REVENUE WATCH INSTITUTE

Disclosure Rules: U.S. and EU Standards

In July 2010, the U.S. Congress passed Section 1504 of the Dodd-Frank Act, a measure requiring companies registered with the Securities and Exchange Commission (SEC) to publicly report how much they pay governments for access to oil, gas and minerals, country-by-country and project-by-project. The SEC is developing final rules to put the disclosure requirement into effect.

In October 2011, the European Commission issued draft directives requiring companies listed on EU stock exchanges and large private companies based in member states to disclose their payments to governments for oil, gas, minerals and timber, country-by-country and per project. After developing a final version, the European Parliament and European Council will send the measure to EU member states for implementation.

The EU's proposals were inspired by the U.S. law, and the reporting standards differ only slightly, but in material ways.

What do these requirements look like side by side?

Issue	U.S. Statutory Language	EU Legislative Proposals
SCOPE: What kinds of companies, activities and payments are covered?		
Company coverage: Both standards apply to extractive industry companies, but the EU adds large private companies, whether publicly held or not. The EU directives also cover forestry, while 1504 is limited to oil, gas and mining. **The bottom line: Requiring reporting from private as well as publicly listed companies helps level the playing field for covered companies. The EU's inclusion of new sectors suggests that that the U.S. law is seen in other markets as a minimum standard to build on.**	Covers any company that is "required to file an annual report with [the SEC]" and "engages in the commercial development of oil, natural gas and minerals."	Covers listed and large* non-listed extractive (i.e. oil, gas and mining) and logging companies. *"Large" companies are defined as those that exceed two of the following three criteria: annual turnover of €40 million; total assets €20 million and employees 250.
Activities covered: Both standards cover multiple stages in the chain of oil, gas and mineral development, but the SEC goes further to cover processing and export activities. **The bottom line: Significant payments to government are affiliated with processing and export activities, and the EU should expand its proposals to cover the full value of oil, gas and mineral development.**	The U.S. law requires payments related to "the activities of exploration, extraction, processing, export and other significant actions relating to oil, natural gas, or minerals" be covered. The SEC has noted that payments related to transport for export purposes are covered under this definition.	EU proposals cover "all companies with activities which involve the exploration, discovery, development and extraction of minerals, oil and natural gas deposits."

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<tr><td><u>Payments covered</u>: Both standards require disclosure of the basic payment types covered under the Extractive Industries Transparency Initiative (EITI), but leave room for reporting of additional benefit streams.

<u>The bottom line</u>: Consonance with EITI reporting is a good thing, but final U.S. rules and EU legislation must be explicit on additional categories of payments to be reported (e.g. infrastructure investments).</td><td>“Taxes, royalties, fees (including license fees), production entitlements, bonuses and other material benefits that the Commission… determines are part of the commonly recognized revenue stream.”</td><td>“Production entitlements; taxes on profits; royalties; dividends; signature, discovery and production bonuses; license fees, rental fees, entry fees and other considerations for licenses and/or concessions; other direct benefits to the government concerned.”</td></tr>
<tr><td colspan="3">DISAGGREGATION: At what level are payments disclosed, and to what level(s) of government?</td></tr>
<tr><td><u>Level of payment disclosure required</u>: Both standards require reporting by country and by project, though the level at which disclosures are made will depend on how each jurisdiction defines “project.” The SEC has yet to define this term in final rules.

<u>The bottom line</u>: Major payments in extractive industries are levied according to the terms of specific leases and licenses. Defining “project” by reference to these agreements is logical and efficient, and will enable observers to fairly judge whether a project is a good deal. Allowing companies to each individually define “project” is arbitrary and would result in widely variable data, limiting the ability of investors and other users to make company by company comparisons.</td><td>Companies must disclose any payments made “for each project” and “to each government” and tag each payment by “the government that received the payments, and the country in which the government is located.”

Revenue Watch submitted comment to the SEC arguing that a “project” should be defined in relation to the lease, license and/or other concession-level arrangement that assigns it with rights and fiscal obligations.</td><td>Companies must disclose payments “in each country where they operate and for each project.”

EU proposals suggest “project is equivalent to a specific operational reporting unit at the lowest level within the [company] at which regular internal management reports are prepared to monitor its business.”</td></tr>
<tr><td><u>Level(s) of government covered</u>: Both standards cover companies owned by/under the control of governments. EU proposals additionally require disclosure of payments made to subnational governments,
<u>The bottom line</u>: The EU directives will provide an additional layer of information valuable to citizens in resource producing countries. The SEC may follow suit.</td><td>In proposed rules the SEC suggested it would require subnational reporting in final rules, though the U.S. law makes explicit that within the U.S., only payments made to the federal government must be disclosed.</td><td>Payments must be disclosed when made to “any national, regional or local authority of a Member State or of a third country.”</td></tr>
<tr><td colspan="3">MATERIALITY: What values of payments must be reported, and how is this threshold determined?</td></tr>
<tr><td>The U.S. law and EU proposals both approach the issue of whether all sizes of payment should be reported. Notably, the EU has linked the concept of materiality to the importance of a payment to a receiving government, rather than to its size relative to a company’s global balance sheet.

<u>The bottom line</u>: The EU has explicitly</td><td>The U.S. law notes that any payments that are “not de minimis” must be reported, where according to common understanding de minimis implies a payment so insignificant as to be irrelevant to an analysis (e.g. an investor’s risk assessment).</td><td>Companies must disclose payments “where the amount is material to the recipient government.”</td></tr>
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aligned its materiality standard with the stipulated goal of making vital payment information available to citizens in recipient countries, not just to investors. The US *de minimis* standard accomplishes the same thing through a different means.		
EXEMPTIONS: Should all relevant companies report?		
Companies have claimed exemptions are needed under the U.S. law and EU proposals for myriad reasons, but especially for cases where host country laws prohibit disclosure. **The bottom line: The EU exemption rule is narrowly subscribed and is unlikely to cover many countries currently. However, countries wishing to deny their citizens this information may be tempted to change their laws.**	The U.S. law contains no language offering exemptions, nor did the SEC's draft rules.	EU proposals note "very few examples of countries prohibiting disclosures," yet allow an exemption where "a company complying with the disclosure obligations would find itself in clear contravention of the criminal law of the country concerned."

To learn more, go to **www.revenuewatch.org/dodd-frank**.