

Early implementation of the Transparency Directive's requirements for reports on payments to governments Including feedback on CP14/17 and final rules

January 2015



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In this Policy Statement we report on the main issues arising from the Consultation Paper 14/17 *'Early implementation of the Transparency Directive's requirements for reports on payments to governments'* and publish the final rules.

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You can download this Policy Statement from our website: www.fca.org.uk. Or contact our order line for paper copies: 0845 608 2372.

Abbreviations used in this paper

AD	Accounting Directive (2013/34/EU)
BIS	Department for Business, Innovation & Skills
DTR	Disclosure Rules and Transparency Rules
EC	European Commission
EU	European Union
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
LR	Listing Rules
PR	Prospectus Rules
TD	Transparency Directive (2004/109/EC)
TDAD	Transparency Directive Amending Directive (2013/50/EU)
the Treasury	HM Treasury

1. Overview

Introduction

- 1.1** On 28 August 2014 we published a consultation paper (CP)¹ proposing, at the request of HM Treasury (the Treasury), to align the implementation of the requirement for reports on payments to governments (or country by country reporting) set out in Article 6 of the Transparency Directive (TD) (as revised by the Transparency Directive Amending Directive (TDAD)) with the implementation by the Department for Business, Innovation & Skills (BIS) of the country by country reporting requirements set out in Chapter 10 of the Accounting Directive (AD).
- 1.2** In this policy statement, we summarise the feedback we received on that CP and our response. We will implement this change to take effect for financial years beginning on or after 1 January 2015. Therefore we also publish the final rules that came into force on 22 December 2014 in relation to financial years beginning on or after 1 January 2015.

Who does this affect?

- 1.3** This Policy Statement will be of interest to:
- issuers of securities admitted to trading on a regulated market where the UK acts as home Member State and our Disclosure Rules and Transparency Rules (DTRs) apply, and who are or who may be active in the extractive or logging of primary forest industries;
 - listed companies who are required by LR9.2.6BR, LR14.3.23R or LR18.4.3R to comply with DTR4 as if they were an issuer for the purposes of the DTRs and who are or who may be active in the extractive or logging of primary forest industries;
 - issuers of securitised derivatives who, pursuant to LR19.4.11BR, we consider should comply with DTR4 as if they were an issuer of debt securities as defined in the DTRs and who are or who may be active in the extractive or logging of primary forest industries;
 - firms advising issuers;
 - firms or persons investing or dealing in listed securities;
 - primary information providers.

¹ www.fca.org.uk/news/cp14-17

Is this of interest to consumers?

- 1.4** This will interest consumers who deal and invest in listed securities either directly or indirectly through institutions.

Context

- 1.5** The new TD country by country reporting requirements will apply to all issuers of securities admitted to trading on a regulated market who are active in the extractive or logging of primary forest industries when the TDAD is implemented in full on a pan-EU basis in November 2015.
- 1.6** Where the UK acts as home Member State, and our DTRs apply, the new requirements will take effect in respect of financial years beginning on or after 1 January 2015. These requirements will also apply to listed companies and issuers of securitised derivatives who are required by our Listing Rules to comply with DTR4.

Summary of feedback and our responses

- 1.7** We received seven responses to CP14/17 from four individual firms and three non-profit organisations.
- 1.8** In Chapter 2, we summarise the feedback we received and our response. The majority of respondents agreed with our proposal to align implementation of the TD country by country reporting requirements with the implementation by BIS of Chapter 10 of the Accounting Directive (AD). All respondents provided technical comments, primarily concerning the reporting format.
- 1.9** We are grateful for the feedback received. We have decided to proceed with the policy proposals as outlined in CP14/17.

What do you need to do next?

- 1.10** The new country by country reporting requirements will apply in respect of financial years beginning on or after 1 January 2015. They will affect relevant issuers where the UK acts as home Member State and our DTRs apply. They will also affect listed companies and issuers of securitised derivatives who are required by our Listing Rules to comply with DTR4.

What will we do?

- 1.11** By aligning the implementation of the TD country by country reporting requirements with implementation of Chapter 10 of the Accounting Directive we will support the Government's commitment to implement the requirements early.

2. Summary of feedback and our responses

2.1 In this Chapter we outline the feedback received to the proposals made in CP14/17 and set out our responses.

2.2 Feedback on the questions asked in CP14/17

Q1: Do you agree with the proposal to align the implementation of the TD country by country reporting requirements with the implementation by BIS of the country by country reporting requirements in Chapter 10 of the AD to take effect in respect of financial years commencing on or after 1 January 2015?

2.3 The majority of respondents agreed with our proposal to align implementation and supported the timing. One respondent commented that the timing has the added benefit of ensuring consistency for UK companies that fall within the scope of both requirements.

2.4 However, one respondent expressed concern about the timescale for applying these rules to non-UK incorporated issuers for whom the UK is the Home State who, as a result of being incorporated outside the UK, will not be subject to the BIS Regulations.² They stated it would be helpful for the FCA to draw the attention of the affected issuers to the new DTR4.3A.

2.5 Another respondent highlighted the potential confusion and the administrative burden for companies that will arise from the different reporting requirements that are being set by Companies House (for the AD) and by the FCA (for the TD) and suggested companies be able to meet all of their reporting requirements using a single methodology. One respondent suggested that a universal template would be preferable, to avoid placing an undue burden on companies whilst making the comparison of information easier, however they noted a template is not likely to be compatible with the RIS system.

2.6 Other respondents commented that the FCA should provide open and machine-readable output data for users, consistent with the data output formats being considered by Companies House under the AD to maximise the value of the payments to governments reports.

Our response

We have considered the detailed comments raised and we have decided to proceed with the policy proposals as outlined in CP14/17.

In respect of the reporting format, we note the desire for us to provide open and machine-readable output data and to create a single reporting system that can be used for both Companies House filings and RIS announcements. However, the revised Transparency Directive does not (at this stage) specify the

² <http://www.legislation.gov.uk/uksi/2014/3209/made>

format for reports on payments to governments. We will not be imposing a prescribed reporting format at this time.

As outlined in CP14/17, under the TD, reports on payments to governments will be treated as regulated information and all issuers preparing these reports will be subject to the requirements set out in Article 19(1) and Article 21(1) of the TD and Chapter 6 of the DTRs.

- 2.7** The following questions were asked in relation to proposed FCA handbook changes on implementation of the new TDAD reporting requirements.

Q2: *Do you agree with the proposal to introduce a new DTR4.3A and new transitional provision DTR TP 1 (23) relating to reports on payments to governments?*

- 2.8** Two respondents noted that the TDAD requires payments to governments to be reported at consolidated level and asked for clarification through guidance, especially given the different regime under the AD. They also suggested that the guidance in DTR4.3A.8G cross refers to the obligation to report at a consolidated level as set out in DTR4.3A.7R(2).

- 2.9** One respondent requested that our guidance expressly state that DTR4.3A.7R(1) will also be satisfied if a report is prepared by an issuer in accordance with rules implementing the AD in any other EU Member State.

Q3: *Do you agree with the proposal to amend DTR4.4.8R and DTR6.3.5R(3) to refer to reports on payments to governments?*

- 2.10** In response to our statement in CP14/17 that under the TD payments to governments reports will be treated as regulated information, one respondent observed this would mean the report will have to be communicated in unedited full text and must also be kept available on the issuer's website for a period of ten years. The respondent argued the reports are not suitable for publication via an RIS in unedited full text and believe that we have the scope under the TD to treat these reports differently from other regulated information.

- 2.11** There is currently a potential exemption from this requirement for information issued under Articles 4, 5 and 6 (which includes the payments to governments reports under amended Article 6 of the TD). The respondent believed there is a strong case for allowing UK listed companies to benefit from this exemption and an RIS announcement containing a link to the report, on the company's website (in addition to sending the report to the National Storage Mechanism) should satisfy the publication requirements in relation to DTR4.3A.

- 2.12** Another respondent strongly supported the inclusion of payments to governments reports as regulated information.

Q4: *Do you agree with the proposal to amend the Glossary definition of the Transparency Directive and to include a definition of the Accounting Directive in the Glossary?*

Q5: *Do you agree with the proposal to amend DTR8 Annex 2, DTR TP 1 (1) and PR2.4.2G to make reference to reports on payments to governments and DTR4.3A?*

- 2.13** We did not receive any responses disagreeing with the proposals outlined in Questions 4 and 5.

Our response

The revised Transparency Directive requires payments to governments to be reported at consolidated level. The guidance in DTR4.3A.8G clarifies that we will consider a report prepared in accordance with the BIS Regulations to be in compliance with DTR4.3A.7R(1). However, the guidance purposely does not cross refer to DTR4.3A.7R(2). At this stage it should not be assumed that this TD requirement can be met through the AD. The Accounting Directive and Transparency Directive are two different regimes, and the requirement to report at consolidated level in a Transparency Directive context, therefore, has to remain separate from the BIS Regulations. The guidance set out in DTR4.3A.8G will remain as proposed and not cross refer to DTR4.3A.7R(2).

We have reproduced the EU requirement in the DTRs but will not be providing any guidance on consolidation at this time, although we may revisit this when the reporting regime is in place and practice develops.

We note the suggestion that DTR4.3A.8G should be extended to include a report prepared by an issuer in accordance with rules implementing the AD in any other EU Member State. As BIS are implementing the AD early, our guidance cross refers to rules that are in place in the UK. However, it is worth noting that an issuer is not obliged to refer to the UK's rules implementing the AD, they can choose to refer to rules implementing the AD in any other EU Member State (provided they are in force).

To note, DTR 4.3A.3G has been amended to clarify that, for the purposes of that guidance, the term "subsidiary undertaking" should have the same meaning as in the BIS Regulations.

We will be required to treat reports on payments to governments as regulated information under the TD, however, we intend to consider further the suggestion that an RIS announcement containing a link to the report on the company's website (in addition to sending the report to the National Storage Mechanism) should satisfy the publication requirements in relation to DTR4.3A.

- 2.14** We proposed applying the existing sanctioning regime available to us under the TD until we implement the TDAD in full. We also proposed that the new country by country reporting requirements will apply to:

- listed companies who are required by LR9.2.6BR, LR14.3.23R and LR18.4.3R to comply with DTR4 as if they were an issuer for the purposes of the DTRs; and
- issuers of securitised derivatives who, pursuant to LR19.4.11BR, we consider should comply with DTR4 as if they were an issuer of debt securities as defined in the DTRs.

Q6: Do you agree with the proposed approach in relation to the sanctions and the scope set out above?

- 2.15** We did not receive any responses disagreeing with our proposed approach in relation to the sanctions and scope. One respondent strongly agreed that breaches of the DTRs for reports on payments to governments should be penalised through the same mechanisms and with the same severity as breaches relating to existing rules.

Our response

As set out in CP14/17, we will apply the existing sanctioning regime available to us under the TD until we implement the TDAD in full.

We will also apply the new country by country reporting requirements to listed companies who are required by LR9.2.6BR, LR14.3.23R and LR18.4.3R to comply with DTR4 as if they were an issuer for the purposes of the DTRs, and to issuers of securitised derivatives who, pursuant to LR19.4.11BR, we consider should comply with DTR4 as if they were an issuer of debt securities as defined in the DTRs.

Article 46 of Chapter 10 of the Accounting Directive

- 2.16** The majority of respondents welcomed the powers for the European Commission to determine other reporting regimes to be equivalent to the European regime under Articles 46 and 47 of Chapter 10 of the Accounting Directive, recognising that this would address concerns of industry to avoid duplicative reporting. One respondent requested a redraft of DTR4.3A.7R(1) to reference this exemption.
- 2.17** Another respondent asked us to provide guidance for listed companies that expressly states that issuers to whom DTR4.3A applies will comply with DTR4.3A.7R if they comply with Article 46 of Chapter 10 of the AD, ie by preparing a report in accordance with the requirements of a non-EEA jurisdiction determined by the European Commission to be equivalent for the purposes of Chapter 10 of the AD.

Our response

The Accounting Directive and Transparency Directive are two separate regimes that serve different purposes. At this stage, we cannot assume that an Accounting Directive equivalence decision will follow across into the Transparency Directive. Therefore, the current position is that decisions on equivalence within the Accounting Directive framework remain outside the scope of the Transparency Directive .

Additional comments raised

- 2.18** Some respondents supported the fact that we do not propose an exemption regime for issuers where a country prohibits the disclosure of information on payments made to governments.
- 2.19** Four respondents argued that similar reporting requirements on payments made to governments should also apply to AIM companies.

Our response

We do not believe that revised Article 6 of the TD provides a Member State with the ability to grant an exemption regime for issuers where a country prohibits the disclosure of information on payments made to governments.

The scope of the TD country by country reporting requirements does not extend to AIM companies, therefore we will not be proposing to extend this scope.

Annex 1

List of non-confidential respondents

BP

CAFOD

Christian Aid

Deloitte

Global Witness and Publish What You Pay UK

Herbert Smith Freehills

RPMI Railpen

Appendix 1

Made rules (legal instrument)

DISCLOSURE AND TRANSPARENCY RULES (REPORTS ON PAYMENTS TO GOVERNMENTS) INSTRUMENT 2014

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 84 (Prospectus rules);
 - (3) section 89A (Transparency rules);
 - (4) section 89C (Provision of information by issuers of transferable securities);
 - (5) section 137A (General rule-making power);
 - (6) section 137T (General supplementary powers); and
 - (7) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 22 December 2014.

Amendments to the FCA Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Prospectus Rules sourcebook (PR)	Annex B
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex C

Notes

- E. In Annex C to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Disclosure and Transparency Rules (Reports on Payments to Governments) Instrument 2014.

By order of the Board of the Financial Conduct Authority
22 December 2014

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

<i>Accounting Directive</i>	Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directive 78/660/EEC and 83/349/EEC.
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Amend the following definition as shown.

<i>Transparency Directive</i>	<p>(1) (except in <u><i>DTR 4.3A</i></u>, <i>DTR 4.4</i> and <i>DTR 6.3.5R(3)(d)</i>) the European Parliament and Council Directive on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market or through a comparable mechanism for the disclosure of information under national requirements of a Member State concerning the dissemination of information (No. 2004/109/EC).</p> <p>(2) (in <u><i>DTR 4.3A</i></u>, <i>DTR 4.4</i> and <i>DTR 6.3.5R(3)(d)</i>) the European Parliament and Council Directive on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market or through a comparable mechanism for the disclosure of information under national requirements of a Member State concerning the dissemination of information (No. 2004/109/EC) as amended by the Directive of the European Parliament and of the Council of 22 October 2013 (No. 2013/50/EU).</p>
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Annex B

Amendments to the Prospectus Rules sourcebook (PR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2.4 Incorporation by reference

Incorporation by reference

...

- 2.4.2 G Information under the *TD* that may be incorporated by reference includes, for example, annual accounts and annual reports, interim management statements, equivalent information made available to markets in the United Kingdom, ~~and~~ half yearly reports and reports on payments to governments.

Annex C

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

After DTR 4.3 (deleted) insert the following new section. The text is not underlined.

4.3A Reports on payments to governments

Application

- 4.3A.1 R Subject to the exemptions set out in *DTR* 4.4 (Exemptions) this section applies to an *issuer*:
- (1) active in the extractive or logging of primary forest industries;
 - (2) whose *transferable securities* are *admitted to trading*; and
 - (3) whose *Home State* is the *United Kingdom*.
- 4.3A.2 R In this section references to an “*issuer* active in the extractive or logging of primary forest industries” are to an *issuer*:
- (1) active in the extractive industry as defined in article 41(1) of the *Accounting Directive*; or
 - (2) active in the logging of primary forests as defined in article 41(2) of the *Accounting Directive*.
- 4.3A.3 G An *issuer* is considered to be active in the extractive or logging of primary forest industries if any of its subsidiary undertakings are:
- (1) active in the extractive industry as defined in article 41(1) of the *Accounting Directive*; or
 - (2) active in the logging of primary forests as defined in article 41(2) of the *Accounting Directive*.

In this guidance “subsidiary undertaking” has the meaning given in regulation 2 of the Reports on Payments to Governments Regulations 2014 (SI 2014/3209).

[**Note:** article 44(1) of the *Accounting Directive*]

Preparation and publication of reports on payments to governments

- 4.3A.4 R An *issuer* must prepare a report annually on payments made to governments for each financial year.

[**Note:** article 6 of the *TD*]

- 4.3A.5 R The report on payments to governments must be made public at the latest six months after the end of each financial year.
[Note: article 6 of the *TD*]
- 4.3A.6 R An *issuer* must ensure that the report on payments to governments remains publicly available for at least ten years.
[Note: article 6 of the *TD*]

Content of reports on payments to governments

- 4.3A.7 R (1) The report on payments to governments must be prepared in accordance with Chapter 10 of the *Accounting Directive*.
(2) Payments to governments must be reported at consolidated level.
[Note: article 6 of the *TD*]
- 4.3A.8 G The *FCA* considers a report on payments to governments which is prepared in accordance with the Reports on Payments to Governments Regulations 2014 (SI 2014/3209) to be in compliance with *DTR* 4.3A.7R(1).

Responsibility

- 4.3A.9 R The *issuer* is responsible for all information drawn up and made public in accordance with this section.
[Note: article 7 of the *TD*]

Amend the following as shown.

4.4 Exemptions

...

Non-EEA States - Equivalence

- 4.4.8 R An *issuer* whose registered office is in a *non-EEA State* whose relevant laws are considered equivalent by the *FCA* is exempted from the *rules* on:
- (1) annual financial reports in *DTR* 4.1 (other than *DTR* 4.1.7R(4) which continues to apply); ~~and~~
- (2) half-yearly financial reports (*DTR* 4.2); and
- (3) reports on payments to governments (*DTR* 4.3A).
- [Note: article 23(1) of the *TD*]

...

6.3 Dissemination of information

Application

...

6.3.5 R ...

- (3) The announcement relating to the publication of the following *regulated information* must include an indication of the website on which the relevant documents are available:
- (a) an annual financial report that is required by *DTR* 4.1 to be made public; ~~and~~
 - (b) a half-yearly financial report that is required by *DTR* 4.2 to be made public; ~~and~~ and
 - (c) [deleted]
 - (d) a report on payments to governments that is required by *DTR* 4.3A to be made public.

[**Note:** article 12(3) of the *TD implementing directive*]

...

8 Primary Information Providers

...

8 Annex
2R

Headline codes and categories

Headline code	Headline Category	Description
...		
High priority		
...		
POS	Transaction in Own Shares*	Notification of a transaction involving own shares, including a purchase, sale, redemption, cancellation, transfer or allotment
<u>PGR</u>	<u>Report on payments to governments</u>	<u>Publication of report on payments to governments</u>

	Miscellaneous	Miscellaneous high priority announcements
...		

...

TP 1 Disclosure and transparency rules

Transitional Provisions

(1)	(2) Material to which the Transitional provision applies	(3)	(4) Transitional provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
1	All of <i>DTR</i> chapter 4 (except <i>DTR 4.3A</i>)	R	<i>DTR 4 (except DTR 4.3A)</i> shall have effect as follows:	From 20 January 2007	
			(a) an issuer whose financial year begins on or after 20 January 2007 must comply with <i>DTR 4 (except DTR 4.3A)</i> as of 20 January 2007; and		
			(b) an issuer whose financial year starts before 20 January 2007 must comply with <i>DTR 4 (except DTR 4.3A)</i> as of the beginning of its next financial year		
...					
23	<u><i>DTR 4.3A</i></u>	R	<u><i>DTR 4.3A</i> applies in relation to a financial year of an issuer beginning on or after 1 January 2015.</u>	From <u>22 December 2014</u>	<u>22 December 2014</u>



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