Report

for

PUBLISH WHAT YOU PAY NORWAY

HOW SHOULD COUNTRY-BY-COUNTRY REPORTING FOR COMPANIES IN THE EXTRACTIVE INDUSTRIES BE INTRODUCED IN NORWAY?

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1 INTRODUCTION

1.1 Summary

Publish What You Pay Norway ("PWYP Norway") has asked us to evaluate how country-by-country reporting for multi-national companies engaged in the extractive industries can be introduced into Norwegian law. The term "extractive industries" means the petroleum (oil and gas) and mining industries. The term "country-by-country reporting" is used here as a reference to a requirement to include operational country-specific information relating to the companies' foreign extractive activities in the companies' annual reports[1].

Country-by-country reporting is a tool in the work against international economic crime, and has been the subject of frequent international debate in connection with post financial crisis measures. The USA has established a requirement for country-by-country reporting by law[2]. The provision was passed in July 2010 and is incorporated in the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The provision stipulates the main rules of country-by-country reporting and requires the U.S. Securities Exchange Commission ("SEC") to prepare more detailed rules ("final rules"). The SEC is currently engaged in finalising its work on the final rules. We discuss the American rules in more detail in sub-section 3.1.

The American rules will apply to companies engaged in the extractive industries that are listed on American stock exchanges, which implies that a very large proportion of the multi-national companies in the extractive industries[3] are already encompassed by such reporting requirement. In order to achieve harmonisation, any Norwegian regulation should be based on the American regulation. Several initiatives and proposals have also been put forward in the EU for the promotion of country-by-country reporting; amongst other a hearing has been executed in order to acquire viewpoints on the introduction of such reporting[4]. There is much that indicates that potential EU regulation also will be based on the American rules, see sub-section 3.2.

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[1] This understanding of the term is in accordance with that which is used in the Government's Action Plan against Economic Crime, March 2011, sub-section 8.2: http://www.regjeringen.no/upload/JD/Vedlegg/Handlingsplaner/Handlinsplan_oko_krim.pdf

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, section 1504. The provision amends Section 13 in the Securities Exchange Act, 1934 (15 U.S.C.78m), by adding a new litra q. See further on this point in sub-section 3.1.

[3] In the hearing note on the proposed rules under section 13 (q) it is stated that the American rules are assumed to encompass over 90 % of the world's major oil companies and 8 of the 10 largest mining companies, see http://www.sec.gov/rules/proposed/2010/34-63549.pdf on page 12, footnote 39

[4] See sub-section 3.2.2 for more details.

In the Government's plan of action against economic crime[5] it is stipulated[6] as a measure that the Government shall assess whether there is basis for introducing country-by-country reporting, either as a step in the process in connection with any new EU rules on this area or on an independent basis. It is stated that the Norwegian authorities have informed the EU Commission that Norway is positive to the introduction of joint EU rules on this area. It is also stated that any EU rules may be EEA relevant and thus of key significance in the preparation of any future Norwegian set of rules.

An important argument in favour of Norwegian incorporation of extended reporting requirements in Norwegian law on an independent basis is the leading role Norway has taken in the work for good governance and increased transparency in the extractive industries. Norway is amongst other things the first country in the Organisation for Economic Co-operation and Development (OECD)[7] that has implemented the Extractive Industries Transparency Initiative ("EITI")[8]. By establishing an obligation to undertake country-by-country reporting by law, Norway could contribute to global recognition of this tool[9].

The USA is ahead of the EU in this work. Despite the high level of interest, it is as per today not definitely determined whether, and in such case when, the EU regulatory initiatives will materialise. If a general reporting requirement is established by law in Norway, such statutory authority can be used to incorporate any subsequent EU requirements.

PWYP Norway proposes that Norway introduces country-by-country reporting in Norwegian law on an independent basis. PWYP Norway wishes that such reporting requirement is given as broad an area of application as possible and that it addresses companies that engage in the extractive industries that are listed in the regulated Norwegian market. On this basis we are of the opinion that the most adequate solution is to introduce the reporting requirement as a part of the requirements for annual financial reports for such companies. We consider this to be best be accomplished by establishing a general rule that stipulates the main elements of the reporting requirement and that provides authority in law to adopt further regulation in regulations. More concretely, we have considered whether a requirement for country-by-country reporting should be incorporated in the Accounting Act or the Securities Trading Act. We presume that the new requirement would have a somewhat broader application through incorporation in the Securities Trading Act.

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[5] The Government's Action Plan against Economic Crime, March 2011: http://www.regjeringen.no/upload/JD/Vedlegg/Handlingsplaner/Handlinsplan_oko_krim.pdf

[6] Measure 46

[7] See http://www.regjeringen.no/nb/sub/eiti/aktuelt/norge-godkjent-som-fullt-medlem-av-eiti.html?id=635021

[8] EITI is a tripartite co-operation between authorities, companies and civil society for the promotion of transparency in extraction industries. EITI has prepared a set of criteria and principles for transparency and good governance. If a country chooses to implement EITI the country must fulfil the said criteria. For further information see http://eiti.org/node/1164.

[9] See also the report on why Norway chose to implement EITI: http://www.regjeringen.no/upload/OED/pdf%20filer/Høringer/EITI/horingsnotat%20EITI.pdf pages 2 and 3.

Against this background we are of the opinion that one way of regulating this would be to incorporate the reporting requirement as a new sub-paragraph in the Securities Trading Act § 5-5, and that the provision could be worded as follows:

> *"The issuer of shares shall in the annual report provide information on all payments to another state, public body in another state or a foreign state-owned company for the commercial exploitation of natural resources. The Ministry can issue regulations regarding which payments this applies to, which recipients are encompassed, what information is required, the application of the mandatory obligation for subsidiary companies of the issuer, and further rules of the reporting".*

A more detailed account of our evaluation concerning the introduction of country-by-country reporting in Norwegian law is provided under section 5.

1.2 Our report

In the following we give an account of the background for country-by-country reporting in section 2 and international regulation and developments in section 3. An account of current applicable legislation is provided in section 4 and an evaluation of how country-by-country reporting can be introduced into Norwegian law in section 5.

The question of introducing country-by-country reporting and other tools for combating economic crime and the flight of capital from developing countries is discussed on a regular basis in various forums. There is therefore a wide selection of source material available. In this report, we have had to limit ourselves to that which we deem to be the most central processes, initiatives and proposals.

The arguments that have been tabled in support of country-by-country reporting in the international debate are many. Implementation of country-by-country reporting can be done in many ways. Our task is to assess how country-by-country reporting for multi-national companies that operate in the extractive industries can be introduced into Norwegian legislation. As mentioned, we have arrived at the conclusion that this is best done by incorporating a general rule that stipulates the main elements of the reporting requirement and that provides authority in law to introduce further regulation by regulations. We therefore limit ourselves to provide a short account of the main grounds for introducing of country-by-country reporting in section 2.

Due to the limitations on time and resources available for the report, it has not been possible to carry out a full study of the applicable adjacent legislation, and we have therefore chosen to describe only a selection of the most relevant rules. Further, it has not been possible to carry out a detailed evaluation of the further regulation of country-by-country-reporting in regulations. Such regulation raises in part complex questions and will require further studies.

2 BACKGROUND

Country-by-country reporting for companies engaged in the extractive industries as stipulated in the Dodd-Frank Act is a tool for achieving increased transparency and control of the cash flows from the extractive industries from company to state. Transparency in cash flows in the extractive industries can contribute to the population of countries with non-renewable natural resources gaining access to information necessary for exercising democratic control of, and holding the government accountable for, the management of revenues from extractive industries.

In connection with the Norwegian implementation of EITI, the importance of transparency and control of the cash flows from the extractive industries was summarised as follows:

> *"[..] As many as 3.5 billion people live in countries rich in natural resources such as oil, gas and minerals. Many of these countries are extremely poor and often plagued by war and conflicts. The objective of EITI is to create greater transparency around the cash flow from the petroleum and mining industries to the authorities. In the longer term this can contribute to better governance and a reduction in corruption, and can form the basis for economic and social development in these countries".*[10]

In recent years both authorities and companies have shown increased willingness to implement measures that promote increased transparency in the extractive industries. This has been demonstrated by amongst other the broad global support EITI has achieved in a short period of time. The initiative is voluntary and only one amongst a number of tools that can promote transparency and control of the cash flows in the extractive industries. We discuss the Norwegian implementation of EITI and the changes in Norwegian regulation that were introduced in this connection in sub-section 4.2.1.

The extraction of natural resources is typically high risk activities that require technical expertise and financial strength. Most countries depend on international companies investing in and performing extraction operations in the host country. This is both due to lack of necessary expertise and capacity in the host country or because the host country does not wish to bear the risk for the activities alone. By requiring companies to undertake country-by-country reporting, transparency as well as the possibilities of exercising control over the cash flows from the extractive industries also in countries that have not taken action to promote transparency is increased. Country-by-country reporting is therefore a tool that is complementary to the implementation of EITI.

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[10] Quote from a press release dated 13th March 2011, see http://www.regjeringen.no/nb/sub/eiti/aktuelt/norge-godkjent-som-fullt-medlem-av-eiti.html?id=635021

PWYP Norway is of the opinion that by introducing country-by-country reporting for extractive industries into Norwegian legislation, Norway could maintain its position as a leading country within the work for increased transparency. We also refer to section 5.

3 INTERNATIONAL REGULATION AND DEVELOPMENT

3.1 USA: Dodd-Frank Wall Street Reform and Consumer Protection Act - Section 1504

On 21st July 2010 the American Congress passed the Dodd-Frank Act[11]. Section 1504 of the Dodd-Frank Act introduces amendments in the Securities Exchange Act 1934[12] Section 13 with a new litra (q). In short, the new section 13 (q) (2) (A)[13] establishes an obligation for SEC to prepare rules that require issuing companies in the extractive industries to provide information on each and every payment that the issuing company, its subsidiaries or entities controlled by the issuing company has made to foreign governments in connection with the commercial extraction of oil, gas or mineral resources. The information shall be submitted in an annual report. The obligation to provide information shall encompass the type of payment and the total amount for each project the issuing company has relating to the extraction of oil, gas or minerals, as well as the type of payment and the total amount paid to each individual government.

Section 13 (q) (1) provides key definitions. Of particular interest is the definition of "commercial development of oil, gas or minerals" in litra (A)[14] that encompasses exploration, extraction, processing, export and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by SEC. Litra (B) [15] defines "foreign government" as a foreign government, a department, agency or instrumentality of a foreign government, or a company owned by a foreign government, as

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[11] The full text of Dodd-Frank Act section 1504 is available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf on page 845 flwg.

[12] Securities Exchange Act, 1934 (15 U.S.C.78m)

[13] Section 13 (q) (2) A states " ''*(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including —''(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*"
"

[14] Section 13 (q) (1) litra (A) states: ''*(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission*"

[15] Section 13 (q) (1) B states: "*(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission*"

determined by SEC. The term "payments" is defined in litra (C)[16] as payments that are made to further the commercial extraction of oil, gas or minerals and that are not *de minimis* and that include taxes, royalties, fees (including license fees), production shares, bonuses and other material benefits, that the SEC, to the extent practicable consistent with the guidelines of the Extractive Industries Transparency Initiative, determines are part of the commonly recognized revenue stream for the commercial extraction of oil, natural gas, or minerals.

It is stipulated in section 13 (q) (2) litra (E) that the rules shall, to the degree it is suited to purpose, support the commitments that the American Government has to international transparency efforts relating to the extractive industries. Section 13 (q) (2) also provides the format for such reporting and the process for the preparation of the regulations in litra (B) – (D). Further, in section 13 (q) (3) it is stipulated that to the degree it is practical and possible, the information shall be publicly accessible on the Internet.

SEC has prepared a proposal for final rules that has been sent out for hearing, and where amongst others PWYP responded with extensive input.[17] The hearing round was closed on 31st January 2011. It is expected that SEC will complete the final rules in the course of the summer of 2011.

3.2 Other international developments

3.2.1 General overview

Country-by-country reporting has been introduced in Hong Kong[18] as a requirement for the listing of companies engaged in mining activities[19] that wish to be listed on the Hong Kong Stock Exchange's Growth Enterprise Market (GEM). We are also aware that a Bill for the introduction of country-by-country reporting has been put forward to the South Korean Parliament[20]. Requirements for country-by-country reporting is also being discussed and assessed by international organisations such as the OECD[21] and the International Accounting Standards Board (IASB).

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[16] Section 13 (q) (1) C says: ''*(C) the term 'payment'—''(i) means a payment that is— ''(I) made to further the commercial development of oil, natural gas, or minerals; and ''(II) not de minimis; and ''(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals*"

[17] The hearing note is available at http://www.sec.gov/rules/proposed/2010/34-63549.pdf. PWYP's input is available at http://www.sec.gov/comments/s7-42-10/s74210-29.pdf.

[18] See GEM Listing Rules, 18A.05 ("Contents of listing documents for new applications") (6) litra c, see http://www.hkex.com.hk/eng/rulesreg/listrules/gemrules/documents/chapter_18a.pdf

[19] The rule applies to Mining Companies, defined in 18A.01 (3) available at http://www.hkex.com.hk/eng/rulesreg/listrules/gemrules/documents/chapter_18a.pdf

[20] We have been informed that such proposal was put forward in a Bill in December 2010 as a proposal for an amendment to the South Korean Overseas Resources Development Act

[21] See http://www.guardian.co.uk/business/2010/jan/28/oecd-country-by-country-reporting

EU is considering the implementation of similar rules[22]. The Commission has amongst other measures proposed to support the on-going research work in the OECD and IASB regarding the introduction of country-by-country reporting as part of a reporting standard for extractive industries[23].

Amongst the EU countries, France, Great Britain and Germany have in particular been in the forefront for implementing country-by-country reporting on the European stock exchanges[24]. At a G20-meeting held on 19th February 2011 the British Chancellor of the Exchequer George Osborne said that Great Britain will actively engage in working for such regulation for companies engaged in the extractive industries. The President of France Nicolas Sarkozy has requested that the EU Commission prepare a report that will clarify the most adequate method of implementing country-by-country reporting at European level[25].The report has been requested by September 2011.

3.2.2 Changes to the IFRS rules

In 2010 the EU Commission implemented a public hearing to gather viewpoints on a requirement for multi-national companies to undertake country-by-country reporting[26]. The consultation closed on 22nd December 2010. The hearing note pointed out that listed companies are under an obligation to prepare and submit group accounts in accordance with the IFRS standards, but that the IFRS standards do not currently include any requirements for the publication of financial information on a "country-by-country" basis, even if subsidiary companies, jointly-controlled companies and associated or affiliated companies shall be included. Further, it was pointed out that there have been discussions in recent years concerning the introduction of legislation to require larger companies (listed and unlisted) to publish financial information on their activities outside the EU/EEA in annual accounts.

The Commission has considered two types of measures designed to increase transparency in this connection:

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[22] See http://www.ft.com/cms/s/0/bd92440e-530f-11e0-86e6-00144feab49a.html?ftcamp=rss#axzz1I9vMod3p

[23] http://ec.europa.eu/development/icenter/repository/COMM_COM_2010_0163_TAX_DEVELOPMENT_EN.PDF on page 10

[24] See for example http://www.ft.com/cms/s/0/f5dcb758-450a-11e0-80e7-00144feab49a.html#axzz1IAKW3DiQ, http://www.guardian.co.uk/business/2011/feb/20/george-osborne-oil-mining-africa, http://www.ft.com/cms/s/0/bd92440e-530f-11e0-86e6-00144feab49a.html?ftcamp=rss#axzz1I9vMod3p.

[25] See http://www.guardian.co.uk/business/2011/feb/20/george-osborne-oil-mining-africa

[26] Information on the consultation and further work is available at http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/accounting/country-by-country&vm=detailed&sb=Title and http://ec.europa.eu/internal_market/consultations/2010/financial-reporting_en.htm

(1) General country-by-country reporting for multi-national companies: The main objective of such reporting has two facets. Firstly, such reports will contribute to providing investors with an improved basis for evaluation of activities in multi-national companies in the various countries, and secondly they will contribute to increased transparency in relation to capital flow, for example in connection with the enforcement of taxation legislation.

(2) Specific information requirements for companies that are active in the extractive industries (for example the extraction of mineral, oil and gas) in countries outside the EU/EEA: The primary objective of such measures is to increase transparency on payments made by extractive industries to authorities outside the EU/EEA.

The EU Commission is now considering how best to continue this work and how this is to progress.

3.2.3 New accounting standard for the extractive industries

We are aware that work is on-going under the auspices of the IASB to consider whether a new accounting standard for the activities of the extractive industries should be developed to replace IFRS 6 Exploration for and assessing of mineral resources[27]. A new standard could be mandatory in the EU through the ordinary implementation process under Regulation (EC) No. 1606/2002 on the application of international accounting standards ("the IFRS Regulation"). The IASB plans to reach a decision in 2011 on whether the project should be added to its active agenda.

3.2.4 Changes to the Reporting Directive

We are also aware that in connection with a consultation[28] concerning the modernisation of the Reporting Directive in 2010 input has been received via the hearing that a requirement for country-by-country reporting should be incorporated in the Directive. The EU Commission is considering the further work to be done in connection with the modernisation of the Reporting Directive.

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[27] See http://www.ifrs.org/Current+Projects/IASB+Projects/Extractive+Activities/Summary.htm

[28] Information regarding the consultation is available at http://ec.europa.eu/internal_market/consultations/2010/transparency_en.htm

4 CURRENT APPLICABLE LAW

4.1 Financial reporting for companies admitted to trading on regulated markets in the EEA

4.1.1 Financial reporting

The requirements for financial reporting for companies that are admitted to trading on a regulated market[29] in the EEA are based on the principle of home state and host state regulation in the Securities Trading Act § 5-4, [30] that implements EEA rules that equate to the EU Transparency Directive[31]. The principle demands that all companies that are listed on a regulated market in the EEA shall have their home state in the EEA. The principle is amongst other things the controlling factor for which country's rules shall apply to the individual companies with regard to financial reporting. In short this means that companies having Norway as their home state shall as the basic rule comply with the Norwegian rules and regulations governing financial accounting and accounts reporting and so forth, and companies having Norway as their host state shall comply with equivalent rules in the host state, even if they are listed on a Norwegian regulated market.

In relation to financial reporting Norway is deemed to be the home state of Norwegian companies if the shares are admitted to trading on a regulated Norwegian market, Norwegian companies if the shares are admitted to trading on a regulated market within the EEA, and companies from countries outside the EEA if the Norwegian authorities are the Prospectus Authority. It results from the Prospectus Directive[32] that this will be the case where issuers from countries outside the EEA have launched public offerings or applied for listing in Norway as the initial market in the EEA after 1st July 2005. In addition are the issuers that prior to this date chose Norway as the home state.

In the following we discuss the requirements for financial reporting for share issuers that have Norway as their home state. Companies from countries outside the EEA with Norway as their home state are referred to as third country issuers.

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[29] "*regulated market*" means companies as defined in the Securities Trading Act § 2-3 third paragraph, cf. the Stock Exchange Act § 3 first paragraph, or similar regulated markets other EEA countries, cf. MiFID (Directive 2004/39/EF on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC) Art. 4 No.1. In Norway there are, as of 1st January 2008 two regulated markets where shares are listed for trading: *Oslo Børs* and *Oslo Axess*.

[30] Act of 29th June 2007 No. 75

31 Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC

[32] Directive 2003/71/EF on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC

All issuers of shares having Norway as their home state have a mandatory obligation to prepare and publish annual reports, half-year reports and quarterly reports in accordance with the rules laid down in the Securities Trading Act §§ 5-5 flwg. and the accompanying rules in the Securities Regulations[33].

The general rule is that the same rules apply universally within the EEA, but in some cases the home state can impose stricter requirements than those that follow from the directive. In Norway this has amongst other measures been done by establishing a requirement for quarterly reporting for share issuers. Further, stricter requirements for periodic financial reporting result from the Stock Exchange's own rules. A host state on the other hand cannot impose stricter requirements than those laid down in the directive.

The annual financial report shall comprise the audited financial statements, management report and statements made by the persons responsible within the issuer stating that that the annual financial report and the management report gives a true and fair view of the company's financial position and so forth, cf. the more detailed comments below. The annual financial report shall be published at the latest four months from the close of the accounting year.

The annual financial report shall as a main rule be prepared in accordance with the Norwegian Accounting Act § 3-3a. This means that the annual report shall include information on amongst other matters the type of activities, the working environment, gender equality, effect on the external environment, continued operation, assessments of the accounting items included the cash flow report together with a risk assessment and future prospects and potential[34].

The annual financial report shall include audited group and parent company accounts. The starting point is that the annual accounts, half-year accounts and quarterly reports shall be prepared in accordance with the IFRS Regulation[35]. One important objective of the regulation is to establish accounting rules that shall be applied in the same way throughout the EEA. The accounts can also be prepared in accordance with the Japanese Generally Accepted Accounting Principles ("GAAP") or the US GAAP, in that such GAAPs are deemed to provide information of at least the same quality as IFRS. In the case of accounting years that commence prior to 1st January 2012, third country issuers can prepare accounts in accordance with Chinese GAAP, Canadian GAAP, South Korean GAAP or Indian GAAP. This is a time-limited transition arrangement until the said GAAPs are converted to IFRS[36]. Further, the EU

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[33] Regulations 29th June 2007 No. 876

[34] Finanstilsynet – The Financial Supervisory Authority of Norway – can rule that certain third country issuers can prepare annual reports in accordance with other regulations, providing that the said regulations fulfil certain requirements. With regard to the obligation to report on enterprise governance, *Oslo Børs / Oslo Axess* can, under certain conditions, exempt third country issuers from this obligation.

[35] Cf. Art. 4 of the IFRS Regulation, which has been implemented in the Accounting Act § 3-9 and accompanying regulations

[36] Cf. the Securities Trading Regulations § 5-11

Commission has assumed that among others Australia, Hong Kong, New Zealand, Singapore and South Africa have already implemented IFRS in their sets of rules[37].

For Norwegian companies, the Accounting Act[38] stipulates the requirements for preparation and content. As mentioned, the Accounting Act implements the IFRS Regulation. The Accounting Act § 3-1 third paragraph stipulates which provisions in the Accounting Act that apply to accounts prepared in accordance with the IFRS Regulation. The background for the said listing is a statement issued by the EU Commission in November 2003[39], in which it states that national accounting legislation cannot be made to apply in the area governed by the Regulation. As of today's date, the IFRS Regulation does not include requirements for reporting payments to other countries in connection with the extraction of natural resources. We point out that third country issuers are not subject to compliance with the note requirements in the Accounting Act Section 7.

The annual financial report shall also include statements made by the persons responsible within the issuer stating that the annual financial accounts have been prepared in accordance with current applicable accounting standards and that, to the best of their knowledge and belief, the information therein provides a true and fair view of the company's assets, liabilities, financial position and result of the issuer and the group taken as a whole, and that the management report includes a true and fair review of the development and performance of the business and the position of the issuer and the group taken as a whole, together with a description of the principal risks and uncertainties factors that they face. The declaration shall be prepared by the persons that are responsible within the issuer for submitting the financial accounts in accordance with the accounting rules applicable to the issuer. In the case of Norwegian issuers, the declaration shall be signed by the Board of Directors and the Managing Director. The declaration shall be published as part of the annual financial report.

4.1.2 Publication of financial reports

All companies admitted to trading have a mandatory obligation to publish financial reports. Companies listed on *Oslo Børs* or *Oslo Axess* publish this information through the Oslo Stock Exchange information system (www.newsweb.no), i.e. either by uploading a link to the report or by uploading information referring to the relevant Internet page where the information has been published. The above arrangements ensure that financial reports from listed companies are accessible in the public domain.

[37] See the Financial Supervisory Authority of Norway's circular of 10/2011 for more details
[38] Act of 17th July 1998 No. 56
[39] Comments on the IAS Regulation and the Accounting Directives, Publication of the IASB Framework

4.1.3 Inspection, controls and sanctions

The Financial Supervisory Authority of Norway oversees that annual financial statements, management reports, half-yearly financial statements and other financial reporting by amongst others listed Norwegian companies are in compliance with laws or regulations, cf. the Securities Trading Act § 15-1 third paragraph. The Financial Supervisory Authority of Norway may impose a violation penalty if the financial reporting is not in conformity with laws or regulations, where the violation was committed wilfully or through negligence, cf. the Securities Trading Act § 17-4 second paragraph.

Breaches of the provisions of the Accounting Act or rules issued with authority in the Accounting Act are punishable by fines or imprisonment for up to three years, cf. the Accounting Act § 8-5. Punishment can be increased to six years if there are particularly aggravating circumstances.

Violation of the deadline for submission of annual accounts, annual reports and auditor's reports to the Register of Business Enterprises are sanctioned by late filing penalties, cf. the Accounting Act § 8-3.

4.2 Other rules

4.2.1 The Regulations on reporting and balancing of cash flows from petroleum activities

The EITI has prepared a set of criteria and principles for transparency and good governance[40]. If a country decides to implement EITI, the country must fulfil the said criteria. Norway is one of eleven countries that have implemented EITI[41] to date.

In connection with the Norwegian implementation of EITI, the Petroleum Act[42] § 10-18 was amended[43]. The provision provides authority in the first paragraph to introduce regulations to supplement and implement the Act, hereunder amongst other things provisions on the licensee's obligation to make information relating to the activities pursuant to the Act available in the public domain. § 10-18 second paragraph continues with a stipulation that the King can in regulations order licensees and administrative agencies to provide information relating to payments. Administrative agencies can be ordered to provide such information without hindrance of the duty of confidentiality and the information can be published by both the provider and the recipient of the information.

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[40] See http://eiti.org/eiti/principles

[41] Norway is the first OECD country that has implemented EITI and has thus achieved the status "Compliant Country". Further, in addition to Norway, at the time of writing Azerbaijan, The Central African Republic, Ghana, Kirgizstan, Liberia, Mongolia, Niger, Nigeria, East Timor and Yemen have implemented EITI. See http://eiti.org/implementingcountries for updated information.

[42] Act pertaining to petroleum activities of 29th November 1996 No. 72

[43] Adopted with authority in the Act of 18th June 2010 No. 27 (in force from 1st July 2010 by res. of 18th June 2010 No. 844).

The Regulations of 26th June 2009 No. 856 on reporting and balancing of cash flows from petroleum activities are issued with authority in the Petroleum Act § 10-18. The regulations include requirements that the licensee for exploration, extraction, transport or exploitation pursuant to the Petroleum Act shall report separately all payments in the previous calendar year that were made in connection with petroleum activities pursuant to the Act Relating to the Taxation of Subsea Petroleum Deposits etc. (The Petroleum Taxation Act)[44], the Act Relating to CO2 Tax in the Petroleum Activity on the Continental Shelf[45], the regulation of 11th December 2001 No. 1451 on Special Public Charges Section 3-19 on Taxation of Emissions of NOx and the Petroleum Act § 4-10 (including area tax, production tax, non-recurrent fees, and production bonus).

4.2.2 Note requirements for unlisted enterprises in extractive industries

There is a specific note requirement for enterprises operating in the business sectors of petroleum extraction, energy production and mining, in the Accounting Act § 7-34. Pursuant to the provision the enterprises with the obligation to submit accounts that have extensive activities in the extraction of petroleum, energy production or mining, shall provide information on estimated reserves and remaining extraction or exploitation periods, license periods and other economic terms and conditions. It shall be reported separately on future expenditures for disposal and cleaning up. The provision does not apply to enterprises that implement IFRS Regulation, cf. the Accounting Act § 3-1.

4.2.3 Requirements for listed mineral companies to provide a report on reserves

In accordance with the Stock Exchange Regulations[46] § 1 third paragraph, the Oslo Stock Exchange has stipulated listing rules[47] and continuing obligations for companies that are listed on *Oslo Børs* (Oslo Stock Exchange) or *Oslo Axess*. The rules stipulated by the Oslo Stock Exchange provide supplementary and clarification regulations to the Stock Exchange Act, the Securities Trading Act, the Stock Exchange Regulations and the Securities Regulations as they apply at any time.

Oslo Stock Exchange has stipulated a requirement that oil and natural gas companies, hereunder companies that are solely engaged in exploration for oil, gas or mineral resources, shall prepare and submit a statement of reserves. This statement shall be presented together with the application for listing on *Oslo Børs* or *Oslo Axess*[48].

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[44] The Act of 13th June 1975 No. 35
[45] The Act of 21st December 1990 No. 72
[46] The Regulations of 29th June 2007 No. 875 on regulated markets (The Stock Exchange Regulations)
[47] The listing rules and the continuing obligations of stock exchange listed companies are available on http://www.oslobors.no/Oslo-Boers/Regelverk/Regler-for-utstedere
[48] Cf. the Listing Rules sub-section 2.2.6.cjf. 3.4 third paragraph No. 30

After the listing of the company, the statement of reserves shall be published annually, and at the latest simultaneously with the publishing of the annual financial report[49]. The same publication mechanisms shall be used as for other information where disclosure is mandatory. The said obligations are described in more detail in Stock Exchange Circular 9/2009 with attachments[50].

The annual statement of reserves must include reserves presented in a table form, while resources should not appear in a table form. Reporting of contingent resources is optional. Contingent resources may be quantified in the management's written account in the report if this is considered to be relevant information. For prospects, leads, resources under evaluation and resources whose development is considered unlikely based on available information, no quantitative information should be disclosed. The reserves report shall also include a narrative (management evaluation and analyses) with key assumptions, and, as a general rule, confirmation by independent expert.

More detailed requirements for the qualification and independence of such experts are provided in the circular. If the company's own reserve estimates for a field differ substantially from the reserve estimates made public by the operator of the field, the deviation should be explained to the extent possible. The attachment to the circular provides more details of classification systems for reserves and resources, estimates and report formats and so forth.

Material breaches of the continuing obligations can be sanctioned by the Oslo Stock Exchange by the imposition of violation fees[51].

[49] Cf. continuing obligations sub-section 3.8
[50] Stock Exchange Circular 9/2009 with attachment is available at http://www.oslobors.no/Oslo-Boers/Regelverk/Boerssirkulaerer/9-2009-Opptakskrav-og-informasjonsplikter-for-olje-og-naturgasselskaper
[51] Cf. continuing obligations sub-section. 15.4

5 INTRODUCTION INTO NORWEGIAN LAW

5.1 General comments on the introduction of reporting requirements into Norwegian Law

As mentioned in the introduction, the Government's action plan against economic crime stipulates that the Government shall assess whether there is basis for introducing country-by-country reporting either as a step in the process with any new EU rules in the area or on an independent basis.

Norway has taken a leading role in the work for good governance and increased transparency in the extractive industries, first and foremost by being the first OECD country that implemented EITI[52]. There is also an established international environment in Oslo that works for good governance and transparency in the extractive industries i.e. UNDP Oslo Governance Center[53] was located here in 2002 and the EITI Secretariat in 2007. Norway is also actively engaged in promoting economic progress in developing countries in connection with the programmes Oil for Development[54] and Tax for Development.[55] By establishing a requirement for country-by-country reporting by law Norway will contribute to global recognition of this tool[56].

We have given an account for several of the on-going regulatory initiatives in the EU that may result in country-by-country reporting. As of today's date it is unclear what these initiatives will encompass. There does however appear to be broad support for the main essence of country-by-country reporting. In any case, there are indications that the EU's reporting requirements will be in line with the reporting requirements that have been adopted in the USA under the Dodd-Frank Act.

The USA is ahead of the EU in this work. Despite the high level of interest no decision has been made as to whether, and if so when, the EU's regulatory initiatives will materialise. PWYP Norway is of the opinion that Norway must take an independent initiative and not await EU rules. Furthermore, PWYP Norway is of the opinion that early engagement will provide important learning in the process. If a general reporting requirement is established in Norwegian law, it will be possible to apply this legal authority to implement any subsequent requirements from the EU.

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[52] Norway was approved as EITI compliant on 1st March 2011. Press Release: http://www.regjeringen.no/nb/sub/eiti/aktuelt/norge-godkjent-som-fullt-medlem-av-eiti.html?id=635021

[53] See http://www.undp.org/oslocentre/

[54] http://www.norad.no/Satsingsomr%C3%A5der/Energi/Olje+for+utvikling

[55] http://www.norad.no/Satsingsomr%C3%A5der/Samfunns%C3%B8konomi+og+offentlig+forvaltning/Skatt+for+utvikling/Skatt+for+utvikling.244698.cms

[56] This is one of the reasons Norway chose to implement EITI, see http://www.regjeringen.no/upload/OED/pdf%20filer/Høringer/EITI/horingsnotat%20EITI.pdf pages 2 and 3.

PWYP Norway has listed a number of concrete requirements and PWYP Norway is of the opinion that these should be introduced into Norwegian law. The requirements listed by PWYP Norway are in part complicated and extensive and on some points they go further than the content of the reporting requirements of the Dodd-Frank Act. Several of these points also require a more in depth consideration in connection with incorporation into Norwegian law, hereunder in relation to existing rules and the placement of any new reporting requirements.

Further, we point out that the SEC is working on the completion of the final rules under the Dodd-Frank Act, see sub-section 3.1. As previously mentioned, we expect the final rules to be published in the course of summer of 2011.

Against this background we consider that an introduction of country-by-country reporting is best introduced at this first stage as a general and broad reporting requirement in Norwegian law. Such requirement should be based on the reporting requirements laid down in the Dodd-Frank Act Article 13 (q) point 2 A. Further, we recommend that at the same time and in addition to this, authority is provided in law to stipulate further requirements and the further content in regulations. This approach corresponds to the technique used in the Norwegian implementation of EITI, cf. sub-section 4.2.1

As of today's date, there is no requirement for country-by-country reporting for larger companies within the commercial extractive industries in the applicable Norwegian law. Neither does the applicable law provide adequate authoritative basis to stipulate such reporting requirements in regulations.

The introduction of new, country-by-country reporting requirements will require anchorage in law by statutory authority. Thus new statutory authority is required for the introduction of country-by-country reporting. The next question is therefore what any such new statutory authority should include.

Within the framework of this report we did not have the opportunity to prepare a proposal for the introduction of the more concrete reporting requirements. Implementation of the detailed reporting elements can be stipulated in regulations.

5.2 Assessment of placement in Norwegian law

The disclosure requirements mainly relate to financial information relating to the commercial exploitation of natural resources that the commercial companies in the extractive industries have undertaken for governments of other countries. It is therefore natural to demand that such information shall be included in the companies' annual financial reports.

We presume that it is not appropriate to lay down the new reporting requirement in a new, separate act, but that the requirement rather should be incorporated in an existing statute.

We have considered whether the reporting requirement should be incorporated into the Accounting Act as part of the notes to the financial statements, or be incorporated in the Securities Trading Act as a requirement to the financial reports of the companies admitted to trading. By regulating this issue in the Securities Trading Act, the requirement will as a starting point apply to all share issuers with Norway as the home state. If it is incorporated as a requirement of the notes to the financial statements, the regulation will not encompass third country issuers[57]. To regulate the reporting requirement through the requirements for financial reporting is in accordance with the solution adopted for the Dodd-Frank Act.

5.3 Starting points for the regulation

5.3.1 Duty of disclosure

The main objective of the proposal is to introduce a requirement that multi-national companies that operate commercial extraction activities in other countries shall annually submit a report containing information on all payments made by the company (hereunder subsidiaries and entities under their control) to other another state, public body in another state, or foreign state-owned companies, cf. correspondingly the Dodd-Frank Act Article 1504 point (2) (A). We consider that these are the main elements that should be reflected in a new statutory authority.

We propose that the reporting requirement is incorporated into Norwegian law as a new requirement for information to appear from the annual financial reports submitted by issuers of shares with Norway as their home state, cf. sub-section 5.4. Such reporting will thus form part of the annual financial report, and will be published and available to the general public in the same manners as other financial reporting by listed companies. Further, supervision and sanctioning of the new requirement could be adapted into current regulation of violations of the rules on financial reporting.

5.3.2 Which companies should be incorporated

It is desirable with a broad approach to the area of application, independently of form of business organisation and listing, and independently of ownership structure and whether the company is owned by private or state interests. The objective of the reporting requirement indicates that it should apply to all multi-national companies that perform extraction activities in foreign states. It is for the most part only large companies that are admitted to trading on regulated markets that operate such activities, because professional competence, a solid organisation and access to large capital sums are required for these types of activities. The companies that are in the main target group for country-by-country reporting are thus the issuers of shares having Norway as their home state.

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[57] I.e. companies from countries outside the EU/EEA that have Norway as their home state, see sub-section 4.1.1.

Such companies are often organised as groups with one or more underlying subsidiary companies and entities under their control. The reporting requirement should apply correspondingly to all such underlying companies. In order to ensure sufficient clarity in this respect, we presume that the area of application for underlying companies should be regulated by regulations.

5.3.3 Which activities and products

As a starting point all extraction activities should be encompassed. The term "extraction activities" refers to the petroleum industry and the mining industry. The duty of disclosure in mandatory reporting should thus include the extraction of petroleum (oil and gas) and minerals.

We presume that in general it would be adequate to be able to refer to existing definitions of the above-mentioned terms in Norwegian law as far as these definitions are suited to the objectives of the reporting requirement.

The Norwegian petroleum industry is regulated mainly by the Petroleum Act[58]. The definition of "petroleum" in the Petroleum Act § 1-6 a) includes both oil and gas[59] and the definition of "petroleum activities" in the same provision litra c encompasses all activities associated with subsea petroleum deposits, including exploration, exploration drilling, production, transportation, utilisation and decommissioning, including planning of such activities, but not including, however, transport of petroleum in bulk by ship.

The Norwegian mining industry is regulated under the Minerals Act[60], which came into force on 1st January 2010. The act encompasses activities that have as their objective of mapping mineral resources with the aim of extraction and any extraction of mineral deposits, cf. the Minerals Act § 3. A key divider in the Act is between land-owners' minerals and State-owned minerals, cf. the Minerals Act § 7. The term state-owned minerals refer to metals with a specific gravity of 5 gram per cubic centimetre or higher, but not alluvial gold. Titanium, arsenic and ores of these as well as magnetic pyrites and sulphur pyrite are also deemed to be state-owned minerals. The term land-owners' minerals refers to the metals and minerals that are not owned by the State. Gold can thus be both State-owned and land-owner's property in that gold in riverbed sand is alluvial (and thus the property of the land-owner). Gold in bedrock is State property.

It would in our opinion be appropriate to limit the reporting requirement to companies, activities and natural resources that are encompassed by the definitions incorporated in the

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[58] The Act of 29th November 1996 No. 72 on petroleum activities (The Petroleum Act.)

[59] "Petroleum" in the Petroleum Act § 1-6 a) encompasses "*all fluid and gaseous hydrocarbons that are found in a natural state subsea, and other substances or fluids that are extracted in connection with such hydrocarbons*".

[60] The Act of 19th June 2009 No. 101 on the acquisition and extraction of mineral resources ("the Minerals Act")

above-mentioned laws. We presume that further detailing of delimitation and listing of the definitions required will be best regulated in regulations. We point out that it is not the intention to limit areas of activity of companies that are encompassed (i.e. hold licenses and permits) pursuant to the laws mentioned, as the reporting requirement is intended to encompass the extraction of petroleum and minerals in other states than Norway.

5.3.4 Which payments shall be encompassed

The reporting requirement should encompass all payments, both monetary and payments in kind, distributed by the type of payment and the total amount paid. The term payments shall encompass all payments to all other states or public bodies as described under sub-section 5.3.5.

States use different instruments and models for generating revenues from the petroleum sector (government take). The definition of the term "payment" should therefore be given broad scope. The term should at least encompass taxes paid, charges, royalties, fees, production shares, area fees, production fees, single payments, various forms of bonus and other material payments. One should also take into account the American solution, which instructs the SEC to ensure that the term "payment" is in accordance with EITI's guidelines to the degree this is possible. In addition to the above, it would also be of interest to study the SEC's final regulation of what is deemed to constitute "part of the commonly recognized revenue streams from the commercial extraction of oil, gas or minerals", see sub-section 3.1. We therefore presume that the final definition of "payments" should be regulated through regulations.

5.3.5 Which recipients shall be encompassed

In general the reporting requirement should encompass all payments made to another state or public body. The term "public body" refers to governments, state-owned enterprises, departments, directorates, state-owned companies including state oil companies or other authoritative bodies, local or central that receives payments from the extractive industries. In our opinion the main elements relating to the recipients that should be encompassed should be included in the general reporting requirement established by law, while the detailed delimitation should be regulated through regulations.

5.3.6 Other elements that should be regulated by regulations

As mentioned above, the regulations should include clarification of a number of definitions and delimitations of terms used in the general reporting requirement. This will improve the predictability for those who are subject to the new rules.

Consideration should be given to including PWYP Norway's list of concrete requirements in the regulations. This report does not take a decision on whether the proposed provision allows for the inclusion of all PWYP Norway's requirements.

The regulations should also include further rules on the implementation of the reporting to the degree such provisions are necessary as well as provisions on the entry into force.

5.3.7 Surveillance and sanctions

By including the reporting requirement as a requirement for financial reporting, violations of the reporting requirement could be incorporated into current inspectorate and sanction systems.

5.4 Proposal for statutory authority

Against this background we are of the opinion that one way of regulating this would be to incorporate the reporting requirement as a new sub-paragraph in the Securities Trading Act § 5-5, and that the provision could be worded as follows:

> *"The issuer of shares shall in the annual report provide information on all payments to another state, public body in another state or a foreign state-owned company for the commercial exploitation of natural resources. The Ministry can issue regulations regarding which payments this applies to, which recipients are encompassed, what information is required, the application of the mandatory obligation for subsidiary companies of the issuer, and further rules of the reporting".*