

Reacting to the draft EU Accounting Directive on countr...

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I have now published (at the request of those who supplied them to me) the drafts of the [EU Accounting](#) and [Transparency](#) directives as they apply to country-by-country reporting. Of the two the Accounting Directive is much the more detailed and since the two are meant to be consistent it is to the Accounting Directive (AD) that I will refer.

Chapter 9 of this draft contains the issues of relevance for this is the draft AD itself rather than the preamble and notes to it.

Highlighting what I think are some of the key issues, the following jump out:

- 1) The AD applies to all large companies in the extractive industries and forestry.
- 2) Government is very widely defined to mean a government, regional government and a government agency.
- 3) Project level reporting is currently included - as requested by Publish What You Pay.
- 4) Large undertakings are required to file an annual report on payments made by them in aggregate across all their subsidiaries operating in a jurisdiction to the government of that place and its agencies.
- 5) Payment includes payments in kind.
- 6) Only taxes relating to the extractive industries are covered. sales and payroll taxes are excluded, although sales taxes are likely to be minimal anyway.
- 7) Materiality is defined in terms of the recipient country not the paying company.
- 8) It is not entirely clear that the report is part of the annual accounts and it is not clear whether it has to be audited, but the reference to Chapter 2 of Directive 2009/101/EC implies that this is the case because I can't see what else it could mean since it does not seem to add this new report to the list of disclosures required there but adds it into those disclosures - and that can only be in the accounts.

9) Reporting exemptions are offered but thankfully will be very hard as written for any company to use.

10) The EU is reserving the right to define materiality specifically.

So that's the good news.

Now the problems:

1) Defining an extractive industries company will be a nightmare.

2) I suspect project reporting to be a major obstacle - but welcome it.

3) There is a real problem that only tax payments are to be included. Let's not for a minute pretend that this is as a result country-by-country reporting because it is not. It's just disclosure data that will be very hard to interpret because no one will know what sales and profits are, for example, in the countries in question meaning that very little meaningful interpretation of the data disclosed from an accounting perspective will be possible. I'll address this in more detail, later.

4) More broadly, I welcome the fact that the AD seems to require reporting whether or not the EI company is actually extracting resources in a territory or not - meaning that, for example, profits taxes appear to have to be reported everywhere, although I am troubled that tax havens will not be covered since a non-payment can't trigger disclosure under the rules noted and that is a major omission.

5) There is no requirement in here to demand some other very basic disclosures we have asked for including:

- a list of every country in the company operates

- a list of its subsidiaries by territory

6) No reserves data by country is required, meaning a massive information source critical to civil society in many developing countries is omitted from disclosure.

7) The data demanded appears to be cash flow data. This imposes serious cost on companies and is inconsistent with the accounting basis used by companies themselves. More logically accounting data requiring profit and loss account charges due by category of liability reconciled with opening and closing liabilities due and total payments made in aggregate would have been of much more use as this then becomes accounting data.

8) But most problematically, this is not accounting data. So, for example, without sales data the rate of royalty paid cannot be checked and consistency over time cannot be appraised. Likewise without profits data whether or not taxes due on profits are

reasonably stated cannot be appraised. And if data is not required for all territories - such as tax havens - then the risk of profits being artificially relocated from developing countries to such places cannot be appraised.

I do of course welcome this development but it is a very long way short indeed of meaningful accounting disclosure that will really hold these companies to account. In that sense this is a profound disappointment: the message that capital must be held to account for what it does not just in developing countries but on its flow into and out of such places has not been heard as yet. That's worrying.

Country-by-country reporting has come a very long way since I published the first version of it in January 2003 but it still has a long way to go as well. The campaign has to go on - and pressure has to still be brought to bear on the EU to get these reforms through, with improvements if possible.

My thanks to all who are bringing that pressure to bear in Publish What You Pay and elsewhere: their efforts have been quite extraordinary, and will be in the months to come too, I know.

NB: published in haste and maybe subject to revision later