

## **Publish What You Pay UK response to Financial Conduct Authority, Quarterly Consultation No. 12, March 2016, Consultation Paper CP16/8<sup>1</sup>**

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Comments sent to [cp16-08@fca.org.uk](mailto:cp16-08@fca.org.uk) and made via [www.the-fca.org.uk/cp16-8-response-form](http://www.the-fca.org.uk/cp16-8-response-form)

### **Re: Chapter 3 Changes to the requirements in the Listing Rules, Disclosure Rules and Transparency Rules and Prospectus Rules**

#### **Introduction:**

These comments respond to CP16/8, Chapter 3, Changes to the requirements in the Listing Rules, Disclosure Rules and Transparency Rules and Prospectus Rules". In particular we comment on:

- The section on "Proposed amendments to the DTR to implement a prescribed reporting format for the annual reports on payments to governments prepared under the Transparency Directive (2004/109/EC) (TD) in accordance with DTR 4.3A", paras 3.10 to 3.23. and questions 3.2 to 3.6.
- The section on "Cost benefit analysis ... Prescribed reporting format for TD reports on payments to governments", paras 3.32 to 3.35, question 3.9.

These comments are submitted by Publish What You Pay UK, the UK national chapter of the Publish What You Pay (PWYP) global coalition of civil society organisations united in their call for an open and accountable extractive sector.<sup>2</sup> Publish What You Pay UK and its member organisations have engaged extensively with the UK Government since 2012 in relation to the European Union's development and implementation of country-by-country reporting requirements for extractive companies under the Accounting and Transparency Directives' and the UK's development and implementation of its Reports on Payments to Governments Regulations 2014 (as amended 2015) and Payments to Governments and Miscellaneous Provisions Regulations 2014.

Publish What You Pay UK and its member organisations also engaged extensively with the UK Government in 2012-13 in relation to the UK's drafting of, and consultation with civil society on, its Open Government Partnership second National Action Plan (NAP2), which gave an undertaking that in 2016 "UK listed and UK registered extractive companies will start to publish data under the EU Directives in an open and accessible format".<sup>3</sup>

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<sup>1</sup> <http://www.fca.org.uk/static/fca/article-type/consultation%20paper/cp16-8.pdf>

<sup>2</sup> Publish What You Pay UK's 25 member organisations are listed at <http://www.publishwhatyoupay.org/members/united-kingdom/>; see also <http://www.publishwhatyoupay.org/about/>

<sup>3</sup> Cabinet Office, Open Government Partnership UK National Action Plan 2013-2015 (October 2015), <https://www.gov.uk/government/consultations/open-government-partnership-uk-national-action-plan-2013/open-government-partnership-uk-national-action-plan-2013-to-2015>

This NAP2 commitment, that UK listed and UK registered extractive companies would start to publish data in an open and accessible format in 2016, was fulfilment of a pledge made by the UK Government and its G8 partners in 2013 to make “data open by default” and “usable by all”.<sup>4</sup>

#### **Specific questions:**

#### **Q3.2 Do you agree with the proposal to use the same prescribed reporting format for TD reports on payments to governments as the one prescribed by BIS and Companies House for AD reports on payments to governments?**

Yes, we fully agree with this proposal. There is no need for the FCA to develop an alternative reporting format for the TD reports, and we agree on the clear benefit to requiring a report under the TD to be prepared in XML format using the same data schema as required by the Department for Business, Innovation and Skills (BIS) and Companies House under the AD. This will ensure that issuers falling within scope of both sets of reporting requirements can prepare a single report that meets both requirements. Royal Dutch Shell, one of the world’s largest extractive companies, has already (April 2016) published its report on its 2015 payments in open data format.<sup>5</sup> This demonstrates that it is entirely practicable for companies to do so and supports our view that that the additional administrative burden is relatively minor. With regard to issuers not falling under the UK’s AD reporting requirements, this minor additional burden will be outweighed by the benefits of a level playing field and comparability of reporting.

Major international oil, gas and mining companies such as Glencore, Gazprom, Rosneft and Lukoil are UK-listed but not UK-registered, and it will be important that their payments are reported to the FCA and published as open and machine-readable data under the TD along with UK-registered company data reported to Companies House under the AD.

#### **Q3.3 Do you agree with the proposal to introduce new rules in DTR 4.3A.10R(1) and DTR 4.3A.10R(2) to require issuers to file TD reports on payments to governments with the FCA and to upload them to the system identified by the FCA on our website as the NSM for regulatory announcements and certain documents published by issuers?**

Yes. Three key benefits of the BIS and Companies House reporting requirements and system under the AD are that: (1) these arrangements enable all UK-incorporated extractive company reports to be located centrally in a single national online repository (avoiding the need for data users to hunt for company reports on numerous separate company or other websites); (2) they provide a facility for data output to, and downloading by, users in the format of open and machine-readable – as well as human-readable by people without specialist knowledge – CSV (comma separated values) data files; (3) they also provide an API (application program interface) for developers and more specialist users to access extractive company payments data as either JSON (JavaScript Object Notation) or XML for machine reading and analysis: see <https://extractives.companieshouse.gov.uk/developer>.

The above third feature is important to enable a community of practice to develop around accessing, analysing, comparing and communicating the extractives data for purposes of greater transparency and accountability that will maximise the value of the payment reporting.

The UK Government and its 2013 G8 partners recognised that data needs to be available in an open and machine-readable format to “empower ... data innovators”, “increase open data literacy”, “allow automated processing and access with the minimum number of file downloads” and

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<sup>4</sup> Prime Minister’s Office, 2013 Lough Erne G8 Leaders’ Communiqué, para. 47, <https://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communication>

<sup>5</sup> See <https://extractives.companieshouse.gov.uk/company/04366849> and <https://extractives.companieshouse.gov.uk/company/04366849/year/2015/version/1/zip>

“increase awareness about how countries’ natural resources are used [and] how extractives revenues are spent”.<sup>6, 7</sup>

It is imperative that the FCA similarly provides a single national online repository for issuers’ reports under the TD – i.e. the system identified by the FCA on its website as the NSM for regulatory announcements and certain documents published by issuers – and that this system enables user access to open and machine-readable (and human-readable) CSV files and access to the data via an API as either JSON (JavaScript Object Notation) or XML. Such access is the principal reason for requiring extractive company reports under the TD to be filed in with the NSM in XML format, as implicit in background paras 3.11 and 3.12 and in para 3.34. It is therefore crucial that the FSA provides for open data and machine-readable **outputs** for users from the NSM as well as requiring open data input from issuers.

**Q3.4 Do you agree with the proposal to introduce a new DTR 4.3A.10R(3), which will specify the new prescribed reporting format and the relevant schema?**

Yes, for reasons we have provided above.

**Q3.5 Do you agree with the proposal to introduce a transitional provision?**

No. There does not appear to be strong justification for a transitional provision. There is no reason why imposing a prescribed reporting format immediately upon the introduction of DTR 4.3A.10R(1), DTR 4.3A.10R(2) and DTR 4.3A.10R(3) would be problematic. We suggest that DTR 4.3A.10R applies in relation to a financial year of an issuer beginning on or after 1 January 2016, which equates to 12 months after the original DTR 4.3A came into effect.

Although the reporting requirements under UK implementation of the AD apply to financial years beginning on or after 1 January 2015, the XML reporting schema and method for filing the report were not finalised until 1 January 2016. Royal Dutch Shell was already using the schema by 18 April 2016. Given that most companies reporting solely under the TD have a January-December financial year, having DTR 4.3A.10R apply to a financial year of an issuer beginning on or after 1 January 2016 would mean that users would expect to see the first XML reports for companies captured only by the TD by June 2017. If a transitional provision is introduced to postpone application of the prescribed reporting format to financial years beginning on or after 1 August 2016, users are not likely to have access to reports from companies such as China Petroleum & Chemical Corporation (Sinopec), Glencore, Gazprom, Rosneft and Lukoil in XML format until around June 2018 (i.e. reporting on payments to governments in calendar year 2017), which is an unnecessary delay.

**Q3.6 Do you agree that the existing disclosure, dissemination and filing requirements for TD reports on payments to governments should remain unchanged?**

Yes. However, while we agree with para 3.21 that XML “is not a human readable format”, we emphasise that the purpose of requiring companies to file in XML is a means to the end of providing data **outputs** in open and machine-readable form for users, as detailed in our response to Q3.3 above. CSV files are both machine- and human-readable.

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<sup>6</sup> G8 Open Data Charter, <https://www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex>, pp. 5, 8; Prime Minister’s Office, 2013 Lough Erne G8 Leaders’ Communiqué, <https://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communication>, paras 46, 47.

<sup>7</sup> For a demonstration of the way users will be able to visualize and benefit from open data released as a result of the Companies House system due to be put in place for the UK Reports on Payments to Governments Regulations 2014, see the submission to the US Securities and Exchange Commission by the Natural Resource Governance Institute, September 2015, available at <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-84.pdf>

**Q3.9 Do you agree with our analysis of the impact of introducing a prescribed reporting format for TD payments to governments reports?**

Yes. We agree that, of the three different types of issuers ((1) those incorporated in the UK and subject to chapter 10 of the AD; (2) those incorporated outside the UK and subject to chapter 10 of the AD; and (3) those incorporated outside the UK and not subject to chapter 10 of the AD), type (1) issuers will not incur additional cost as a result of these proposals. And we agree that for types (2) and (3) issuers, compliance costs will be relatively low and outweighed by the benefits of having all reports filed in the UK in the same format, thus increasing the usefulness of the data by making it more comparable, and of creating a level playing field in respect of the TD reports on payments to governments and imposing the same requirements on all issuers within scope.

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