do the requirements have a differential impact on international trade or general competitiveness (asymmetry in information available to competitor) for you or/and EU companies?

Click or tap here to enter text.

- 22 Do the requirements have a differential impact on innovation in the sector for you or/and EU companies?

Click or tap here to enter text.

23

Do your competitors use weak governance systems in third countries to gain a competitive advantage? Do these impacts differ in different types of third countries?

Click or tap here to enter text.

24 Are there any reporting requirements which are especially hurtful to the competitive position of your or/and EU companies?

Click or tap here to enter text.

25 What are the impacts of the non-implementation of section 1504 of the Dodd Frank Act in United States?

Click or tap here to enter text.

26 What are the consequences of an unlevelled-playing field?

Click or tap here to enter text.

27 Do the reporting requirements create competitive advantages for you or/and other companies in terms of reputation due to the transparency? Are EU consumers sensitive to the transparency of the companies?

Click or tap here to enter text.

Q.5 Security of energy supply

28 Did your company find it harder to operate in third countries following the introduction of the disclosure measure? Is there evidence that third countries would restrict the operations of your or/and other companies subject to the reporting requirements?

Click or tap here to enter text.

29 Did your company experience impacts in terms of contractual terms, price or volume?

Click or tap here to enter text.

30 In your opinion, have the energy imports of the EU have become more concentrated due to the reporting requirements?

Click or tap here to enter text.

31 Did third country governments claim infringements on domestic law following the introduction of the reporting requirements?

Click or tap here to enter text.

Q.6 Need to amend

32 What aspects of the reporting requirements your company found unclear, challenging to comply with or open to interpretation? How has your company

addressed these uncertainties? Could your company benefit from further guidance on certain areas of the reporting requirements?

Click or tap here to enter text.

- 33 What would be the benefits of auditing the report on payments to governments? To what extent is your or/and other companies already seeking independent assurance on their reporting?

Click or tap here to enter text.

- 34 Would it be relevant to require the disclosure of additional payment information, such as:

- (1) the average number of employees,
- (2) the use of subcontractors,
- (3) the pecuniary penalties administered by a country,
- (4) the effective tax rates,
- (5) the recipient details such as bank account information.

Click or tap here to enter text.

ANNEX 7 Survey questionnaire



STUDY DESCRIPTION

The study covers the provisions of the Accounting Directive (2013/34/EU – Chapter 10) and the Transparency Directive (2013/050/EU – Article 6) regarding country-by-country reporting for extractive and logging industries. It assesses the reports by companies in the scope of the reporting requirements and the impact of the reporting regime for companies, civil societies and governments in resource-rich countries.

The objectives of the review are to:

1. Evaluate the existing reporting requirements in terms of implementation and functioning, including assessing their results and impacts.
2. Fulfil the requirement of Article 48 of the Accounting Directive, which foresees creation of a report to assess the implementation and effectiveness of the reporting requirements.

Part of the data collection are interviews and surveys with relevant stakeholders, including: EU / International organisations, national authorities, national sector associations, NGOs / civil society actors, companies in extraction and logging.

In the survey, attention will be placed on the following elements:

- *Implementation*: review of the implementation of the reporting requirements by companies in the different Member States.
- *Effectiveness*: analysis of the progress made towards achieving the requirements' **original specific and operational objectives in terms of effectiveness**, with focus placed on the factors driving and hindering the process.
- *Impacts of other international regimes* (foreign regulations and private initiatives such as the EITI) on the existing ongoing practices within the EU.
- *Effects on competitiveness*: identifying possible advantages for the companies which are not being required to report on payments to governance, providing evidence for material damages or losses of opportunity.
- *Effects on security of energy supply*: listing obstacles for business development in third countries following the introduction of the disclosure measure, identifying domestic law infringements claims by companies falling in the scope of the obligation.
- *Need to amend the reporting requirements* to improve their effectiveness in the context of the market environment described through fulfilling the previous objectives.

The output of the study will be the publication of a report by the Commission in the first quarter of 2019.

Basic information

0 Please provide the following information:

Name: Click or tap here to enter text.

Company: Click or tap here to enter text.

Position: Click or tap here to enter text.

E-mail: Click or tap here to enter text.

Phone: Click or tap here to enter text.

0.1 In which sector(s) does your company operate?

Extraction

Logging

0.2 What is the size of your company?

Micro (Staff: <10; Turnover or Balance sheet total: ≤ € 2 m)

Small (Staff: < 50; Turnover or Balance sheet total: ≤ € 10 m)

Medium (Staff: < 250; Turnover or Balance sheet total: ≤ € 50 m)

Large (Staff: > 250; Turnover or Balance sheet total: > € 50 m)

0.3 In which country is your company established?

Click or tap here to enter text.

0.4 In which countries does your company operate?

Click or tap here to enter text.

0.5 I wish my response to be confidential and not cited in the published report

Q.1 Implementation

1 Are you familiar with the reporting requirements from the EU Accounting Directive and Transparency Directive?

Yes

No

2 What is the process in your country of establishment to comply with the reporting requirements?

Reports submitted to business registries

Reports published on the company website

Separate report

Information in annual or financial report

3 Does your company comply with the reporting requirements at company level?

- Yes
- No

4 Does your company comply with the reporting requirements at project level?

- Yes
- No

5 How does your company address the reporting requirements regarding joint-venture operations?

- Includes all joint-venture operations
- Includes some joint-venture operations
- Does not include joint-venture operations

6 Were any of the reporting requirements unclear to interpret or challenging to comply with?

- Yes
- No

If Yes, please elaborate which reporting requirements were unclear to interpret or challenging to comply with
Click or tap here to enter text.

7 Did you benefit from any guidance to implement the reporting requirements?

- Yes, by the government
- Yes, by a sector association
- Yes, by peer support in the industry
- Yes, by a legal adviser
- No

Q.2 Effectiveness

8 Has your company been approached by civil society/NGOs regarding the information you have provided in the reports?

- Yes
- No

9 What were/are your company's costs to comply with the reporting requirements, in terms of man days?

- 0-10 man days per year and report
- 10-20 man days per year and report
- 20-30 man days per year and report
- More than 30 man days per year and report

10 What would be the daily cost rate of the members of staff involved in the publication of those reports?

- less than 200 EUR per man day
- 200-400 EUR per man day
- 400-600 EUR per man day
- 600-800 EUR per man day
- more than 800 EUR per man day

11 Do these costs differ significantly (more than 50%) per project?

- Yes
- No

Q.3 International regimes

12 Do you think that other standard regimes (EITI, Canadian ESTMA, Dodd Frank Act, Australian one) provide the same transparency and are equivalent to the EU reporting requirements?

- Yes
- No

If Yes, please specify which ones:
Click or tap here to enter text.

Q.4 Competitiveness

13 In your opinion, do the reporting requirements cause compliance costs that do not apply to your competitors?

- Yes
- No

If Yes, please specify which compliance costs caused by reporting requirements apply to you, but not your competitors:
Click or tap here to enter text.

14 Is there evidence that competitors not subject to the reporting requirements benefit from competitive advantages from not being required to report on payments to governance?

- Yes
- No

If Yes, please specify what competitive advantages your competitors benefit from:
Click or tap here to enter text.

15 Did your companies suffer material damages or losses of opportunity caused by such disclosure?

- Yes
- No

If Yes, do you consider the material damage or losses of opportunity to be:
 Very significant
 Somewhat significant
 Not significant

Q.5 Security of energy supply

- 16 Did your company find it harder to operate in third countries following the introduction of the disclosure measures?
- Yes
 No
- 17 Is there evidence that third countries restrict the operations of companies subject to the reporting requirements?
- Yes
 No

Q.6 Need to amend

- 18 Would the disclosure of the following additional information increase the compliance costs for your company in terms of:
- (1) the average number of employees,
- Yes, very much
 Yes, somewhat
 No
- (2) the use of subcontractors,
- Yes, very much
 Yes, somewhat
 No
- (3) the pecuniary penalties administered by a country,
- Yes, very much
 Yes, somewhat
 No
- (4) the effective tax rates
- Yes, very much
 Yes, somewhat
 No
- (5) the recipient details such as bank account information
- Yes, very much
 Yes, somewhat
 No

ANNEX 8 Summary of workshops' **discussions**

Review of country-by-country reporting requirements for extractive and logging industries

Workshop with reports users

19 September 2018

Agenda

09:30 – 09:35	Welcome & introduction to the workshop and its objectives by Jean-Philippe Rabine, European Commission
	Plenary discussion of the study Review of country-by-country reporting requirements for extractive and logging industries and case studies
09:35 – 10:05	Lucas Porsch, VVA Presentation of the main recommendations and the main findings of the cases studies assessing the added value and effectiveness of introducing a compulsory audit of the report and adding further reporting requirements
10:05 – 10:25	Reactions from: <ul style="list-style-type: none">• Marc-Olivier Herman and Miles Litvinoff, Publish What You Pay EU• Pr. Jim Haslam, University of Sheffield• Pr. Louise Crawford, Aberdeen Business School
10:25 – 10:55	Q&A session and plenary discussion with the participants about the report, recommendations and cases studies, moderator Robert Haffner, Ecorys
10:55 – 11:10	Coffee break
	Working groups on the added value and potential effectiveness of introducing a compulsory audit of the report and adding further reporting requirements
11:10 – 12:10	Working group 1: added value and potential effectiveness of introducing a compulsory audit chaired by Robert Haffner, Ecorys
11:10 – 12:10	Working group 2: added value and potential effectiveness of introducing additional reporting requirements chaired by Lucas Porsch, VVA
	Presentation of the working groups' results and conclusion of the workshop
12:10 – 12:25	Presentation of the two working groups results by Lucie Lechardoy, Timothé Péroz, VVA
12:25 – 12:30	Concluding remarks by Robert Haffner

List of participants

- Jean-Philippe Rabine European Commission
- Paul Fraix European Commission
- Christoffer Borchgrevink Claussen Extractive Industries
Transparency Initiative
- Ines Schjolberg Marques Extractive Industries
Transparency Initiative
- Marc-Olivier Herman Oxfam International
- Miles Litvinoff Publish What You Pay
- James Royston Publish What You Pay
- Elena Livia Gaita Transparency International
- Clotilde Henriot Client Earth
- Karen Diaz Global Reporting Initiative
- **Mia d'Adhemar** Global Reporting Initiative
- Joseph Williams Natural Resource Governance
Institute
- Alexander Malden Natural Resource Governance
Institute
- Louise Crawford Newcastle University
- Jim Haslam Sheffield University
- Emile van Diggelen Dutch Authority for the Financial
Markets
- Ine Tollenaers ONE
- Andrew Stevenson Deloitte
- Tony Hand EIT RawMaterials
- Robert Haffner Ecorys
- Chloé Gavard Deloitte
- Lucas Porsch VVA
- VVA
- Lucie Lechardoy VVA
- Timothé Péroz VVA

Comments on findings:

The participants made the following comments and suggestions on the preliminary findings in the workshop:

- Participants noted that the main aspects that should be clarified in the requirements are:
 - The definition of projects;
 - The approach on joint ventures;
 - The treatment of in kind payment (report both the value and the volume and not mix different types of commodities (e.g. oil and gas) together);
 - Naming clearly the government entity receiving payment;
 - The definition and scope of primary forests.
- If guidelines are drawn up at EU or national level, civil society representatives would like to be involved in the consultation. Some participants also argued that guidance would not be enough but called for the missing definitions to be added to the legislation.
- Participants highlighted the need to ease the access to information/data. In that sense, an important recommendation from civil society is to have a central repository of reports at EU level, with machine readable data.
- Some participants called for a reporting requirement for payments to governments related to the sale of oil, gas and minerals (commodity trading). Commodity trading payments are the largest payment stream missing from mandatory disclosures and are often greater in value than payments for other payment types. It was noted by other participants that such payments might not naturally fall within the intended remit of Chapter 10 to the extent they are not directly related to extractive activity or projects.
- Participants also confirmed the need for more contextual data (e.g. on the production, volume) as very often the payment information can only be assessed and used with that contextual information. Other participants noted that this could significantly change the nature of the reporting from its existing numerical, and usually tabular, format.
- Participants recalled that according to Article 45.2 of the Accounting Directive, Member States shall ensure that reports are drawn up in accordance with the Directive. However there is currently very little monitoring from national authorities.
- The distinction that the reporting requirements aim at holding governments (not companies) to account was found to be less important, as in the view of some participants they serve both purposes.

Working group on auditing the reports:

- In the current situation, without mandatory audit:
 - Civil society can question the reliability of reports, and wants to make sure the data are correct to be confident to use them.
 - Reporting interpretations and practices vary across companies
 - There are sometimes errors and inconsistencies in the reports
- A full audit would enhance the credibility of the reports and the confidence of civil society to use them. However it depends on the clarity of definitions. The materiality would be linked to the threshold for reporting, and can be established either from the threshold in the Directive, or by the auditor.

- Limited assurance would already increase the reliability of reports. However the scope can be defined between the auditor and the company, and discrepancies across companies would remain. The International Federation of Accountants has established standards for auditing and for assurance engagements (ISAE 3000). However the framework regarding limited assurance is very general and would need to be tailored to the specific reporting regime to define the scope.
- Another option would be to include the reports in annual reports. This would carry more weight and imply that there are no inconsistencies between the reports and the audited financial statements. The report could also, or alternatively, be included in corporate social responsibility reports.
- Another requirement could be a reconciliation between reports and other financial reports, which could be difficult since the figures do not have the same basis (cash vs accruals).
- Agreed upon procedures consist in defining the scope from the start, it can be a first step. However it does not constitute an audit.

Working group on additional requirements:

- The added requirements suggested are deemed not to be the most important ones. They were added to the review clause of the directives for historic reasons but a more open discussion on what added information would be useful, would be appreciated.
- One additional information would not be enough to provide a comprehensive **picture of the company's activities**. The **additional requirements need** to be combined to provide the broader picture about the context in which the company operates.
- It is important to clearly define certain aspects of the additional requirements (e.g. what is a subcontractor), what information to include (e.g. is it preferable to include the value of the contract or just the name of the participants in the operation?) or the materiality level (e.g. for the pecuniary penalties).
 - The number of employees could indicate the level of economic activity in the country and if there is an important difference between the number of employees and the profit of the company, it could be worth investigating further the cause of this gap; in itself, it would not **provide a comprehensive picture about the company's activities (there is a need to couple this requirement with additional information)**. In practical terms, the EITI already requires this information. However, the centralization of the data for all the countries of operation could be burdensome at company level.
 - For the use of subcontractors, it is first important to clearly define the notion of subcontractor itself. The opacity about the involvement **of different subcontractors in a company's activities can hide practices of corruption**. Thus, greater transparency would be welcome. While the disclosure of information about subcontractors could be costly, minimum information to report could include, for each subcontractor above a minimum subcontract materiality threshold, at least the name of the subcontractors who are involved in the operations and beneficial

- ownership disclosure, including Politically Exposed Persons (PEPs), for each named subcontractor.
- With regards to the pecuniary penalties, it is of utmost importance to clearly define the materiality and the scope of the pecuniary penalties and the legal consequences for the company. It was suggested that this would help demonstrate which companies had a track record of being good corporate citizens.
 - For the bank account details: while naming the government entity that received the payment is crucial, participants were not sure about the added value of providing the bank account details. One added suggestion was to provide only the country or institute of the bank account to identify payments which do not reach the country in the first place. In any case, there is a need to define what information to disclose about the bank account and what would be legally allowed to do.
- Overall there is a need to find the best information (or combination of data) that will help the users to contextualize the payments made. In addition, an important and effective step would be to determine which requirements already in place could be improved in priority.
 - It was noted by other participants that additional information, such as number of employees, seemed to be wanted at least in part in order to better understand and assess companies on their activities and payments (rather than holding governments to account for payments received). Information (indeed much more detailed and targeted information) for this purpose is increasingly now disclosed to, and exchangeable between, tax authorities under national requirements arising from BEPS Action 13. There is currently no requirement to publicly disclose this information, although such a requirement is currently being considered by EU authorities.
 - Some stakeholders confirmed that the limitation of the reporting to logging in primary forests is thought to be an important limitation that should be reviewed.

Review of country-by-country reporting requirements for extractive and logging industries

Workshop with industry representatives

19 September 2018

Agenda

14:00 – 14:05 Welcome & introduction to the workshop and its objectives by Jean-Philippe Rabine, European Commission

Plenary discussion of the study Review of country-by-country reporting requirements for extractive and logging industries and case studies

Presentation of the study by Lucas Porsch, VVA:

14:05 – 14:35 Presentation of the main recommendations and the main findings of the cases studies assessing the added value and effectiveness of introducing a compulsory audit of the report and adding further reporting requirements

14:35 – 14:55 Reactions from:

- François-Régis Mouton, International Association of Oil & Gas Producers
- Luke Balleny, International Council on Mining and Metals
- Mark Rachovides, European Association of Mining Industries, Metal Ores & Industrial Minerals

14:55 – 15:25 • Q&A session and plenary discussion with the participants about the report, recommendations and cases studies, moderator Robert Haffner, Ecorys

15:25 – 15:40 Coffee break

Working groups on the added value and potential effectiveness of introducing a compulsory audit of the report and adding further reporting requirements

15:40 – 16:40 Working group 1: administrative and financial impacts of introducing a compulsory audit chaired by Robert Haffner, Ecorys

15:40 – 16:40 Working group 2: administrative and financial impacts of introducing additional reporting requirements chaired by Lucas Porsch, VVA

Presentation of the working group results and conclusion of the workshop

16:40 – 16:55 Presentation of the two working groups results by Lucie Lechardoy, Timothé Péroz, VVA

16:55 – 17:00 Concluding remarks by Robert Haffner, Ecorys

List of participants

- Jean-Philippe Rabine European Commission
- Paul Fraix European Commission
- Kamila Piotrowska International Association of Oil & Gas Producers
- François-Régis Mouton International Association of Oil & Gas Producers

- Luke Balleny International Council on Mining and Metals
- Jérôme Roche European Organisation of Agricultural, Rural and Forestry Contractors
- Mark Rachovides European Association of Mining Industries, Metal Ores & Industrial Minerals

- Corina Erika Hebestreit European Association of Mining Industries, Metal Ores & Industrial Minerals
- Stephen Blythe Independent consultant

- Thérèse Le-eludut Rio Tinto
- Rosie Donachie BHP Billiton
- Brianda Bugge-Mahrt BHP Billiton

- David Rider BP
- Donovan Ingram ExxonMobil
- Tom Evans Oil and Gas
- Annelies Jaggie Shell
- Arne Koepfel FTI Consulting for Anglo American
- Andrew Stevenson Deloitte
- Tony Hand EIT RawMaterials
- Robert Haffner Ecorys
- Chloé Gavard Deloitte
- Lucas Porsch VVA
- Lucie Lechardoy VVA
- Timothé Pérez VVA

Comments on findings:

The participants made the following comments and suggestions on the preliminary findings in the workshop:

- The industry finds it premature to amend the Directive before having evidence that the reports are being used and effectively contribute to greater transparency and greater accountability of governments in resource-rich countries.
- The industry challenged EU authorities for evidence that overseas **governments were “changing their behaviour” in relation to information which** was already being put in the public domain.
- Capacity building of civil society in resource rich countries is crucial to enable them to use the reports and to improve resource governance.
- Any revision of the Directive should be evidence based, purposeful, and in line with the objectives of the Directive.
- Changes to the Directive could threaten the equivalence gained with other reporting regimes such as the Canadian ESTMA regime, where this equivalence is highly valued by preparers.
- Some commentators mentioned that the OECD BEPS Action 13 requiring large companies to report country by country information on corporate tax would meet the objectives of some of the additional proposals. In many ways, the Action 13 reporting requirements has made the additional information envisaged in Article 48 of the Directive for this review process to be largely **“out of date”, although the Action 13 data is currently only available to tax** authorities rather than wider society.
- Participants highlighted that the objective of the Directive is to enable civil society to hold governments accountable, not the companies. However, Action 13 data is designed to hold companies to account. If this is a goal of civil society, then a separate debate is relevant as to whether this Action 13 information should be made publicly available and the EU Commission was asked about the status of this debate.
- The EU should promote the reporting requirements in global fora (e.g. G7) to encourage other countries to adopt similar requirements. The overall market share of EU extraction companies is only 5-10%, so the EU reporting requirements only disclose a small part of all payments to government for extractive activities. 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 to reinforce the development of good governance capacity and tools.
- The definition of government entity should be clarified, in particular the status of state owned enterprises. The definition of joint-venture and projects could also be clarified.
- A greater synergy between the EITI and the EU reporting requirements would have a positive impact both on the effectiveness in reaching the objectives (i.e. greater transparency and accountability of governments in resource-rich countries) and on compliance costs. The EITI seeks to strengthen government and company systems, inform public debate and promote understanding. In each of the implementing countries, the EITI is supported by a coalition of government, companies, and civil society.

- Some commentators argued that if American companies continue to be free of reporting requirements, European companies may in the future suffer from a competitive disadvantage.

Working group on auditing the reports:

- There was no consensus on the value add of commissioning audits of their payments to governments reports.
- When the reporting requirements were first implemented, it was the first time that companies had to provide such information. Some companies used external audit/assurance to receive assistance on how to report. Now, companies are more used to this reporting scheme and some see less added value in any assurance or audit. One company commissions a yearly reasonable assurance report of its payments to governments report, and reports no extra burden from doing so.
- Most participants of the working group questioned the added value of introducing a mandatory limited assurance or audit. Both an audit or a limited assurance would entail administrative and financial costs. A full audit would entail higher costs as the scope of the review would be broader than for a limited assurance. If a limited assurance or an audit is to be introduced, the deadlines for the submission of the reports should be extended as the reporting exercise will require more time.
- One company argued that commissioning a reasonable assurance report gave credibility to discussions with civil society stakeholders. This also enables the reconciliation of figures between the report on taxes paid and other government reports, such as the EITI reports, thus giving additional credibility.
- Only one company gave an estimate of the cost of their reasonable assurance report, and advised that costs were not prohibitive. However, the participants think that if an audit is made mandatory, the costs will be higher at the start of the implementation and will decrease over time. The burden of dealing with the auditors will decrease over time, as they become more familiar with the reporting, but the recurring cost will not decrease.
- Participants mentioned that a reconciliation between the reports and government revenues, as prescribed by the EITI, would be useful. However, it does not seem feasible within the framework of the EU Accounting Directive, as companies have no powers to compel governments to disclose details of their receipts from companies. Overall, the industry would welcome a greater synergy between the EITI and the EU reporting requirements.

Working group on additional requirements:

- The five additional information proposals were included in the review clause when the Directive was negotiated, but industry representatives do not consider that they would currently add value to the Directive to achieve its objectives.
- There was very firm resistance to the proposal on subcontractors. Mapping the whole value chain in the country would be very burdensome to companies

and would provide very little added value as the payments to governments of subcontractors would still not be known. In addition, some participants questioned the added value of adding new reporting requirements for the use of subcontractors since a significant share of the subcontractors are providing services rather than goods and their activity may not be extractive in nature and therefore not within the original intended scope of the rules.

- The inclusion of penalties was also criticised as the existence of fines can sometimes be an indication of bad governance on the side of the host government.
- The effective tax rate can be problematic at the project level because pre-tax profits are not generally recorded at the same level (e.g. country or project) as the taxes that would go into the numerator of this formula. In addition, the reportable taxes under the Accounting Directive include more payment types (income, production and profits taxes) than those in a typical ETR calculation.
- Some of the elements are also included in the 2016 proposal for amending the Accounting Directive, and in the OECD BEPS Action 13 data (e.g. effective tax rates could be calculated from Action 13 data, albeit not necessarily at a project level). Again, the public disclosure of this information was considered to be a separate issue to the current review and is subject to separate consideration by the EU authorities.
- Overall, the scope of each proposal has to be better clarified to estimate the added value and costs.
- Adding these requirements would require setting up new IT and collection systems, which would entail important costs.
- Naming the government entity can be most easily done, as the IOGP guidance already advises to do. However, disclosing the bank account number would be more sensitive, for example due to phishing attempts. An alternative would be for companies to flag (in supporting notes for example) the fact that the payment was made to a bank account in a different country.
- Disclosure of information on commodity trading is very important as the volume of the payments is significantly higher than the payments currently in scope. With respect to commodity trading, any proposal needs to be robustly evaluated, especially enquiring whether this policy measure is the best way to tackle it. The Directive is mostly targeted at extractive operations and projects; any future inclusion of commodity trading payments would seem to require a fundamental shift in the scope of the regulations beyond extractive activity.
- Any proposal needs therefore to be robustly evaluated, especially enquiring whether this policy measure is the best way to tackle it.

ANNEX 9 National transposition measures

The research team has conducted a brief review of the main national measures transposing the Accounting Directive. The objective of this review was not to assess the level of compliance of the 28 Member States legislations with the Directive, which is out of the scope of this study. The aim was to provide an overview of the main trends and main differences in transposition and interpretation of the Directive by Member States. A particular attention was paid to the following points:

Access to the reports

The Accounting Directive requires the Member States to ensure that companies falling under the scope of the Directive publish the report in which they disclose the payments made to governments. Overall, Member States comply with this requirement since all the national measures reviewed state that undertakings must publish this report.

However, the degree of precision of the requirements varies across national transpositions in terms of access sources (i.e. where the report must be published), deadline for companies to publish the report and period for which the report must be available-.

Based on the review of the main national measures transposing the Accounting Directive in the 28 Member States, it can be inferred that the main source where the reports must be published is a national registry where accounting and financial information about companies can be consulted. In addition, several Member States require that undertakings publish their reports in other central registries. Examples of such national or central registries include: the National Bank registry (e.g. in Belgium), the Board of Patents and Registration (e.g. in Finland), the centralised companies registry (e.g. the Swedish Companies Registration Office or the UK Companies House), the Courts' registries (e.g. the French registry of Commercial Court) or official websites disclosing the legislation or information about companies (e.g. The German Federal Gazette).

Several national legislations also explicitly require that companies publish their reports on their websites (e.g. in Italy and in France) or allow this alternative (e.g. Denmark). Finally, it should be noted that several Member States require that the reports disclosing the payment must be enclosed in the companies' **annual report** (e.g. Cyprus and Belgium) or allow this alternative (e.g. Denmark). Another scheme consists of requiring undertakings to fill in the commercial register with the reports on payments together with the annual statements (e.g. in Spain).

Payments in-kind

According to Article 43 (3) of the Accounting Directive, undertakings must report the in-kind payments in value and, where applicable, in volume. Almost all the national transposition measures in the 28 Member States have equivalent requirements. Based on the review of the national measures transposing the Directive, the research team estimates that one country does not mention the in-kind payment in its legislation (Denmark), four national legislations do not mention the reporting of such payments in volume (France, Hungary, Slovakia and Slovenia) and two require undertakings to report such payments in value and where applicable by their scope (Germany and Lithuania).²⁵³

Project

The reporting of payments at project level can be challenging for companies. Indeed, the definition of a project as provided by the Directive can lead to different interpretations, in particular with regards to the agreements that need to be substantially interconnected to be considered as a single project.

Overall, the national measures reviewed by the research team provide the same definition of a project than in the Directive. However, a few Member States have **adopted a more flexible approach on the “substantial interconnection” mentioned in the Directive**. For instance, the Bulgarian and Lithuanian national measures only refer to related agreements, the Finnish legislation does not mention the substantial interconnection needed between different agreements while the Danish, Estonian and Slovenian transposition measures do not define the notion of a project at all. **On the contrary in Germany, the legislation adds the requirement of having “operatively and geographically combined contracts” to report for a single project.**

In addition, the Accounting Directive requires from undertakings the disclosure of the total amount of payments and the total amount per type of payments for each project. Companies are also allowed to report payments at the entity level under certain conditions. Again, in general the national transposition measures implement these requirements. Nevertheless, in few legislations there is no requirement to disclose the total amount per type of payments for each project (e.g. in Austria, Italy and Sweden). All the national transposition measures consulted provide the opportunity to the companies to report at the entity level, except in Austria.

All the Member States, except Denmark and Italy, also have explicit national measures that require companies to not artificially split up or aggregate payments at the project level. The Danish legislation states that the annual report must consider facts rather than payments with no real content while the Italian one requires the reports to be based on the real nature of the payments.

Joint-venture

Neither in the Accounting Directive nor in the national transpositions are there definitions and guidelines to report payments to governments in case of joint-venture.

Penalties

All the national transposition measures foresee fines in case of non-compliance with the reporting requirements. It should be noted that for a significant share of the Member States, most of the penalties target cases of non-compliance with the general requirements set out in the Directive and not specifically the ones in chapter 10. However, at least two countries (France and Cyprus) impose specific fines when undertakings do not report their payments to governments. In France, the fine is of EUR 3,750 and in Cyprus it can amount up to EUR 8,000.

Endnotes

¹Defined in the Accounting Directive as a "forest of native species, where there is no clearly visible indication of human activities and the ecological processes are not significantly disturbed".

²**Projet de loi portant diverses dispositions d'adaptation au droit de l'Union européenne en matière économique et financière - Etude d'impact, 11 July 2014**, available at : <http://www.assemblee-nationale.fr/14/projets/pl2148-ei.asp>.

³One from a Swedish company and one from a UK company.

⁴Interview with experts.

⁵Bolagsverket, the Swedish Companies Registration Office.

⁶As confirmed by the competent national authorities.

⁷Interview with a Finnish company.

⁸The Companies House Register is where information about UK incorporated companies can be found.

⁹For the Swedish company.

¹⁰For the company from the UK, the report was provided by an NGO active in the logging sector.

¹¹ Publish What You Pay (2017). Submission to UK government review of the reports on payments to governments regulations 2014. Available at: <http://www.publishwhatyoupay.org/wp-content/uploads/2017/11/2017-11-PWYP-submission-to-UK-review-final.pdf>.

¹² As of November 2017

¹³Publish What You Pay (2018). La transparence à l'état brut - décryptage de la transparence des entreprises extractives. Available at: http://www.oxfamfrance.org/sites/default/files/file_attachments/la_transaprence_a_letat_brut_one_oxfam_sherpa.pdf.

¹⁴Chatzivgeri, E., Chew, L., Crawford, L., Gordon, M. Reports, Haslam, J. (2017). Reports on payments to governments. A report on Early Developments and Experiences, report for Publish What You Pay International Secretariat and Publish What You Pay UK. Available at: <http://www.publishwhatyoupay.org/wp-content/uploads/2017/06/reports-on-payments-to-governments-a-report-on-early-developments-and-experiences-1-2.pdf>.

¹⁵Interviews with companies.

¹⁶Interview with an expert and with a company.

¹⁷Chatzivgeri, E., Chew, L., Crawford, L., Gordon, M. Reports, Haslam, J. (2017). Reports on payments to governments. A report on Early Developments and Experiences, report for Publish What You Pay International Secretariat and Publish What You Pay UK. Available at: <http://www.publishwhatyoupay.org/wp-content/uploads/2017/06/reports-on-payments-to-governments-a-report-on-early-developments-and-experiences-1-2.pdf>.

¹⁸The UK company.

¹⁹Opinion expressed by two respondents to the survey.

²⁰Publish What You Pay (2018). La transparence à l'état brut - décryptage de la transparence des entreprises extractives. Available at : http://www.oxfamfrance.org/sites/default/files/file_attachments/la_transaprence_a_letat_brut_one_oxfam_sherpa.pdf.

²¹Interview with a company.

²²Interview with a company.

²³Interview with a company.

²⁴ Interview with an expert.

²⁵ The UK company that operates in Russia.

²⁶This opinion is shared by several respondents to the survey.

²⁷Within the meaning of the report, these are two or more entities jointly carrying on the project through a separate vehicle/legal entity.

²⁸Within the meaning of the report these are two or more entities jointly carrying on the project under **contract's provision, which** are not incorporated in a separate vehicle/legal entity.

²⁹Interview with an expert.

³⁰ Publish What You Pay (2017). Submission to UK government review of the reports on payments to governments regulations 2014. Available at: <http://www.publishwhatyoupay.org/wp-content/uploads/2017/11/2017-11-PWYP-submission-to-UK-review-final.pdf>.

³¹Ibid.

³²Cash call is the process when the operator company is proportionally reimbursed by its non-operating venture partners through a partner billing process. For example, this is the case with Royal Dutch Shell Payments to Governments Report 2015. Available at: <https://www.shell.com/sustainability/transparency/revenues-for->

governments/_jcr_content/par/textimage_569728713.stream/1460962925009/43a62e840a312580b7a030a0b6719d720a03afb774d5edf22bc8f30914609748/shell-report-payments-to-governments-2015-18042016.pdf.

³³Chatzivgeri, E., Chew, L., Crawford, L., Gordon, M. Reports, Haslam, J. (2017). Reports on payments to governments. A report on Early Developments and Experiences, report for Publish What You Pay International Secretariat and Publish What You Pay UK. Available at: <http://www.publishwhatyoupay.org/wp-content/uploads/2017/06/REPORTS-ON-PAYMENTS-TO-GOVERNMENTS-A-REPORT-ON-EARLY-DEVELOPMENTS-AND-EXPERIENCES-1-2.pdf>.

³⁴Ibid.

³⁵Interview with a company.

³⁶Publish What You Pay (2017). Submission to UK government review of the reports on payments to governments regulations 2014. Available at: <http://www.publishwhatyoupay.org/wp-content/uploads/2017/11/2017-11-PWYP-submission-to-UK-review-final.pdf>.

³⁷Ibid.

³⁸Interview with representatives of the academia.

³⁹Interviews with several companies.

⁴⁰Interview with a company.

⁴¹Interview with a company.

⁴²Interview with a company.

⁴³Chatzivgeri, E., Chew, L., Crawford, L., Gordon, M. Reports, Haslam, J. (2017). Reports on payments to governments. A report on Early Developments and Experiences, report for Publish What You Pay International Secretariat and Publish What You Pay UK. Available at: <http://www.publishwhatyoupay.org/wp-content/uploads/2017/06/REPORTS-ON-PAYMENTS-TO-GOVERNMENTS-A-REPORT-ON-EARLY-DEVELOPMENTS-AND-EXPERIENCES-1-2.pdf>.

⁴⁴Interview with experts.

⁴⁵Interview with a company.

⁴⁶IOGP (2016). The Reports on Payments to Governments Regulations 2014 Industry Guidance. IOGP Report 535. Available at: <https://www.iogp.org/bookstore/product/the-reports-on-payments-to-governments-regulations-2014-industry-guidance/>.

⁴⁷BEIS (2016). Guidance for the Companies House extractives service. Available at: <https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries/guidance-for-the-companies-house-extractives-service>.

⁴⁸Interview with a national authority.

⁴⁹Communication from the Commission Guidelines on non-financial reporting, 2017, available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/guidelines_on_non-financial_reporting.pdf.

⁵⁰Interview with a company.

⁵¹Interviews with a sector association and an international organisation; BEIS (2018). Post Implementation Review on The Reports on Payments to Government Regulations 2014. Available at: <http://www.legislation.gov.uk/ukxi/2014/3209/resources>.

⁵²Lack of oversight was confirmed during interviews with experts and with four national authorities. For example, in Sweden the responsible body is a registry agency since during transposition no particular non-compliance was foreseen.

⁵³Interview with a national authority.

⁵⁴Interview with a national authority.

⁵⁵Interviews with national authorities.

⁵⁶BEIS (2018). Post Implementation Review on The Reports on Payments to Government Regulations 2014. Available at: <http://www.legislation.gov.uk/ukxi/2014/3209/resources>.

⁵⁷Publish What You Pay (2017). Submission to UK government review of the reports on payments to governments regulations 2014. Available at: <http://www.publishwhatyoupay.org/wp-content/uploads/2017/11/2017-11-PWYP-submission-to-UK-review-final.pdf>.

⁵⁸Ibid.

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responsibility for ensuring that: (a) the annual financial statements, the management report and, when provided separately, the corporate governance statement; and (b) the consolidated financial statements, consolidated management reports and, when provided separately, the consolidated corporate governance statement, are drawn up and published in accordance with the requirements of this Directive and, where applicable, with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002.

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¹⁵⁰Interview with international NGO.

¹⁵¹Interview with international NGO.

¹⁵²Interview with international NGO.

¹⁵³Interview with international NGO.

¹⁵⁴Interview with international NGO.

¹⁵⁵Interview with international mining association, a company and an expert.

¹⁵⁶Interview with international oil and gas association.

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¹⁵⁸BEIS (2018) **The Reports on Payments to Governments Regulations 2014 ("The Regulations")**. 4216(1) BEIS.

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¹⁶¹ Ibid.

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¹⁶⁵The Resource contracts website available at: <https://www.resourcecontracts.org/>.

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¹⁶⁷Interviews with 4 international NGOs.

¹⁶⁸Interview with international NGO.

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¹⁷³Publish What You Pay (2017) Submission to UK Government Review of the Reports on Payments to Governments Regulations 2014.

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¹⁷⁵Interview with international mining association.

¹⁷⁶Interviews with 5 international NGOs.

¹⁷⁷Interview with international NGO.

¹⁷⁸Interview with a national industry association.

¹⁷⁹Interview with international NGO.

¹⁸⁰Interview with international NGO.

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¹⁸³Interview conducted in Spain.

¹⁸⁴European Commission (2011). Impact assessment for financial disclosures on a country by country basis. SEC(2011) 1289 final.

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¹⁸⁹Eurostat (2018). EU imports of energy products - recent developments. Available at:

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²⁰⁰Interview with a national authority.

²⁰¹Interview with experts and BEIS (2018). Post Implementation Review on The Reports on Payments to Government Regulations 2014. Available at: <http://www.legislation.gov.uk/ukxi/2014/3209/resources>

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²¹⁰See Section 4.1.

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²¹⁸In the United Kingdom, the Companies House is currently setting up a webpage to publish companies' responses to complaints about their compliance to reporting requirements.

²¹⁹It should be noted that the Canadian government monitors reports submitted under the Extractive Sector Transparency Measures Act (ESTMA), unlike any EU government authority.

²²⁰See question 16 in European Commission, Proposal for Directive on transparency requirements for listed companies and proposals on country by country reporting – frequently asked questions, 2011, <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/734>.

²²¹EITI 2016 Standards, 4.9b, <https://eiti.org/document/standard>.

²²²Idem.

²²³Interviews with 2 companies.

²²⁴Interview with a company.

²²⁵International Federation of Accounting, International Standard on Assurance Engagements (ISAE) 3000 Revised, Assurance Engagements Other than Audits or Reviews of Historical Financial Information. Available at: <http://www.ifac.org/publications-resources/international-standard-assurance-engagements-isae-3000-revised-assurance-enga>.

²²⁶Interviews with 2 companies and one national industry association.

²²⁷UK EITI Annual Progress Report 2016, <https://eiti.org/sites/default/files/documents/uk-eiti-progress-report-2016.pdf>.

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²²⁹See www.resourceprojects.org.

²³⁰This point was raised by NGOs' representatives who participated in the workshop.

²³¹All the NGOs' representatives who participated in the workshop highlighted the fact that providing the sole number of employees without contextual information would be inefficient.

²³²NGOs representatives who participated in the workshop.

²³³Point mentioned during the workshop by several participants.

²³⁴**This opinion was shared by several NGOs' representatives during the workshop.**

²³⁵Companies' representatives present at the workshop.

²³⁶Ibid.

²³⁷This point was mentioned by several companies present at the workshop.

²³⁸See: <https://www.sec.gov/rules/final/2016/34-78167.pdf>, page 59.

²³⁹EITI summary data template, spreadsheet 3 "Revenues", column headed "Name of receiving agency",
government
<https://eiti.org/sites/default/files/documents/Summary%20Data%20Template%20v1.1.xlsx>;

²⁴⁰This point was mentioned by several companies present at the workshop.

²⁴¹The members include associations from EU, Colombia, Argentina, Philippines, Chile, India, Brazil, Ghana, Peru, Japan, South Africa, Australia, Canada, USA: <https://www.icmm.com/en-gb/about-us>.

²⁴²The members include associations from EU, USA, Australia, Canada, Colombia, Brazil, Norway, Latin America and the Middle East: <https://www.iogp.org/members/>

²⁴³Defined in the Accounting Directive as "'forest of native species, where there is no clearly visible indication of human activities and the ecological processes are not significantly disturbed".

²⁴⁴Secondary forests are natural forest which have been logged at least once.

²⁴⁵The United Nations Conference on Trade and Development, statistics webpage available at: <http://unctad.org/en/Pages/statistics.aspx>.

²⁴⁶The OECD statistics library, available at: <https://www.oecd-ilibrary.org/statistics>.

²⁴⁷The UN comtrade database available at: <https://comtrade.un.org/>.

²⁴⁸The Eurostat database available at: <http://ec.europa.eu/eurostat/web/balance-of-payments/data/database>.

²⁴⁹The variables selected were: the net FDI outflows from the EU, the mining, quarrying and exploitation of crude petroleum and natural gas sectors from 2013 to 2016. The recipient countries selected were the ones that we cover for the country fiches.

²⁵⁰Only data for France and the Netherlands in few countries of operation were available.

²⁵¹The EITI is a global standard to promote the open and accountable management of extractive resources. One of the principles is for extractive industry companies to disclose their payments in the countries they are operating in. Available at: <https://eiti.org/document/eiti-principles>.

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²⁵³Germany and Lithuania. Based on the version in the national language, the meaning of scope is close to the notion of volume.

EV-05-18-055-EN-N

DOI: 10.2874/73979

ISBN : 978-92-79-97001-6