Publish What You Pay CANADA

Natural Resource Governance Institute

The Extractive Sector Transparency Measures Act

Division 28, Bill C-43

Publish What You Pay-Canada and the Natural Resource Governance Institute welcome the Government of Canada's leadership on extractives transparency and the proposed *Extractive Sector Transparency Measures Act* (the Act). The Act was informed by the work of the Resource Revenue Transparency Working Group ("working group"), which brought together Publish What You Pay Canada, the Canadian mining industry and the Natural Resource Governance Institute to develop recommendations to Canadian governments on the creation of extractive transparency standards.

1. KEY CONCERN: DISAGGREGATED PROJECT-LEVEL REPORTING

We are generally supportive of the proposed Act and note that it reflects several key elements of the working group's recommendations. However, we have significant concerns about section 9(5), the form and manner of reporting, of the Act.

Section 9(5) provides the Minister with the power to prescribe the way in which Canadian extractive company payments are to be broken down and reported. The current text of 9(5), however, does not specifically mandate that the information reported by companies be disaggregated by payment category, project, country and level of government. Disaggregated project-level payment disclosure will be essential for these reports to be effectively used by citizens to deter and detect corruption – which is the purpose of the Act as stated in section 6. Since it is a central, minimum requirement for achieving the purpose of the Act, we believe disaggregated, project-level reporting should be clearly mandated in section 9(5) as follows:

Current text 9(5)	Proposed Amendment
9(5)The Minister may specify, in writing, the way in which payments are to be organized or broken down in the report — including on a project basis — and the form and manner in which a report is to be provided. The Minister is to make those requirements available to the public in the manner that he or she considers appropriate.	9(5) The Minister **shall** specify, in writing, the way in which the payments are to be organized and broken down in the report – including **requiring disclosure of** **(a) the payee to which each payment has been made and the country of that payee;** **(b) the total amount of payments made to each payee;** **(c) the total amount per category of payment made to each payee;** **(d) where those payments can be attributed to a specific project, the total amount per category of payment made for each such project and the total amount of payments for each such project;** and the form and manner in which a report is to be provided. The Minister is to make those requirements available to the public in the manner that he or she considers appropriate.

Achieving the Policy Intent of the Act

We believe that the amendment proposed above would clarify and support the policy intent of the Act and is essential to achieve the Act's purpose as outlined in section 6. As such, this critical detail should not be left to the Minister's discretion.

When the Prime Minister announced the Government of Canada's commitment to mandatory payment reporting, he stated, amongst other things, that the intent is "to ensure citizens in resource rich countries around the world are better informed and benefit from the natural resources in their country." [1] Natural Resources Canada has consistently affirmed that the government is committed to a strong reporting regime that upholds global standards and requires that payments be reported on a disaggregated project-level basis. However, without greater specificity in section 9(5) regarding disaggregated, project-level reporting, this policy intent is not reflected in the legislative text of the proposed Act, a practice that is inconsistent with legislation in other jurisdictions, despite the Prime Minister's commitment to "ensuring Canada's framework is consistent with existing international standards and aligned with other G-8 countries."

Merely noting that the government "May" introduce requirements in this area suggests that these issues are not essential to achieve the purpose of the Act. We strongly disagree with this assertion.
Our proposed amendment will serve to remedy this concern. Firstly, the amendment will ensure that the purpose and policy intent of the Act are clear in the legislative text. Secondly, the amendment will support a stable, consistent reporting regime. Thirdly, the amendment will preserve Canada's reputation as a world leader in the promotion of transparency and accountability, as stated in Prime Minister Harper's commitment to this issue in 2013.

Disaggregated project-level payment reporting has been identified by investors with $5.8 trillion under management as critical to efforts to deter corruption and improve the overall business climate in the countries within which they invest.[2] Moreover, over 500 civil society organizations from 40 countries recently wrote a joint letter calling for public, project-level disaggregated payment reporting.[3] As subnational governments are increasingly empowered to collect or manage resource revenues, disaggregated project level reporting has become even more important to global efforts to fight corruption. For example, in Peru 34% of revenues from mining, oil and gas are transferred to subnational governments.

Creating a global standard
The proposed amendment would align with legislation in the EU and the US that clearly requires that payments be disclosed on a disaggregated project-level basis. Section 1504 of the US Dodd-Frank Act requires that payments be electronically tagged so as to indicate the project to which the payments relate, the total amount of payments per category and the government that received the payment, alongside the country within which that government is located. European legislation adopted in 2013 through the EU Accounting and Transparency Directives is equally unambiguous with regard to disaggregated project-level reporting (see table below).

Section 1504 of the U.S. Dodd-Frank Act, Section 2(A)(i)-(ii)
(i) the type and total amount of such payments made for **each project** of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and (ii) the type and total amount of such payments made to each government.[4]
EU Accounting Directive, Chapter 10, Article 43.2[5]
"The report shall disclose the following information…in respect of the relevant financial year: (a) the total amount of payments made to each government; (b) the total amount per type of payment…made to each government; (c) **where those payments have been attributed to a specific project, the total amount per type of payment…made for each such project and the total amount of payments for each such project.**"

[1] http://pm.gc.ca/eng/news/2013/06/12/canada-commits-enhancing-transparency-extractive-sector
[2] http://www.pwyp.ca/images/documents/Mandatory_Disclosure/NRCan%20joint%20investor%20letter%20-%2014-8-13%20-%20PUBLIC.pdf
[3] http://pwypusa.org/sites/default/files/FinalPWYP_PR_500_CSOApril_14_1.pdf
[4] http://s127054.gridserver.com/sites/default/files/Section%201504%20-%20Cardin%20Lugar%20Provision%20-%20Dodd-Frank%20Law.pdf
[5] A European Directive is a legal act provided for in the EU Treaty and is formal EU legislation. A European Directive is binding in its entirety and obliges EU Member States to transpose the Directive into national law within a set deadline. The EU Accounting Directive is available at http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0034&from=EN

The UK Reports on Payments to Governments Regulations 2014, Article 5(1)[6]
"5. (1) For each financial year, the report must state the following information in relation to the relevant activities of the undertaking— (a)the government to which each payment has been made, including the country of that government; (b)the total amount of payments made to each government; (c)the total amount per type of payment made to each government; and (d)**where those payments have been attributed to a specific project, the total amount per type of payment made for each such project and the total amount of payments for each such project**."

2. REGULATIONS: EXEMPTIONS AND PUBLIC ACCESS TO INFORMATION

We have additional concerns relating to section 23(1)b and f of the proposed legislation. Section 23(1)b provides sweeping powers for the regulations to grant exemptions, which could include whole countries or sectors. Broad exemptions could easily undermine the purpose of the legislation. During the consultation period prior to the introduction of the Act, the government asked industry to provide evidence that there is a clear need for exemptions; for example, a law in another country that prohibits the disclosure of payments to governments. Industry provided no such evidence, in Canada or any other jurisdictions where similar rules have been introduced. Additionally, extractives contracts, even in the most opaque countries, consistently include a clause that allows companies to disclose information in accordance with home country laws. The European legislation does not provide for any exemptions and invokes the principle of "universality" stating that "no exemptions, for instance for issuers active in certain countries, should be made which have a distortive impact and allow issuers to exploit lax transparency requirements".[7] We recommend that section 23(1)b be removed from the Act.

We also have important concerns about section 23(1)f which states that the regulations can alter the information that is made publicly available. The public availability of information in a centralized, open and accessible format is critical to ensure that the Act achieves its purpose. The Act cannot effectively deter corruption if payments are hidden from public view. Section 12 specifies that company reports be made publicly available, ensuring Canadian disclosure standards align with international best practice and that the reporting fulfills the policy intent of the law. Section 23(1)f has the potential to undermine this. If the Government of Canada intends to make company reports publicly available, as they have repeatedly stated, then 23(1)f is unnecessary to the Act. We recommend that section 23(1)f be removed from the act.

3. CANADA'S GLOBAL LEADERSHIP ON EXTRACTIVES TRANSPARENCY

Canada has made a global commitment to extractives transparency and the Extractive Sector Transparency Measures Act is the cornerstone of this commitment. Strong legislation would not only affirm this commitment, but it would also recognize that Canada is not just committed to transparency, but to upholding the global standard and continuing to lead on global transparency efforts.

[6] The UK has chosen to implement its binding obligation to transpose Chapter 10 of the EU Accounting Directive through a Statutory Instrument entitled the "Reports on Payments to Governments Regulations 2014" (draft until enacted) which is available at http://www.legislation.gov.uk/ukdsi/2014/9780111122235

[7] EU Transparency Directive, Recital 8. http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0050&from=EN

BACKGROUND

In numerous developed and developing countries, the natural resource sector generates critical income that—if mobilized to support sustainable development—can reduce poverty, improve economic growth and maximize social benefits.

However, citizens and civil society in many of these countries lack crucial information about this industry, such as:

- What companies operate in their country's extractive sector;
- How much their governments collect in natural resource revenues;
- How those funds are spent.

This lack of transparency makes it challenging—if not impossible—for citizens, government officials and civil society to ensure that countries and communities receive full benefit from the extraction of their natural resources.

With the Extractive Sector Transparency Measures Act, Canada has made a strong commitment to making natural resource extraction more transparent and accountable.

KEY MILESTONES

In 2010 the **United States** passed into law section 1504 of the **Dodd-Frank Act**, requiring all oil, gas and mining companies listed on a US stock exchange to disclose the payments they make to governments internationally, on a project-by-project basis. This law will be implemented through regulation to be developed by the Securities and Exchange Commission.

In 2012 PWYP-Canada, the Mining Association of Canada, the Prospectors and Developers Association of Canada and the Natural Resource Governance Institute launch the **Resource Revenue Transparency Working Group** whose objective was to develop recommendations for the creation of a mandatory payment reporting framework in Canada. In 2014 the Working Group presented its **final recommendations** to the government Canada.

In 2013**,** the **European Union** finalizes the **Transparency and Accounting Directives**, requiring all publically listed and large, private oil, gas, mining and forestry companies to disclose the payments they make to governments abroad on a project-by-project basis.

In 2013, the **Extractive Industries Transparency Initiative**, an international voluntary standard for improving transparency in the extractive sectors, adopted a stronger Standard that includes a requirement for payments to be disclosed in a disaggregated format, including on a project-level basis.

In 2013, Prime Minister Stephen Harper announces **Canada's commitment to implement mandatory disclosure requirements** for the payments made to governments by oil, gas and mining companies both domestically and abroad. The *Extractive Sector Transparency Measures Act* is tabled October 23nd, 2014.

In 2013, **Norway passes legislation** requiring public, project-level payment reporting for the extractive and forestry sectors.

In 2014, **United Kingdom, France,** and **Germany** develop draft legislation to implement the EU Transparency and Accounting Directives. UK legislation is likely to pass before the end of 2014 and to apply to companies with a fiscal year beginning January 1st 2015.

For further information please contact: Claire Woodside, Director, PWYP-Canada
cwoodside@pwyp.ca or 1-613-237-6768