| **Title:** The Reports on Payments to Governments Regulations 2014 (“The Regulations”) | Post Implementation Review |
|---|---|
| **PIR No:** BEIS024(PIR)-18-BF | **Date:** 15/02/2018 |
| **Original IA/RPC No:** IA BISBE777 | **Type of regulation:** EU |
| **Lead department or agency:** Department for Business, Energy and Industrial Strategy (BEIS) | **Type of review:** Statutory |
| **Other departments or agencies:** Click here to enter text. | **Date measure came into force:** 01/12/2014 |
| | **Recommendation:** Keep |
| **Contact for enquiries:** **John Conway** | **RPC Opinion: Green** |

### 1. What were the policy objectives of the measure?

The Regulations (which implement Chapter 10 of the EU Accounting Directive) require certain entities that are active in the extractive industry or the logging of primary forests to disclose on an annual basis the details of payments made to governments regarding any activity involved in the extraction process (exploration, development etc.). This initiative is intended to bring greater transparency and accountability to revenue flows to governments of resource rich countries. Chapter 10 is linked to a global standard of extractive sector transparency based on mandatory disclosure of payments to governments worldwide that has also been implemented in Canada and Norway, and compliments the voluntary Extractive Industries Transparency Initiative.

### 2. What evidence has informed the PIR?

The review has mainly been informed by survey work conducted by an external body to assess the costs and benefits accrued by reporting entities, civil society organisations and other parties with an interest in the Regulations. We have also analysed the written submissions sent to inform the review, and revisited the costs and benefits estimates of original IA (IA BISBEE777) and the assumptions that underpinned them.

### 3. To what extent have the policy objectives been achieved?

Companies appear to have yet to realise the positive or negative impacts which the publication of payments to Governments might bring. They did not report any substantial costs associated with this reporting. Overall the response of Civil Society Organisations (CSO) was positive and enumerated the benefits to citizens and Governments. However, all recognised that reporting was at an early stage (reporting requirements apply to financial years on or after January 2015) and that more time is needed to learn how to use the data and for it to have a wider impact on investors and Governments.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

Signed: Date: 11/05/2018

## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

**4. What were the original assumptions?**

Original cost estimates[1] were based on a small number of responses that were extrapolated across the industry using various assumptions about the allocation of reporting costs between companies and their subsidiaries. It was assumed that this reduced the accuracy of these estimates, but it was recognised that this method improved upon the methodology used in the EU Chapter 10 impact assessment, in which the costs reported by four multinational companies were used to calculate a cost per entity which was then extrapolated across the industry.

**5. Were there any unintended consequences?**

No unintended consequences were identified.

**6. Has the evidence identified any opportunities for reducing the burden on business?**

There is some evidence that submissions process to Companies House could be streamlined. Companies House has been informed and will look at improvements that can be made to the software and accompanying guidance.

**7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business?**

The UK implemented the reporting requirements in advance of EU member states as part of a G7 commitment[2] on corporate transparency. The findings of the review will contribute to a later review of Chapter 10 of the Accounting Directive by the European Commission[3]. At this stage it is too early to make a comparison with costs in EU member states as estimates of the costs arising from EU implementation of Chapter 10 are not yet available.

---

[1] IA BISBEE777 estimated that the costs to business for the first year of implementation would be £19.7 million and that the Regulations would impose a total cost £69.8 million over an assessment period of 10 years.

[2] Lough Erne 2013

[3] The Commission's review is expected in 2019.

## Introduction

1. The Reports on Payments to Governments Regulations 2014 ("the Regulations") came into force on 1st December 2014[4]. The Regulations implement chapter 10 of Directive 2013/34/EU on the annual financial statements, consolidated financial statements, and related reports of certain types of undertakings. Chapter 10 requires certain undertakings active in the extractive or primary logging industries to make and publish reports on payments made to governments. The Transparency Directive (2004/109/EC), as amended by Directive 2013/50/EU, extended the reporting obligation set out in Chapter 10 of the Accounting Directive to companies active in the extractive industries with securities admitted to trading on a regulated market. This means that those companies that are listed in the UK (but not necessarily UK-incorporated) also have to comply with the requirements in the Directive. The FCA amended its rules for listing to ensure that those companies listing in the UK would be required to make the same information available.
2. Therefore the Regulations apply to all large companies[5] and any public interest entity companies[6] registered in the UK which are active in the extractive industries – that is those companies engaged in the extraction of oil, mineral and gas and the logging of primary forests. For the purposes of the Regulations, public interest entities are companies whose securities are publicly traded on a government regulated stock exchange[7]. In practice, this means that the majority of these companies (53%) report to both the FCA and Companies House.
3. The Regulations came into force in the UK on 1st December, 2014 – a year ahead of other EU nations. This was in line with the UK Government's commitment to quickly implement reporting of payments to governments by the extractive industries affirmed at a G7 summit in 2014. Therefore the Regulations apply to financial years beginning on or after 1st January 2015.
4. On 28 March 2014, the Government launched a consultation on proposals relating to the implementation of Chapter 10 of the new Accounting Directive 2013/34/EU. This also asked for comments on Article 6 of the Transparency Directive 2004/109/EC by

---

[4] The Reports on Payments to Governments Regulations 2014 extend to the whole of the United Kingdom, reflecting the extent of the Companies Act 2006 (c.46) ("the Act").

[5] Large company is defined in Regulation 10 of The Reports on Payments to Governments Regulations 2014.

[6] Public interest entities are treated as large companies for the purposes of the Accounting Directive (as referred to in Article 2 (1) of Directive 2013/34/EU). Therefore, all UK-registered extractives companies which are listed in the UK fall within scope of the requirement to report payments to governments, regardless of their size. References to "large extractives companies" in this document should be taken to include all UK-registered extractives companies which are listed in the UK, as well as those unlisted companies that meet the size threshold as large.

[7] As defined in Regulation 2 of The Reports on Payments to Governments Regulations 2014.

an amending Directive 2013/50/EU. The consultation informed an impact assessment for this regulation in 2014[8] (hereafter, 'the IA'), which estimated that the costs to business for the first year of implementation would be £19.7 million and that the Regulations would impose a total cost £69.8 million[9]. This PIR draws on the IA as well as research conducted by an external body.

## Policy Background

5. Natural resources, such as oil, gas and minerals, provide substantial income to developing countries. However many of these countries, despite often presiding over large reserves of resources, still remain some of the poorest countries around the world. One of the reasons for this could be because governments of resource-rich countries fail to appropriately handle the large payments that they receive from companies in the extractives sector.
6. Increased transparency surrounding the payments made by extractives entities is believed to ameliorate this issue. The intended effect of this is two-fold. Firstly, citizens of these countries have an improved ability to hold their governments to account; and secondly UK extractive entities and their investors should benefit from a more transparent operating environment and an improved ability to accurately assess the associated risks.
7. Chapter 10 of the EU Accounting Directive addresses these issues. It requires extractive entities to produce an annual report that details the payments made to governments regarding any activity involved in the extraction process (exploration, development etc.).
8. The UK's implementation of Chapter 10 sits alongside its active participation, since 2014, in the Extractive Industries Transparency Initiative (EITI), a global standard promoting good governance of oil, gas and mineral resources. On the basis of voluntary company participation, the EITI Standard examines information along the extractive industry value chain from the point of extraction, to how the revenue makes its way through the government, to how it contributes to the economy. EITI complements Chapter 10 in the sense that it focuses on the domestic revenues arising from the activities of UK registered companies. While company size is not a determinant for inclusion, UK EITI has chosen to mirror Chapter 10's monetary threshold as the benchmark for identifying those companies which are within scope for reporting.

---

[8] IA N° BISBEE777 – Implementation of Chapter 10 of the EU Accounting Directive (2013/34/EU).

[9] This represents the total present value of costs to business over a period of assessment of 10 years as estimated in 2014.

## Policy Objectives

### *Rationale for Intervention*

9. The IA considered that there was an **economic efficiency** rationale for intervention to help developing countries address the government failures in their own administrations. The IA concluded that even though this economic inefficiency originated outside UK jurisdiction, the benefits of addressing this failure were likely to have economic benefits to UK and were therefore in scope in terms of the Green Book

10. For instance, if the Directive effectively inspired greater transparency, less information asymmetry and less corruption, UK extractive companies would benefit from the improved operating environment. With greater political and economic stability in the countries in which they operate, UK extractive companies would be able to produce more consistently and at a lower cost than under the status quo. Also UK investors would be able to make improved investment decisions.

11. Furthermore, greater transparency around extractive companies would reduce the **information asymmetry** between investors and extractive companies, thereby ensuring a more efficient allocation of capital. Moreover, if investors were more able to make effective investment decisions, capital would be more efficiently allocated, to the benefit of the companies with the greatest growth prospects.

12. Knowledge of a company and its operating environment is important in helping those who engage with a company to more accurately assess the risk of company transactions, and therefore their own engagement with them. Not knowing a company's full profile means that there is a greater inherent risk of investors making sub optimal investments. This makes economic transactions/activity less attractive[10] and hence less likely to go ahead or, in the event they do go ahead, they do so at a higher cost or lower level of investment. For instance, Easley and O'Hara (2004)[11] found that companies which kept a greater proportion of their information private require a greater compensating return for the lack of transparency, i.e. they face a higher cost of capital. This is a common finding in the economic literature[12].

[10] Furthermore, considering adverse selection, if the share of 'bad' companies exceeds a certain threshold, the market will cease to exist as 'good' companies are driven out of business.

[11] Easley, D. and O'Hara, M. (2004) 'Information and the Cost of Capital' The Journal of Finance, Vol. 59, No 4.

[12] 17 See Barry, C., and S. J. Brown (1985) "Differential Information and Security Market Equilibrium." Journal of Financial and Quantitative Analysis 20, no. 4: 407-22 for a model, which demonstrates that securities with relatively little information are of a higher systemic risk. See Merton, R. (1987) "A Simple Model of Capital Market Equilibrium with Incomplete Information." Journal of Finance 42, no. 3: 483-510. Finds that in a model where investors are not aware of all stocks available i.e. suffer from incomplete information, the equilibrium value of each company is always lower.

13. In addition, when corporate information is not readily available, other parties must incur greater costs from conducting due diligence to mitigate this risk. They must, for instance, actively seek to 'profile' the company and also write, complete and monitor contracts[13]. Therefore, a lack of information would increase transaction costs, which can serve as a serious barrier to entry in the market, discouraging economic activity and potentially harming growth.

14. There was also a strong political/societal rationale to intervene on **international equity** grounds to assist disadvantaged people in developing countries by increasing accountability and therefore promoting good governance. Increasing good governance was likely to lead to improved social outcomes[14]. Although the benefits associated with international equity accrue outside the UK (so are not strictly counted under Green Book guidance) this forms a major part of government's rationale for intervention.

15. The IA did not assume that the international equity benefits would be immediate, or that they would be easy to measure nor that they would occur in isolation – they would need to be part of wider initiatives (improved reporting will only bring benefits when there is an active and influential audience). Therefore the PIR draws on the views of CSO and some companies to assess whether the wider benefits can be realised over time.

### *Chapter 10 and Transparency Standards*

16. The aim of Chapter 10 was to raise global standards of transparency in the extractives sector by requiring companies to report publicly the payments they make to governments in all their countries of operation.

17. Chapter 10 was intended to achieve this objective by improving accountability and global comparability in a way that would reduce the space for corruption and other illicit activities, and ensure that citizens benefit appropriately from the extraction of their natural resources.

18. It was also expected to bring benefits to UK extractives companies by improving their operating environments, as well as to UK investors by improving their ability to assess risk and make more effective investment decisions. As such, Chapter 10 supported the Government's ambition for strong extractives reporting requirements and

[13] Nonetheless, knowledge is always imperfect to some extent: as noted by Miller and Whitford (2002)18 without all-encompassing contracts, which account for every eventuality, some element of trust is implicit in every business contract.

[14] Khan (2010) Governance, Growth and Development

represented a significant contribution to the development of a global standard for transparency in these industries.

19. The key requirements introduced by Chapter 10 were:

    - Large EU registered extractives companies (mining, oil, gas and forestry) must report the payments they make to governments in all of their countries of operation.
    - Reports must be prepared on an annual basis, and must:
        i. Be prepared on the basis of individual projects
        ii. Include all payments made in money or in kind, whether made as a single payment or a series of related payments, totalling €100,000 (approx. £84,000) or more.
        iii. Disclose the total amount of payments made to each level of government, including national, regional and local governments, and state owned organisations.
        iv. Disclose the total amount per type of payment. Types of payment covered are: production entitlements; taxes levied on the income; production or profits of companies (excluding taxes levied on consumption such as value added, personal income taxes or sales taxes); royalties; dividends; signature, discovery and production bonuses; licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and payments for infrastructure improvements.

20. There were no exemptions to reporting, even where companies are operating in countries that prohibit disclosure in criminal law. It was felt that providing exemptions in these cases would diminish the effectiveness of the reporting requirements in the Directive and would provide an incentive for corrupt countries to implement such laws. Furthermore, we do not have any convincing evidence that any criminal prohibitions on the reporting of payments to governments exist in other countries, or that disclosure of such information would result in any legal action or loss of business.

## Methodology

### *Overview*

21. To inform this post-implementation review, the Department for Business, Energy and Industrial Strategy (BEIS) commissioned PricewaterhouseCoopers (PwC) to undertake a full review of the impact of the new reporting regime on business, civil society, and investors. The research underpinning this review was conducted after the first year of reporting and specifically assessed the cost borne by companies in scope, and the

benefits that accrue to these companies, their respective investors, and any Civil Society Organisations (CSOs) that have a particular interest in this legislation. To this end, the approach to the research and the questions it should answer were outlined by BEIS and used as the basis of the wider research design by PWC. Responses were collected from groups in scope via telephone interviews, an interactive pdf form, and in some cases, face to face interviews, between August and October 2017.

22. Written submissions from stakeholder groups and other interested parties (catalogued in *Appendix C*) were also considered in the development of this review.

23. The IA originally estimated that 251 companies would be in scope, however only 91 companies submitted reports to Companies House, the Financial Conduct Authority (FCA), or both. This significant difference in the estimated number of companies in scope could be in part attributed to the fact that the IA did not fully account for the complexity of ownership structures (group structures) in determining the number of reporting entities[15]; and the possibility that not all companies in scope will necessarily have made payments to Governments during the period considered in the research. Of the 91 companies identified as having reported, 32 participated in the PWC research – a response rate of 35%, which is considered satisfactory for the purposes of this review.

24. The set of respondents from whom data was collected is considered to be representative of a wide cross-section of stakeholders in scope of the regulation and provides a wide enough base on which to review the impact of the regulation:

    - There was representation from each of the primary reporting segments (22% reporting to Companies House; 25% to the FCA; and 53% to both). Respondent companies also represent a broad distribution of organisations by both revenue and employee size (see *Figure 1*). It must be noted that due to significant variations in scale and scope across the distribution[16], there is considerable variability in costs of compliance and administrative burden for companies in scope.
    - Interviews were conducted with the following CSOs nominated by the Publish What You Pay coalition (PWYP):
        - The Natural Resource Governance Institute

[15] Companies were counted separately as global ultimate owners (GUOs), subsidiaries with UK parents, subsidiaries with EU parents, and subsidiaries with non-EU parents. It was assumed in the IA that GUOs and subsidiaries with UK parents will report for themselves, and that UK subsidiaries of UK or EU companies will incur the cost of data collection, but not final reporting.

[16] The proportion of companies with less than 500 employees matches the proportion with greater than 50,000 employees; and about one fifth of companies have revenue greater than £10 billion but there is a long tail of smaller companies, one third of which have revenues of less than £500 million.

- Global Witness
- Publish What You Pay International Secretariat
- OXFAM France
- Zimbabwe Environmental Law Association
- Publish What You Pay Canada
- The ONE Campaign
- Publish What You Pay South Africa
- Publish What You Pay US

Invitations were also sent to non-PWYP groups, but none of these participated in the research. The FCA and Companies House were also interviewed for their views on the costs of the reporting system and potential areas for improvement.

### *Methodological Challenges*

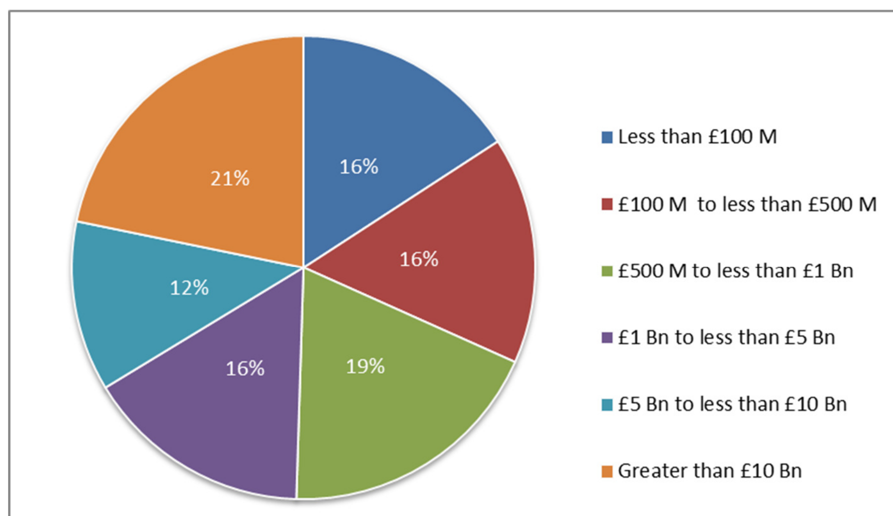
25. Challenges faced in collecting evidence derived primarily from the timing of the research relative to the introduction of the Regulations, and to the difference in focus of the participating groups, and the relatively small sample size.

    - The consensus among respondents was that not enough time had elapsed since the introduction of the regulation to allow for a thorough assessment of its direct benefits. The view from CSOs was that benefits would become more apparent over time as reporting became a more embedded activity.
    - The views of investors were not separately addressed in the research as investors were largely unwilling to participate. This is most likely due to the fact that the Regulations did not apply until January 2015 and there is still relatively low awareness among investors. CSOs were of the general view that this too would change positively over time.
    - About one third of businesses subject to the reporting requirement of the Regulations viewed it less as a regime with significant present and future benefits and more as an additional administrative burden. Further, this burden tended to be absorbed into business-as-usual costs, thus making it difficult to identify isolated costs for the purpose of this review. The response rate, though higher than expectations for the industry, could have also been limited by this fact, since some companies that do not actively capture compliance

costs may have felt that they would not be able to make any significant contribution to the research.

- The range of CSOs participating in the research was relatively narrow, as all CSO responses came from organisations associated with the PWYP coalition.
- There were differences in the focus and purpose of different participating groups: PWYP focuses specifically on this reporting issue, while businesses face competing demands for their time and are thus less focused on these Regulations.
- The numbers in scope are relatively small, and therefore, whilst 32 out of 91 companies (35%) can be considered a substantial response rate, it is not a large enough number to allow for any sub-analysis since there are wide variations in size and scope of operations (and hence, compliance costs) from one company to the next within the respondent sample.

**Figure 1: Size Distribution of Participating Companies (By Revenue)**




## Monetised and Non-Monetised Costs and Benefits of the Regulation

### Costs to Companies in Scope

26. The costs imposed by the Regulations were considered in the IA to take the form of transition and ongoing costs, but were estimated separately for companies that produced final reports for themselves and those that prepared these reports both for themselves and their subsidiaries. The research used for this review has not used this approach in collecting cost data and instead has looked overall at three types of cost that apply to companies in scope: costs of compliance; external costs; and wider cost impacts.

### *i. Costs of Compliance*

27. Of the 32 participating companies, 84% indicated that they did not actively capture compliance costs. The findings of this PIR therefore rely largely on both estimated and actual one-off and recurring costs. 15 companies provided actual or estimated costs for one-off impacts, and 15 provided for recurring costs (though these are not the same 15 companies in both cases). Estimated and actual costs are aggregated in the table that follows (*Table 1*) under the assumption that estimated and actual costs are likely to be equivalent.

**Table 1: Costs of Compliance**

| Costs of Compliance by Company Size | | | |
|---|---|---|---|
| **Company Size** | **Small** | **Medium** | **Large** |
| **One-off costs** | £700 - £30,000 (9 companies) | £25,000 (1 company) | £4,000 - £5,230,000 (5 companies) |
| **Recurring costs** | £500 - £25,000 (8 companies) | £12,000 - £100,100 (2 companies) | £5,000 - £1,200,000 (5 companies) |
| **Total Estimated Costs** | **£167,900** | **£137,100** | **£8,589,000** |

Companies in scope have widely varying profiles based on size, scale, type of operations, and number of countries in which they operate. The degree of reporting required and thus the costs of complying with the reporting regime are therefore similarly varied, thus implying that an average cost per business of complying with the Regulations will be meaningless for individual businesses (the drivers of compliance costs are presented in *Table 2* below).

28. There is (as can be deduced from *Table 2*) some correlation between company size and costs and further, Companies with a lower reporting burden (having operations across fewer countries) also reported lower costs than those with a higher reporting burden.

**Table 2: Drivers of Compliance Costs (Ordered By Impact)**

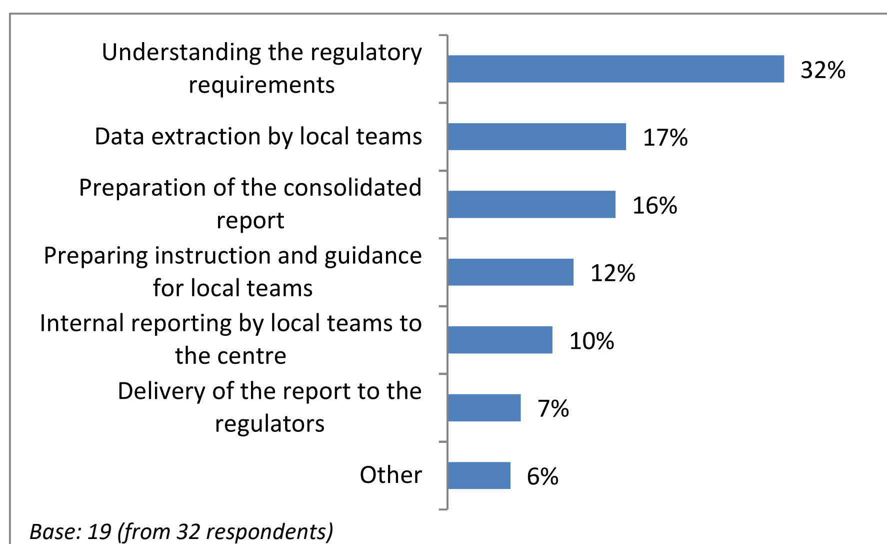
| Impact | Factor |
|---|---|
| **1** | Number of payment types |
| **2** | Number of projects on which they report |
| **3** | Number of countries in which they report |
| **4** | Number of Government payees |
| **5** | Scale of payments |
| **6** | Types of country |
| **7** | The size of projects on which they report |

29. Most companies were unable to provide specific costs associated with internal reporting activities (by grade, time, and total internal salary costs). Those who were able to provide some indication of those costs noted that they were not borne as separate costs since these reporting activities were added to existing roles and hence absorbed into business-as-usual (therefore not imposing any additional burden).

30. Largely, companies leveraged existing staff to capture and report the flow of payment to governments. 90% indicated that they have adjusted their ways of working in order to gather information on payments and compile the final report. This is largely in keeping with the expectations outlined in the IA.

31. *Figure 2* shows the percentage of the cost of compliance allocated to reporting activities for the first year of reporting and confirms the assertion in the IA that familiarisation costs will contribute significantly to overall transition costs faced by companies. Unlike with the IA however, data collected for this PIR does not include any sub-analysis on how these costs are distributed between parents and subsidiaries.

**Figure 2: Percentage of costs related to different reporting activities**




32. Assuming that the size distribution of the 15 companies reporting costs of compliance (in *Table 1*) is representative of the size distribution for all companies in scope, the estimated aggregate cost of compliance for all companies in scope is £52.5 million[17].

33. This estimate is significantly larger than that produced in the IA (£19.7 million). This is most likely due to the fact that in the IA, costs were aggregated based on the separate filing activities of subsidiaries and their parent companies, based on data extrapolated from four companies. This small sample may not have covered the largest companies

[17] Since the totals in *Table 1* represent ≈ $^1/_6$ of the total number of companies, under the assumption that the size distribution of the remaining ≈ $^5/_6$ is the same, the aggregate costs for all companies in scope will be ~ 6 times the totals displayed for each size grouping in *Table 1*.

in the distribution and may have also underestimated costs to subsidiaries, thereby underestimating the overall impact.

### *ii. External Costs*

34. Almost one third of respondent companies indicated that they had not incurred any external costs as a result of this regulation.

35. Those that did report external costs reported the following types and ranges:

- External legal fees: £1,000 - £10,000
- Advisory fees: £500 - £2,500
- Assurance fees: £6,000 – £280,000

36. Similar to the costs of compliance, these external costs tend to vary significantly by company profile (as outlined above). Granular cost data is not available on a company by company basis, and as such, extrapolating an average external cost per company or total for all companies in scope is not possible.

37. It should be noted that these costs were not accounted for in the IA.

### *iii. Wider Impacts*

#### *a) Cost of Early Implementation and Competitive Disadvantage*

38. Most companies (72%) indicated that the early implementation of the regulation in the UK (relative to the rest of the EU) did not impose additional costs. Only two companies (6%) indicated that they did incur some costs due to the timing of implementation, but they were however unable to provide any idea of the magnitude of these costs.

39. While the IA indicated the potential for inadvertent disclosure of confidential business data, it also correctly noted (as per the findings of this review) that companies may not face any damaging loss of competitiveness as a result.

40. The only concerns about competitive disadvantage were voiced within the context of the timing of implementation and not the existence of the Regulations itself. Some companies indicated that due to early implementation, UK companies in general were put at a relative disadvantage to their peer companies that were not subject to similar reporting requirements. No indication of the degree of that disadvantage or its potential costs were provided.

41. Beyond early implementation concerns, no further issues regarding competitive disadvantage were flagged. 69% of companies (22 out of 32) indicated that they expect the disclosure of the payments to government to have no impact on their competitive position over the next 3 to 5 years, while only 3% (1 company) indicated that they did.

*b) Costs Arising from the Lack of an Exemptions Clause (Legal Conflicts due to Disclosures)*

42. In the main, companies have not reported experiencing any problems related to the reporting activities required by this regulation in countries with laws that prohibit the disclosure of payment information. Close to 50% indicated that they had no issues in any of the countries in which they made payments.

43. Some companies have indicated that in some cases, there was a need to assess any conflict of law around disclosure in different jurisdictions, and to manage relationships in host countries.

44. Whilst two-thirds of the companies stated that they faced no resistance or concerns from governments about payment disclosures, a quarter reported that they did, which required negotiations with those governments. In these cases, companies incurred some costs in terms of the time required to alleviate potential conflicts but specific details about these costs were not provided.

## Benefits to Companies in Scope, Investors, and Citizens of Host Countries

45. The IA outlined expected benefits to UK companies within the context of improved governance, widened economic opportunities, increased political stability, and reduced corruption. These benefits were expected to take the form of increased productivity, reduced costs from conflicts, reduced risk, greater profitability (and hence greater dividends for shareholders), better reputations, and a wider social license to operate.

46. Further, the IA considered the publication of payments to governments to allow investors easier access to information with which could more effectively model cash-flows, assess political risks and acquisition costs, increase their managerial effectiveness, and ultimately, materially and substantially improve their investment decision-making.

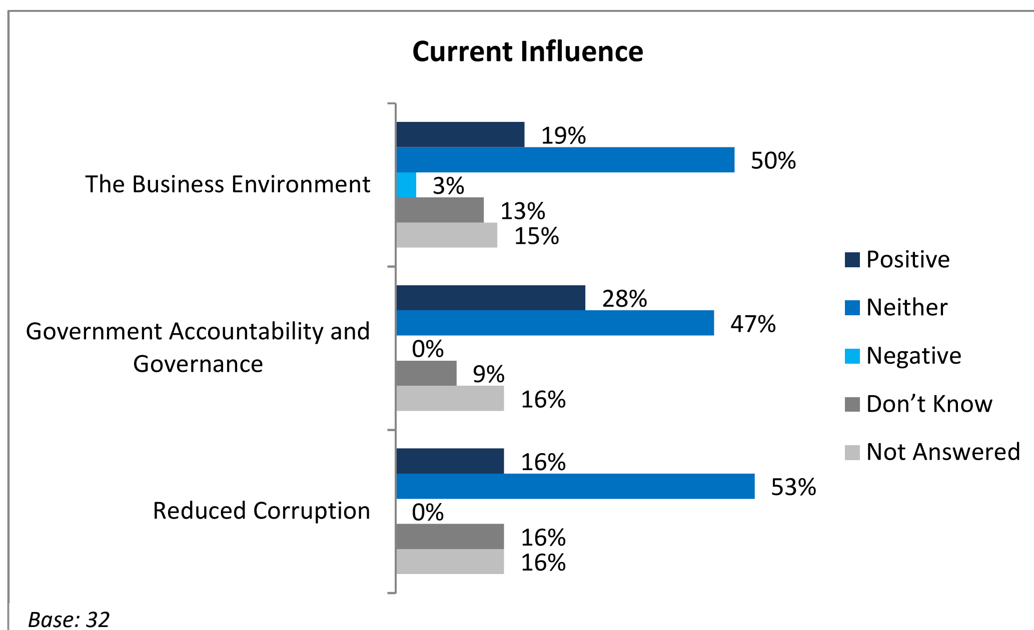
47. Due to the relatively short time period between the implementation of the Regulations and the research conducted for this review, many companies and their investors are yet to realise any of these positive impacts. Despite this, the current and expected benefits to companies and the citizens of host countries are discussed below. As outlined in the methodology, among investors in particular, there remains low awareness of the Regulations (and the reports produced in compliance with them), and so no direct input from investors is included in the descriptions that follow.

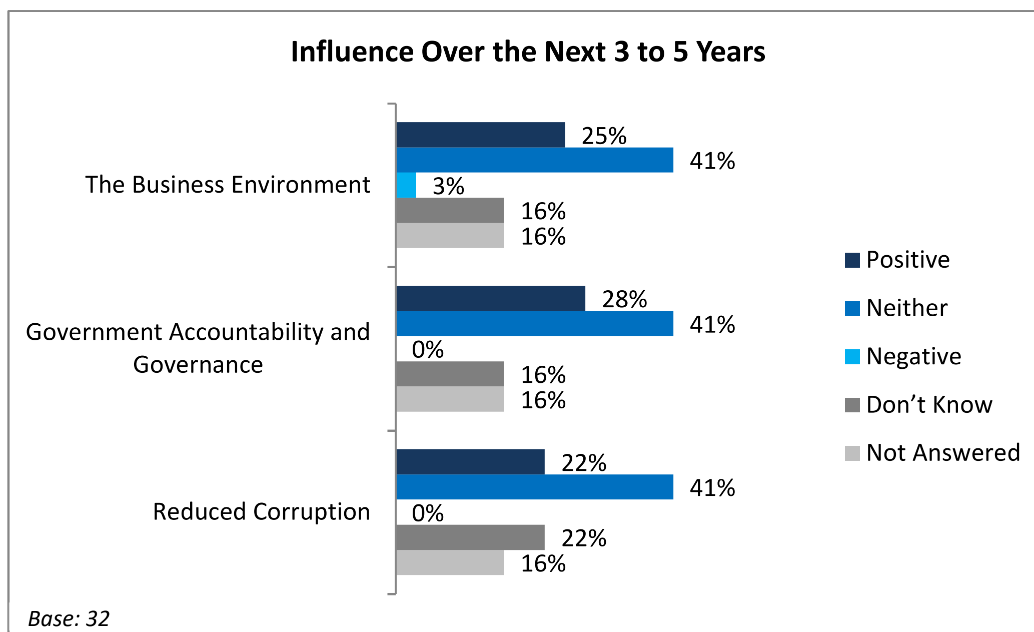
*i. Financial Benefits to Companies in Scope*

48. Whilst currently there are no clear signs of the positive impact of these Regulations, some companies have indicated that they expect an overall positive influence from

the Regulations on the business environment, government accountability and governance, and corruption levels over the next 3 to 5 years (*see Figure 3*).

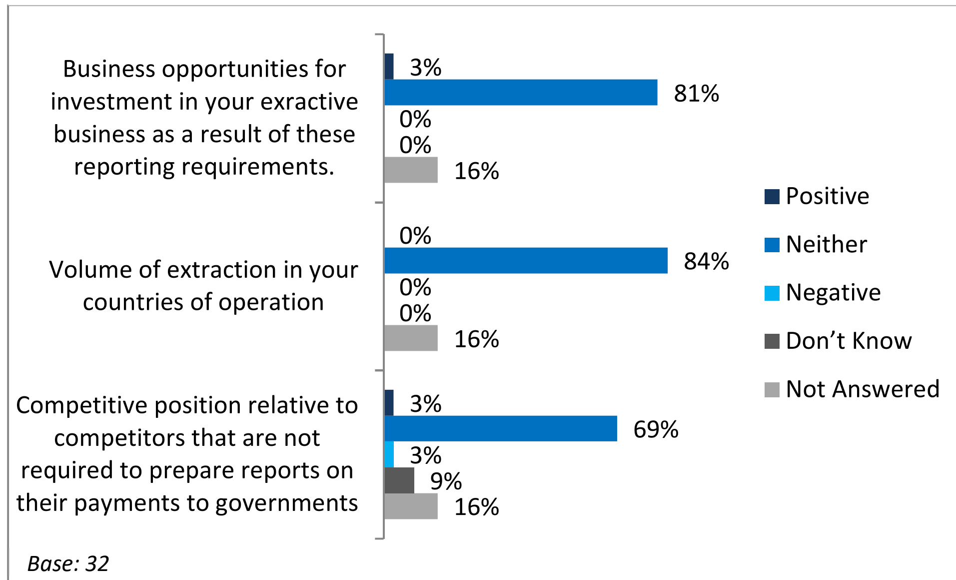
**Figure 3: Companies' views of the Current and Expected Influence of the Regulations**




49. With regard to increases in the volume of extraction undertaken by companies, one company indicated that they had experienced positive impacts on their investment opportunities, and one company had experienced a positive impact on their competitive position relative to their peer-companies that are not required to report. Most companies reported no improvement in this area (*see Figure 4*).

**Figure 4: Impact of the Regulations on Investment, the Volume of Extraction, and Competitive Position**

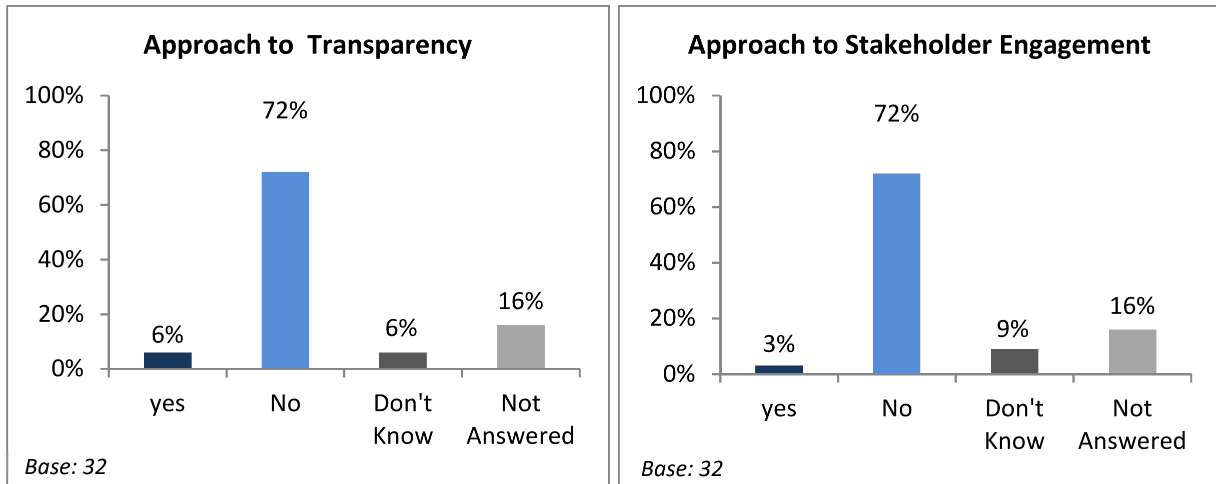



50. 16% of companies (5 out of 32) estimated a marginal future financial benefit, while half of companies remain uncertain about these future impacts, and almost one third anticipate a marginal to moderate future cost (based on responses from respective groups of companies when asked separately about expected outcomes).

### *ii. Non-Financial Benefits to Companies in Scope*

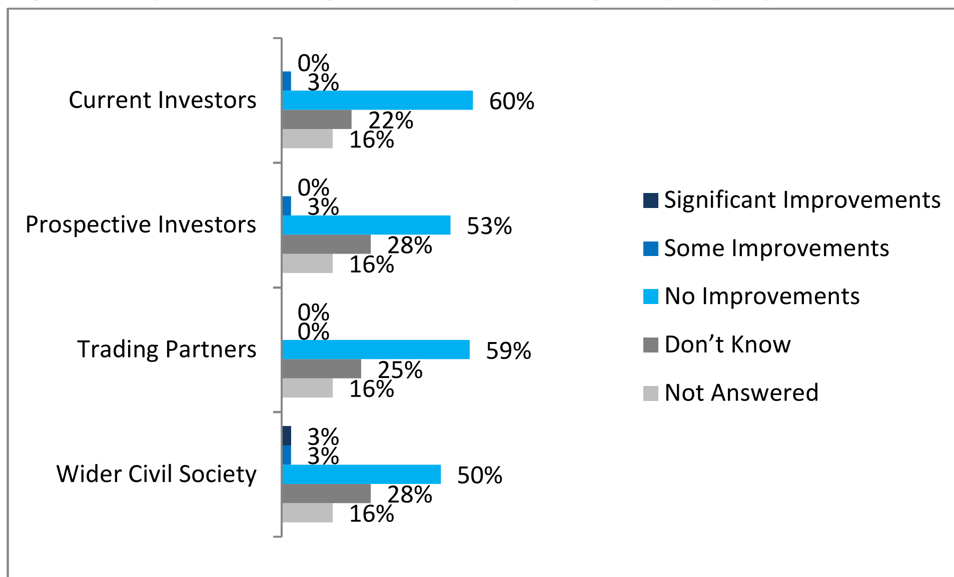
51. From the research it is apparent that companies have not changed their approach to either transparency or stakeholder engagement (*see Figure 5*): out of 32 companies, 72% of companies indicated that the regulation has not changed their approach to transparency, while only 6% indicated that it did; and 72% of companies indicated that they have not changed their approach to stakeholder engagement, while only 3% indicated that they did.

**Figure 5: Impact of the Regulations on Companies' Approach to Transparency and Stakeholder Engagement**



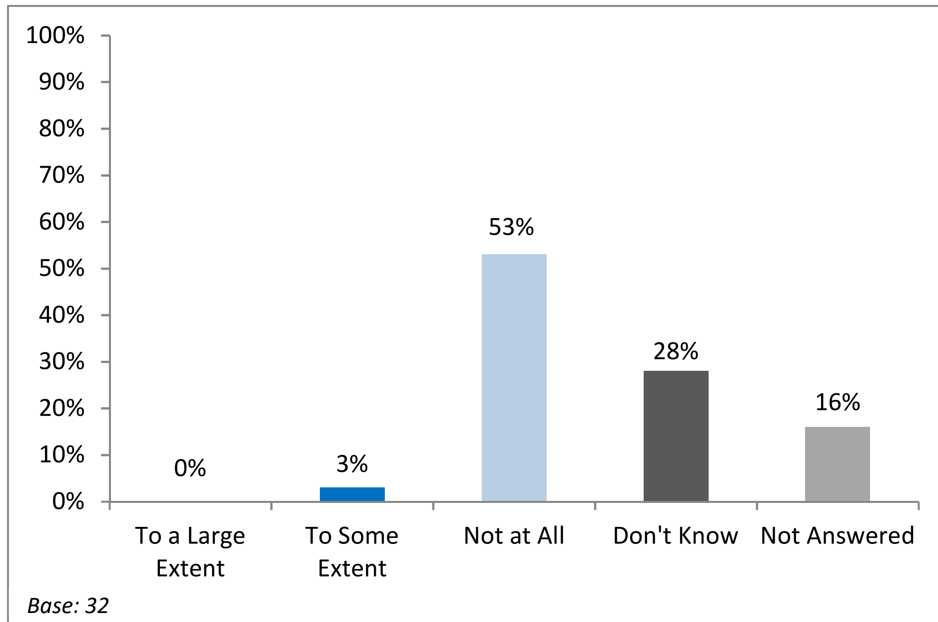

52. On average, more than 50% of companies indicated that they experienced no improvement in their reputation amongst investors, trading partners, and the wider society as a result of the regulation (*see Figure 6*).

**Figure 6: Impact of the Regulations on Improving Company Reputation**



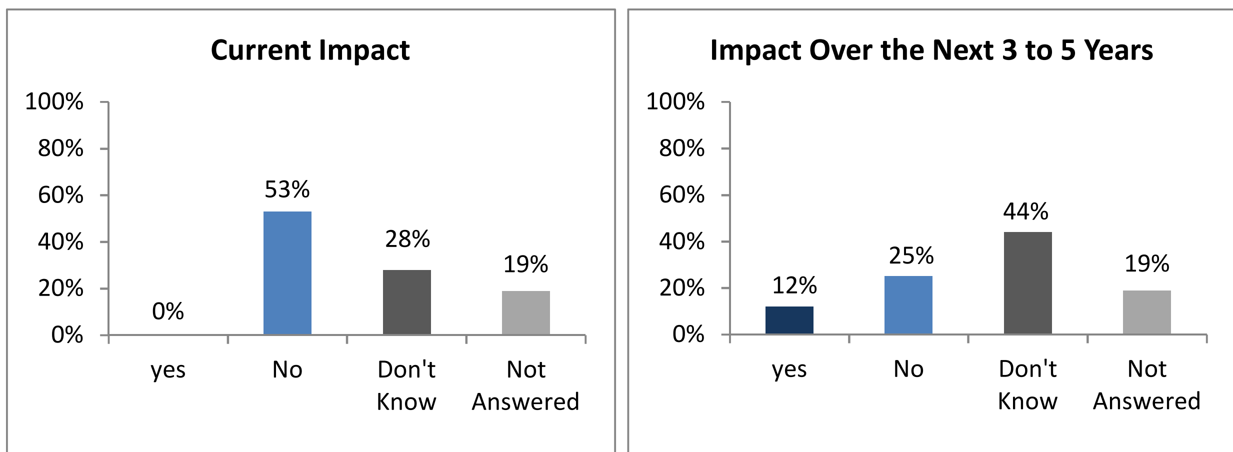

53. 53% of companies indicated that there has not been any reduction in resistance from civil society organisations to the granting of licenses for their operation. Only 3% indicated that they benefitted from lower resistance to licensing of extractive operations (*see Figure 7*).

Figure 7: Impact of the Regulations on Reducing Resistance from CSOs to the Granting of Operating Licenses




54. 53% of companies indicated that, up to the time the research was conducted, they had not noticed any reduction in bribery and corruption in the countries in which they operate. Respondents were more optimistic about the 3-5 year outlook: 12% of companies expect decreased corruption, and only 25% expect no change in this regard (*see Figure 8*).

Figure 8: Companies' Views of the Current and Expected Impact of the Regulations in Reducing Bribery and/or Corruption




55. Only four companies (12.5%) felt that the reporting of payments to government made the extractive industry more attractive to investors. Generally, there remains at this stage, some uncertainty among companies about who is using the information in the reports. This is no doubt largely due to the fact that there is still low awareness of the regulation amongst investors and other stakeholders.

### *iii. Benefits to the Citizens of Host Countries and the Civil Society Organisation Perspective*

56. From the IA, benefits to the citizens of resource rich countries – in the form of reduced corruption and the surety that payments made to governments are invested in its citizens – were expected to result from the wider availability of information and the resulting accountability it forces upon government.

57. In general, CSOs found the reports to be a highly valuable tool in empowering citizens to hold governments and companies to account. They have identified a significant impact of the Regulations in reducing corruption since companies and governments are now aware that payments are open to scrutiny, and are of the view that in the long term, this transparency will reduce levels of civil unrest since it could lead to improved infrastructure and social development through improved governance (*see Appendix A for some country examples*).

58. Not only do the Regulations allow governments to be held to account by their citizens, but governments of resource-rich countries also benefit from the Regulations, as noted in the examples of Nigeria and Zimbabwe, where reforming elements of government have invited civil society to work with them in analysing data from mandatory reporting in order to fight corruption.

59. CSOs are of the view that other potential benefits to governments will include:

    - Improved rule of law and reduced civil unrest
    - Better, fairer deals with companies based on 'fair value'
    - More efficient and transparent flows of funding
    - Enhanced reputation of extractive company home countries
    - Increased transparency and information sharing across government.

60. These benefits could translate into improvements in health, education, and the wider allocation of resources, and ultimately, to confidence in government and increased prosperity and quality of life for the citizens of host countries.

61. CSOs indicated that mandatory reporting has led to the provision of information that is more timely, comprehensive, and universal in nature. The general view is that the reporting environment has changed significantly as a result.

62. As a result of it being still early on in the post-implementation period, they expect the true value of reporting to emerge over time as more time-series data becomes available, thus allowing analysts to track payments throughout project lifecycles, including whether projects are actually producing the revenues promised at the prospecting stage.

63. Compared to companies, there is greater clarity about how the reports are used amongst CSOs. These uses are summarised below, and specific examples are presented in *Appendix B*.

    - *Sharing data across the PWYP network*

      CSOs monitor the publication of the reports and share their availability with organisations across their national and international networks. Initial work has focused on how awareness can be raised across grassroots communities in host countries and how they may start using the data to hold their governments to account.

    - *Data analytics*

      The data is used across the CSO network in large-scale analytical projects. This has allowed CSOs to ask questions of both governments and companies within the industry. Examples were given of Niger and Angola, where the data analytics was able to reveal instances of underpayment to Government.

    - *Monitoring company payments*

      The reports are used across the CSO network to monitor the timeliness and quality of the information in the reports. This allows CSOs to engage directly with companies to deal with any issues they may uncover with their report (such as missing data, late filing, or quality concerns). CSOs reported that this also helped them to develop a better understanding of how companies and their payments are structured.

    - *Holding governments to account*

      Reports are used to identify and contact governments of countries where they suspect a risk of corruption (for example to verify company payments are as they are filed).

64. Though largely positive in their outlook on the Regulations, CSOs did highlight the following issues:

    - There was some inconsistency in the quality of reporting that could be attributed to misinterpretation of the regulations.
    - Some companies did not report on joint venture operations and many joint venture participants did not report production entitlements – weaknesses that could lead to significant data gaps.
    - There were instances in which multiple distinct projects were reported as single projects (over-aggregation).

- For CSO purposes, the level of government in receipt of the payments is not made clear in the reports, making it difficult to track the movement of those payments.
- Details on payment-in-kind are not required in the reports. The view of CSO's is that such detail would allow them to assess whether fair value has been provided and to track the end destination of payments.
- It was not made clear in the Regulations that different commodities should be reported separately and not conflated.

## Small and Micro Business Assessment (SaMBA)

65. By the size definitions stated in the Regulations, micro-sized companies are not in scope, but small companies are (provided they are listed and satisfy the payment threshold criteria).
66. For this research, 9 small companies (out of a total of 15 companies overall) have reported estimated or actual one-off costs, and 8 small companies (out of a total of 15 companies overall) have reported estimated or actual recurring costs.
67. We have found no evidence that these small companies face (or will face) a disproportionately high financial or non-financial burden from this mandatory reporting requirement. As noted earlier, costs of compliance and external costs vary by company profile, which implies that small companies will face costs commensurate with their size and scale of operations.

## Enforcement and Compliance

68. The Directive does not make provision for exemptions from reporting. The Regulations create an enforcement regime that is based on similar penalties already used within the Companies Act 2006 for company reporting. However, the government decided that a late filing penalty regime, along the lines of that applied to accounts, was inappropriate for extractive reporting[18] and that it is more appropriate to look at penalties that are applied for failure to file other company information on the register. Therefore the regime for reports by extractive companies includes criminal offences, which may be punished by fines.

---

[18] It would also have arguably been unworkable. Late filing penalties for accounts can safely be issued against a company because we know that they were due to file accounts and when they were supposed to file them by. This is not the case for an extractives report as we are not certain whether or not a company must file such a report in any given year. Just because a company has filed such a report in a previous year does not mean that it will necessarily need to do so for the following year.

69. These requirements are consistent with other Companies Act requirements, for example failure to notify of a new director or failure to update a statement of capital. The register contains this information so that third parties can make informed decisions about the company.

70. Enforcement is the responsibility of Companies House, and generally, this would be in response to a complaint that a report had not been filed (an issue that CSOs would be expected to raise[19]). The procedure would work along the following lines.

71. Once informed of the failure of a company to file, Companies House would contact the company to query this situation and to confirm that one of the following applies[20]:

    i. A report return is not necessary as no reportable payments were made.

    ii. A report is necessary and will be filed within 28 days.

    iii. A report has been filed in another Member State by the parent company.

    iv. An equivalent report has been filed (prepared under an EU recognised equivalent reporting requirement).

72. The Regulations require a response to the above within a set period, and the reply to the request from Companies House will be published on the CH website. This would discourage further questions from other parties if the company had filed elsewhere, or will show where a report was necessary but had not been provided.

73. Eligible companies are relatively high profile which would mean that the reputational costs of non-compliance would generally outweigh any benefits. The reports are monitored for timeliness, quality and compliance on a company by company basis. CSOs can engage with companies directly if reports are late, if the data appears incomplete, or if there are any quality issues. In a few cases, where the omission has been deemed to be significant, companies have been reported to the FCA by the CSOs. It was acknowledged that infringements are not always the fault of the individual company but could be due to ambiguities in the Regulations.

74. In their responses, several CSOs indicated that they believe that there is insufficient monitoring of both the quality and timeliness of the reports by the Government, and that resources should be allocated so that monitoring and enforcing activity could be undertaken. It was suggested that not all companies reported as required, with some reporting late, some not at all, and some publishing the report on their website, but the specific details and overall number of these companies were not provided.

---

[19] During the development of the mechanism to file extractive reports CH worked very closely with both the industry and representatives of civil society, and the expectation in those discussions was that civil society would scrutinise these reports and raise any issues with CH.

[20] The details of this procedure are set out in full in the Regulations.

75. Our analysis indicates that relevant companies have largely complied with the Regulations. The report found that concerns that reporting could lead to difficulties with the law and authorities in the countries in which they operate have not been realised.

76. The submission process does present challenges for companies, particularly those reporting through Companies House. Overall, 11 companies (out of 25) who submitted reports to Companies House stated that the submission process was difficult. This is in contrast with the FCA, where 12 companies said the submission process was easy (of the 24 interviewed who submit reports to the FCA). Common themes were the lack of guidance for the industry, the complexity of the processes involved, and technical difficulties with the Schema.

77. There was also some concern about the appearance of the reports, given that these reports are publically available. The companies that are subject to these regulations are accustomed to presenting their corporate information in a very visually appealing way which does not equate with the appearance of the Schemas. The reason for these difficulties is likely to be because the Companies House software is designed to be compatible with systems used by listed companies.

## Conclusions and Next Steps

78. The Department received 16 submissions that were strongly supportive of the objectives of the regulations (*see Appendix C*). These included submissions from US and UK politicians as well as CSO representatives as well as an oil and gas exploration and production firm, and a fund management company. Many expressed the view that the regulations supported a global standard on the transparency of payments to Government and improved the investor environment.

79. The general view among companies and CSOs is that given the timing of the Regulations, the full benefits were unlikely to be realised at the time of the research that informed this review – after only one year of reporting (the first reports were not published until 2016). Both companies and CSOs have however indicated that they expect that benefits of the Regulations to investors, governments, companies, and civil society would accrue over the medium to long term. CSOs, while noting that they are still in the early stages of learning how best to use the reports, were able to provide some examples of countries in which the reports were already being put to uses that benefitted governments and citizens, and highlighted the leadership shown by the UK in creating these positive outcomes.

80. The main implementation challenges for companies related to determining reportable payments, data collection for the reports, and the submission of the reports. Multiple filing requirements (based on the geographic spread of some companies' operations)

and the early implementation of the Regulations relative to other EU Member States were not perceived to be major challenges, though several companies did note that there may be a need to keep a level playing field with other jurisdictions.

81. Guidance on the submission of reports is available from both the FCA and Companies House. In the case of Companies House, industry and civil society representatives contributed to the development of guidance for filing and outputting/distributing the information. However some of the responses indicate that that there might be a need for some revision, in particular to the Companies House guidance that will overcome identified software issues. This has been drawn to the attention of companies House, who will consider the issue further.

82. The majority of companies did not support expansion of the Regulations, as it would add to the burden of reporting – a view that is possibly exacerbated by the fact that at this stage, companies are largely unaware of how (and by whom) reports are used. However some CSOs felt that there was a case for strengthening the reach of the requirements by re-defining some of the disclosures (*see Appendix C*).

83. It can therefore be concluded that the Regulations should remain as is on the grounds that:

    - The policy is on course to achieve its objectives and key success criteria have been met in terms of greater levels of transparency, compliance levels and avoidance of unnecessary costs to business. Furthermore, the research indicates that this type of reporting does not disadvantage company business interests, including their relationships with governments.
    - Compliance levels are sufficient to support the achievement of its objectives.
    - There is every indication that in the medium to long term, the benefits of the regulations would outweigh the costs imposed by it.
    - Government intervention is still required, since if the Regulations are withdrawn, the UK would be at risk of significant reputational damage, and would undermine much of the good work already done in encouraging transparency and accountability in the extractives industry. Furthermore the UK would be walking away from a high-profile policy commitment.

84. The conclusions in this review are based on early findings, and further company reporting and experience of the requirements is necessary before any final conclusions of the effectiveness of this reporting regime can be drawn. At this stage, therefore, amendment of the Regulations is not suggested.

# Appendix

## A) *Benefits of Mandatory Reporting under Reports on Payments to Government Regulations (Country-specific Examples)*

**PWYP South Africa**

PWYP South Africa described the reports as very useful to CSOs in South Africa, given that it is one of the larger hubs for European companies. While PWYP campaigns for mandatory reporting in South Africa, it is able to use the data provided by UK listed companies to provide more transparency in the extractive industries there. The organisation, which is relatively new, is currently training communities to access and analyse the reports. It is focusing on holding both the South African government and companies to account, to assess whether companies are providing fair value to South Africa.

**Tunisia**

It was highlighted that the oil sector in Tunisia has been controversial in the past, with many Tunisians questioning why their country is not as equally prosperous as their oil-rich neighbours. This has led to protests in some areas of the country. It has been reported that the reports have helped the Tunisian government, which did not previously have reliable information on oil revenues, to forecast revenues more effectively. CSOs are also using this data to train activists on holding their Government to account. Some participants suggested that there has been a "multiplier" effect from the Regulations, whereby, in Tunisia for example, the Government has become more "pro-transparency", taking steps to becoming full members of EITI for example. It was also suggested that more transparency was helping ease relations between communities in Tunisia and companies, as the latter are better placed to demonstrate their value to the local economy.

**Nigeria**

One of the big benefits of mandatory reporting was thought to be the facilitation of data modelling, particularly at the project level. The reports have been used in Nigeria to train CSOs to analyse operations and companies, looking at the difference between what the Government is receiving and what it should be receiving. It is hoped that mandatory disclosures will help misreporting as well as the diversion of funds. CSOs in Nigeria have been working with companies to consider the importance of the reports for empowering its citizens.

### *B) Uses of Mandatory Reporting under Reports on Payments to Government Regulations (Country-specific Examples)*

| Country | Use of the Reports |
|---|---|
| **Uganda** | CSOs identified and queried a discrepancy of $14 million in payments between the reports of an oil company and the annual accounts of the Bank of Uganda. |
| **Niger** | Questions were raised over the value of uranium contracts to the Niger government. The reports have allowed PWYP to engage with both the relevant company and the Government on the issue. |
| **Uganda** | Reports have been used to raise questions on payments that had not been included in government reports. |
| **Zimbabwe** | The reports are being used to educate community leaders and councillors on the value of revenues from platinum and diamond mining. Workshops have been held to train local activists on interpreting the data. |
| **USA** | CSOs are campaigning for US companies to disclose so that they are subject to the same requirements as their Russian and European counterparts. |
| **Philippines and Indonesia** | PWYP is publishing reporting information online and creating an electronic community. It has created a phone app in Indonesia to share the data |
| **Australia** | Reports data contributed to a royalties debate in the media over oil pricing. |

### *C) Submissions received from interested parties*

| Submission | Received From | Date | Summary |
|---|---|---|---|
| 1 | Ecumenical Council for Corporate Responsibility (ECCR) | 31/10/2017 | Response issued to the Church of England Ethical Investment Advisory Group (EIAG) Consultation on Ethical Policy on Extractive Industries (June 2016) related to the ethical considerations that should guide the operation of the extractive sector in countries that have weak governance, or are fragile states, conflict, or post-conflict zones.<br>This submission also includes the ECCR chair's letter to Charles Holliday, Chair of Shell Group, in relation to corruption relating to the transfer of the OPL 245 oil block. |
| 2 | Sen. Ben Cardin, United States | 06/11/2017 | Commendation and Support. |
| 3 | OXFAM France - Quentin Parinello | 07/11/2017 | Voiced support for a change in the perimeter covered by the regulations to include AIM listed extractive companies, and offered the OXFAM France report on findings for French regulations for review. |
| 4 | George Soros | 13/11/2017 | Commendation and Support. |
| 5 | Arlene McCarthy | 14/11/2017 | Commendation and Support. |
| 6 | Liontrust Investment Partners | 14/11/2017 | Commendation and Support. |
| 7 | Jo Swinson MP | 15/11/2017 | Jo Swinson was Minister for Employment Relations and Consumer Affairs and oversaw the UK regulations coming into force in 2014. Ms Swinson comments that, “It was crucial at the time for the UK to deliver on its commitment…to advance global standards of transparency in the extractive sector”, she adds that, “the comprehensive payment reports now being published by UK-regulated oil, gas and mining companies” are delivering “substantial public benefit”. |
| 8 | Kosmos Energy | 15/11/2017 | Commendation and support (including the disclosure of payments to Governments at project level). |

| Submission | Received From | Date | Summary |
|---|---|---|---|
| 9 | Columbia Center on Sustainable Investment | 17/11/2017 | CCSI submission to the US Securities and Exchange Commission, which covers its findings on the materiality of payment disclosure such as required through these regulations,  along with references to investor feedback that higlights the need for adoption of a global payment transparency standard. |
| 10 | Publish What You Pay (PWYP) UK | 17/11/2017 | In a detailed response (including brief case studies), PWYP stressed their support of the Regulations, but identified areas that needed considerable improvement.  The organisation made 12 recommendations on areas of improvement, and highlighted issues including the aggregation of projects, clarifying in-kind payments, accessibility of reports, and tax disaggregation and definition. |
| 11 | Rt. Hon. Caroline Flint MP | 20/11/2017 | Commendation and Support. |
| 12 | Global Witness | 20/11/2017 | Request for the inclusion of further disclosure requirements related to climate risk in the regulations to ensure UK is able to keep the commitments of the Climate Change Act and its pledges to the Paris Climate Agreement while addressing concerns about the financial impact of climate change. |
| 13 | Publish What You Pay (PWYP) UK | 23/11/2017 | Summary of the PWYP news item ("*Transparency champions and civil society call on UK to maintain momentum on oil and mining disclosures* ") discussing the review of the regulations and outlining some of the submissions made to the government in November 2017. |
| 14 | Natural Resource Governance Institute | */01/2018 | NRGI briefing on generating government revenue from the sale of oil and gas and the continued need for improved commodity trading transparency. |