

Country-by-Country Reporting by Multinational Companies

EUROPEAN COMMISSION DIRECTORATE GENERAL FOR INTERNAL MARKET AND SERVICES
PUBLIC CONSULTATION ON COUNTRY-BY-COUNTRY REPORTING BY MULTINATIONAL COMPANIES
Disclaimer: This document is a working document of the Internal Markets and Services Directorate General of the European Commission for discussion and consultation purposes, and does not purport to represent or pre-judge the formal proposal of the Commission. Please note that the questionnaire must be completed in one session. It is not possible to save comments and responses entered, and return to them later. Moreover you will be automatically disconnected after 90 minutes of inactivity. If you would like to take time completing the questionnaire, it is recommended that you copy it into a working document. When you have then finalised your comments and responses they can be copied from the working document into the questionnaire. It is possible to attach supporting documents to this questionnaire (max size 1MB) – please make sure that you have these documents prepared in advance.

INTRODUCTION The Services of DG MARKT are conducting a public consultation in order to gather stakeholders' views on country-by-country reporting by multinational companies. Country-by-country reporting is a concept that would require multinational companies to disclose financial information [1] on their operations in third countries[2] in their annual financial statements. At present, issuers of securities in regulated markets in the EU[3] are required to make public an annual financial report comprising, inter alia, a management report and the audited financial statements (cf. Article 4 of Directive 2004/109/EC)[4]. When the issuer is required to prepare consolidated accounts, the audited financial statements must comprise consolidated accounts drawn up accordance with international accounting standards (cf. Regulation (EC) No 1606/2002). Currently, the applicable accounting standards do not require issuers to disclose financial information on a country-by-country basis in their consolidated accounts, although the Accounting Directives do require issuers to identify subsidiaries, jointly controlled entities and associates[5]. Moreover, non-listed limited liability companies registered in the EU (including subsidiaries of listed companies), are required to file their annual accounts with the business registries, which are accessible to any interested party[6]. Similar obligations exist in many third countries.

POSSIBLE WAYS OF ENSURING ADDITIONAL TRANSPARENCY In recent years there have been calls to impose on large companies (whether listed or unlisted) operating in third countries additional transparency requirements linked to these activities in third countries. In some cases, these calls concern a particular industry sector. In a more general context, the Commission, on 22 September 2010, agreed with the European Parliament in the context of the negotiations of the new supervisory package "to prepare a Communication evaluating the feasibility of requesting certain issuers of shares whose securities are admitted to trading in a regulated market and which prepare consolidated accounts, to disclose in the annual financial report, key financial information regarding their activities in third countries." Broadly speaking, two types of disclosure could be considered in this context: 1) General country-by-country reporting by multinational companies. The main goals of such disclosure would be: (a) to help investors to better assess the different national activities of multinational companies; and (b) to enhance transparency about capital flows, for instance, to better enforce tax rules. Certain steps have already been taken to this end: The Commission Communication on Tax and Development: Cooperating with Developing countries on promoting good governance in tax matters (COM(2010)163 final) of 21 April 2010, aims to improve synergies between tax and development policies. Recent Foreign Affairs Council conclusions of 14 June 2010 encouraged the EU and its Member States to work towards "exploring country by country reporting as a standard for multinational corporations, by encouraging the OECD to pursue its work on country-by-country reporting, including as regards the OECD Guidelines for Multinational Enterprises and in its Principles of Corporate Governance and on propriety, integrity and transparency in the conduct of international business and finance. In addition, Member States should support ongoing consultation work by the IASB (International Accounting Standard Board) on a country-by-country reporting requirement in IFRS 6 (International Financial Reporting Standard 6) for the extractive sector, and encourage the IASB to look beyond the extractive sector." [7] 2) Specific transparency obligations for companies which are active in the extractive industry (minerals, oil, and gas)[8] in third countries. The main goal of such disclosure would be to provide more transparency about the payments made by the extractive industry to governments in third countries. In this context, it may be noted that Section 1504 of the US Dodd-Frank Act (which was adopted on 21 July 2010),

requires all extractive companies (e.g. minerals, oil, or natural gas) listed on US stock-exchanges to publish payments made to governments on a country-by-country basis[9]. Some EU based companies active in the extractive industry are listed in the US and will therefore in the future be subject to this Act. Moreover, the IASB (International Accounting Standard Board) is currently working on a possible country-by-country reporting requirement which could be incorporated within a replacement Standard for IFRS 6 (International Financial Reporting Standard 6) for the extractive sector. Once finalized, this standard is likely to become mandatory in the EU through the usual endorsement process under the IFRS Regulation.

FOLLOW UP OF THE CONSULTATION The following questions are aimed at gathering reactions and insights from stakeholders as well as quantitative and qualitative evidence on the impact, costs and benefits relating to the issue of country-by-country reporting obligations. **NOTE:** Contributions received and the identity of the contributor will be published on the internet, unless the contributor is opposed to the publication of personal data for fear that this would damage his/her legitimate interests, in which case the contribution may be published anonymously. Otherwise, the contribution will not be published, and its content will not be taken into account. It is important to read the specific privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with. [1] The Accounting Directives already require issuers to identify subsidiaries, jointly controlled entities and associates in other countries. There is, however, no consensus on what further financial data, if any, should be disclosed on a country-by-country basis. This could include information such as: the financial performance in each country including information on intra-group transactions, pre-tax profit, tax information on a country-by-country basis, etc. [2] 'Third country' means a state that is not a Member State of the European Union and the European Economic Area (EEA). [3] And the European Economic Area. [4] Issuers of shares and issuers of debt securities admitted to trading in a regulated market in the EU shall also publish a half-yearly financial report; and issuers of shares also publish quarterly financial information (either a quarterly report or an interim management statement). See Articles 5 and 6 of Directive 2004/109/EC. [5] Articles 43(1)(2) of Directive 78/660/EEC and 34(2) of Directive 83/349/EEC. [6] See so-called First Company Law Directive (Directive 68/151), in particular Article 1 for the types of companies covered by this obligation and article 2 for the obligation. [7] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/115145.pdf [8] As defined in the IASB Discussion Paper DP/2010/1 on Extractive Activities (April 2010): "Exploring for and finding minerals, oil and natural gas deposits, developing those deposits and extracting the minerals, oil and natural gas. These are referred to as extractive activities or, alternatively, as upstream activities. Minerals, oil and natural gas are non-regenerative natural resources. In other words, they cannot be replaced in their original state after extraction. Minerals are naturally occurring materials in or on the earth's crust that include metallic ores (such as copper, gold, silver, iron, nickel, lead and zinc), other industrial minerals (non-metallic minerals and aggregates), gemstones, uranium and fossilised organic material (coal). Oil and natural gas, often referred to collectively as petroleum, can be defined as a naturally occurring mixture consisting of hydrocarbons in the gaseous, liquid or solid phase (such as tar sands or oil shale)." [9] More specifically, (i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of minerals, oil, or natural gas; and (ii) the type and total amount of such payments made to each government.

Background Information

Please provide the following details together with your response.

For the purpose of analysis of this consultation you want to be identified as **(compulsory)**
(at most 1 answer)

preparer

- user
- public authority
- accountants and auditors
- other

If you are preparer, are you **(compulsory)**
(at most 1 answer)

- Company (including financial institutions)
- Association of companies
- Other (please specify)

Are you listed on regulated market? **(compulsory)**
(at most 1 answer)

- Yes
- No

In which country(ies) you are listed: **(compulsory)**

Do you report according to IFRS? **(compulsory)**
(at most 1 answer)

- Yes
- No

Do you have investments in third countries? **(compulsory)**
(at most 1 answer)

- Yes
- No

Other company, please specify **(compulsory)**

Please specify the user type **(compulsory)**
(at most 1 answer)

- Financial institution
- Analyst
- Investor/investor organisation
- NGOs
- Association of stakeholders

Private person

Other (please specify)

Other user: please specify **(compulsory)**

Please specify the type of accountants and auditors **(compulsory)**
(at most 1 answer)

accounting/audit firm

Association of accountants and auditors

Other, please specify **(compulsory)**

Name(s) (of respondent and of your organisation / company) **(compulsory)**

Country where your organisation / company is located **(compulsory)**
(at most 1 answer)

- AT - Österreich
- BE - Belgique / België
- BG - България
- CS - Česká republika
- CY - Κύπρος
- DE - Deutschland
- DK - Danmark
- EE - Eesti
- EL - Ελλάδα
- ES - España
- FI - Suomi
- FR - France

- HU - Magyarország
- IE - Ireland
- IT - Italia
- LT - Lietuva
- LU - Luxembourg
- LV - Latvija
- MT - Malta
- NL - Nederland
- PL - Polska
- PT - Portugal
- RO - România
- SK - Slovensko
- SL - Slovenija
- SV - Sverige
- UK - United Kingdom
- EU-wide organisation
- other

Non EU country, please specify (compulsory)

Please provide the name and location of parent company (optional)

Your address (optional)

Your e-mail address: **(compulsory)**

Short description of the general activity of your organisation / company: **(optional)**

Is your organisation registered in the Interest Representative Register? If your organisation is not registered, you have the opportunity to register here before you submit your contribution. Responses from organisations not registered will be published separately from the registered organisations. **(compulsory)**

(at most 1 answer)

- Yes
- No

Please specify the Register ID number in the Interest Representative Register **(compulsory)**

Can the Commission contact you if further details on the information you submitted is required? **(compulsory)**

(at most 1 answer)

- Yes
- No

Publication: Do you object to publication of the personal data on the grounds that such publication would harm your legitimate interests? **(optional)**

- I object

Questionnaire

1. Would it be useful to have common EU rules on the disclosure of financial information[10] on a country-by-country basis? [10] The Accounting Directives already require issuers to identify subsidiaries, jointly controlled entities and associates in other countries. There is, however, no consensus on what further financial data, if any, should be disclosed on a country-by-country basis. This could include information such as: the financial performance in each country including information on intra-group transactions, pre-tax profit, tax information on a country-by-country basis, etc. **(compulsory)**

(at most 1 answer)

- Yes
- No
- No opinion

Please explain In replying to this question, please consider: (i) whether the existing disclosure requirements (e.g. publication of accounts by subsidiaries of multinationals in third countries concerned) provide sufficient transparency; (ii) whether there is scope for disclosing information only to public authorities (which could consolidate such information on a "country-by-country" basis before making it public); (iii) this transparency requirement in the context of corporate social responsibility; (iv) any possible negative consequences for the EU economy (e.g. impact on security of energy supply in the EU; competitive disadvantages for EU companies which may be disclosing commercially sensitive information, increased reporting costs); and (v) any possible positive/negative repercussions for corporate governance as a consequence of applying higher transparency standards. **(optional)**

(maximum 10000 characters)

2. Would the disclosure of financial information on a country-by-country basis by multinational companies be meaningful to investors of the company concerned? **(compulsory)**

(at most 1 answer)

- Yes

No

No opinion

Please explain In replying to this question, please consider: (i) whether there are risks inherent to multinational companies' activities that could be identified through the disclosure of financial information on a country-by-country basis, and (ii) any possible positive/negative repercussions for corporate governance as a consequence of applying higher transparency standards. If yes, please specify the type of financial information that would be useful (e.g. intra-group transactions, turnover, pre-tax profit, tax expenses on a country-by-country basis, etc.), for which purpose, and how such disclosure could help in achieving the objective of being meaningful to investors. Please consider whether additional specific information would be needed for companies operating in certain sectors (e.g. financial services, extractive industry, other) **(optional)**

(maximum 10000 characters)

3. Would the disclosure of financial information on a country-by-country basis by multinational companies be useful for the purposes of improving tax governance at a global level? **(compulsory)**

(at most 1 answer)

Yes

No

No opinion

Please explain the type of financial information that would be useful (e.g. intra-group transactions, turnover, pre-tax profit, tax expenses on a country-by-country basis, etc.), and how such disclosure could help in achieving the objective. **(optional)**

(maximum 10000 characters)

4. Would the disclosure of financial information on a country-by-country basis by multinational companies active in the extractive sector (e.g. minerals, oil, natural gas, etc.)^[11] be useful in order to improve domestic accountability and governance in natural resource-rich third countries? ^[11] As defined in the IASB Discussion Paper DP/2010/1 on Extractive Activities (April 2010): "Exploring for and finding minerals, oil and natural gas deposits, developing those deposits and extracting the minerals, oil and natural gas. These are referred to as extractive activities or, alternatively, as upstream activities. Minerals, oil and natural gas are non-regenerative natural resources. In other words, they cannot be replaced in their original state after extraction. Minerals are naturally occurring materials in or on the earth's crust that include metallic ores (such as copper, gold, silver, iron, nickel, lead and zinc), other industrial minerals (non-metallic minerals and aggregates), gemstones, uranium and fossilised organic material (coal). Oil and natural gas, often referred to collectively as petroleum, can be defined as a naturally occurring mixture consisting of hydrocarbons in the gaseous, liquid or solid phase (such as tar sands or oil shale)." **(compulsory)**

(at most 1 answer)

- Yes
- No
- No opinion

Please explain the type of financial information that would be useful (e.g. intra-group transactions, turnover, payments to governments, pre-tax profit, tax expenses on a country-by-country basis, etc.), other narrative information on activities rather than figures, and how such disclosure could help in achieving the objective. **(optional)**

(maximum 10000 characters)

5. Would it be useful if financial information on a country-by-country basis by multinational companies would be presented according to predefined standards or formats? **(compulsory)**

(at most 1 answer)

- Yes
- No
- No opinion

Please explain. In replying to this question, please consider, in the absence of existing international accounting standards on this issue: (i) how could this objective be achieved (e.g. disclosure in the annual management report); (ii) at what level should the data be comparable (e.g. at the level of the multinational "company", for the benefit of investors; at the level of the "country", for the benefit of other stakeholders; other?); (iii) who could prepare any common reporting format of this kind (e.g. the IASB, ESMA, the OECD) and what would be the advantages of the latter bodies compared to the IASB. **(optional)**

(maximum 10000 characters)

6. If country-by-country reporting were to be considered useful, what kind of multinational companies would usefully be targeted? **(compulsory)**

(at most 1 answer)

- All issuers of shares in EU regulated markets
- Only some issuers of shares in EU regulated markets which meet one or more of the following criteria (click all relevant boxes):
- Other (please specify)
- None (reporting not useful)

Only some issuers of shares in EU regulated markets which meet one or more of the following criteria (click all relevant boxes): **(compulsory)**

(at least 1 answers)

- Large Size [please provide a threshold in terms of capitalization or turnover]
- Company active in the extractive industry
- Company active in other important sector of activity for third countries [please identify the sector]
- Companies for which the revenue arising from 3rd countries is important [please provide a threshold or percentage]
- Other (please specify)

Large Size [please provide a threshold in terms of capitalization or turnover] **(optional)**

Company active in other important sector of activity for third countries [please identify the sector] (optional)

Companies for which the revenue arising from 3rd countries is important [please provide a threshold or percentage] (optional)

Other (please specify) **(compulsory)**
(maximum 10000 characters)

Other (please specify) **(compulsory)**
(maximum 10000 characters)

If country-by-country reporting were to be considered useful, what kind of multinational companies would usefully be targeted? Please explain. In replying to this question, please consider some of the following issues: (i) the benefits that disclosure by all companies may bring; (ii) the compliance cost; (iii) the extent of a company's activities in third countries (if limited extent, disclosing financial information may be prejudicial to the business position of the company); and (iv) the possible consequences for the competitiveness of EU capital markets. **(optional)**

(maximum 10000 characters)

7. Please provide information on the cost that you estimate that the introduction of country-by-country disclosure requirements could entail. **(optional)**

(maximum 10000 characters)

8. Please provide any additional comments you may have that have not been addressed above. **(optional)**
(maximum 10000 characters)

9. If you have relevant documents you want to share with us, please attach them here.
(optional) **(optional)**

I attach additional documents

Useful links

Financial Reporting webpage: http://ec.europa.eu/internal_market/accounting/index_de.htm
Company Law & Corporate Governance
webpage: http://ec.europa.eu/internal_market/company/index_de.htm