Transparency in the oil and gas industry: voluntary and regulatory disclosure mechanisms

Joseph Williams
Chatham House (GEM), 5 Nov 2013
The Approach

• Support voluntary measures as a first step and encourage use of mandatory mechanisms.

• View mandatory mechanisms as vital in order to
  – Avoid dependence on a moment of political will;
  – Entrench transparency in long-term.
Strengths of EITI

- Builds trust amongst stakeholders
- Is a unique forum that allows civil society often unprecedented access to engage in policy with corporate and government decision-makers
- Can lead to laws at the national level. Moves it away from voluntary and gives the initiative teeth.
Strengths of EITI

New EITI standard unveiled in May 2013:

- Disaggregation by company, revenue stream and project
- Sale of in-kind revenues
- Sub-national transfers
- Licenses and license holders (beneficial owners?)
- Transit fees
- Contract disclosure (encouraged)
- Production figures
EITI and International Corporate Regulation

- Global momentum for transparency – until now EITI most prominent
- EITI often the only game in town (and supported!)
- But...
  - Hasn’t worked in STP (too early? conditions not right?)
  - Angola, Libya, Uganda, BRICS, Kenya, Somalia?
  - Nigeria (flagging commitment since 2006)
  - EG, Gabon are no longer candidates
Where there is an EITI process
International regulations will...

- Provide **genuine** timely disclosure of information (annual basis).
- Data would be more easily searchable and comparable

Complementary approaches
In addition to EITI, PWYP has been pushing for:

- National laws and regulations
- Accounting standards (IASB)
- Bank/IFI lending policies
- Stock market listing requirements and Accounting laws
  - London AIM and Hong Kong (HKEx)
  - US Dodd-Frank and EU legislative proposals
  - Canada and Australia

*Some national laws = international effect*
United States: Dodd-Frank 1504

European Union: EC Accounting and Transparency Directives

Why?: 73% of value of world’s oil, gas and mining companies
Dodd-Frank Section 1504

- Voted into law in July 2010
- Multiple hearings / opportunities for industry input
- Full White House backing
- Investor / Company / Civil society support
- SEC was instructed by Congress to issue final rules by 17 April 2011
- Final rules were issued on 22 August 2012
- Legal challenge – July 2013
- Waiting for re-issued rules
- Recent investor letter
What it means

- Covers around 90% of internationally operating oil companies – US and foreign
- 8 of the world’s 10 largest mining companies
- Country-by-country and project-by-project
- All payments over USD$ 100,000
- Disaggregated by payment type (royalties, signature bonuses, production entitlements, taxes, fees and other benefits)
- US and foreign governments
- Online in annual reports
What it means

- New tool to empower civil society in EI-dependent developing countries (online, tagged, searchable)
- Disclosure will not wax/wane based on host government political will (Nigeria)
- Complements EITI and is part of the package of measures needed
Whitehouse Press Statement

“The United States is committed to working with other countries to ensure the implementation of similar disclosure requirements in other financial markets and will make this a priority in the year ahead.”

23 July 2010
European Directives

- Proposed by European Commission on 25 October 2011 as amendments to Accounting and Transparency Directives
  - Includes large private companies (turnover 40 million EUR)
  - Substantive text in Accounting Directive
  - Includes forestry companies
- Accounting Directive – signed into law 26 June 2013
- Member State transposition
- 7 Countries = early implementation
European Directives – key features

All payments over EUR 100,000 must be disclosed

No exemptions

Equivalence clause
European Directives – key features

Payment types:

(a) production entitlements;
(b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;
(c) royalties;
(d) dividends;
(e) signature, discovery and production bonuses;
(f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and
(g) payments for infrastructure improvements.
European Directives – key features

Project definition:

“Project” means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, this shall be considered a project.
## Key sticking points

<table>
<thead>
<tr>
<th>Exemptions?</th>
<th>PWYP</th>
<th>Companies</th>
</tr>
</thead>
</table>
| None; to be effective law should cover all companies, all countries. | - Exemptions for foreign issuers.  
- Exemptions from reporting data where host country objects.  
- Confidentiality clauses |
### Key sticking points (2)

<table>
<thead>
<tr>
<th>Project definition</th>
<th>PWYP Reporting in relation to legal agreements which give rise to payments</th>
<th>Companies No project Project = -Country -Geologic basin/province -Level of govt. where payments are reported to</th>
</tr>
</thead>
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Key sticking points (3)

<table>
<thead>
<tr>
<th>Materiality threshold</th>
<th>PWYP</th>
<th>Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>As low as $15,000 per payment, to capture revenues material to host country, communities (cf EC)</td>
<td>1 million USD + some companies want reporting on ‘material’ projects only</td>
</tr>
</tbody>
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