13 March 2020

Vanessa A. Countryman
Secretary, Securities and Exchange Commission
100 F Street NE, Washington, DC 20549-1090, USA.

CC:
Mr. William Hinman, Director, Division of Corporate Finance
Mr. Barry Summer, Associate Director, Division of Corporation Finance
Ms. Elizabeth Murphy, Associate Director, Division of Corporate Finance
Mr. Elliot Staffin, Special Counsel, Division of Corporate Finance

VIA EMAIL (to: rule-comments@sec.gov)

Re: File Number S7-24-19 – Proposed Rule 13q-1 to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Secretary Countryman:

We write on behalf of the Publish What You Pay ("PWYP") International Secretariat and PWYP Global Council in response to proposed Rule 13q-1 implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") relating to disclosure of payments by resource extraction issuers.

PWYP is a global civil society coalition working for an open and accountable extractive sector so that when oil, gas and solid minerals are extracted the resulting revenues are used to drive development and to benefit citizens in producer countries. In Europe, PWYP played an important role in promoting the adoption in 2013 and subsequent implementation of legislation mandating the annual public reporting of payments to governments by extractive companies (Chapter 10, Accounting Directive 2013/34/EU and Article 6, Transparency Directive 2004/109/EC introduced by Directive 2013/50/EU).

In many resource rich countries where PWYP member organisations are active, this legislation has significantly increased the level of transparency on payments to governments in the extractive sector. This transparency is essential to promote accountability and improve resource governance. It has had no adverse impacts on the competitiveness of European (including UK) companies or on the security of energy supply to the European Union and the United Kingdom. This is confirmed by responses to the public consultation on, and the independent review of, the implementation and effectiveness of this legislation undertaken by the European Commission (EC) in 2018 as part of its

The Office Group (TOG), 201 Borough High Street, London SE1 1JA, United Kingdom
T: +44 20 38177639 | E: info@pwyp.org | W: www.PWYP.org

ongoing Fitness Check on the framework for public corporate reporting in the European Union.[1]

According to the EC's summary report on the consultation, 338 stakeholders including extractive companies and investors submitted responses. These responses to the public consultation, and the findings of the consultants that undertook the independent review,[2] are very relevant to the design of the rule implementing Section 1504 of the Dodd-Frank Act. We would like to draw the attention of the Commission to the following key findings:

Effectively increasing transparency and deterring corrupt payments

- "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."[3]
- "Civil society from both countries of origin and countries of operations is using the information provided by the reports … The EU CBCR [payments-to-governments reporting requirements], 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."[4]
- "A vast majority of respondents to the consultation saw the country-by-country and project-by-project reporting of payments to governments by extractive and logging industries as efficient, relevant and coherent."[5]

Support from major industry players

- In June 2019, following publication of the EC's public consultation and independent review reports, mining companies Anglo American, Antofagasta Minerals, BHP, Glencore, Orano, Rio Tinto and South 32, together with oil company Kosmos, co-signed a joint letter to the EC with civil society stating: "These EU reporting requirements have contributed to increasing the level

---

[1] https://ec.europa.eu/info/consultations/finance-2018-companies-public-reporting_en; https://ec.europa.eu/info/publications/181126-country-by-country-reporting-extractive-logging-industries-study_en

[2] The consultants commissioned by the EC that undertook the review were Valdari, Vicari & Associati (VVA) (Italy), Ecorys (Netherlands) and Deloitte (UK).

[3] European Commission, Review of country-by-country reporting requirements for extractive and logging industries: Final report, 2018, https://ec.europa.eu/info/publications/181126-country-by-country-reporting-extractive-logging-industries-study_en, page 43.

[4] Ibid., pages 11, 12. In November 2017 PWYP compiled a set of 28 case examples of civil society using mandatory payment disclosures in over 20 countries to hold industry and governments to account and for citizen empowerment: https://www.pwyp.org/wp-content/uploads/2017/11/2017.20.17-Case-study-examples-PWYPUK-submission-UK-review.pdf. PWYP and its members have undertaken more work in this regard during 2018-20.

[5] European Commission, Summary Report of the Public Consultation on the Fitness Check on the EU framework for public reporting by companies 21 March 2018 - 31 July 2018, https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2018-companies-public-reporting-feedback-statement_en.pdf, page 15.

of transparency in the extractive sector. As responsible business actors and civil society organisations with well recognised expertise on these issues, we believe such transparency is essential to promote good resource governance and the accountability of the governments of resource rich countries towards their citizens." The letter also called on the European Union to promote transparency in the extractive sector in international fora and to "encourage the EU's international partners to introduce similar reporting requirements".[6]

No evidence of negative impacts on competitiveness – instead, indications of positive impacts

- According to interviews conducted by the EC's consultants for the independent review: "There is no evidence that competitors from third countries [based in other regions] benefit from substantial competitive advantages by not being required to report on payments to governments"; and there is "shared opinion that EU reporting requirements do not represent a competitive disadvantage".[7]
- Moreover, "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"; and some companies agreed with civil society "that greater openness helps secure their social licence to operate in host countries and therefore provides a competitive advantage".[8]
- Among responses to the public consultation, a majority of stakeholders considered that transparency has a somewhat positive impact on the competitiveness of companies.[9]
- Prominent representatives of the accountancy industry such as Accountancy Europe are supportive of mandatory reporting requirements including with regard to potential competitiveness benefits: "We believe that country-by-country reporting of payments to governments enhances transparency, which can strengthen the reputation of the affected EU companies and thereby improve competitiveness."[10]

Support from institutional investors, including in relation to competitiveness

- The policy is seen as effective by leading investors. Norges Bank Investment Management, manager of one of the world's largest sovereign wealth funds, commented that "the existing reporting requirements have been effective in ensuring greater transparency on payments from extractive companies to host governments. From an investment decision standpoint, transparency on payments to governments on a country-by-country basis increases our understanding of a company's access to markets, risk profile and cost of resources, and improves evaluation of companies' use of funds for investment."[11]
- APG, a large Dutch institutional investor providing pensions to 4.5 million people, sees a positive

[6] The civil society co-signatories were PWYP, Global Witness, the Natural Resource Governance Institute and Transparency International EU: https://www.pwyp.org/wp-content/uploads/2015/03/Joint-civil-society-and-extractive-companies-letter_Commissioner-Dombrov.._.pdf
[7] European Commission, Review of country-by-country reporting requirements for extractive and logging industries: Final report, 2018, op. cit., page 13.
[8] Ibid., pages 13, 58.
[9] PWYP's analysis of 338 responses exported from https://ec.europa.eu/eusurvey/publication/finance-2018-companies-public-reporting?surveylanguage=en
[10] Accountancy Europe response exported from https://ec.europa.eu/eusurvey/publication/finance-2018-companies-public-reporting?surveylanguage=en
[11] Norges Bank Investment Management response to the EC consultation exported from https://ec.europa.eu/eusurvey/publication/finance-2018-companies-public-reporting?surveylanguage=en

impact of transparency on competitiveness: "transparency about taxes paid per country increases overall transparency and allows for a more detailed analysis by investors. Those investors can also use this information in their dialogues with companies … Improved transparency on tax-related information will enable investors to better understand and model a company's tax position and make better informed investment decisions"; potential long-term benefits may include those to "brand value, stakeholder relations and social license to operate".[12]

Prevention of risk and conflict, and avoidance of costs to industry

- "[T]here are multiple benefits of payment transparency for companies. First, it enhances a company's 'social licence to operate'. According to Ernst & Young, among the top 10 business risks facing mining and metals industry, social licence to operate is at number four. 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. 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."[13]

Limited and proportional compliance costs

- "The reporting requirements entail additional compliance costs, but the companies did not consider that they represent a disproportionate burden … The requirements entail compliance costs, but they are not seen as highly disproportionate by the industry."[14]
- Two companies with interests in operational extractives assets provided evidence about compliance costs. BASF (Germany) reported a start-up cost of Euro €47,000 and an annual reporting cost of €26,000. Eni (Italy) reported a start-up cost of €1,000,000 and annual reporting costs of €500,000.[15]

No negative impacts on security of supply

- The public consultation and independent review found no evidence of effects on security of energy supply in Europe, such as by third countries raising infringement actions or limiting the operation of EU-reporting companies due to the reporting requirements.

More reliable and up to date than EITI data

- Attention was also given to comparison between the Extractive Industries Transparency

[12] APG response to the EC consultation exported from https://ec.europa.eu/eusurvey/publication/finance-2018-companies-public-reporting?surveylanguage=en
[13] Ibid., page 59, original footnotes and citations omitted here.
[14] Ibid., pages 12, 13.
[15] BASF and Eni responses exported from https://ec.europa.eu/eusurvey/publication/finance-2018-companies-public-reporting?surveylanguage=en

Initiative (EITI) and the EU requirements. Reports published under the latter have been "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".[16]

We trust you will take the above points into account as you prepare the final Section 1504 rule. Should you require any additional clarification or information, please don't hesitate to contact us.

Yours sincerely,

Chenai Mukumba
Chair, Global Council
[redacted]

Elisa Peter
Executive Director
[redacted]

[16] European Commission, Review of country-by-country reporting requirements for extractive and logging industries: Final report, 2018, op. cit., page 12.