

NATURAL RESOURCE TRANSPARENCY: STRENGTHENING THE USE OF EXTRACTIVE INDUSTRY REVENUES FOR PUBLIC BENEFIT

2015

The UK Government should use its third Open Government Partnership National Action Plan (NAP3 2016-2018) to consolidate and advance its major contribution to payment and revenue transparency in the world's oil, gas and mining industries. It should do this by:

- ensuring that UK- (London Stock Exchange-) listed as well as UK-incorporated extractive companies provide open data;
- filling in reporting gaps by working for EU-wide extractives commodity and other payments disclosure;
- filling in reporting gaps by extending disclosure to AIM-listed companies and influencing the Overseas Territories and Crown Dependencies to require disclosure.

1. Ensure that the UK fulfils its OGP NAP 2 commitments by requiring UK-listed extractive companies to publish data under the EU Transparency Directive Amending Directive in an open and machine-readable format by 2017.

Rationale:

The UK has an existing OGP NAP 2 commitment to “principles of open data through the G8 Open Data Charter, which will be applied to extractives’ data”¹ and is developing an open data reporting procedure and open data outputs for reports by UK-registered extractive companies to Companies House (the companies registrar for England and Wales) under the EU Accounting Directive.² However, the Financial Conduct Authority (the UK listings authority) has publicly stated that for UK-listed companies under the EU Transparency Directive it “does not plan to impose a prescribed reporting format at this time”,³ although HM Treasury has since informed civil society that the FCA will consult with a view to imposing such a requirement from 2017.

Major international oil, gas and mining companies such as Glencore, Gazprom, Rosneft and Lukoil are UK-listed but not UK-registered, and it will be important that their payments are reported to the FCA and published as open and machine readable data along with UK-registered company data reported to Companies House.

The UK Government and its 2013 G8 partners recognised that data needs to be available in an open and machine readable format, and committed to provide this, to “empower ... data innovators”, “increase open data literacy”, “allow automated processing and access with the minimum number of file downloads” and “increase awareness about how countries’ natural resources are used [and] how extractives revenues are spent”.⁴

¹ UK OGP NAP 2013-15,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255901/ogp_uknationalactionplan.pdf, p. 49. See also key milestone for 2016, also p. 49.

² <https://www.gov.uk/government/news/extractive-industries-reporting-draft-schema-and-step-by-step-guide>

³ FCA, Early implementation of the Transparency Directive’s requirements for reports on payments to governments: Including feedback on CP14/17 and final rules, policy statement PS15/1, January 2015, <http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-01>, pp. 7-8.

⁴ G8 Open Data Charter, <https://www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex>, pp. 5, 8; Prime Minister’s Office, 2013 Lough Erne G8 Leaders’ Communiqué, <https://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communication>, paras 46, 47.

Users need machine readable and manipulable data to make comparisons and gain a bigger picture of natural resource payments and revenues, in order to meet the EU Directives' objectives of increasing accountability via transparency.⁵ Demand from civil society for open and machine readable data arises from the need to analyse and reuse the data in its full context, in bulk as well as for individual companies, countries and projects.⁶

2. Fill in reporting gaps relating to certain categories of payments to governments by extractive companies, and champion transparency in the trading of oil, gas and minerals, by ensuring that the UK's and EU's reviews of implementation of the transparency requirements of the 2013 EU Accounting and Transparency Directives (reviews in 2017 and 2018 respectively) extend reporting requirements to: (a) payments to governments for the sale of oil, gas and minerals; (b) payments to governments for transportation and export activities; (c) payments to governments for social expenditures; and (d) payments to state security forces for security services.

Rationale:

(a) Payments to governments for the sale of oil, gas and minerals

The UK is one of the world's largest hubs for oil and other commodities trading, along with Switzerland and the USA, and is responsible for 25% of the global commodity trade in oil.⁷ While the UK now requires payment transparency for large and publicly listed extractive companies for upstream activities, such companies' – and commodity trading companies' – midstream payments to governments (including to state-owned enterprises) for the purchase of oil, gas and minerals remain one of the most profitable yet opaque areas of the natural resources sector.⁸ Major EU-registered and/or -listed companies that engage in commodity trading include not only recognised traders such as Glencore but also "major oil companies' commodity trading arms, such as BP ... Shell ... and Total".⁹

Commodity trading contributes substantially to state revenues. From 2011 to 2013, the total value of sales by the national oil companies of sub-Saharan Africa's 10 leading oil producers equalled 56% of combined government revenues (more than 10 times international aid to these countries).¹⁰ Countries where the "resource curse" is acute such as Angola, Congo-Brazzaville, Gabon and Nigeria are highly dependent on commodity trading with companies based in the UK (second in the world for oil trading) and Switzerland (world leader).¹¹ National oil companies' sales in countries such as Azerbaijan and Nigeria constitute about

⁵ See Open Knowledge Foundation, "Natural resource revenues should be published as open data", August 2013, <http://blog.okfn.org/2013/08/08/natural-resource-revenues-should-be-published-as-open-data>

⁶ For a demonstration of the way users will be able to visualize and benefit from open data released as a result of the Companies House system due to be put in place for the UK Reports on Payments to Governments Regulations 2014, see the submission to the US Securities and Exchange Commission by the Natural Resource Governance Institute, September 2015, available at <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-84.pdf>

⁷ Berne Declaration, *Commodities: Switzerland's Most Dangerous Business*, 2012, https://www.ladb.ch/fileadmin/files/documents/Rohstoffe/commodities_book_berne_declaration_lowres.pdf, p.39

⁸ *Financial Times*, "Commodity traders reap \$250 bn harvest", 14 April 2013, <http://www.ft.com/cms/s/0/9f6f541e-a397-11e2-ac00-00144feabdc0.html>

⁹ RCS Global, "7 reasons why trading companies disclosing payments to governments makes good business sense", June 2015, GOXI, http://goxi.org/profiles/blogs/7-reasons-why-trading-companies-disclosing-payments-to?xg_source=msg_mes_network

¹⁰ Natural Resource Governance Institute, Swissaid and Berne Declaration, *Big Spenders – Swiss Trading Companies, African Oil and the Risks of Opacity*, 2014, http://www.resourcegovernance.org/sites/default/files/BigSpenders_20141014.pdf

¹¹ Berne Declaration, *Commodities: Switzerland's Most Dangerous Business*, op. cit.; Natural Resource Governance Institute, "Swiss disclosure proposal would promote global transparency", September 2012,

70% of total government revenues,¹² largely to oil traders.

Opaque and suspect deals are common. For example, a 2013 contract with the Republic of Congo's state-owned oil refinery reportedly enabled a junior Geneva-based trading company, said to be close to the Congolese President's son, to buy oil at a very favourable price and to immediately resell at a higher price under the same contractual conditions.¹³

The UK Financial Conduct Authority has identified due diligence gaps in commodity trading enabling corruption, "financial crime risk" and "heightened reputational risk" for trading companies.¹⁴ NGOs have exposed the link between commodities trades and Politically Exposed Persons, as well as the lack of due diligence requirements to know your customer in the sector.¹⁵

In Switzerland, the world's largest commodity trading hub, a preliminary draft law on extractives transparency aligned with the payments to governments requirements of the EU Accounting and Transparency Directives includes the ability for the Swiss Federal Council to extend the scope of the legislation quickly to include payments to governments for commodity trading, but only as part of an "internationally agreed process".¹⁶ UK action could have a significant impact on Swiss moves to improve trading transparency in the extractives sector. Taken together, action in the UK and Switzerland would capture over half of the world's commodity trading and significantly improve transparency in the trading of oil, gas and minerals.¹⁷

Extension of the EU Directives and UK regulations to cover EU commodity trading would also be in keeping with the revised EITI Standard: "Where the sale of the state's share of production or other revenues collected in-kind is material, the government, including state owned enterprises, are required to disclose the volumes sold and revenues received. The published data must be disaggregated to levels commensurate with the reporting of other payments and revenue streams."¹⁸ Countries such as Iraq and Nigeria now publish EITI data on commodity transactions,¹⁹ and leading Swiss oil trader Trafigura has

http://www.resourcegovernance.org/news/press_releases/swiss-disclosure-proposal-would-promote-global-transparency

¹² Natural Resource Governance Institute, country overviews of Azerbaijan and Nigeria,

<http://www.resourcegovernance.org/countries/eurasia/azerbaijan/overview> and

<http://www.resourcegovernance.org/countries/africa/nigeria/overview>

¹³ Berne Declaration, "Philia's refined ventures in Brazzaville – how Swiss traders misappropriate Congolese oil rents", 2014, https://www.bernedeclaration.ch/fileadmin/files/documents/Rohstoffe/BD-2015-Investigation-Philias_s_refined_ventures.pdf; see also re the 2010 contract between Swiss commodity trader Vitol and Nigeria's state oil company, Berne Declaration, *Commodities: Switzerland's Most Dangerous Business*, op. cit., pp. 207-8.

¹⁴ FCA, Commodity Markets Update, February 2014, <http://www.fca.org.uk/static/documents/commodity-market-update-1402.pdf>, p. 9.

¹⁵ Berne Declaration, "A supervisory authority to combat the regulatory lacuna in the commodities sector", 2014, https://www.bernedeclaration.ch/fileadmin/files/documents/Rohstoffe/14_295_EVB_ROHMA_Paper_A4_EN_FINAL_LowRes.pdf

¹⁶ Swiss Federal Council, "Company law to be modernised", 28 November 2014,

<http://www.ejpd.admin.ch/ejpd/en/home/aktuell/news/2014/2014-11-28.html>

¹⁷ Natural Resource Governance Institute, Berne Declaration, Swissaid and Publish What You Pay, "In pursuit of transparent trading", October 2015, http://www.resourcegovernance.org/sites/default/files/nrgi_TradingPaper.pdf, pp. 6-7.

¹⁸ EITI Standard, requirement 4.1.c.

¹⁹ Iraq: <https://eiti.org/files/IEIT%20Final%20Report%202012%20%20English.pdf>; Nigeria:

http://neiti.org.ng/sites/default/files/pdf_uploads/2012-OIL-GAS-REPORT/2012-Oil-Gas-Audit-Report.pdf

committed to make similar disclosures.²⁰

(b) Payments to governments for transportation and export activities

Revenues and in-kind payments earned from the energy transit trade are at risk of corruption and mismanagement, contributing to political instability, and should be covered by UK and EU transparency legislation. European energy supplies are particularly dependent upon transport through pipelines, making natural gas transport a growing industry of geopolitical importance to Europe, especially in the case of pipelines from the former Soviet Union.²¹ In Africa major new pipeline networks are under construction and proposed with large capital investments.²²

The extractives transportation subsector can involve destabilising instances of theft and corruption, such as the oil theft and fraudulent gas deals with international companies that have cost Nigeria an estimated US\$1 billion a month.²³ Tracking transit and transportation fees and in-kind payments is critical to understanding the use, control and abuse of pipelines and other transport mechanisms. The US Dodd-Frank Act Section 1504 recognises this by including export among “significant actions relating to oil, natural gas, or minerals” to which it applies transparency requirements.²⁴

Extension of the EU Directives and UK regulations to cover payments for transit and transportation would also complement the revised EITI Standard: “Where revenues from the transportation of oil, gas and minerals constitute one of the largest revenue streams in the extractive sector, the government and state owned enterprise/s are expected to disclose the revenues received. The published data must be disaggregated to levels commensurate with the reporting of other payments and revenue streams.”²⁵

(c) Payments to governments for social expenditures

Legal or contractual obligations for extractive companies to make social payments to governments are a common feature of resource-rich countries’ fiscal frameworks and a significant source of revenue for government budgets. In Angola, companies are required to make social contributions under the 2004 Petroleum Activities Law and under production sharing contracts. These funds are vulnerable to corruption and mismanagement: US\$175 million in social contributions from a single Angolan oil block may have been corruptly diverted, with a further US\$175 million due to be paid.²⁶ In Kazakhstan, where companies are contractually obliged to make social contributions, civil society groups have reported funds being misused.²⁷

Extension of the EU Directives and UK regulations to cover social expenditures would also complement the

²⁰ EITI, “Trafigura to disclose payments to governments from oil trade”, 18 November 2014,

<https://eiti.org/news/trafigura-disclose-payments-governments-oil-trade>

²¹ See e.g. Global Witness, “To secure its energy, Europe must end opacity”, referring to disputes between Russia and Ukraine, *Financial Times*, 15 January 2009, <http://www.ft.com/cms/s/0/83b51a08-e242-11dd-b1dd-0000779fd2ac.html#axzz3dWETx9Jl>

²² Pipelines International, “Pipeline to prosperity: developing pipeline infrastructure in Sub-Saharan Africa”, June 2011, http://pipelinesinternational.com/news/pipeline_to_prosperity_developing_pipeline_infrastructure_in_sub-saharan_af/061149/

²³ UPI Business News, “Nigeria loses billions in oil, gas theft”, 25 October 2012, http://www.upi.com/Business_News/Energy-Resources/2012/10/25/Nigeria-loses-billions-in-oil-gas-theft/UPI-77851351181960/

²⁴ <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>, pp. 80981-80982.

²⁵ EITI Standard, requirement 4.1.f.

²⁶ Global Witness, “BP and partners’ US\$350 million payments in corruption-prone Angola show need for US transparency rule”, August 2014, <https://www.globalwitness.org/archive/bp-and-partners-us350-million-payments-corruption-prone-angola-show-need-us-transparency/>

²⁷ IIED, *Localising transparency: Exploring EITI’s contribution to sustainable development*, 2014, <http://pubs.iied.org/16555IIED.html>, p. 42.

revised EITI Standard: “Where material social expenditures by companies are mandated by law or the contract with the government that governs the extractive investment, the EITI Report must disclose ... these transactions. The published data must be disaggregated to levels commensurate with the reporting of other payments and revenue streams.”²⁸

(d) Payments to state security forces for security services

Extractive activities often involve the use of state security forces, and companies often make payments to the state and related institutions for security services.²⁹ Company–state security relationships are a notorious area of opacity and risk both for investors and for affected communities in many extractives locations,³⁰ and payments to state security forces therefore need to be publicly reported.

3. Fill in reporting gaps relating to payments to governments by extractive companies listed on certain markets by: (a) extending current disclosure requirements to non-EU-regulated exchanges in the UK such as AIM; and (b) influencing the UK Overseas Territories and Crown Dependencies to introduce similar regulation for their registered and publicly listed extractive companies.

Rationale:

(a) Because of the number of major extractive companies listed on the Alternative Investment Market (AIM), to create a level playing field for UK- and EU-listed companies the UK Government should extend the application of the Transparency Directive beyond strictly EU-regulated markets to include AIM, which is an LSE-regulated market.³¹

AIM already requires prospectus-issuing oil, gas and mining companies to disclose in their admission document “any payments aggregating over £10,000 made to any government or regulatory authority or similar body made by the applicant or on behalf of it, with regard to the acquisition of, or maintenance of, its assets”.³²

(b) For similar reasons, the Government should use its influence over the Channel Islands to ensure that the Channel Islands Securities Exchange (CISE) in Guernsey adopts equivalent mandatory reporting requirements. This will avoid the Channel Islands becoming a European listings centre that attracts “forum-shopping” by companies seeking to avoid application of the EU Transparency Directive. The Government should likewise also ensure that Jersey and other UK Overseas Territories and Crown Dependencies apply equivalent disclosure requirements to their home-incorporated extractive companies.

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²⁸ EITI Standard, requirement 4.1.3.

²⁹ See e.g. “Shell spending millions of dollars on security in Nigeria, leaked data shows”, *Guardian*, 19 August 2012, <http://www.theguardian.com/business/2012/aug/19/shell-spending-security-nigeria-leak>

³⁰ See e.g. Statement by Voluntary Principles Participants on Memoranda of Understanding Between Companies and State Security Forces, 2014, http://www.voluntaryprinciples.org/wp-content/uploads/2014/10/VPs_-_Statement_on_MOUs.pdf

³¹ For examples of the governance challenges associated with AIM-listed companies, see London Mining Network, *UK-Listed Mining Companies and the Case for Stricter Oversight*, 2011, <http://londonminingnetwork.org/docs/lmn-the-case-for-stricter-oversight.pdf>

³² AIM Note for Mining, Oil and Gas Companies, 2009, <http://www.londonstockexchange.com/companies-and-advisors/aim/publications/rules-regulations/guidance-note.pdf>, p. 4.