

To  
The Minister of Finance, Sigbjørn Johnsen,  
The Minister of International Development, Erik Solheim,  
The Minister of Foreign Affairs, Jonas Gahr Støre

Dear ministers,

**Bringing the voice of governments and tax authorities to the International Accounting Standards Board - A New reporting standard for the Extractive Sector is in development<sup>1</sup>.**

Publish What You Pay Norway is writing to you in order to direct your attention to the International Accounting Standards Board (IASB) recent publication of a Discussion Paper on a new International Financial Reporting Standard (IFRS) for the Extractive Industries<sup>2</sup>, for which we have submitted a formal response letter. Our formal response letter is attached to this email and can also be found online<sup>3</sup>.

The extractive industries face unique material and reputational risks in the form of country-specific taxes and regulations. Challenges are compounded by the substantial need of capital companies and the importance of natural resource to the national security and strategic objectives.

PWYP has developed a coherent set of six requirements for an improved reporting standard, which will contribute greatly to anti-corruption work, capital flight control in addition to setting a global standard for transparency and promoting a level playing field for companies. PWYPs proposals have been tested by key business partners and have been assessed as to the point, concrete and achievable.

The IASB responded to the concrete proposal from PWYP by letting the IASB project group include and discuss the concrete proposals from PWYP in chapter 6 of the Discussion Paper.

We appreciate that PWYPs proposals have been included<sup>4</sup> and addressed in chapter 6 of the discussion paper as we have worked for this since 2006; however, we cannot accept the way our proposal has been analyzed and discussed, or the following conclusions that the IASB project group is suggesting in the Discussion Paper. We will come back to this.

**A global civil society network working for country-by-country reporting standards**

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<sup>1</sup> A snapshot of the discussion paper: [http://www.iasb.org/NR/rdonlyres/FBoCAAoD-92E1-4F31-98B2-DF2C8957D15C/o/IASB\\_Snapshot\\_Aprilv7.pdf](http://www.iasb.org/NR/rdonlyres/FBoCAAoD-92E1-4F31-98B2-DF2C8957D15C/o/IASB_Snapshot_Aprilv7.pdf)

<sup>2</sup> Full report: <http://www.iasb.org/News/Press+Releases/extractive+activities+DP.htm>

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<http://www.iasb.org/Current+Projects/IASB+Projects/Extractive+Activities/DPAp10/CL/CL.htm>

<sup>4</sup> History of PWYPs relation with IASB:

<http://www.publishwhatyoupay.org/en/about/advocacy/accounting-standards-regulations>

Publish What You Pay Norway is the national chapter of the international campaign Publish What You Pay, which addresses the paradox that 2/3 of the world's citizens, in total 3,6 billion people, live in the most resource rich countries and economies in the world *without* access to the information they need in order to play a rightful role as informed citizens exercising democratic control and holding their governments accountable for management of revenues from trade with the country's non-renewable resources.

PWYP has been working for country-by-country reporting standards for companies in the extractive industries since 2002, both through voluntary and binding regulation. We organize and mobilize over 300 non-governmental organizations from over 70 countries campaigning for this concept.

One example on a *voluntary* global standard, which PWYP has played an instrumental part in developing, is the Extractive Industries Transparency Initiative (EITI)<sup>5</sup>, which Norway has gained much recognition for implementing as the first OECD country in the world.

Our chosen avenue for our work for *binding* regulation is to influence standard setters in the extractive industries and propose improved reporting standards. Accounting regulations and reporting standards make up our global financial reality and may contribute, or not, to our global financial stability and transparency. Lack of such conditions may lead to financial instability and civil riots. The extractive industry is particularly relevant in this aspect because of its relation to energy security and because this sector has proved to be particular by association to large scale corruption, conflict, negative financial development, capital flight, environmental devastation and violations of human rights.

If resource rich developing countries are to fulfil internationally agreed upon goals, such as the Millennium Development Goals, large investments will be needed. If being channelled correctly and managed properly, revenues from the extractive industries hold perhaps the largest potential developing countries can mobilise for such investments. In order for this to likely happen we need an informed and demanding civil society that can contribute to building good institutions from within a country. Today, citizens in resource rich countries are hindered in play the effective role it could play in holding their governments accountable for the management of revenues from the extractive industries as international accounting standards allow that companies does not report their assets, values and payments on a country specific basis – hence, not much is know about how much governments may receive of payments from companies operating on their territory.

Today's current lack of useful accounting standards in public interest facilitates opaqueness on revenues from extractive industries, which in turn facilitates large –scale corruption to take place. Today's standards allow companies in the extractive industries to decide themselves whether or not they would like to report the key information citizens consider useful.

### **What are Norwegian interests in this?**

Norway, along with many other states, has allowed the development of such standards to be set outside the democratic control of the state. It has transferred this responsibility to a mainly privately owned institution dominated by the four largest accounting companies in the world, namely the International Accounting Standards Board (IASB), registered in Delaware, USA. The IASB develops accounting standards for the private sector (and increasingly also the public sector). The IASB only recognises capital providers (shareholders, creditors and perhaps other creditors being owed money etc.) as users of accounts and is only accountable to these.

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<sup>5</sup> <http://eiti.org/>

The IASB does *not* consider governments as “users of financial information”, and hence does not see themselves as accountable to any governments. The same view was also reflected amongst representatives from Norwegian standard setters in a closed roundtable organized and hosted by PWYP Norway and Norsif<sup>6</sup>, May 25<sup>th</sup><sup>7</sup>. This roundtable included informed standard setting bodies in Norway, government representatives, unions, the Norwegian investment community, all being actors having an interest in country-by-country reporting.

The constitution governing the IASB states that it must act in the public interest and address the needs of the various users of company financial reports. In spite of this, the Discussion Paper from IASB project group explicitly rejects consideration of the needs of any users except capital providers/investors. By ignoring the information requirements of tax authorities and other government agencies, we are concerned that *this standard may not be in the public interest. As Norway has transferred the responsibility to a body outside democratic control, we think it is urgent that Norway acts out of public interest and submit a response to this discussion paper.*

Norway also has substantial commercial interest within the extractive industries, both in Norway and abroad. With international ambitions comes an increased international social responsibility.

Norway has already made commitments for working on this topic, through Soria Moria 2. In addition to the efforts Norway has made in relations to the Extractive Industries Transparency Initiative (EITI), Norway also has a profiled position in the UN council for human rights where Norway has committed itself to work for human rights. It should be unnecessary to say that the connection between extractive industries and human rights is obvious. Norway also supports the Millennium Development Goals (MDG). PWYPs proposal for improved accounting standards addresses both the structural challenges reproduce the symptoms of economic injustice addressed in the MDGs, and also presents a concrete step to finance the implementation of the MDGs.

Norway has committed itself to work for mobilising developing countries own resources from the extractive industries through the Oil for development initiative. This initiative can only hope to succeed if there exists an informed and demanding civil society holding government to account for revenues from the extractive industries. In order to do this, civil society needs access to information to how much their government gets paid by the different companies operating on their territory. A sovereign state has exclusive ownership over resources through the general principles of international customary law, and makes commercial agreements with companies. But a state does not always represent a public interest or exercise fundamental state responsibilities even though international customary law is found within the states own law system, as is often the case for many resource rich developing countries. Citizens in resource rich countries all over the world have therefore, through the PWYP campaign, organised and mobilised in order to work to propose concrete change in the financial accounting architecture that may facilitates large-scale corruption and reproduce it.

Norway also produced the NOU 2009: 19<sup>8</sup> on “Tax havens and development”, which was seen as a groundbreaking new report, also internationally. We commend this work and are impatient on how this will be implemented. This NOU is also directly connected to the

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<sup>6</sup> Norsif is an investor network addressing sustainability through financial markets:

<http://www.eurosif.org/>

<sup>7</sup> The programme for the roundtable is attached.

<sup>8</sup> <http://www.regjeringen.no/en/dep/ud/Documents/nou-er/2009/nou-2009-19-2.html?id=572129>

framework laid out in the NOU 2008:14<sup>9</sup> “Coherent for development?” Energy and finance policy was central in this report. The ambition for policy coherence should be reflected in action. Norway has taken some steps as Norad has been trying to establish tax programs focusing on income distribution, revenue mobilisation and just tax systems and to establish exchange programs for bureaucrats, which is positive. But, if Norway is to live up to the OECD definition of policy coherence for development, this means having a policy that ensures that the aim of the goals for a development policy is not undermined by other policy led by other parts of the government, which also affects developing countries, and that these other policy areas as far as possible supports development goals.

Under this, we would like to emphasise that we are of the opinion that the Ministry of Finance is responsible for the standard setters in Norway, although, as we have experienced, standard setters themselves do not see themselves as accountable towards the Ministry of Finance. As mentioned above, we know that standard setters in Norway recommend standards that are not in the best interest for citizens in resource rich developing countries. This is incoherence in Norwegian policy. It is therefore urgent that the Ministry of Finance fully understands that it has a responsibility to ensure that the development dimension is taken into account and integrated into accounting policy, since if it is not, much of government spending on aid will not even compensate the costs for developing countries imposed by unnecessary incoherent policies.

We would like to underline that Publish What You Pay does represent a public interest through the network of citizens from resource rich countries, over 300 organisations from over 70 countries, who have proposed six suggestions integral for anti-corruption work, capital flight control and increased access to information. We aim to make public authorities responsible. At the same time, we experience that strong opinion drivers from companies in the extractive industries and the accounting companies assisting companies doing “tax planning”, seems to have unlimited resources available to drive opinion in the direction of companies in the extractive industries, which express that authorities should not be responsible.

PWYP has been instrumental in pushing and globalising the concept of country-by-country reporting internationally. The EU parliament has already adopted PWYPS concept of country-by-country reporting and emphasises that transparency and accountability should be embraced and promoted by all its member states and notes the efforts of countries participating in the EITI.

Investment and pension fund managers – over 80 institutional investors<sup>10</sup> globally, which together represents over 16 trillion USD (equalling the value of over 36 Norwegian pension funds), saying that *‘legitimate, but undisclosed, payments to governments may be accused of contributing to the conditions under which corruption can thrive. This is a significant business risk, making companies vulnerable to accusations of complicity in corrupt behavior, impairing their local and global “license to operate”, rendering them vulnerable to local conflict and insecurity, and possibly compromising their long-term commercial prospects in these markets’*. This statement is important as it contains support for the principle of comparability and enabling data from different countries to be easily compared.

The US has taken steps for regulating their financial sector in order to compensate for regulatory weaknesses in their system. The financial reform in the senate opens up to look for new ways to *address risk* in the financial system. It is an increased awareness on protection of users. Regulation and transparency is important to facilitate investments in sustainable value creation internationally and in developing countries.

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<sup>9</sup> <http://www.regjeringen.no/nb/dep/ud/dok/regpubl/stmeld/2008-2009/stmeld-nr-13-2008-2009-.html?id=545698>

<sup>10</sup> Per June 2009: <http://www.eiti.org/supporters/investors>

On May 12th, the Energy Security Through Transparency Act (ESSTA), (proposed by PWYP in USA<sup>11</sup>), has been turned into an amendment to the financial reform bill being debated in the US Senate this week. The amendment will likely receive a vote on the Senate floor this week and if it passes we will be very close to turning this idea into law: The Amendment (3732) to the Restoring American Financial Stability Act (S. 3217) would require all oil, gas, and mining companies registered with the US Securities and Exchange Commission to report how much they pay governments for access to their natural resources. The amendment introduced by Senator Cardin (D-MD) and supported by Senators Lugar (R-IN), Durbin (D-IL), Schumer (D-NY), Feingold (D-WI), Merkley (D-OR), and Johnson (D-SD), is based on a bipartisan bill introduced last September by Cardin and Lugar, the Energy Security through Transparency Act (S.1700). This bill is likely to be voted on in the Senate July 13<sup>th</sup>.

On May 21st, 2010, the Hong Kong Stock Exchange issued its new listing requirements for Mineral Companies. It includes a requirement for a company to include in its listing document; "*payments made to host country governments in respect of tax, royalties and other significant payments on a country by country basis.*" (Section 18.05, point c)[1] The OECD is also looking at country-by-country reporting

If Norway is serious about its commitments, this is a concrete opportunity to demonstrate it.

### **Why is this Discussion Paper important?**

Once finalized, the new standard will take effect in approximately 110 countries worldwide, and if the IASB succeeds in its convergence plans with the US, India, China and others, this reach will be even close to worldwide. If public interest actors are able to include key provisions, the new standard could be pivotal in improving the availability of financial information in this critical sector.

In particular, the Discussion Paper considers requiring oil, gas and mining companies to report **country-specific information** on scale of reserves, production, costs, revenues and payments to host governments. If fully included, companies would need to report this information for each country of operation.

However, not all this disclosure is currently recommended in the Discussion Paper and there are gaps and weaknesses in the current proposals that will undermine the usefulness of the data to tax authorities.

This is the first step in the IASB's standard-setting process. It is requesting comments in response and we would like to invite the Norwegian government to review the IASB's Discussion Paper and submit its comments on it before IASB's deadline July 30<sup>th</sup>.

The full text of the Discussion Paper can be found at <http://www.iasb.org/News/Press+Releases/extractive+activities+DP.htm>

We would like to bring to your attention some of aspects of the discussion paper, which we believe will be of particular interest and concern:

### **1. Rejection of the relevance of the needs of users other than capital providers**

The constitution governing the IASB explicitly commits

(a) to develop, **in the public interest**, a single set of high quality, understandable, enforceable and globally accepted financial reporting standards .....to help investors, other participants in

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<sup>11</sup> [http://action.openthebooks.org/t/2217/content.jsp?content\\_KEY=351](http://action.openthebooks.org/t/2217/content.jsp?content_KEY=351)

the world's capital markets and **other users of financial information** make economic decisions.<sup>12</sup>

The staff summary of deliberations that led to this wording of the constitution in March 2010, stated that the addition of specific reference to investors, “*does not minimise the importance of other users of financial information.*”<sup>13</sup>

Yet, the recent Discussion Paper for Extractive Activities, prepared by a project group set down by the IASB ( which notes that their report has been prepared within the framework of IASB, state that “*proposals have been assessed only from the perspective of whether capital providers would find the information useful.*” (Paragraph 6.10). With this, they have chosen to ignore the needs of other users of financial reports, including tax authorities. We would like to draw your attention to that this is inconsistent with the IASC Foundations own constitution.

This makes it urgent that other users of financial reports, including tax authorities, engage on the development of new standards to ensure their information needs are met. In addition to this, UNCTAD, in their report from 2008 called “Guidance on Corporate Responsibility Indicators in Annual Report”<sup>14</sup> recognises governments and their institutions as users of accounts.

In addition to this, this need is particularly acute for agencies in emerging economies, of which many are resource rich developing countries.

## ***2. Lack of clear recommendation to require country-specific reporting of payments to governments***

Company reporting of payments to government in their annual financial reports would allow tax authorities to compare this to their data within their own country for receipts. Data on payments in other countries would allow comparison of overall tax payments with company profits and where those payments are being made. By providing standard data across all countries of a company's operation, it would increase the possibilities for preventing transfer mispricing and other illicit forms of tax evasion and avoidance.

All companies should already have full information about payments to individual governments as part of their tax accounting. Thus the costs of producing such information should be low.

Despite this, the authors of the Discussion Paper has listened to companies claims that such country-specific data will be expensive to produce, and the Paper shies away from recommending such a requirement, seeking more research on the cost-benefit balance of requiring country-specific reporting of payments to governments.

We would suggest that tax authorities seeking a full understanding of companies' payments to governments at home and in all their countries of operation should comment on the benefits of including country-specific payment requirements for this. Again, this is also in line with NOU 2008:14.

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<sup>12</sup> <http://www.iasb.org/NR/rdonlyres/B611DD9A-F4FB-4A0D-AEC9-0036F6895BEF/o/Constitution2010.pdf>

<sup>13</sup> Staff summary: Annotated constitution showing changes agreed at the January 2010 Trustees' meeting

<sup>14</sup> [http://www.unctad.org/en/docs/iteteb20076\\_en.pdf](http://www.unctad.org/en/docs/iteteb20076_en.pdf)

### ***3. Proposal that materiality thresholds be set in relation to a company's international operations and left to the company's discretion***

The IASB's Discussion Paper for Extractive Activities proposes allowing companies to set their own materiality thresholds for country-specific reporting, stating, "It will not always be clear whether a country is material to the entity in this way, but ultimately this decision rests with the entity." (Paragraph 6.24.) This would mean that where companies deem national figures to be insignificant in relation to their international profile, this information would continue to be aggregated together and presented as 'other countries'.

Such a criteria is against the interests of tax authorities. Firstly, small figures might actually represent under-reporting and under-payment and therefore more of a reason to be reported, not less. Secondly, many multi-nationals have profits and turnovers that dwarf the national economies of many of the countries in which they operate. What may be immaterial to the company may be highly material to a country.

Therefore, we would suggest that tax authorities should express resistance to the proposal in the current Disclosure Paper to leave decisions on materiality to the discretion of companies and in relation to what is material to the company. Rather, the standard should state that companies would report for each country in which they operate. If materiality thresholds are to be set, these should be in terms of materiality to countries, not just companies.

### ***4. Proposal to allow reporting exemptions***

In addition to leaving companies to determine materiality, the Discussion Paper also proposes allowing companies to opt out of reporting country-specific data where they feel host governments might oppose this (paragraph 6.37).

One of the main rationales for accounting standards is to give consistent data from each company to be able to compare prospects and performance. Exemptions and non-reporting clearly remove this comparability.

Therefore, we would suggest it is appropriate to voice disapproval of the inclusion of reporting exemptions in the new standard.

### ***5. Proposal to include country-specific reporting requirements for some data but excluding others***

To fully understand the profile of a company's operations in each country would require reporting of:

- a. Reserves
- b. Production volumes
- c. Costs
- d. Production revenues
- e. Benefit streams (payments) to governments
- f. Subsidiaries and properties

However, whilst the current Discussion Paper is recommending a certain degree of country-specific reporting of the first three, it does not recommend the latter three.

This will not serve the needs of tax authorities. As tax expert Richard Murphy<sup>15</sup> notes, “The package above is not one that contains a series of options, it is an integrated whole, and at that the smallest integrated set of data that can be disclosed to ensure accounting credibility exists.... If their total flows to governments were to be appraised, full country-by-country reporting would add significantly to the available data to provide assurance that the reported data was credible when assessed against available comparative information.” He continues, “So, for example, the request for information on production revenues is made to ensure that payments of royalties can be validated by comparison of one with the other; a consistent ratio between revenues and royalties being expected over time on the basis of most mineral extraction agreements. He states that the list above “is the minimum needed to appraise with some reliability most of the tax flows that an extractive company will pay.....The data that the IASB is recommending be supplied is not coherent, is not comparable and will not be of high standard as a result.”

Thus, it is in the interest of tax authorities to resist the proposed selective approach of the Discussion Paper and endorse country-by-country reporting requirements for each kind of information. In particular, there is a need to express support for the inclusion of requirements related to productions revenues, payments to governments, subsidiaries and properties that are not currently recommended.

It is our sincere hope that The Ministry of Finance, The Minister of International Development and The Minister of Foreign Affairs will see it as important to participate in the development of a new IFRS for the extractive industries. We believe that requirements for country-by-country reporting by extractive countries will give tax authorities in particular a vital additional source of audited data on the financial profile of companies. Such an international standard should also generate standardized data that would support comparison of a company’s profits and payments in all the jurisdictions in which it operates, assisting the identification of anomalies.

We also believe the IASB should listen and be accountable, to a broad range of users of financial reports, including governments and civil society.

To submit your comments on the Discussion Paper please visit the IASB’s website on:  
<http://www.iasb.org/Current+Projects/IASB+Projects/Extractive+Activities/DPAp10/CL/CL.htm>.

With thanks and kind regards,



Mona Thowsen,  
National coordinator, Publish What You Pay Norway

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<sup>15</sup> Country-by-Country Reporting and The Extractive Industries: A review of the International Accounting Standards Board discussion paper on Extractive Activities published in April 2010. (May 2010) Richard Murphy FCA