From: Miles Litvinoff, Coordinator
Publish What You Pay UK
mlitvinoff@pwypuk.org
07984 720103

Publish What You Pay

United Kingdom

UK coalition members

ABColombia
Action Aid
Amnesty International UK
Burma Campaign
CAFOD
Campaign Against Arms Trade
CARE International UK
Christian Aid
Ecumenical Council for Corporate Responsibility
Engineers Against Poverty
Global Poverty Project
Global Witness
Natural Resource Governance Institute
The ONE Campaign
OpenCorporates
Open Knowledge International
Open Society Foundations
Oxfam Great Britain
Peru Support Group
Save the Children UK
Scottish Catholic International Aid Fund
Tearfund
Transparency International UK
United Nations Association of the UK
World Vision International

Submission to

UK GOVERNMENT REVIEW OF THE REPORTS ON PAYMENTS TO GOVERNMENTS REGULATIONS 2014

November 2017[1]

"We promoted mandatory reporting by extractives companies as part of our 2013 G8 Presidency and were joined in the establishment of such rules by Canada, Norway and other members of the EU. …

"The Government remains committed to this, and will continue to work with other jurisdictions around the world to raise global standards of transparency in the oil, gas and mineral sectors."

Office of Prime Minister Theresa May, March 2017[2]

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Note: All companies named in the text where there are detailed company-specific issues have been contacted and given a right to comment on the text. Companies' comments have been incorporated where necessary.

1. EXECUTIVE SUMMARY AND RECOMMENDATIONS

This submission provides Publish What You Pay UK's assessment of reporting under the UK Reports on Payments to Governments Regulations by both UK-registered (incorporated) extractive companies that are large and/or whose securities are publicly traded on an EU-regulated stock exchange, and non-UK-registered extractive companies whose securities are traded on the London Stock Exchange Main Market.

[1] This version includes minor amendments made following PWYP UK's original submission on 17/11/17 and subsequently communicated to the UK Government on 27/11/17.

[2] Letter to Publish What You Pay from No. 10 Downing Street on behalf of Prime Minister Theresa May, http://www.publishwhatyoupay.org/wp-content/uploads/2017/03/010317-From-Office-of-PM-Rt-Hon-Theresa-May-MP.pdf

After decades of discussion about corruption and revenue mismanagement in the extractive industries worldwide, the UK Regulations are, together with in-force legislation in other EU Member States, Canada and Norway, and legislation awaiting implementation in the United States, game-changing in the disclosure obligations they place on extractive companies in a sector that has been characterised by opacity. The Regulations go a long way to meeting global expectations that oil, gas and mining companies around the world report their payments to governments comprehensively, country by country and project by project.

Civil society has identified disclosures of payments to governments relating to financial years starting in 2015 ("FY 2015") reported or announced under the Regulations by 92 extractive companies and so far for FY 2016 by 71 such companies. This adds to the significant and growing global body of extractive payment data available to governments, investors, citizens, civil society, journalists, parliamentarians and other stakeholders.

Benefits of company reporting, illustrated in this submission with numerous brief case studies highlighting the active role of civil society, arise from the link between transparency and accountability and include: the deterrence of corruption and mismanagement; conflict prevention; enhanced public understanding and citizen empowerment; complementing the Extractive Industries Transparency Initiative (EITI); business benefits for companies; and investor benefits.

Despite its value and importance, however, the quality of mandatory extractive company reporting to date indicates that improvement is needed in several areas. Our recommendations to the UK Government are summarised here and explained in more detail in the sections that follow. Where appropriate, we urge the Government to work for similar EU-wide improvement when the European Commission reviews chapter 10 of the Accounting Directive in 2018-19.

Summary of recommendations

<u>*Urgent priorities:*</u>

1. Joint venture reporting

The Government should explicitly require companies to report their own and their subsidiaries' proportionate share of any in-scope joint venture payment they make either directly or indirectly via a joint venture operator or other entity on their behalf, regardless of whether they have a controlling or non-controlling interest in the joint venture. It should also clarify that in-scope payments made by companies and their subsidiaries to state-owned enterprises acting as joint venture operators must be reported.

2. Aggregation of projects

The Government should clarify that company reports may treat two or more legal agreements as "substantially interconnected", and therefore reportable as a single project, only where those agreements (a) are both operationally and geographically integrated, (b) have substantially similar terms and (c) are signed with the same government.

3. Identifying recipient government entities

The Government should clarify that company reports are required to identify by name each national or subnational government entity to which a payment has been made, rather than only provide the country name or only identify the government entity generically, such as by level of government.

4. Clarifying in-kind payments

The Government should clarify that where an in-kind (non-cash) payment is made in the form of oil, gas or another mineral, company reports must state both the value and the volume of each such payment separately, provide supporting notes to explain how the value has been determined, and avoid aggregating in a single figure cash and in-kind payments or any payments in kind for differently valued commodities.

5. Payments for the sale of oil, gas and minerals
The Government should actively and without further delay progress its Open Government Partnership National Action Plan and May 2016 Anti-Corruption Summit commitment to work with others to enhance company disclosure regarding payments to governments for the sale of oil, gas and minerals. These payments should be made a mandatory reportable payment type under the Regulations, and the Government should use its influence to achieve the same requirement under similar and equivalent legislation in other jurisdictions.

6. Accessibility of reports and information on reporting for companies and others
(a) Both the Companies House Extractives Service and the National Storage Mechanism (NSM/Morningstar) should provide an alphabetised annual index by company name, linking to the reports, so that users can see at a glance which companies have provided reports year by year, and quickly access the reports. The NSM/Morningstar should also, like Companies House, provide an application programming interface (API) so that users can gather the XML data (required for reports on financial years starting on 1 August 2016) digitally. The Government should explore possibilities for joint coordination between Companies House, the Financial Conduct Authority and the NSM/Morningstar to provide users with a single access point for all extractive payment reports submitted under UK legislation.
(b) Companies House should provide a prominent link to its guidance page on filing extractives payments to governments reports from the Extractives Service welcome and company filing webpages.[3] The Financial Conduct Authority (FCA) should clarify what it requires from companies in terms of "human readable" as well as machine-readable reports and provide clear, accessible and well-signposted online information on this for reporting companies and others.

<u>*Additional necessary improvements:*</u>

7. Tax disaggregation and definition
The Government should require companies to disaggregate different types of tax payments, such as corporate income tax, capital gains tax and withholding taxes, in their disclosures. It should also make the Regulations' definition of tax more comprehensive to require the reporting of all taxes other than consumption taxes and personal income taxes.

8. Inclusion of other payment types
The Government should extend reporting requirements to include payments to governments for transportation and export activities, payments to governments for social expenditures and payments to state security forces for security services.

9. Extractive companies traded on AIM and those registered or publicly listed in the UK Overseas Territories and Crown Dependencies
The Government should arrange with the London Stock Exchange to extend mandatory payment reporting to extractive companies traded on the Alternative Investment Market (AIM), and ensure that the UK Overseas Territories and Crown Dependencies introduce mandatory reporting regulations for their registered and publicly listed extractive companies.

10. Additional project-level disclosure for more meaningful accountability
The Government should require all extractive companies to include in each payment report: (a) information on the basis of preparation (as many already do); (b) the name of every project for which no above-threshold payments were made; (c) for each project, information on (i) project status (exploration, development, exploitation) with date of first production if applicable, (ii) project partners if any (including identification of which is the operator), and (iii) production volumes.

[3] Guidance page: https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries/guidance-for-the-companies-house-extractives-service; welcome page: https://extractives.companieshouse.gov.uk/; company filing page: https://extractives.companieshouse.gov.uk/chsearch

11. Report monitoring and quality control
The Government should resource a small team of officials to monitor company reporting and compliance, as is done in Canada, and ensure that company reports are subject to a compliance test before being accepted. Reports that are deficient in terms of the Regulations' requirements should be rejected, with the company required to submit an amended report. Appropriate action should be taken in line with the Regulations' penalties[4] and the FCA's Decision Procedure and Penalties Manual[5] towards companies seriously in default of their reporting obligations.

12. Extended public county-by-country reporting
To address aggressive tax avoidance by extractive and other companies, including profit shifting out of producer countries via tax havens and tax secrecy jurisdictions by transfer mispricing etc., the Government should implement and champion internationally extended public county-by-country reporting across all sectors. All large and publicly listed companies should be required to publish a report annually for every jurisdiction in which they have an operational, financial or trading presence, comprising data on earnings (turnover), profit or loss before tax, assets, number of full-time-equivalent employees, tax paid and accrued, and subsidiaries, in line with the OECD/G20 Base Erosion and Profit Shifting (BEPS) action plan and with the European Parliament's draft report on disclosure of income tax information of July 2017.[6]

2. BACKGROUND AND INTRODUCTION TO THIS SUBMISSION

2.1 Background

Publish What You Pay UK is the UK chapter of the global Publish What You Pay (PWYP) civil society coalition that calls for oil, gas and mining revenues to form the basis for development and to improve the lives of citizens in resource-rich countries.[7] We welcome this opportunity to contribute to the Department for Business, Energy and Industrial Strategy's (BEIS) statutory review of the Reports on Payments to Governments Regulations 2014 (as amended 2015).[8] The Regulations, and chapter 10 of the 2013 EU Accounting Directive,[9] which they implement, represent a major achievement after years of advocacy for a more transparent and accountable extractive sector and are game-changing in the disclosure obligations they place on extractive companies after decades of opacity.

The Government's original decision to review the Regulations in 2017 made sense in enabling the UK to be better informed ahead of, and potentially to influence, the European Commission's (EC's) review of chapter 10 of the EU Accounting Directive in 2018 (which we understand may be delayed into 2019). Nevertheless, with most UK-registered and UK-listed extractive companies in only their second year of reporting, civil society and other stakeholders have had barely two years to assess the overall quality and impacts of reporting, with comparable reporting so far mainly in France, Canada and Norway. Civil society's development of report

[4] Regulations 17-19.
[5] http://fshandbook.info/FS/html/FCA/DEPP
[6] OECD, Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, annex III to chapter V, http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm; European Parliament, Disclosure of income tax information by certain undertakings and branches, July 2017, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0284+0+DOC+PDF+V0//EN
[7] http://www.publishwhatyoupay.org/members/united-kingdom/
[8] Statutory Instrument 2014 No. 3209, http://www.legislation.gov.uk/uksi/2014/3209/contents/made; also Reports on Payments to Governments (Amendment) Regulations 2015), Statutory Instrument 2015 No. 1928, http://www.legislation.gov.uk/uksi/2015/1928/contents/made
[9] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0034

monitoring and data analysis capacity, its assessment and use of the data and, where necessary, follow-up with companies and governments on questions arising from the data all take time. The PWYP coalition is now in the second year of a programme developing its capacity to use extractives data.[10]

2.2 Introduction to this submission

This submission highlights both the major benefits of the Regulations and current weaknesses in their implementation and shortcomings of company reporting. We make recommendations to address these deficiencies. We discuss reporting by two categories of extractive companies:

- UK-registered (incorporated) extractive companies that are large and/or whose securities are publicly traded on an EU-regulated stock exchange, to which the EU Accounting Directive applies.
- Non-UK-registered extractive companies whose securities are traded on the London Stock Exchange (LSE) Main Market and for which the UK is their “home state”[11] – or that have nevertheless reported (or announced a payments report) to the UK Listing Authority, i.e. the Financial Conduct Authority (FCA) – to which the EU Transparency Directive Amending Directive (2013/50/EU) applies.[12]

Where benefits of reporting (section 4 below) and weaknesses of the Regulations and their implementation and how these can be addressed (section 5 below) are discussed, our submission sometimes draws on independent research undertaken by a team of UK accounting academics,[13] as well as on examples from other jurisdictions (France and Canada).

<u>2.3.1 Review questions and Regulations’ objectives</u>

This statutory review is required to address three questions: (1) the extent to which the Regulations achieve their objectives; (2) whether those objectives remain appropriate; (3) if they remain appropriate, the extent to which they could be achieved with a system that imposes less regulation.[14] The review must “have regard to how the [EU Accounting] Directive … is implemented in other member States”.[15] Subsequent review reports are “to be published at intervals not exceeding five years”.[16]

The Regulations’ Explanatory Memorandum states that their purpose is to implement chapter 10 of the EU Accounting Directive, which mandates all companies registered in the UK and large or with securities traded on a regulated market and active in the extractive industry to report the payments they make to governments worldwide.[17] The Memorandum states that the requirements of chapter 10 of the Directive have “The intention … to give citizens of resource-rich countries the information they need to hold their governments to account”, and that “Project level reporting will provide greater insight into how the industry operates and the

[10] http://www.publishwhatyoupay.org/our-work/using-the-data/

[11] “Home state”: FCA Handbook, DTR Disclosure Guidance and Transparency Rules sourcebook, DTR, 6.1.1, https://www.handbook.fca.org.uk/handbook/DTR/6/?view=chapter. Non-EU-registered companies are required to designate an EU member state as their “home state” for reporting purposes: https://www.fca.org.uk/markets/ukla/regulatory-disclosures/home-member-state-notification

[12] Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013, http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1415872329209&uri=CELEX:32013L0050; implemented by the UK’s Payments to Governments and Miscellaneous Provisions Regulations, http://www.legislation.gov.uk/cy/uksi/2014/3293/made, regulation 4FCA, and Disclosure and Transparency Rules (Reports on Payments to Governments) Instrument 2014, https://www.handbook.fca.org.uk/instrument/2014/FCA_2014_63.pdf, annex C, DTR 4.3A.7, 4.3A.8.

[13] E. Chatzivgeri, L. Chew, L. Crawford, M. Gordon and J. Haslam, Reports on payments to governments: a report on early developments and experiences, report for Publish What You Pay International Secretariat and Publish What You Pay UK, 2017, http://bit.ly/2rLmBnv

[14] Regulations, http://www.legislation.gov.uk/uksi/2014/3209/contents/made, regulation 21(3).

[15] Regulation 21(2).

[16] Regulation 21(5).

[17] Explanatory Memorandum, http://www.legislation.gov.uk/uksi/2014/3209/memorandum/contents, paras 2, 4.1.

range of economic contributions that can result."[18]

The Government's Impact Assessment provides the context:

> "Across the world, natural resources are worth over a thousand trillion dollars and make substantial contributions to the public budgets of many developing countries. However, the citizens of these countries often remain extremely poor. This is in part because many governments of developing countries have failed to responsibly manage the large payments made to them by extractives companies in return for access to natural resources. The absence of good governance and the lack of transparency around these payments reduce the positive impact that extractive industries can have on economic development. It also negatively impacts on, and increases the risk for, UK companies and investors active in the extractives sector through civil unrest and poor business environment."[19]

The Impact Assessment then the states that the policy objectives, intended effects and aim of the policy are "to raise global standards of transparency in the extractives sector."[20]

The objectives of the Regulations can therefore be summarised as: (1) to give citizens of resource-rich countries the information they need to hold their governments to account for in-scope payments made by in-scope extractive companies; (2) to enable citizens to derive greater insight by means of project-level reporting; (3) to raise global standards of transparency in the extractives sector. From a civil society perspective, the legislation also provides for greater accountability on the part of extractive companies themselves, a benefit that the European Commission has recognised.[21]

3. EXTRACTIVE COMPANY REPORTING TO DATE UNDER THE UK REGULATIONS

3.1 Companies known to have reported on FYs 2015 and 2016

UK-registered extractive companies are required to report to the registrar of companies at Companies House.[22] LSE Main Market-traded companies whose "home state" is the UK are required to report, or announce their report, by filing this as "regulated information" with the Financial Conduct Authority (FCA) "using a primary information provider" (or "Regulatory Information Service", "RIS") to disseminate the information, and are required to include "an indication of the website on which the relevant documents are available".[23] The National Storage Mechanism (NSM), operated by Morningstar (http://www.morningstar.co.uk/uk/NSM), is said to "automatically receive all regulatory announcements that must be published via the RIS regime … via regulatory feeds and store them within the NSM"; it is here that users can access extractive company payment reports or announcements.[24]

Civil society monitoring has identified publication of payments to governments (or, in the case of some LSE Main Market-traded companies, announcements) under the Regulations by 92 UK-registered and/or LSE Main Market-traded oil, gas and mining companies for financial years starting in 2015 ("FY 2015"), and to date by 71

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[18] Explanatory Memorandum, paras 7.1, 7.3.

[19] Impact Assessment, http://www.legislation.gov.uk/uksi/2014/3209/impacts, page 1.

[20] Impact Assessment, http://www.legislation.gov.uk/uksi/2014/3209/impacts, page 1.

[21] European Commission, Part II Impact Assessment for Financial Disclosures on a Country by Country Basis, October 2011, section 7.1.1, page 35, http://ec.europa.eu/internal_market/accounting/docs/sme_accounting/review_directives/20111025-impact-assessment-part-2_en.pdf

[22] https://extractives.companieshouse.gov.uk/; Regulation 14.

[23] FCA, Early implementation of the Transparency Directive's requirements for reports on payments to governments: Including feedback on CP14/17 and final rules, PS15/1, January 2015, http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-01, page 8; FCA, Disclosure Rules and Transparency Rules (DTRs), chapter 6, https://www.handbook.fca.org.uk/handbook/DTR/6/?view=chapter

[24] https://www.the-fca.org.uk/markets/ukla/regulatory-disclosures/national-storage-mechanism

such companies on FY 2016.[25]

Of the 92 extractive companies reporting on FY 2015: 60 UK-registered companies reported to Companies House (of which 30 are also LSE Main Market-traded and reported/announced via the NSM or elsewhere); 3 non-UK-registered LSE Main Market-traded companies reported to Companies House and reported/announced via the NSM; 2 UK-registered companies reported via the NSM but not to Companies House; 27 non-UK-registered LSE Main Market-traded companies reported or announced via the NSM or elsewhere but not to Companies House.

The 71 extractive companies that have so far reported on FY 2016 comprise 27 that have reported on FY 2016 both to Companies House and via the NSM, 11 that have reported only to Companies House and 33 that have reported only via the NSM.

3.2 Payments in which countries?

Illustrating the geographical scope of reporting, disclosures on FY 2015 by 20 selected prominent companies provide data on payments made to governments of [84 host countries](#).[26] These include resource-rich developing countries, economies in transition and OECD countries such as the following:

Country	*Selected prominent companies disclosing payments under the Regulations*
Angola	BP, China Petroleum & Chemical Corporation, Gazprom, Total
Australia	Anglo American, BG Group, BHP Billiton, BP, Glencore, Rio Tinto, Shell
Azerbaijan	BP, Total
Brazil	Anglo American, BG Group, BHP Billiton, BP, Premier Oil, Rio Tinto, Rosneft, Shell, Total
Canada	Anglo American, BHP Billiton, BP, Centrica, Glencore, Rio Tinto, Shell, Total
China	BHP Billiton, China Petroleum & Chemical Corporation, Shell, Total
Republic of Congo	Glencore, Soco, Total
Equatorial Guinea	Glencore, Tullow
Gabon	Shell, Total, Tullow
India	BG Group, BHP Billiton, BP, Vedanta
Indonesia	BHP Billiton, BP, Premier Oil, Rio Tinto, Shell, Total
Iraq	BP, Shell, Total
Kazakhstan	BG Group, Gazprom, Glencore, Lukoil, Total
Kenya	BG Group, Total, Tullow
Malaysia	BHP Billiton, Shell
Nigeria	Shell, Total
Peru	Anglo American, BHP Billiton, Glencore, Rio Tinto
Philippines	Shell, Total
Qatar	BP, Shell
Republic of Congo	Soco, Total, Tullow
Russia	BP, Gazprom, Lukoil, Rosneft, Total
South Africa	Anglo American, Glencore, Lonmin, Rio Tinto, Total, Tullow, Vedanta
Tanzania	BG Group, BHP Billiton, Glencore
UK	BG Group, BHP Billiton, BP, Cairn, Centrica, Gazprom, Premier Oil, Shell, Total, Tullow
USA	Anglo American, BHP Billiton, BP, Rio Tinto, Shell, Vedanta
Zambia	Anglo American, Glencore, Vedanta
Zimbabwe	Anglo American, Rio Tinto

[25] One UK-registered and LSE Main Market-traded forestry company, Mondi, has also reported on FYs 2015 and 2016.
[26] PWYP UK sample spreadsheet, https://docs.google.com/spreadsheets/d/1JWSFBy2wC9DSUibIK4I7nd4S9oOL3Mnc_yOn9z4qe1E/edit?usp=sharing

Companies have disclosed payments made to governments in Angola, China and Qatar. In the past, certain oil companies claimed it would contravene host country laws to disclose payments made to these governments, an assertion that civil society consistently challenged. A survey of disclosures by extractive companies by the Natural Resource Governance Institute (NRGI) found that companies reporting under UK law on FY 2015 had reported more than US$136 billion paid to governments in 112 countries around the world.[27]

3.3 Non-reporting and late-reporting companies

Reporting deadlines are 11 months following FY-end for UK-registered companies and 6 months following FY-end for LSE Main Market-traded companies.[28] Not all companies have met, or are meeting, these deadlines.

UK-registered GoldBridges Global Resources Plc (changed name Dec. 2016 to Altyn Plc) reported more than US$1 million in payments for FY 2015 via the NSM and should, we believe, also have reported the same payments to Companies House but has not done so.[29] The same company's NSM report/announcement on FY 2016 was due 30/6/17 and appeared there on 15/11/17, indicating above-threshold payments.[30] PWYP UK contacted the company in 2017 about its non-reporting to Companies House for FY 2015, and subsequently late reporting via the NSM for FY 2016, and received no reply.

Two LSE Main Market-traded extractive companies that appear to have been operationally active in FY 2015 and likely to have made reportable payments do not appear to have reported/announced on the NSM or elsewhere, despite their deadlines having long passed. PWYP has informed these companies of the disclosure requirement: Canadian Overseas Petroleum Ltd – FY-end 31/12/2015, report due 30/6/2016; ZCCM Investments Hldgs – FY-end 31/3/2016, report due 30/9/2016.

Other LSE Main Market-traded companies: China Petroleum & Chemical (part of Chinese state-owned Sinopec Group) reported on FY 2015 a full year late, on 30/6/17 (combined with its report for FY 2016). Gem Diamonds reported for FYs 2015 and 2016[31] on its own website but seemingly without reporting/announcing via the NSM. PWYP has attempted to inform this company of the disclosure requirement. Green Dragon Gas reported late to the NSM on FY 2015 (on 9/9/17); its report/announcement on FY 2016 was due 30/6/17 but to date has not been found. PWYP has reminded this company of the disclosure requirement.

Some of the above companies, and others, may have not reported because they made, or consider they made, no in-scope payments above the reporting threshold (£86,000), but there is no clear way to tell. Further comments are made on late reporting below.

4. BENEFITS OF COMPANY REPORTING UNDER THE REGULATIONS

The Regulations, and similar legislation in and beyond the European Union,[32] are the outcome of two decades of civil society advocacy with governments, industry and investors regarding the need for transparency and

[27] NRGI, Oil company data on payments to governments is now coming thick and fast, June 2017, http://bit.ly/2t24wSp
[28] Regulation 14(1)(b); FCA, DTR 4.3A.
[29] Goldbridges: http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=370395832293780
[30] Altyn: http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=394969487609737
[31] Gem Diamonds: http://www.gemdiamonds.com/downloads/2017/press/gem-diamonds_report-on-payments-to-gov-7-june-2017.pdf
[32] Mandatory reporting by companies under the EU Directives began in the UK and France in 2016 and is under way in 2017 throughout the EU. Mandatory reporting has also begun under similar laws in Norway and Canada, and the requirement remains on the stature book in the USA awaiting a new Securities and Exchange Commission rule.

accountability in the extractive industries to counter the "resource curse".[33] Payment and revenue transparency and accountability are crucial to address the widely documented corruption, mismanagement and negative developmental effects associated with oil, gas and minerals extraction in natural-resource-rich developing economies. They should be complemented by full contract and licence transparency in the extractive industries and by public beneficial ownership disclosure, on both of which the UK has shown leadership.

For the first time, there is now a growing body of data from mandatory reporting, as well as from the voluntary Extractive Industries Transparency Initiative (EITI). This data is essential, if not sufficient, to prevent corruption and mismanagement and to inform governments, investors, citizens, civil society, journalists, parliamentarians and other stakeholders about the revenues generated by the extraction of their countries' natural resources. The data also helps show how well the money compensates for the depletion of host countries' finite resources and for negative social and environmental impacts of extraction, and indicates the revenues that flow directly to identified government entities. Citizens and civil society can link the extractives revenue data to their monitoring of how their governments budget and spend public finances.

As PWYP has argued for many years:

> "[I]ncreasing transparency in the extractive sector will enable citizens to hold governments and companies to account for the ways in which natural resources are managed. … [A] more transparent and accountable extractive sector … enables citizens to have a say over whether their resources are extracted, how they are extracted and how their extractive revenues are spent. … [R]evenue payments and receipts should be published and tracked, communities should be given all the information they need to make an informed choice about whether to move ahead with the extraction. Transparency and accountability are needed along every step of the value chain from finding out the natural wealth of a country to winding down an extractive project."[34]

Despite challenges in quantifying these benefits with precision, their capacity and potential to address the "resource curse" are considerable. Here we discuss, with brief case study examples, the following benefits of mandatory extractives transparency:

4.1 Deterring corruption and mismanagement
4.2 Conflict prevention
4.3 Enhanced public understanding and citizen empowerment
4.4 Complementing the Extractive Industries Transparency Initiative (EITI)
4.5 Business benefits for companies
4.6 Investor benefits
4.7 User benefits of a centralised reporting portal and open data

4.1 Deterring corruption and mismanagement

The first – and sometimes overlooked – major benefit of the Regulations is as a deterrent against corruption and mismanagement. The OECD has cited the estimated cost of world corruption as more than 5% of global GDP and identified the extractive industries as the world's most corrupt economic sector.[35] Equally, the High Level Panel on Illicit Financial Flows from Africa noted that the natural resources sector "is very prone to the generation of illicit financial outflows by such means as transfer mispricing, secret and poorly negotiated contracts, overly generous tax incentives and underinvoicing" and found "a clear relationship between

[33] http://www.resourcegovernance.org/sites/default/files/nrgi_Resource-Curse.pdf
[34] http://www.publishwhatyoupay.org/about/objectives/
[35] OECD, Foreign Bribery Report, 2014, http://www.oecd.org/daf/anti-bribery/scale-of-international-bribery-laid-bare-by-new-oecd-report.htm

countries that are highly dependent on extractive industries and the incidence of [illicit financial flows]".[36]

The fact that oil, gas and mining companies and governments know that their payments and revenues will be disclosed and open to public scrutiny is certain to help prevent future corrupt or questionable deals. A 2017 *Financial Times* article states that while "Transparency alone does not curb corruption or ensure that the wealth generated by natural resources is put to equitable use … the pressure on oil and mining companies to publish what they pay has helped activists in the developing world keep a closer eye on money earned by their governments … [amid] the kind of opaque dealing that has given oil a bad name."[37]

Inclusion of examples here should not be taken to imply that companies named have engaged in corrupt activity. Most examples simply show how civil society is using mandatory reports to demonstrate to companies that their payments are under scrutiny.

Case study example: Nigeria: OPL 245[38]

Royal Dutch Shell and Italian oil company Eni are at present reported as due to face a preliminary court hearing in Italy where prosecutors are seeking their trial for alleged international corruption offences over the purchase of the Nigerian offshore oil block OPL 245. Separate proceedings are being brought against four senior Shell employees, and related charges have reportedly been filed against both companies by Nigerian authorities. This arises from an arrangement concluded between Shell, Eni and the Nigerian government in 2011 whereby US$801 million in company payments for OPL 245 passed into bank accounts controlled by former Minister of Petroleum Dan Etete, who had been convicted of money laundering in France in 2007 and has since been charged in Nigeria with money laundering. The oil block had been allocated in 1998 for just US$20 million to a company named Malabu secretly owned by Etete and was subsequently sold to Shell and Eni for US$1.1 billion, most of which flowed to Etete's company, rather than to the Nigerian state, depriving the country of an estimated 80% of its 2015 health budget. Revelations indicate that Shell senior executives may have known the money would go to Etete's company. Prosecutors in the UK have previously alleged that US$523 million of Shell and Eni's payment went to alleged "fronts" for former Nigerian President Goodluck Jonathan. Dutch financial police have raided Shell's headquarters in The Hague.[39]

This example of allegedly corrupt deal making, conducted behind closed doors and without knowledge of the public or investors, came to light as a result of the filing of papers in a UK commercial court by a middleman who had acted for Malabu in negotiations with Eni and was suing for fees he claimed to be owed. Had Shell and Eni been required to publish what they paid in 2011 to Nigerian government bodies on a project-by-project basis, as under the UK Regulations and EU Accounting and Transparency Directives, in civil society's view it is unlikely that they would have made such a deal.[40] Nigerian government officials are also far less likely to have agreed to the deal knowing that the companies' payments for OPL 245 would be published under UK and EU law.

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[36] Report of the High Level Panel on Illicit Financial Flows from Africa, 2015, https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf, page 67.

[37] Financial Times, Trump takes aim at the blood minerals cause, February 2017, https://www.ft.com/content/e06a3354-ef8c-11e6-ba01-119a44939bb6

[38] Source: Global Witness: http://bit.ly/2na0xQX and http://bit.ly/2nH8Ma9

[39] For Shell's view on the case, see its presentation to socially responsible investors, London, April 2017, http://www.shell.com/investors/news-and-media-releases/investor-presentations/2017-investor-presentations/socially-responsible-investors-briefing-london-24-april-2017.html, especially PDF slides 7-13. Shell states that based on information and evidence available to it, it does not believe there is a basis to prosecute Shell or any current or former employees.

[40] Eni gives its view on the case at https://www.eni.com/en_IT/media/focus-on/nigeria.page. Eni says it is "ungrounded" to assert that, had it been required to publish what it paid in 2001 to the Nigerian government, it is unlikely that it would have made the deal. Eni states that "independent analysis carried out by an US law firms [*sic*] did not reveal evidence of unlawful conduct in relation to the transaction for the acquisition of license OPL 245".

By monitoring company payment disclosures, and putting questions to reporting companies, civil society and others can reinforce the Regulations' deterrent effect, irrespective of whether in specific cases serious discrepancies come to light.

Case study example: Shell's Nigerian payments
In analysing Royal Dutch Shell's report on its FY 2015 Nigerian payments,[41] PWYP UK noted an anomaly in the data with regard to the valuation of some production entitlements paid in kind to the Nigerian government. When calculated from Shell's volume and value data, the average price per barrel of oil equivalent (boe) for in-kind production entitlements payments for one reported project (SPDC East) was at US$20.89/boe far lower than the average price for other reported projects (US$51.59/boe). PWYP UK wrote to Shell about this. The company replied that its valuation of in-kind payments for the project combined oil with gas, and it provided a figure for the oil valuation. But Shell declined to disaggregate the oil from the gas, or to provide respective volumes, or to price its in-kind gas payments for this or any other project. This made it impossible to check whether Shell's in-kind gas payments were appropriately and fairly valued per barrel of oil equivalent.[42] PWYP UK's finding about the in-kind payment was cited in a published online legal article.[43] The same unexplained outlier in price per boe appears in Shell's FY 2016 payment report for the same project.

Case study example: Reports by Total, Glencore and one other company[44]
Global Witness's engagement with Total, Glencore and one other company has helped demonstrate to the companies that their payments are under scrutiny and in the case of Glencore has encouraged better reporting.

Total. In 2015 French oil company Total struck a deal with the Congo Brazzaville government to renew its rights to three lucrative oil licences in the country. Civil society monitors would have expected Total to report a substantial signature bonus for the licence renewal; however, no signature bonus was disclosed in Total's 2015 payment report (published under France's implementation of the Accounting Directive and announced on the NSM).[45] PWYP member Global Witness wrote to Total to ask about the apparently missing payment. The company explained that while the deal had been signed in 2015, by the end of that year it had still not been ratified by the Congo Brazzaville parliament, so no bonus payment had been made in FY 2015. The company subsequently informed Global Witness that there was no further approval of the relevant licences and that it relinquished the licences at the end of 2016.

Glencore. Reporting under the UK Regulations, Glencore disclosed paying zero royalties from a large oil project in Chad in 2015.[46] This appeared questionable because the project is producing substantial volumes of oil, and the contract stipulates a royalty rate of 14.75% to be paid on the value of production. Global Witness wrote to Glencore in November 2016 to ask for an explanation. The company replied in 2017 explaining that the royalties were paid and disclosed but reported as

[41] Shell: https://extractives.companieshouse.gov.uk/company/04366849; http://www.shell.com/sustainability/transparency/revenues-for-governments.html
[42] Shell says it complies with the UK's Reports on Payments to Governments Regulations 2014 (amended 2015), cites confidentiality obligations, competitive harm and costs as reasons for not providing more detailed breakdowns, and provides more information at www.shell.com/payments
[43] HK Law, SEC rules for resource extraction issuers could lead to increased FCPA scrutiny, disclosures, September 2016, https://www.hklaw.com/publications/sec-rules-for-resource-extraction-issuers-could-lead-to-increased-fcpa-scrutiny-disclosures-09-08-2016/#_edn13
[44] The third company in this example has been anonymised at its own request.
[45] Total (primary public listing in France): http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=370395832254923; http://www.total.com/sites/default/files/atoms/files/registration_document_2015.pdf
[46] Glencore: https://extractives.companieshouse.gov.uk/company/ZE8BF193; http://www.glencore.com/assets/sustainability/doc/sd_reports/GLEN-Payments-to-Government-2015.pdf

production entitlements, also noting that in response to requests for further information it has opted to disclose royalties separately from its FY 2016 report onwards.

A mining company. A UK-registered and LSE Main Market-traded mining company reported that it had paid in 2015 US$2.094 million in royalties from a mine in an African country.[47] Global Witness calculated that the company should have paid closer to US$3.401 million in royalties and wrote to the company about this. The company explained that it had recorded the balance of US$1.307 million as a liability to be paid in 2016, and therefore to be reported in 2017. The company subsequently confirmed in 2017, consistent with its payments report for FY 2016, that this payment had now been made.

Case study example: Weatherly's Namibian payments
In analysing UK-registered Weatherly's original report under the Regulations on its FY 2015 payments to the Namibian government, PWYP member NRGI noted that the company had disclosed royalty payments for one project but not for two others that had been in production for part of the reporting period. When NRGI asked the company to confirm that no in-scope payments had been made for the latter two projects, Weatherly stated that because these projects had ceased operations during the year it had overlooked reporting more than US$400,000 in royalty payments it had made, and it had therefore filed an amended report including this information.[48] There is no suggestion that the company had intended other than to file a complete and accurate report.

Case study example: Petrofac's Tunisian payments
In analysing Petrofac's original report on its 2015 Tunisian payments, PWYP UK noted insufficient clarity in the company's disclosures regarding the valuation of in-kind royalty payments and the identity of recipient government bodies. The original report gave a composite figure for in-kind and cash royalty payments without stating how much of the total was in kind and how much in cash (although noting that the in-kind payments were valued "with reference to market rates"). This did not allow readers to ascertain the value calculated for 5,000 barrels paid in kind or to compare this with market rates. The company also inadvertently, as it later informed us, omitted to identify the various government entities that received each payment, preventing Tunisian citizens from fully holding the different government entities to account for the receipts. PWYP UK notified Petrofac about these deficiencies, and the company subsequently published a corrected report containing the previously missing information (although not correcting anomalous in-kind payment data for Malaysia).[49] There is no suggestion, again, that the company had intended other than to file a complete and accurate report, and these errors were not repeated in its report on FY 2016.

Dialogue along the above lines between civil society and companies helps in a critical way to normalise diligent and comprehensive company reporting for transparency and accountability purposes and reminds companies that their payments are under scrutiny.

4.2 Conflict prevention
Violent conflict can disrupt oil, gas and minerals production, often reducing the revenues of extractive companies and governments, destabilize countries, harm human rights, and threaten national, regional and global security. Such conflict is often linked to corruption or suspicion of corruption in the sector, or erupts when communities experience negative social and environmental impacts of extraction while seeing very little

[47] The company has been anonymised at its own request.
[48] Weatherly: https://extractives.companieshouse.gov.uk/company/ZEEDF9F9
[49] Petrofac: http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=373204741491616; http://otp.investis.com/clients/uk/petrofac1/rns/regulatory-story.aspx?cid=227&newsid=801657

of the revenues generated or anticipate.[50]

Transparency of extractive company payments and government revenues is a much needed remedy (although, again, insufficient on its own) to risks of associated conflict. PWYP member the ONE Campaign has gathered more than 50 case studies of citizens successfully using public information to challenge corruption and press for changes that improve government accountability and help prevent conflict and political instability.[51]

> *Case study example: Questions on the Nigerian government's receipts*
> ONE has estimated that oil and gas companies operating in Nigeria lost unrealised revenues of at least US$14.8 billion between 2003 and 2016 as a result of conflict and unrest leading to shut-in production. Some estimates place the annual value of oil stolen from Nigeria at between US$3 billion and US$8 billion. In 2012 a former Nigerian government minister estimated that Nigeria had lost more than US$400 billion to oil thieves since the country gained independence.[52] Poor governance has hindered Nigeria's economic development, kept a majority of the population poor while an unaccountable ruling elite became very wealthy, and contributed to lawlessness and criminality. Unrest and militant movements regularly disrupt Nigerian oil and gas production and sabotage pipelines, forcing companies to suspend production and spend large sums on heightened security.[53] As Shell stated in its 2015 Annual Report: "Security issues and crude oil theft in the Niger Delta continued to be significant challenges."[54]
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> To help bring greater public scrutiny to Shell's payments to the Nigerian government, PWYP UK and PWYP Nigeria summarised in an infographic the company's 2015 payments to Nigerian government entities as disclosed under the Regulations, totalling US$4.95 billion.[55] PWYP Nigeria sent this infographic with covering letters to Nigeria's Department of Petroleum Resources, Federal Inland Revenue Service, Central Bank, Niger Delta Development Commission and National Petroleum Corporation, asking officials to confirm receipt of the disclosed payments. PWYP Nigeria also included a question to government entities about the anomaly in Shell's 2015 valuation of its in-kind production entitlement payments. None of the Nigerian government entities would provide the requested confirmation, despite PWYP Nigeria's follow-up Freedom of Information requests.[56]
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> Although the Nigerian government refused to disclose the information that civil society requested arising from Shell's 2015 payments report, the government is now more aware that its oil and gas receipts are under civil society scrutiny. By strengthening its watchdog role, civil society can bring about greater government accountability and, longer term, reduce the causes of oil-related conflict in Nigeria.

4.3 Enhanced public understanding and citizen empowerment
Civil society is using the growing body of extractive industry payment data to build public understanding of the

[50] OECD, Terrorism, Corruption and the Criminal Exploitation of Natural Resources, February 2016, https://www.oecd.org/corruption/Terrorism-corruption-criminal-exploitation-natural-resources-2016.pdf; Economist, Mining in Latin America: from conflict to co-operation, February 2016, https://www.economist.com/news/americas/21690100-big-miners-have-better-record-their-critics-claim-it-up-governments-balance
[51] ONE, Letter to US Securities and Exchange Commission Chair Mary Jo White, March 2016, https://www.sec.gov/comments/s7-25-15/s72515-64.pdf
[52] ONE, Letter to US Securities and Exchange Commission Chair Mary Jo White, March 2016, https://www.sec.gov/comments/s7-25-15/s72515-64.pdf, pages 4, 12-17.
[53] Financial Times, Militants "seriously affecting" Nigerian oil production, May 2016, https://www.ft.com/content/4f788405-5efa-3e1c-bb67-dc2bf0e592cc
[54] Shell, Annual Report 2015, http://reports.shell.com/annual-report/2015/servicepages/downloads/files/download2.php?file=entire_shell_ar15.pdf, page 29.
[55] PWYP infographic, http://bit.ly/2qe9AED
[56] PWYP Nigeria newsletter, March 2017, http://publishwhatyoupay.com.ng/2017/03/31/none-compliance-to-freedom-of-information-impedes-transparency-in-extractive-sector/

sector. This will increase pressure for more accountable revenue management on the part of host country governments and more responsible payment practices among companies. Citizens empowered with company payment information can assist in the fight against corruption and mismanagement and press more effectively for better governance.

Case study example: Mapping payments in Indonesia[57]
PWYP Indonesia, which for some time has used EITI report data to track revenues, map concession areas and monitor subnational payments, analysed 2015 payments to Indonesian government entities reported under the Regulations and EU Directives by UK-registered and/or LSE Main Market-traded Shell, BP, BHP Billiton,[58] Premier Oil, Total Oil and Jardine Matheson, plus disclosures under Norwegian law by Statoil. These seven companies' payments in Indonesia in 2015 totalled more than US$2.38 billion. PWYP Indonesia created an interactive online map of the companies as a public resource for citizens, including operational sites and data disaggregated by payment type, and included the data in their Android "Open Mining" mobile application for wider accessibility. They plan to update these information resources annually.

Case study example: Payment discrepancies in Uganda
With corruption and mismanagement undermining investment in Uganda's mining sector and threatening people and the environment,[59] concerns have extended to the country's newly developing oil sector, potentially one of the largest in sub-Saharan Africa. Ugandan civil society, including members of PWYP Uganda, have examined 2015 payments disclosed under the Regulations by UK-registered Tullow and (under France's implementation of the Accounting Directive) LSE Main Market-traded Total and compared these with information in Bank of Uganda annual reports for fiscal years 2015 and 2016.[60] Civil society has used this information in dialogue with government officials to query discrepancies and demand financial accountability. A review of Tullow and Total's 2015 disclosures revealed US$14 million not included in the government reports. Unless these payments were part of a prior transfer into the country's general budget before operationalization of the petroleum fund, the US$14 million could be deemed to be missing. Civil society has asked officials to explain the discrepancy. The need to do this was reinforced in January 2017 when it was revealed that Ugandan President Museveni had approved payment of US$1.65 million to government officials to "reward" them for a successful lawsuit against Heritage Oil.[61]

Case study example: Publishing and tweeting oil and gas payments in Nigeria
BudgIT is a Nigerian civil society organisation that uses technology to promote citizen engagement and to raise standard of transparency and accountability in government. BudgIT's Fix Our Oil campaign publishes infographics based on UK and other EU countries' mandatory extractive company disclosures that help citizens gain a clearer view of their government's oil and gas revenues. BudgIT uses social media to make its infographics available to wider audiences, including tagging government ministers

[57] PWYP Indonesia: http://tabsoft.co/2ngXUi3; https://play.google.com/store/apps/details?id=com.zan.android.pwyp&hl=en; http://www.publishwhatyoupay.org/pwyp-resources/why-mandatory-disclosures-matter-for-indonesia
[58] BHP Billiton data is from the company's voluntary report for FY 2014/15. BHP's first report under the Regulations, for FY 2015/16, was published in September 2016, after PWP Indonesia had completed its initial project.
[59] Global Witness, Uganda: undermined, June 2017, http://bit.ly/2qTtZ36
[60] PWYP Uganda, Digging deep into oil, gas, and mining data, PWYP US Extract-A-Fact blog, February 2017, http://www.extractafact.org/blog/project-level-disclosures-open-up-ugandas-opaque-oil-sector; Tullow: https://extractives.companieshouse.gov.uk/company/03919249; Total: http://www.total.com/sites/default/files/atoms/files/registration_document_2015.pdf
[61] Oil News Kenya, Uganda awarded officials, lawyers $1.65m after winning Heritage Oil tax dispute, January 2015, http://www.oilnewskenya.com/uganda-awarded-officials-lawyers-1-65m-after-winning-heritage-oil-tax-dispute/

with its Twitter posts.[62]

Case study example: Exposing a poor deal in Niger[63]
Oxfam France in partnership with PWYP Niger has published an assessment of the disclosures of French uranium company Areva under the French regulations. The investigation concludes that recent contract renegotiations between the company and the Nigerien government have failed to increase government revenues, despite previous announcements that they would. Analysis of the data published by Areva reveals that the new contracts include a renegotiated uranium price that is below the former price, explaining the decrease in royalty revenues. Civil society's analysis indicates that uranium exported by Areva's operated joint venture subsidiary Somaïr from Niger to France's nuclear power industry may be undervalued by up to €11,500 per tonne compared with other Nigerien uranium exports. Oxfam France and PWYP Niger believe this is largely why Areva did not pay any profit tax in Niger in 2015. Areva has refuted this conclusion, stating that the agreed price "reflects uranium market conditions", but has not provided a consistent explanation for the undervaluation of the uranium exports. Local civil society including PWYP Niger has used this information to raise media and government awareness about the outcome of the contract renegotiations.

Case study example: Dialogue in Tunisia
Extractive company reporting under the Regulations has helped inform and empower Tunisian civil society in addressing corruption though its dialogue with the government. PWYP UK and the PWYP-affiliated Tunisian Coalition for Transparency in Energy and Mines analysed FY 2015 payments to Tunisian government entities reported by BG Group, the country's largest gas producer (acquired by Shell in 2016)[64] and Petrofac.[65] Infographic summaries of payments reported by each company, totalling together more than US$114 million, were produced, and questions were formulated for the Tunisian government relating to revenue receipts, subnational revenue allocations and company social responsibility payments to local authorities. The Tunisian coalition intended when last heard from to use the infographics to inform its dialogue with the government.

Case study example: Empowering communities in Zimbabwe[66]
PWYP Zimbabwe used payment data disclosed by Anglo American[67] for its Unki platinum mine to empower citizens. Workshops were held with 20 representatives of the Marange and Shurugwi communities to develop their skills in assessing local mining tax revenue alongside local government budget and financial statements and to support their calls for better funding for local economic and social development from the proceeds of mineral extraction. PWYP Zimbabwe has also begun sharing company payment and government revenue data with community organisations in diamond-producing

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[62] BudgIT: http://fixouroil.com/wp-content/uploads/2017/10/shell-payment-latest-8_16pm.pdf; http://fixouroil.com/wp-content/uploads/2017/04/Oil-Gas-Payments.pdf; https://twitter.com/search?src=typd&q=BudgIT

[63] PWYP France, Oxfam France, ONE and Sherpa, Beyond transparency: investigating the new extractive industry disclosures, September 2017, https://www.oxfamfrance.org/sites/default/files/file_attachments/beyondtransparency.pdf; see also Q. Parrinello (Oxfam France/PWYP France), Three years after "win-win" negotiations, Niger still losing out to Areva, June 2017, http://www.publishwhatyoupay.org/three-years-after-win-win-negotiations-niger-still-losing-out-to-areva/, and Why is Niger still losing out to Areva?, September 2017, http://bit.ly/neareva

[64] BG Group: https://extractives.companieshouse.gov.uk/company/03690065

[65] Petrofac: http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/PFC/12867390.html

[66] PWYP Zimbabwe, http://www.publishwhatyoupay.org/wp-content/uploads/2017/06/PWYP-Data-Extractor-Case-Study_Mukasiri.pdf, and How Zimbabweans persuaded diamond companies and government to listen, August 2017, http://www.publishwhatyoupay.org/pwyp-news/how-zimbabweans-persuaded-diamond-companies-and-government-to-listen/

[67] Anglo American: https://extractives.companieshouse.gov.uk/company/03564138 and http://www.angloamerican.com/~/media/Files/A/Anglo-American-PLC-V2/documents/tax-report-2015/aa-2015-tec-report-21-04-16-final.pdf

but impoverished eastern Zimbabwe. This has helped make data a tool that communities can use in organising their grassroots advocacy and has enhanced PWYP Zimbabwe's participation in national budget consultations and dialogue with government officials. PWYP Zimbabwe reports that community leaders are keen to further improve their data literacy and aims to support district administrators, local councillors and traditional chiefs in promoting development through sharing knowledge about mineral revenues.

Case study example: Seeking accountability in Iraq
PWYP UK, the PWYP International Secretariat and the PWYP-affiliated Iraqi Transparency Alliance for Extractive Industries developed an Arabic-language summary of 2015 payments to Iraqi government entities disclosed by Shell and BP under the Regulations, along with contextual information. The Iraqi Alliance planned to use the data to seek greater accountability from their government and the companies, including by cross-checking the data with the country's forthcoming EITI report on 2015, and in looking into how the oil companies account for operating costs.

Case study example: Informing citizens in the United States[68]
Like citizens in resource-rich developing countries, citizens of the USA also need to know if they are getting a good deal on their plentiful natural resources. PWYP US analysed 2015 state and federal tax payments made by nine major extractive companies operating in the USA, using companies' mandatory and voluntary financial disclosures, including reports under the UK Regulations from BP, Rio Tinto and Shell. While this research produced more questions than answers regarding the relatively low level of taxes contributed by these companies' US extractive operations, publication of the findings has provided US civil society with the basis for a more informed public debate.

Case study example: Summarising reports by UK companies[69]
PWYP UK has published an online summary of FY 2015 reporting by Shell under the Regulations, and an interim overview of FY 2015 reporting by all UK-registered and LSE Main Market-traded companies. These online summaries provide the general public with accessible information about the global footprints of Shell and UK-reporting companies respectively, including in Shell's case an infographic ranking the size of its FY 2015 payments in 24 countries.

Case study example: Disclosures by Russian state-owned companies[70]
During public debates in the USA ahead of the US Congress's decision to void the bipartisan Cardin-Lugar anti-corruption rule for oil, gas and mining companies (Dodd-Frank Act, Section 1504), PWYP US used reports under the UK Regulations by Russian state-owned Gazprom[71] and Rosneft[72] to disprove inaccurate claims that only US companies were required to disclose payments under global extractives anti-corruption laws. The fact that several Russian companies have now become more transparent about their payments to governments than US oil giants such as Exxon and Chevron has become part of

[68] PWYP US, Is the United States getting a good deal on its natural resources?, April 2017, http://www.extractafact.org/blog/is-the-united-states-getting-a-good-deal-on-its-natural-resources-a-taxing-question
[69] PWYP UK, Shell reports 2015 payments to governments using open data, June 2016, http://www.publishwhatyoupay.org/shell-reports-2015-payments-to-governments-using-open-data/; PWYP UK, Extractive companies publish worldwide payments under UK law, January 2017, http://www.publishwhatyoupay.org/extractive-companies-publish-worldwide-payments-under-uk-law/
[70] PWYP US, Myth busting: the truth about the Cardin-Lugar anti-corruption provision, February 2017, http://www.pwypusa.org/wp-content/uploads/2017/02/3CRA-Mythbusters-Cardin-Lugar-Provision-2017.pdf
[71] Gazprom: http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=373204741508084
[72] Rosneft: http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=373204741509820; https://www.rosneft.com/Investors/Reports_and_presentations/Reports_on_payments_to_governments/

wider public debate.[73]

Case study example: Investigating company payments for local development in India[74]
Indian journalist Shreya Shah and online media portal IndiaSpend investigated the way local government in Bhilwara, Rajasthan, used levy payments by mining companies to the District Mineral Foundation intended to assist mining-affected communities with local development projects. Finding a poor record of revenue use to date, Shah and IndiaSpend made recommendations for better use of the funds, including public participation, monitoring and spending transparency. Among the mining companies involved and making payments was UK-registered and LSE Main Market-traded Vedanta. The investigative approach and reporting methodology are being shared widely with PWYP coalitions around the world for potential replication.

Case study example: Understanding oil price data[75]
Independent industry analysts OpenOil have used disclosures under the Regulations by BP and Shell, and under Norwegian law by Statoil, to develop a public analysis of oil pricing. This shows that prices spread across a wide range, including significant differences in the concurrent price of oil for projects in the same country. This kind of data and analysis will increasingly enable citizens and civil society to identify patterns and outliers in company payment reports and government oil sale prices, enabling improved public oversight, more informed debate and ultimately better public policymaking.

Case study example: Insight into Ghana's oil and gas sector[76]
Tullow Oil, which has voluntarily disclosed its payments to governments since 2011, operates Ghana's two main producing oil and gas fields, Jubilee and TEN. NRGI analysed six years of Tullow's reporting payments in Ghana, including disclosures under the Regulations for FYs 2015 and 2016, to publish an account of how developments during a period of domestic sector growth and oil price volatility can affect company tax payments. The analysis shows how production entitlements representing over half the payments have fluctuated depending on oil price and production volumes, while income tax has fluctuated more, generating over US$100 million in some years and zero in others. NRGI's article concludes that the difference came mainly from deductions against taxable income from the Jubilee field.[77] It concludes that Ghana's oil fields can remain profitable and provide a larger share of revenue for the government, and it highlights the common trade-off between increasing short-term tax revenues and attracting further investment.

Case study example: Informing public debate in Australia
Australia's ABC News published an online article in April 2017 focused on Glencore's payments report under the UK Regulations.[78] The article highlighted that Glencore paid zero royalties in Australia's Northern Territory, where – unusually – royalties apply to profits rather than to the value of production. ABC News used the company's absence of royalty payments as the basis for a discussion about the

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[73] Economist, Donald Trump signs a law repealing a disclosure rule for oil companies, February 2017, http://www.economist.com/blogs/democracyinamerica/2017/02/big-signing

[74] IndiaSpend, For a dying silicosis patient, a mining fund offers hope, October 2017, http://www.indiaspend.com/cover-story/for-a-dying-silicosis-patient-a-mining-fund-offers-hope-57967, and How not to use a development fund for mineral-rich areas, October 2017, http://www.indiaspend.com/cover-story/how-not-to-use-a-development-fund-for-mineral-rich-areas-40871; also https://www.youtube.com/watch?v=TnwWEunkGrM

[75] OpenOil, With mandatory disclosures, more open, granular oil price data, August 2016, http://openoil.net/2016/08/15/with-mandatory-disclosures-more-open-granular-oil-price-data/

[76] NRGI, Tullow disclosure yields insight into Ghana oil, gas sector, https://resourcegovernance.org/blog/tullow-disclosure-yields-insight-ghana-oil-gas-sector May 2017; Tullow: https://extractives.companieshouse.gov.uk/company/03919249 and http://www.tullowoil.com/Media/docs/default-source/2016-Annual-Report-Accounts/2016-Annual-Report-Accounts.pdf?sfvrsn=18

[77] Tullow's view, however, is that the primary factor was the decline in the oil price.

[78] ABC News, Mining giant Glencore paid "$0" in royalties to Northern Territory government, April 2017, http://www.abc.net.au/news/2017-04-26/mining-giant-glencore-paid-no-royalties-to-nt-government/8472350

relative benefits and shortcomings of different royalty regimes. This shows the Regulations' and the Accounting Directive's usefulness in informing public debate about different approaches to extractives revenue management and potential to result in reform.

Case study example: Creating a "how-to" handbook for extractives data users
Global Witness is working with Resources for Development Consulting, a leading authority on resource project economics, to develop an accessible, high quality handbook (both web-based and PDF format) to promote citizens' use of extractive companies' payment disclosures. Members of PWYP's Data Extractors group from the Philippines, Canada, Zimbabwe, France, the US, Indonesia and the UK have tested the methodologies for analysing project payments developed in the draft handbook, using company disclosures under the EU Accounting and Transparency Directives. The results of the testing will inform the final version of the handbook, which is due for publication in late 2017/early 2018. The handbook will help equip civil society groups, journalists, independent activists, parliamentarians, academics and others who want to use extractives data for accountability purposes. It will increase the effectiveness of payment transparency regulations in resource-dependent host countries and in home countries and promote responsible data use by explaining the logic behind company payments. Global Witness promoted the handbook's methodology at PWYP's 2017 Africa Conference[79] and will launch it at a forthcoming international extractives and/or financial transparency event, present it at other suitable events in resource-dependent countries and encourage civil society to incorporate the methodology into its advocacy and capacity-building.

Case study example: Public interest financial modelling in Indonesia[80]
PWYP Indonesia and analysts/trainers OpenOil are modelling extractive project finances using publicly available data to inform public monitoring and discussion about contract implementation, especially in relation to fiscal regimes, and to evaluate project costs and benefits and estimate future state revenues from the extractive industries. PWYP Indonesia plans to extend modelling to include payment reports under the EU Directives, covering payments in Indonesia by companies such as BHP Billiton, BP, Premier Oil, Rio Tinto, Shell and Total, and to develop a mentoring programme for Southeast Asian civil society, academics, journalists and government officials.

Case study example: An online open-source international data repository on oil, gas and mining project payments[81]
NRGI is developing www.ResourceProjects.org as an online platform that collects and searches extractive project information using open data. It aims to harvest data on project-by-project payments to governments based on mandatory disclosure legislation in the EU, Norway, Canada and (once implemented) the US, as well as in EITI reports. ResourceProjects.org then links the data to associated information such as project location and status, relevant contracts, companies and licences from a variety of government and industry sources. The platform aims to make it easier for journalists, civil society organisations, researchers and government officials to search, access and download relevant data originating from these sources.

4.4 Complementing the Extractive Industries Transparency Initiative (EITI)

Mandatory reporting is widely agreed to complement reporting under the EITI.[82] While the EITI has proved valuable as a country-based reconciliation process and in giving civil society a seat at the table with industry

[79] http://www.publishwhatyoupay.org/pwyp-news/publish-what-you-pay-africa-meets-for-its-6th-conference/
[80] http://pwyp-indonesia.org/en/programs-profile/project-6-financial-modelling-and-openness-in-the-extractive-industries/; http://pwyp-indonesia.org/en/298777/program-mentoring-on-the-financial-modelling-in-the-extractive-industries-pwyp-indonesia-open-oil/; https://pwyp-indonesia.org/en/325216/financial-modelling-a-new-instrument-for-promoting-accountability-in-extractive-industry/
[81] http://www.resourceprojects.org/
[82] EITI Chair's statement on repeal of SEC's "resource extraction" rule, January 2017, https://eiti.org/news/statement-from-eiti-chair-on-repeal-o-secs-resource-extraction-rule

and government, it is currently limited to about 50 participating countries. By contrast, the Regulations and EU Directives ensure that companies registered and/or traded on a regulated market in the UK and the EU disclose their payments to governments worldwide, including payments in high-corruption-risk countries that are unlikely to join the EITI any time soon, such as Angola and Russia. NRGI estimates that 80% of payments reporting under the UK Regulations went to non-EITI country governments in 2015.

BHP Billiton's report on FY 2016, for example, discloses a total of $4.51 billion in in-scope payments to governments in 19 countries.[83] Of these countries, only 7 are currently implementing the EITI (and one, the United States, may shortly cease). BHP's payments to the 12 non-EITI countries totalling $4.2 billion – i.e. 93% of its total in-scope payments made in FY 2016 – will never be reported under the EITI. This starkly illustrates the importance of mandatory reporting in relation to non-EITI countries.

In addition, EITI data is often incomplete and out of date, whereas payment data is disclosed under mandatory reporting laws during the financial year following the one when payments were made. And with the EITI there is always a risk – borne out in 2017 in the case of two countries – that for political reasons a country will stop implementing the initiative.

Case study example: Making a case in the Philippines
Bantay Kita (PWYP Philippines) analysed payments data published under the French implementation of the Accounting Directive by LafargeHolcim and under the Regulations by LafargeHolcim's UK subsidiary Aggregate Industries,[84] identifying that the Philippines was the group's third largest recipient of government payments in 2015, totalling approx. US$66 million. Bantay Kita, which is represented on the Philippines EITI Multi-Stakeholder Group and publishes a public web portal for extractive industry data and project information, is using LafargeHolcim and Aggregate Industries' disclosures to strengthen its case for the inclusion of payments by non-metallic mining companies in future Philippines EITI reports.

Case study example: Total's payments in Angola[85]
ONE, Oxfam France and Sherpa (all members of PWYP France) in partnership with independent analysts Le Basic published an analysis of the first disclosures by French oil and gas company Total of its payments to governments in Angola under France's implementation of the Accounting Directive. Because Angola – a highly corruption-prone country – is not an EITI member, Total's payments in the country were published for the first time in 2016 alongside mandatory disclosures by other companies such as BP and Statoil. Analysis of production entitlement ("profit oil") payments made by a consortium of companies including Total (40% stakeholder and operator) on block 17 revealed a major discrepancy between the value of in-kind payments made by the companies (as calculated from Total's proportionate disclosure at 40%) and the production entitlement revenue for the block voluntarily declared by the Angolan authorities, which was US$108 million less. The fact that the company had not disclosed the volume as well as the value of its in-kind payment made it more difficult to identify the reason for the discrepancy; the government did disclose the volume (number of barrels).

[83] BHP Billiton: http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=384822628095094; https://extractives.companieshouse.gov.uk/company/03196209
[84] LafargeHolcim: http://www.lafargeholcim.com/sites/lafargeholcim.com/files/atoms/files/07152016-finance-lafargeholcim_report_on_payments_to_governments.pdf; Aggregate Industries: https://extractives.companieshouse.gov.uk/company/00245717
[85] PWYP France, Oxfam France, ONE and Sherpa, Beyond transparency: investigating the new extractive industry disclosures, September 2017, https://www.oxfamfrance.org/sites/default/files/file_attachments/beyondtransparency.pdf; see also Q. Parrinello (Oxfam France/PWYP France), Three years after "win-win" negotiations, Niger still losing out to Areva, June 2017, http://www.publishwhatyoupay.org/three-years-after-win-win-negotiations-niger-still-losing-out-to-areva/, and Why is Niger still losing out to Areva?, September 2017, http://bit.ly/neareva

This civil society report offers three possible explanations for the gap: (1) differences between Total and the Angolan government in defining and estimating the volume of "profit oil" paid and received; (2) differences between Total's and the government's valuation of the oil per barrel (Total does not provide a value per barrel of oil, unlike the government, which does: US$51.9; from evidence elsewhere it appears that Total and the Angolan government have priced the same oil differently); (3) embezzlement of part of the in-kind "profit oil" payments by Angolan officials.

In response to the civil society report, Total stated that it accounts for production entitlement volumes in accordance with the production sharing contract, and values these volumes on the basis of regulated prices controlled and provided by the Angolan government, and that this "completely excludes any possible manipulation of transfer prices". Total's detailed response to the PWYP France report is published online.[86]

By comparing the company data with Angolan government data, French civil society organisations used Total's mandatory disclosures to perform a similar task of verification to that undertaken in other countries through the EITI, raising important questions similar to those addressed by the EITI reconciliation process. Civil society would still expect Total to disclose in-kind payments by volume as well as by value, in line with the EU Directive.[87]

Case study example: Gazprom's payments in the UK
Analysing company payment reports on FY 2015 under the Regulations, NRGI established by end-March 2017 that a total of 36 different companies' disclosures included payments to UK Government entities. Among these were mandatory disclosures by Russian state-owned oil company Gazprom, which had declined to disclose payments made to UK Government bodies in 2015 under the 2016 UK EITI process. This data gap in the UK EITI report on 2015 was partly addressed by NRGI providing text and a web link in the UK EITI report to NRGI-compiled data on Gazprom and other companies' reported payments to the UK under the Regulations.[88]

4.5 Business benefits for companies
Payment transparency helps secure companies' social licence to operate, enhances their reputational standing, reduces business risk and lowers costs of capital. International auditors EY have listed social licence as the fourth greatest risk that mining companies face.[89] Loss of social licence can lead to delayed production – and in extreme cases, abandoned operations, as with Royal Dutch Shell in Ogoniland – and additional risks and costs, such as the need to deploy armed security guards when conflicts arise with local communities. All this impacts negatively on companies' reputation and bottom line.

Estimates of the potential business costs of community conflict and of production halts and delays are large. The former Special Representative of the UN Secretary-General for Business and Human Rights, Professor John Ruggie, cites an international oil major's estimate that it may have experienced a "US$6.5 billion value erosion over a two-year period" from "non-technical … stakeholder-related risks", referring specifically to "costs

[86] https://www.oxfamfrance.org/sites/default/files/file_attachments/right_of_reply_-_total.pdf
[87] Accounting Directive, art. 43.3. France's transposition of the Directive inadvertently omitted the requirement to report, where applicable, in-kind payments by volume.
[88] UK EITI Report for 2015, March 2015, https://www.gov.uk/government/publications/extractive-industries-transparency-initiative-payments-report-2015, page 76; NRGI data: http://resourcegovernance.org/analysis-tools/tools/company-reports-payments-governments-including-uk-2015
[89] EY, http://www.ey.com/Publication/vwLUAssets/EY-business-risks-in-mining-and-metals-2016-2017/%24FILE/EY-business-risks-in-mining-and-metals-2016-2017.pdf; see also on social licence Tom Butler, International Council on Mining and Metals, quoted in Reuters, Mine bosses say transparency will not be clouded by US rule changes, February 2017, http://www.reuters.com/article/us-africa-mining-transparency-idUSKBN15O1KG

arising from conflict with local communities”.[90]

Researchers Davis and Franks find that “temporary shutdowns or delay” may cost “a major, world-class mining project with capital expenditure of between US$3-5 billion … roughly US$20 million per week of delayed production … largely due to lost sales”. They also cite cases of delays costing companies hundreds of millions of dollars in total, and tens or hundreds of thousands of dollars per day; and in one extreme case quoted from an interviewee: “When we were building [the mine] the number was frequently thrown around that every day of delay in the construction schedule cost $2 million, partly because of additional costs, but mainly because of delay in the start of the revenue stream.” [91]

Leading oil, gas and mining companies recognise these risks, including the fact that payment transparency helps protect companies and their investors from bribe-seeking government officials. They have acknowledged publicly that they favour country- and project-level reporting under the Regulations and similar legislation for such reasons, even where benefits may not be immediately quantifiable:

> Anglo-American: “[W]e … support and comply with the EU Transparency Directive.”[92]
>
> BHP Billiton: “[W]e … would be supportive of a globally consistent mandatory disclosure regime based on … [the EU Accounting] Directive.” “We believe transparency by governments and companies about revenue flows from the extraction of natural resources is an important element in the fight against corruption.” “Consistency of financial disclosure … is … critical for civil society and other users of financial disclosure data.” [93]
>
> BP: “BP supports the concept of transparency in revenue flows from oil and gas activities in resource-rich countries. It helps citizens of affected countries access the information they need to hold governments to account for the way they use funds received through taxes and other agreements.”[94]
>
> Glencore: “[W]e are strong supporters of transparency around payments made to governments in resource producing countries.”[95]
>
> Rio Tinto: “Rio Tinto believes our investors, stakeholders and communities deserve to understand in clear terms the amount of tax we pay in each country. We are committed to providing transparency about tax payments made to governments.”[96]
>
> Shell: “Shell is committed to transparency as it builds trust. Trust is essential for a company that operates in our line of business, reflecting our core values of honesty, integrity and respect for people.

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[90] J. Ruggie, Foreword to R. Davis and D. Franks, Costs of company-community conflict in the extractive sector, CSR Initiative at the Harvard Kennedy School, 2014, https://sites.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf

[91] Ibid., pages 9, 19.

[92] https://business-humanrights.org/sites/default/files/documents/Anglo-American-response-re-revenue-transparency-2016.pdf

[93] http://www.bhpbilliton.com/~/media/12d7d9572f1042a4b6cdb0bd7abe5c09.ashx; http://www.bhpbilliton.com/~/media/bhp/documents/investors/annual-reports/2016/bhpbillitonsustainabilityreport2016.pdf?utm_source=Website&utm_medium=Organic&utm_term=SusDownloadNews&utm_campaign=AR2016; https://business-humanrights.org/en/publish-what-you-pay-urges-oil-gas-mining-firms-to-support-us-law-on-disclosure-of-payments-to-govts-statements-of-support-by-8-firms/?dateorder=datedesc&page=1&componenttype=all

[94] http://www.bp.com/content/dam/bp/pdf/sustainability/group-reports/bp-report-on-payments-to-governments-2015.pdf

[95] https://business-humanrights.org/en/publish-what-you-pay-urges-oil-gas-mining-firms-to-support-us-law-on-disclosure-of-payments-to-govts-statements-of-support-by-8-firms?dateorder=datedesc&page=1&componenttype=all

[96] http://www.riotinto.com/documents/RT_taxes_paid_in_2015.pdf

By fulfilling the mandatory disclosures in line with the new UK legislative requirements we demonstrate that extraction of natural resources can lead to the opportunity of government revenue, economic growth and social development."[97]

Statoil: "Statoil is committed to and engaged in revenue transparency for activities in the extractives sector, and has found this practise conducive to establish trust between stakeholder groups"; "[O]ur company supports transparency … Statoil has not seen negative effects from the disclosures we have made."[98]

Tullow: "The taxes we pay to governments are the most significant economic contribution we make to our countries of operation. We are committed to the transparent disclosure of payments to all our major stakeholder groups." "[W]e believe transparent disclosure of tax payments helps governments, citizens and international opinion formers to debate how wealth from oil resources should be managed sustainably and equitably."[99]

Similarly, the International Council on Mining and metals (ICMM), a leading mining industry body, has said:

"[T]he global trend is in the [pro-transparency] direction. The train has left the station. It is driven by investors and other stakeholders and the desire of the industry to maintain its social license to operate. One way to maintain that is for everyone to see that the taxes and other payments the mining industry makes are applied sensibly to the development of the country."[100]

The UK Government's Impact Assessment indicated that the Regulations were "expected to bring real benefits to UK companies operating in resource rich developing countries by reducing risk and improving the business environment".[101] Guidance for companies published by the UK Government for the UK EITI has similarly acknowledged that revenue transparency enhances risk mitigation for, and the reputations of, companies:

"Political instability caused by opaque governance is a clear threat to investments. In extractive industries, where investments are capital intensive and dependent on long-term stability to generate returns, reducing such instability is beneficial for business.

"Transparency of payments made to a government can also help to demonstrate the contribution that their investment makes to a country. …

"Openness around the extractive industry and its value creation, importance for the economy will lead to more predictable social and political development. …

"Shareholders, investors, employees, competitors, civil society groups, the media and other external stakeholders view companies' disclosure of payments … as an example of principled leadership. …

"Regular … [r]eports on payments and revenues can improve the creditworthiness of both companies

[97] http://www.shell.com/sustainability/transparency/revenues-for-governments.html
[98] https://www.statoil.com/content/dam/statoil/documents/annual-reports/2016/statoil-2016-annual-report.pdf; email to PWYP UK, February 2017.
[99] http://www.tullowoil.com/Media/docs/default-source/3_investors/2013-annual-report/2013-tullow-annual-report-pdf.pdf?sfvrsn=6; http://www.tullowoil.com/sustainability/shared-prosperity/transparency
[100] Tom Butler, ICMM, quoted in Reuters, Mine bosses say transparency will not be clouded by US rule changes, February 2017, http://www.reuters.com/article/us-africa-mining-transparency-idUSKBN15O1KG
[101] http://www.legislation.gov.uk/uksi/2014/3209/impacts, page 1.

and countries."[102]

UK Business Minister and EITI Champion Margot James MP has publicly acknowledged the reputational benefits of transparency for companies that do business in the UK: "Improving corporate transparency across all sectors makes us even more attractive to foreign investors on our path to building a truly global Britain."[103]

While one or two years' reporting under the Regulations cannot prove or disprove the above anticipated business benefits, there is every reason to think such benefit will consolidate over time.

> *Case study example: Civil society's reporting guidance for companies reporting in the UK*[104]
> Based on analysis of company reports on FY 2015, in early 2017 PWYP UK, Global Witness and NRGI prepared and sent to approx. 100 UK-registered and/or LSE Main Market-traded extractive companies detailed guidance for their reports on FY 2016 under the Regulations. The guidance highlights four specific areas where we believe many companies need to improve their disclosures' clarity and comprehensiveness to achieve the greatest possible benefit from their transparency efforts: direct and indirect joint venture payments; project aggregation; naming recipient government entities; and payments in kind. These four points are covered in section 5 below.

4.6 Investor benefits

The UK Government's Impact Assessment refers to "benefits … to UK investors who will be better able to assess the risk profiles of extractives projects".[105]

Numerous UK and EU investors, including Allianz Global Investors, CCLA Investment Management, Co-operative Asset Management, F&C Asset Management, Henderson Global, Hermes, ING, Legal & General, the Local Authority Pension Fund Forum, RPMI Railpen, Scottish Widows, SNS, the Swedish National Pension Fund, UBS and USS, are on record as supporting country- and project-level reporting by extractive companies under US and/or EU laws. See for example this statement from their 2013 letter to the US Securities and Exchange Commission (SEC):

> "Payment disclosure regulations, such as [Dodd-Frank Act] Section 1504 and the European Union Transparency Directive, play a critical role in encouraging greater stability in resource-rich countries, which benefits both the citizens of those countries and investors. … [D]isclosure requirements … protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."[106]

Similarly PWYP has been told in conversation with certain UK investment fund managers that payment transparency is valued because it demonstrates and enhances the good governance of oil, gas and mining companies and addresses investor risk.

The study by UK accounting academics cited above notes that payments to governments disclosures "should assist investors in judging the merits of potential investments in terms of compliance with applicable tax laws and transparency displayed by companies. It is useful in relation to risk assessment. [Payments to

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[102] Guide to the UK Extractive Industries Transparency Initiative (UK EITI), June 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/424168/Guidance_document_for_mining_companies_on_EITI.pdf

[103] Business Minister Margot James renews UK's commitment to corporate responsibility in extractive industry, March 2017, https://www.gov.uk/government/news/business-minister-margot-james-renews-uks-commitment-to-corporate-responsibility-in-extractive-indsutry

[104] http://www.publishwhatyoupay.org/wp-content/uploads/2017/03/Civil-society-reporting-guidance-for-companies-March-2017-1.pdf

[105] http://www.legislation.gov.uk/uksi/2014/3209/impacts, page 1.

[106] Investor letter to SEC Chairman Mary Jo White, August 2013, https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf

governments reports] provide a level of detail not available in the accounts or elsewhere in company disclosure and to this extent they provide users with information which they would not otherwise have any access to."[107]

When in early 2017 the newly elected US Congress voted to rescind the SEC's rule for the Cardin-Lugar provision (Dodd-Frank Section 1504), and President Trump signed the resolution into law, the *Responsible Investor* online news service published an article subtitled: "Why the repeal of '1504' section of act will harm investors".[108]

4.7 User benefits of a centralised reporting portal and open data

From a data user's perspective, all UK-registered companies' payment reports are usefully accessible online in open data CSV files via the Companies House Extractives Service portal. The requirement for UK-registered companies to report via a central online repository, using the prescribed XML schema that outputs as open data CSV files, significantly enhances access and usability for report users. Civil society appreciates that, in prescribing open data reporting by UK-registered companies, the Government exceeded the minimum requirements of the Accounting Directive and acted resolutely in the spirit of the 2013 G8 Open Data Charter and 2013 Lough Erne G8 Leaders' Communiqué, and in keeping with its 2013-15 Open Government Partnership commitment that by 2016 "UK listed and UK registered extractive companies will start to publish data under the EU Directives in an open and accessible format."[109]

Open data enables users to access and use data freely, machine-read it, analyse it mechanically and easily represent it in different formats. The 2013 G8 Open Data Charter recognised the value of open data to citizens and society:

> "Open data can increase transparency about what government and business are doing. Open data also increase awareness about how countries' natural resources are used, how extractives revenues are spent …. All of which promotes accountability and good governance, enhances public debate, and helps to combat corruption."[110]

Much of the payment analysis and advocacy undertaken by PWYP and other civil society actors, as evidenced in the case study examples above, makes use of the open data provided under the Regulations.

5. WEAKNESSES OF THE REGULATIONS AND THEIR IMPLEMENTATION AND HOW THESE CAN BE ADDRESSED

As useful as it has been, reporting to date by UK-registered and/or LSE Main Market-traded extractive companies under the Regulations indicates that improvement is needed in several areas. PWYP members have contacted numerous companies about minor omissions and deficiencies in their FY 2015 and/or 2016 reporting, and in many cases these have been corrected. Such instances are not generally documented here.

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[107] E. Chatzivgeri, L. Chew, L. Crawford, M. Gordon and J. Haslam, Reports on payments to governments: a report on early developments and experiences, report for Publish What You Pay International
Secretariat and Publish What You Pay UK, 2017, http://bit.ly/2rLmBnv

[108] Responsible Investor, Analysis: investors concerned over repeal of Dodd-Frank extractives disclosure rule, February 2017, https://www.responsible-investor.com/home/article/analysis_investors_concerned_df/

[109] G8 Open Data Charter, 2013, https://www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex; Prime Minister's Office, 2013 Lough Erne G8 Leaders' Communiqué, https://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communique, para. 47; Cabinet Office, Open Government Partnership National Action Plan 2013-15, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255901/ogp_uknationalactionplan.pdf, commitment 21, page 49.

[110] https://www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex, page 1.

What we do document are more significant instances where we consider the Regulations and their implementation are weak or ambiguous, or companies are at fault.

In view of the UK statutory review's need to "have regard to how the [EU Accounting] Directive … is implemented in other member States",[111] we refer where relevant to examples from implementation of the Accounting Directive in France,[112] plus one example from Italy for FY 2016, as well as to implementation of similar legislation in Canada.

The recommendations that follow are addressed to the UK Government. Many apply equally to mandatory payment reporting in other EU member states, and in such cases we would urge the Government to use its influence when the European Commission reviews chapter 10 of the Accounting Directive in 2018-19 to achieve EU-wide improvement in company disclosures. We distinguish below between urgent priorities and additional necessary improvements.

Urgent priorities:
5.1 Joint venture reporting
5.2 Aggregation of projects
5.3 Identifying recipient government entities
5.4 Clarifying in-kind payments
5.5 Payments for the sale of oil, gas and minerals
5.6 Accessibility of reports and information on reporting for companies and others

Additional necessary improvements:
5.7 Tax disaggregation and definition
5.8 Inclusion of other payment types
5.9 Extractive companies traded on AIM and those registered or publicly listed in the UK Overseas Territories and Crown Dependencies
5.10 Additional project-level disclosure for more meaningful accountability
5.11 Report monitoring and quality control
5.12 Extended public county-by-country reporting

Urgent priorities:

5.1 Joint venture reporting

5.1.1 Omission of certain joint venture (JV) payments

At least seven UK-reporting companies state in their payments reports on FY 2015 and/or 2016 that they have omitted payments by non-subsidiary joint ventures (JVs), and/or payments by JVs over which they have joint control, and/or payments by entities that are accounted for using the equity method and/or payments where they are not the operator or do not make payments on behalf of the operation. Some companies also state that they report any full amount they pay a government as a JV operator, including where they are proportionally reimbursed by non-operating JV partners via a cash call.

Given the frequency of JVs in resource extraction, particularly in oil and gas but also in mining, and because JV production entitlements are often the largest payment to a government, non-reporting of the kinds of JV payments cited in the preceding paragraph is likely to leave very large sums of money undisclosed.

[111] Regulations, clause 21(2).
[112] France and Romania are the only two other EU member states known to have implemented chapter 10 of the Accounting Directive early enough to have required extractive companies to report on FY 2015 payments; for Romania, see report by Societatea Nationala de Gaze Naturale ROMGAZ SA, http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=373204741512003

For example, BHP Billiton in its voluntary *Economic contribution and payments to governments report 2016* on FY 2015 includes "for information purposes" payments (not disaggregated by payment type) totalling US$671 million as representing payments made by the Samarco (Brazil), Cerrejón (Colombia) and Antamina (Peru) mines in Latin America in which it has an equity interest. But it omits entirely its share of these large payments from its FY 2015 mandatory reports to Companies House and to the NSM. For FY 2016 BHP omits mention of these mines entirely from its voluntary report and from its report to the NSM; a very minor tax payment identified as relating to Samarco appears in its report to Companies House.[113] Glencore and Anglo American are BHP's joint shareholders in Cerrejón in Colombia, without any being a majority shareholder. Glencore does not disclose its share of payments made for this mine, while Anglo American discloses to the NSM but not to Companies House.

There is a risk of companies setting up collective arrangements that would permit questionable payments to governments to be kept hidden by copying the Cerrejón model to avoid having to report such payments, unless this reporting loophole is addressed.

As another example, BP is a non-operating JV partner in two producing blocks (15 and 17) in Angola. BP has chosen not to disclose for FYs 2015 and 2016 the production entitlement payments made on its behalf by the operating companies of Blocks 15 and 17. Assuming that BP's share of total production entitlement payments was in line with its FY 2015 equity interest in blocks 15 (26.67%) and 17 (16.7%), this would indicate that for 2015 BP did not report around $1.2 billion of its production entitlements payments in Angola alone.[114]

It is important to citizens that JV payments to governments are reported comprehensively. Where JV participants appoint an operator to conduct operations on their behalf they do not cease to have an underlying liability for their proportionate share of the payments to governments or cease to be responsible for reporting this proportionate share. This view is supported by a legal opinion obtained by civil society from a senior barrister in 2015, which states that the assumption that companies need not report payments if they are made on their behalf by a JV operator is not supported in the Regulations, and that such an assumption is without legal basis, "incorrect" and "highly unsatisfactory".[115]

Proportionate reporting is in the interest of companies by helping them show their economic contribution to a country and demonstrating their commitment to transparency. Several companies reporting under the Regulations, under France's implementation of the Directive and under Norway's similar legislation have disclosed their proportionate share of at least some JV payments: see FY 2015 and 2016 reports by Rio

[113] BHP Billiton: http://www.bhpbilliton.com/~/media/12d7d9572f1042a4b6cdb0bd7abe5c09.ashx, page 2; https://extractives.companieshouse.gov.uk/company/03196209; http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=373204741720122; http://www.bhp.com/-/media/documents/investors/annual-reports/2017/bhpeconomiccontributionreport2017.pdf; http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=384822628095094

[114] Estimate based on Angola's voluntary disclosures of production entitlement receipts for 2015 at http://www.minfin.gov.ao/PortalMinfin/faces/economianacional/petroleo

[115] K.P.E. Lasok QC, In in the matter of Global Witness and in the matter of draft industry guidance concerning the Reports on Payments to Governments Regulations 2014, legal opinion, Monckton Chambers, February 2015, http://www.publishwhatyoupay.org/wp-content/uploads/2015/04/Legal-opinion-2-on-JV-reporting.pdf, paras 12, 19, 20.

Tinto,[116] Tullow,[117] Total (France)[118] and Statoil (Norway) (production entitlements).[119] Rio Tinto states helpfully: "Where we hold a share in a joint operation, joint venture or associate, we have included Rio Tinto's share of the tax payments of those operations consistent with our share of equity in the operations."[120]

By contrast, the absence of JV payment disclosures where a company's involvement in a project is known may pose a reputational risk.

A company and its subsidiaries' JV payments, whether made directly or made indirectly via the operator or another entity on the reporting company's behalf, should be included on a proportionate basis in the company's disclosures, regardless of whether the company has a controlling or non-controlling interest.

The Canadian government department Natural Resources Canada, in its FAQs on the Extractive Sector Transparency Measures Act (ESTMA), which is the equivalent Canadian legislation, supports civil society's view that, to fulfil the purposes of extractive industry transparency, companies should report their own and subsidiaries' proportionate share of in-scope joint venture payments, whether made directly or indirectly:

> *"[T]he Act deems payments made by a non-reporting Entity on behalf of a Reporting Entity to have been made by the Reporting Entity*…
>
> "Non-operator [joint venture] members must ensure that they report any payments they make directly to a Payee, *as well as any payments made for them that are not reported by the operator*…
>
> "If the operator of a joint agreement is not a Reporting Entity (i.e., it is not required to submit an ESTMA report), the *non-operator Reporting Entities must report all of the payments that they make directly to the Payee, as well as all payments that have been made for them* … There may be cases where payments are made for a Reporting Entity, but the Reporting Entity is not aware if those payments are being reported by the operator, what the payments are, or who they are being made to. *Compliance with the Act requires that Reporting Entities make efforts to obtain this information*…
>
> "In situations where two or more Reporting Entities exercise joint control and no single operator is in a position to report the payments made for all non-operating members, *Reporting Entities have flexibility in determining how to report these payments in a manner that achieves the purpose of the Act, which is to make the reportable payments transparent to the public*…
>
> "*Another option may be for each member to report their proportion of the reportable payments that have been made to a Payee*."[121]

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[116] Rio Tinto: http://www.riotinto.com/investors/taxes-paid-16634.aspx, page 3; http://www.riotinto.com/documents/RT_taxes_paid_in_2016.pdf, page 2.

[117] Tullow: http://www.tullowoil.com/Media/docs/default-source/3_investors/2015-annual-report/tullow-oil-2015-annualreport-and-accounts.pdf?sfvrsn=2, page 171; http://www.tullowoil.com/Media/docs/default-source/2016-Annual-Report-Accounts/2016-Annual-Report-Accounts.pdf?sfvrsn=18, page 167.

[118] Total, http://www.total.com/sites/default/files/atoms/files/registration_document_2015.pdf, page 311; http://www.total.com/sites/default/files/atoms/files/ddr2016_va_web.pdf#page=333, page 329.

[119] Statoil: http://www.statoil.com/no/InvestorCentre/AnnualReport/AnnualReport2015/Documents/DownloadCentreFiles/01_KeyDownloads/2015%20Payments%20to%20governments.pdf, page 5; https://www.statoil.com/content/dam/statoil/documents/annual-reports/2016/statoil-2016-annual-report.pdf, page 248.

[120] http://www.riotinto.com/investors/taxes-paid-16634.aspx, page 3.

[121] Natural Resources Canada, Extractive Sector Transparency Measures Act (ESTMA) FAQs, August 2017, http://www.nrcan.gc.ca/node/18802/, pages 3, 11, 12, emphasis added.

5.1.2 Omission of "non-distinguished" JV payments to state-owned enterprises

At least one major UK-reporting company states for FYs 2015 and 2016 that it reports in-scope payments made to any national oil company acting as the operator of a JV in which it has an interest when the payment "is distinguishable" – implying that it omits "non-distinguishable" payments. As with the lack of proportional reporting by JV non-operating participants, any omission of in-scope payments should be avoided, especially when it is left to the discretion of companies to decide what is "distinguishable". Legal opinion obtained by civil society from a senior barrister in 2015 states that an implication that "reportable payments are not subject to the disclosure obligation if they are rolled up [indistinguishably] into 'other costs'" is "not mandated by either the 2014 Regulations or the Directive", and that any in-scope payment "is a reportable payment irrespective of whether or not it is 'distinguished from other costs'".[122]

Again, the Canadian government's FAQs support this view: "There may be cases where payments are made for a Reporting Entity, but the Reporting Entity is not aware if those payments are being reported by the operator, what the payments are, or who they are being made to. *Compliance with the Act requires that Reporting Entities make efforts to obtain this information*."[123]

5.1.3 Omission in French and Italian reporting

At least one company reporting in France omits for FYs 2015 and 2016 "payments by non-consolidated entities (such as those … accounted for using the equity method)". The same omission can be assumed to occur in the FY 2015 report to Companies House by this company's UK-registered subsidiary. One Italian company states for FY 2016 that it omits payments made on its behalf by JV operators and by incorporated JVs that it does not control.

Recommendation 1: Joint venture reporting

The Government should explicitly require companies to report their own and their subsidiaries' proportionate share of any in-scope joint venture payment they make either directly or indirectly via a joint venture operator or other entity on their behalf, regardless of whether they have a controlling or non-controlling interest in the joint venture. It should also clarify that in-scope payments made by companies and their subsidiaries to state-owned enterprises acting as joint venture operators must be reported.

5.2 Aggregation of projects

The importance of project-level reporting has been widely acknowledged, including by the Government in the Regulations' Explanatory Memorandum.[124] As the EITI International Secretariat has stated: "Publishing project-level information can allow the public to monitor and assess the extent to which the government receives what it ought to from each individual extractive project, as payments can be compared with the fiscal terms set out in the laws or contract governing the project. For host communities, it could also contribute to show the contribution made by each project."[125]

5.2.1 Over-aggregation of project agreements

At least two non-EU-registered LSE Main Market-traded extractive companies identify in their reports to the NSM on FY 2015 and/or 2016 various subsidiary legal entities as "projects" where there is good reason to believe that at least some of these subsidiaries operate more than one distinct project. One of these companies acknowledges that, while based on tax regulations in its home country (Russia), this means it has not disaggregated to project (field) level its mineral extraction taxes paid in FYs 2015 and 2016.

[122] Lasok, op. cit., February 2015, http://www.publishwhatyoupay.org/wp-content/uploads/2015/04/Legal-opinion-2-on-JV-reporting.pdf, paras. 5-7.

[123] Natural Resources Canada, Extractive Sector Transparency Measures Act (ESTMA) FAQs, August 2017, http://www.nrcan.gc.ca/node/18802/, page 12, emphasis added.

[124] http://www.legislation.gov.uk/uksi/2014/3209/memorandum/contents

[125] EITI reaffirms its leadership on revenue transparency, March 2017, https://eiti.org/news/eiti-reaffirms-its-leadership-on-revenue-transparency

At least five companies have broadly aggregated FY 2015 and/or 2016 data for multiple oil and gas fields or mines and reported these as a single project. Some of these companies have used broad geographical names such as the name of an offshore geological basin or an onshore geographical area to designate such "projects". Several companies have justified such project aggregation, either in their PDF report's explanatory text on "basis of preparation" or in dialogue with civil society, as resulting from the legal agreements governing the operations in question being (to quote the Regulations and the Directive) "operationally and geographically integrated".[126]

One company has indicated to us that several projects could be aggregated for reporting purposes simply because they are operated under a single overarching agreement and are ring-fenced by the company for tax purposes. Another has aggregated two distinct JV projects for reporting as a single project despite each having different partners and, very possibly, significantly different profitability levels, and despite the company disaggregating the projects for EITI reporting.

Over-aggregation of projects reduces the granularity of company reports, prevents users from fully understanding the data and may result in specific payments of interest to citizens and civil society being obscured from view. All this tends to undermine the Regulations' purpose of providing through project-level reporting "greater insight into how the industry operates and the range of economic contributions that can result".[127]

The Regulations' language on project aggregation, mirroring the language of the Accounting Directive's recital 45, is currently ambiguous:

> "(5) If agreements of the kind referred to in the definition of 'project' are substantially interconnected, those agreements are treated for the purposes of these Regulations as a single project.
>
> "(6) For the purpose of paragraph (5), 'substantially interconnected' means forming a set of operationally and geographically integrated contracts, licences, leases or concessions or related agreements with substantially similar terms that are signed with a government." [128]

The ambiguity centres on how the phrases "operationally and geographically integrated" and "related agreements with substantially similar terms" relate to each other and are to be interpreted. Some companies have evidently interpreted these phrases as each in its own way and on a separate basis enabling and justifying project aggregation. For some such companies, it appears that "related agreements with substantially similar terms" are in themselves sufficient to be reported as "substantially interconnected" and therefore as a single project, whether or not they are operationally and geographically integrated. Similarly, other companies have apparently assumed that "operationally and geographically integrated" agreements are in themselves sufficient to be reported as "substantially interconnected" and therefore as a single project, whether or not they have substantially similar terms.[129]

However, in civil society's view both these looser interpretations of "substantially interconnected" are mistaken and contrary to the spirit of the Regulations and Directive. We consider that multiple agreements should be treated as a single project for reporting purposes *only* if they *both* are operationally and geographically integrated *and* have substantially similar terms. This view is supported by a legal opinion from a

[126] Regulation 2(6); Accounting Directive, recital 45.
[127] Explanatory Memorandum, para 7.3.
[128] Regulations 2(5), 2(6).
[129] This questionable interpretation is promoted in the International Association of Oil and Gas Producers' Industry Guidance, 2016, http://www.iogp.org/Reports/Type/535/id/790, which the Government, the International Council on Mining and Metals (ICMM) and civil society all declined to endorse.

senior barrister that civil society obtained in 2014, which finds looser interpretations of the Regulations on this point to be "misleading and wrong".[130]

The Canadian government's FAQs on the Extractive Sector Transparency Measures Act (ESTMA) support the civil society view that project aggregation requires both operational and geographical integration *and* substantially similar terms for operations governed by multiple agreements to be reported as a single project:

> "'Substantially interconnected' means forming a set of operationally and geographically integrated agreements (e.g. contracts, licenses, etc.) with substantially similar terms that are signed with a government."[131]

5.2.2 Project reporting weaknesses in French FY 2015 reporting

One company reporting in France aggregated as a single "project" two mines that are nearly 100 km apart, and another aggregated as a single project payments relating to roughly 10 mines scattered throughout a country, as well as reporting on a legal entity (subsidiary) basis when it appears that at least some of these legal entities operate more than one distinct project each.

Recommendation 2: Aggregation of projects

The Government should clarify that company reports may treat two or more legal agreements as "substantially interconnected", and therefore reportable as a single project, only where those agreements (a) are both operationally and geographically integrated, (b) have substantially similar terms and (c) are signed with the same government.

5.3 Identifying recipient government entities

For citizens of host countries to hold their governments effectively to account, they need to know which specific government entity receives each payment. Citizens have a right to this information and should not be expected to guess or to seek the information elsewhere.

5.3.1 Lack of named government recipient

Numerous UK-reporting companies do not identify in their reports on FY 2015 and/or 2016 some or all of the government entities they pay. Several LSE Main Market-traded companies do so inconsistently, such as by identifying government entities by name in their report to Companies House but not in their HTML or PDF as reported/announced on the NSM, or vice versa. Some reports identify only the country name (sometimes adding the words "the Government of [country name]"), especially when reporting payments to national-level government entities; or they provide only generic indications of government level as "national", "regional/local" or "municipal". One discloses only that payments have gone to "state authorities".

The Regulations require companies to report "the government to which each payment has been made, *including the country of that government*" (emphasis added).[132] In requiring companies to identify both the payee government *and* the country, the Regulations clearly indicate that reports should specify – presumably by naming – each "national, regional or local authority of a country … department, agency or undertaking [e.g. state owned enterprise]"[133] that receives each payment (or payment category) and not just the country or the level of government. The XML schema prescribed by Companies House for UK-registered companies similarly

[130] K.P.E. Lasok QC, In the matter of Global Witness and in the matter of the Draft Reports on Payments to Governments Regulations, legal opinion, Monckton Chambers, December 2014, http://www.publishwhatyoupay.org/wp-content/uploads/2015/04/Legal-opinion-1-on-industry-guidance.pdf, paras 26, 67.

[131] Natural Resources Canada, Extractive Sector Transparency Measures Act (ESTMA) FAQs, August 2017, http://www.nrcan.gc.ca/node/18802/, page 11.

[132] Regulations 5(1)(a), 9(1)(a).

[133] Regulation 2(1).

requires companies to fill two separate fields in the "government payments" and "government payment totals" tables: (a) country code and (b) (name of) government.

In Canada, Natural Resources Canada, the department responsible for ESTMA, monitors company reports and conducts a compliance check on the naming of recipient government entities and other particulars. Department officials have required companies to resubmit reports with government entities correctly identified by name and not by generic terms.[134]

5.3.2 Lack of named government recipient in French reporting

One company reporting in France on FY 2015 entirely omits to name recipient government entities, identifying payees generically only as "National government" or "Regional/local government". (The same occurs in the Companies House report by this company's UK-registered subsidiary.) Another French company (which is also LSE Main Market-traded and announced in the UK via the NSM) for both FYs 2015 and 2016 omits identifying the government entity in the case of one country.

Recommendation 3: Identifying recipient government entities

The Government should clarify that company reports are required to identify by name each national or subnational government entity to which a payment has been made, rather than only provide the country name or only identify the government entity generically, such as by level of government.

5.4 Clarifying in-kind payments

Production entitlements and royalties paid in kind can be a very significant element in extractive companies' payments and host country revenues and are potentially an area of major corruption risk. In-kind payments mainly take place in the oil and gas sector; they are less common in the mining sector. As an example of their size, Azerbaijan received an estimated US$8 billion in in-kind production entitlements in 2015.

When companies report payments in kind, the Regulations require disclosure of both the value and "where applicable, the volume", along with "supporting notes to explain how the value has been determined".[135] As this wording indicates, companies should provide volume as well as value data for in-kind payments comprising quantities of oil, gas or other minerals (unlike, for example, providing an in-kind payment in the form of financing the building of a road). In keeping with the Regulations' purpose of giving citizens the information needed to hold governments to account, project-specific volume as well as value data enables citizens to calculate the unit price of in-kind oil, gas or mineral payments by dividing value by volume in order to judge whether payments are appropriately valued.

Overvalued in-kind payments, i.e. those valued in excess of current market prices, may indicate that a government has received a poor deal, because the true market value of the in-kind payment is less than the company claims it was. Conversely, undervalued in-kind payments may indicate that government officials have benefited improperly from a payment whose value has not been fully disclosed, because the true market value of the in-kind payment is more than the company states it was.

5.4.1 Opaque, incomplete and over-aggregated reporting of in-kind payments

Some UK-reporting companies have in their FY 2015 and/or 2016 reports provided opaque or incomplete in-kind payment data that prevents users from calculating the value per unit. One LSE Main Market-traded company, for example, states that it pays royalties in kind or in cash and estimates these in-kind payments at "contractual" or "market" price or via "an appropriate benchmark", in some cases "on an averaged basis over

[134] Information from PWYP Canada. Natural Resources Canada indexes company reports under ESTMA at http://www.nrcan.gc.ca/mining-materials/estma/18198 and makes clear its powers to reject non-compliant and substandard reports; see also Natural Resources Canada, Extractive Sector Transparency Measures Act (ESTMA) FAQs, August 2017, http://www.nrcan.gc.ca/node/18802/, section on compliance.

[135] Regulations 5(6), 9(7).

a given period". But it does not disclose whether some or all its reported royalty payments were in kind or cash, if in kind which price/benchmark/average it has applied, or what the volume of each payment was. Civil society would expect to see companies value each payment in kind individually, whether in their report via the NSM/Morningstar or to Companies House, as most companies appear to do, to fully reflect the reality of varying unit prices applying to different countries and fields.

One company provided FY 2015 volume data (in kilobarrels of oil equivalent/kboe) for an in-kind payment for at least one of its African projects combining oil and gas in a single figure. We discovered this through dialogue with the company after division of value by volume had showed an anomalous unit price valuation. Informing us that the figure was a composite combining oil and gas, and providing a unit price for the oil, the company declined our request for a unit price for the gas or to disaggregate the volume of oil from the volume of gas, or to inform us which other projects' reported in-kind payments also combined oil and gas and in which proportions. This made it impossible to check the valuation of the gas. The company's FY 2016 data for the same project appears to be disclosed on the same basis.

Another company originally provided volume data for an in-kind royalty payment but in its valuation aggregated cash and in-kind royalty payments in a single figure without adequate explanation, leading to division of value by volume yielding a hugely anomalous figure. When queried, the company explained and issued a corrected report separating out in-kind from cash payments.

5.4.2 Incomplete in-kind payments data in French reporting

Companies reporting under French law are not currently asked to disclose volumes as well as values of payments in-kind where applicable, despite this being a requirement of the Directive.[136] PWYP France is urging the French government to fill this gap in its transposition. Four companies reporting in France disclose in-kind payments without providing volume data. One of these companies has a secondary listing in the UK and is traded on the LSE Main Market, while another has a UK-registered subsidiary that has reported to Companies House. One French company, reporting the activities of its oil and gas subsidiary, does however disclose volumes associated with values of payments in-kind in line with the Directive.

Recommendation 4: Clarifying in-kind payments

The Government should clarify that where an in-kind (non-cash) payment is made in the form of oil, gas or another mineral, company reports must state both the value and the volume of each such payment separately, provide supporting notes to explain how the value has been determined, and avoid aggregating in a single figure cash and in-kind payments or any payments in kind for differently valued commodities.

5.5 Payments 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.[137] Midstream payments to governments (including to state-owned enterprises) for purchases of oil, gas and minerals are one of the most profitable yet most opaque areas of the natural resources sector,[138] and are currently omitted from disclosures under the UK Regulations and EU Directives. Major UK-registered and LSE Main Market-traded companies engaged in commodity trading include both recognised traders such as Glencore and leading oil

[136] Accounting Directive, art. 43.3.
[137] Berne Declaration (now PublicEye), Commodities: Switzerland's most dangerous business, 2012, https://www.publiceye.ch/fileadmin/files/documents/Rohstoffe/commodities_book_berne_declaration_lowres_01.pdf, page 39.
[138] Financial Times, Commodity traders reap US$250 bn harvest, 14 April 2013, http://www.ft.com/cms/s/0/9f6f541e-a397-11e2-ac00-00144feabdc0.html

companies such as BP, Shell and Total.[139]

Commodity trading contributes substantially to state revenues, including in countries where the "resource curse" is acute such as Angola, Azerbaijan, Congo-Brazzaville, Gabon and Nigeria. These countries are highly dependent on oil and other minerals trading with companies based in the UK and Switzerland.[140] Opaque and suspect deals are common.[141] The FCA has identified due diligence gaps in commodity trading enabling corruption, "financial crime risk" and "heightened reputational risk" for trading companies.[142]

The UK's Open Government Partnership National Action Plan 2016-18 describes the current lack of disclosure of "[p]ayments from physical commodity trading companies to governments and state-owned enterprises for the sale of oil, gas and minerals" as a "significant gap".[143] The Government committed at the May 2016 Anti-Corruption Summit in London to "work with others to enhance company disclosure regarding payments to government for the sale of oil, gas and minerals … [and], with others, explore the scope for a common global reporting standard",[144] and it recognised the necessity of such action in its response to the House of Commons International Development Committee's 2016 report *Tackling corruption overseas*.[145] Discussions have commenced at OECD level.[146] Extension of the UK Regulations and EU Directive to cover payments to governments for the sale of oil, gas and minerals would be in keeping with the 2016 EITI Standard.[147]

Recommendation 5: Payments for the sale of oil, gas and minerals
The Government should actively and without further delay progress its Open Government Partnership National Action Plan and May 2016 Anti-Corruption Summit commitment to work with others to enhance company disclosure regarding payments to governments for the sale of oil, gas and minerals. These payments should be made a mandatory reportable payment type under the Regulations, and the Government should use its influence to achieve the same requirement under similar and equivalent legislation in other jurisdictions.

5.6 Accessibility of reports and information on reporting for companies and others

5.6.1 UK-registered extractive companies

Civil society appreciates the Government's efforts to ensure accessibility of reports by setting up the Companies House Extractives Service portal and requiring UK-registered extractive companies to report via an XML schema that provides open data CSV or XML output files for users.[148] This responded to civil society

[139] 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
[140] NRGI, Swissaid and Berne Declaration (now PublicEye), Big spenders – Swiss trading companies, African oil and the risks of opacity, 2014, http://www.resourcegovernance.org/sites/default/files/BigSpenders_20141014.pdf; Berne Declaration, Commodities: Switzerland's most dangerous business, op. cit.; NRGI country overviews, http://www.resourcegovernance.org/countries/eurasia/azerbaijan/overview and http://www.resourcegovernance.org/countries/africa/nigeria/overview
[141] See e.g. SWISSAID, Chad Inc.: a corrupt family clan, Glencore's billions and Switzerland's responsibility, June 2017, https://www.swissaid.ch/en/chad-inc
[142] FCA, Commodity Markets Update, February 2014, http://www.fca.org.uk/static/documents/commodity-market-update-1402.pdf, page 9.
[143] UK OGP NAP 2016-18, commitment 2, http://bit.ly/1Tnzaxb, page 11.
[144] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522749/United_Kingdom.pdf, page 1.
[145] House of Commons International Development Committee, Government Response to the Committee's Fourth Report of Session 2016-17, 2017, http://www.publications.parliament.uk/pa/cm201617/cmselect/cmintdev/911/911.pdf, page 4.
[146] http://www.oecd.org/dev/inclusivesocietiesanddevelopment/Background-note-on-Commodity-Trading-Transparency-PD-NR.pdf
[147] EITI 2016 Standard, https://eiti.org/document/standard, requirement 4.2.
[148] https://extractives.companieshouse.gov.uk/

advocacy and fulfilled commitments in the UK's Open Government Partnership National Action Plan 2013-15.[149]

However, the Companies House portal is challenging for users in that it provides no alphabetised index of reports filed by UK-registered companies. Unless users have the specialist knowledge to explore the portal's developer page and use the application programming interface (API), they must search for reports manually by company name or number. A user who searches by a different company name or number from the one under which a company has filed may not find the report, which may result in a needlessly time-consuming inquiry to Companies House.

For reporting companies and others, the useful online guidance page on filing reports[150] is hard to locate, with no clear link from the Companies House Extractives Service portal's welcome or filing pages.[151] Companies and other stakeholders need to be fully aware, for example, that "The registrar will issue a notice on receipt of a valid complaint that an undertaking has not delivered a report which it should have delivered under the regulations, or does not meet the requirements of the regulations" (para 8) and that "If a report does not meet the specified requirements, it will be returned for correction, with an indication of the areas which need amendment" (para 10).

5.6.2 LSE Main Market-traded extractive companies

It can be particularly difficult to find reports from LSE Main Market-traded extractive companies. There is for FY 2015 and so far for FY 2016 no central repository where all reports are stored and accessible. Some companies publish a complete report via the National Storage Mechanism (NSM), Morningstar, while others file only an announcement of publication. No companies that have published or announced via the NSM so far have used the correct headline type from the drop-down menu ("Publication of Report on Payments to Governments", which PWYP UK proposed in 2016 to the FCA to shorten to "Report on Payments to Governments").[152] This makes it very challenging to discover all the LSE Main Market-traded companies that have reported and to access their reports.

For FY 2015 we found two LSE Main Market-traded (and UK "home state")[153] companies that had published payment reports but appeared not to have reported or announced on the NSM. One has since announced its FY 2016 report on the NSM; the other has for the second year running not done so.

We welcome the FCA's recently introduced policy, applying to FYs starting from 1 August 2016, requiring LSE Main Market-traded companies to directly upload their payment report to the NSM, rather than merely announcing it there.[154] And we are pleased that the policy requires companies to file in open data using a prescribed XML data schema. However, as we have recently mentioned to the FCA, there appears to be

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[149] Open Government Partnership National Action Plan 2013-15, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255901/ogp_uknationalactionplan.pdf, commitment 21.

[150] https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries/guidance-for-the-companies-house-extractives-service

[151] https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries/guidance-for-the-companies-house-extractives-service; https://extractives.companieshouse.gov.uk/; https://extractives.companieshouse.gov.uk/chsearch

[152] Several companies have used the catch-all headline type "Miscellaneous", while others appear to have invented their own.

[153] "Home state": FCA Handbook, DTR Disclosure Guidance and Transparency Rules sourcebook, DTR, 6.1.1, https://www.handbook.fca.org.uk/handbook/DTR/6/?view=chapter. Non-EU-registered companies are required to designate an EU member state as their "home state" for reporting purposes: https://www.fca.org.uk/markets/ukla/regulatory-disclosures/home-member-state-notification

[154] https://www.the-fca.org.uk/markets/ukla/regulatory-disclosures/reports-payments-governments. Reports are required to remain publicly available for at least 10 years: DTR 4.3A.5-6.

uncertainty about what the FCA means by the need for companies to file in a “human readable” format.[155] If the FCA and the NSM ensure that companies' XML filings can output to or be opened in CSV or Excel, civil society will accept these as being “human readable” (which XML alone is not). What is most unclear is whether the FCA will require companies to file reports on FYs starting from 1 August 2016 in another format such as HTML and/or PDF as well as in XML. The only online page where the FCA appears to explain how LSE Main Market-traded companies should disclose mentions reporting to the NSM in XML but omits any reference to a “human readable” report.[156] Nor is the latter requirement mentioned at DTR 4.3A.10.[157]

Whatever the FCA's view, it should provide clear and unambiguous information to reporting companies so that all concerned know what is required, such as ensuring that each company provides data that is consistent, and consistently granular, between its XML and its HTML or PDF report. The NSM should also, like Companies House, provide an API so that users can gather the XML data digitally.

<u>5.6.3 Similar challenge in French reporting</u>

Lack of a central repository has posed challenges for users in locating payment reports by French-registered and -listed extractive companies. Although the French government's impact assessment considered that the disclosure obligation would apply to approximately 30 companies, PWYP France was able to identify only 12 reports on FY 2015 and has no clear way to know whether more have been or should have been submitted.[158] PWYP France has published recommendations to the French government and to the EU that companies be required to publish their reports both in PDF and as open data via a centralised online repository freely accessible to the public.[159]

<u>Recommendation 6. Accessibility of reports and information on reporting for companies and others</u>

(a) Both the Companies House Extractives Service and the National Storage Mechanism (NSM/Morningstar) should provide an alphabetised annual index by company name, linking to the reports, so that users can see at a glance which companies have provided reports year by year, and quickly access the reports. The NSM/Morningstar should also, like Companies House, provide an application programming interface (API) so that users can gather the XML data (required for reports on financial years starting on 1 August 2016) digitally. The Government should explore possibilities for joint coordination between Companies House, the Financial Conduct Authority and the NSM/Morningstar to provide users with a single access point for all extractive payment reports submitted under UK legislation.

(b) Companies House should provide a prominent link to its guidance page on filing extractives payments to governments reports from the Extractives Service welcome and company filing webpages.[160] The Financial Conduct Authority (FCA) should clarify what it requires from companies in terms of “human readable” as well as machine-readable reports and provide clear, accessible and well-signposted online information on this for reporting companies and others.

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[155] The “human readable” requirement is stated in the FCA's 2016 consultation paper: “While XML meets the ‘open and accessible’ format … it is not a human readable format, therefore filing in this format alone would not meet the TD requirements for regulated information” – http://www.fca.org.uk/static/fca/article-type/consultation paper/cp16-8.pdf, para 3.21.

[156] https://www.the-fca.org.uk/markets/ukla/regulatory-disclosures/reports-payments-governments

[157] https://www.handbook.fca.org.uk/handbook/DTR/4/3A.html

[158] ONE, Oxfam France, Sherpa, Open data: the extractive industries case-study, 2016, http://www.publishwhatyoupay.org/wp-content/uploads/2016/12/open-data_A4ANG.pdf

[159] PWYP France, Oxfam France, ONE and Sherpa, Beyond transparency: investigating the new extractive industry disclosures, September 2017, https://www.oxfamfrance.org/sites/default/files/file_attachments/beyondtransparency.pdf

[160] Guidance page: https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries/guidance-for-the-companies-house-extractives-service; welcome page: https://extractives.companieshouse.gov.uk/; company filing page: https://extractives.companieshouse.gov.uk/chsearch

Additional necessary improvements:

5.7 Tax disaggregation and definition

5.7.1 Aggregation of tax types

The Regulations' current interpretation of what payments should be included in the "tax" category[161] allows companies to aggregate different types of income, profit or production tax, such as corporate income tax, capital gains tax and withholding taxes. However, users sometimes need to analyse these payment types separately, since they can be critical sources of revenue for governments that are often subject to controversy.

For example, one UK-reporting company has been involved in a dispute with an African government over a $520 million capital gains tax claim. In another African country a highly regarded anti-corruption pressure group supported by the UK's DFID has raised questions about an apparently negotiated but strikingly low rate of capital gains tax paid by an Italian oil company.

With wide recognition that tax avoidance is a major source of revenue loss for resource-dependent countries, and examples of OECD, World Bank, IMF and UN initiatives to combat tax base erosion focused specifically on the extractives sector,[162] it is important for revenue transparency rules to ensure that companies disaggregate different types of tax payments in their disclosures.

5.7.2 Unhelpful interpretation of tax types

Companies reporting in the UK and in France have interpreted some payment categories in questionable and at times unhelpful ways, resulting in relevant payments being omitted or making it challenging for data users to know whether all in-scope payments have been included. For example, a mining company reporting under the Regulations has omitted to disclose payments to municipal governments in Canada. When asked by PWYP Canada, the company stated that UK law does not require this disclosure because the payments are for property taxes and therefore out of scope.[163] Canadian municipal property taxes as paid by extractive companies are levied for the value of the land used and are in effect fees that companies must pay to access and extract from land they own. Canada's ESTMA, which the EC has accepted as equivalent,[164] requires the reporting of all taxes "other than consumption taxes and personal income taxes".[165] Canadian reporting guidance cites the need to report property taxes related to commercial development of oil, gas or minerals, plus the fact that "It does not matter whether a payment … is characterized as a fee or not. If the payment accomplishes the same purpose in substance as a fee, it should be reported as a fee."[166]

If it were termed a "fee" such a payment would without doubt be in scope of the UK Regulations and the EU Directive, both of which also state that disclosures should reflect the "substance, rather than … form" of payments.[167] Here the UK and EU interpretations of in-scope taxes are unhelpfully narrow.

5.7.3 Aggregation of tax and royalty payments

A company reporting in France and announcing via the UK NSM/Morningstar informed PWYP France that it uses a United States accounting rules' definition of "royalty", resulting in its reporting as taxes many payments that would be identified in other countries as royalties. This has made it difficult in a number of instances to

[161] Regulation 2.

[162] OECD and Platform for Cooperation on Tax, Addressing the information gaps on prices of minerals sold in an intermediate form, discussion draft, 2017, https://www.oecd.org/ctp/discussion-draft-addressing-the-information-gaps-on-prices-of-minerals-sold-in-an-intermediate-form.pdf; United Nations, Handbook on Selected Issues in Protecting the Tax Base of Developing Countries, 2015, http://www.un.org/esa/ffd/wp-content/uploads/2015/07/handbook-tb.pdf

[163] The Regulations (2(1)) and Directive (art. 41(5)(b)) currently require disclosure of taxes paid on "income, production or profits".

[164] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D1910&from=EN

[165] ESTMA, http://laws-lois.justice.gc.ca/eng/acts/E-22.7/page-1.html, section 2.

[166] Natural Resources Canada, ESTMA Guidance, March 2016, http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mining-materials/PDF/ESTMA–Guidance.pdf, page 14.

[167] Regulations 5(5) and 9(6).

determine whether the company has paid its share of royalties.

Recommendation 7: Tax disaggregation and definition
The Government should require companies to disaggregate different types of tax payments, such as corporate income tax, capital gains tax and withholding taxes, in their disclosures. It should also make the Regulations' definition of tax more comprehensive to require the reporting of all taxes other than consumption taxes and personal income taxes.

5.8 Inclusion of other payment types

5.8.1 Payments to governments for transportation and export activities

Revenues and in-kind payments from energy transit are at risk of corruption and mismanagement, contributing to political instability, and should be covered by the UK Regulations and EU Directives. 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 in the past cost Nigeria, for example, an estimated US$1 billion a month.[168] Monitoring of transit and transportation fees including in-kind payments is needed to understand the use, control and abuse of pipelines and other transport mechanisms. Extension of the UK Regulations and EU Directive to cover payments for transit and transportation would complement the 2016 EITI Standard.[169]

5.8.2 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. For example, US$175 million in social contributions from a single Angolan oil block were reportedly alleged to have been diverted to fund the so-called Sonangol Research and Technology Center, whose existence is open to question, with a further US$175 million due to be paid.[170] In Kazakhstan, where companies are contractually obliged to make social contributions, civil society has reported funds being misused.[171] Extension of the UK Regulations and EU Directive to cover social expenditures would complement the 2016 EITI Standard.[172]

5.8.3 Payments to state security forces for security services

Extractive activities can involve the use of state security forces, and companies often make payments to the state and related institutions for security services.[173] Company–state security relationships are a notorious area of opacity and risk for investors and affected communities alike.[174] Payments to state security forces should therefore be publicly reported.

Recommendation 8: Inclusion of other payment types

[168] UPI Business News, Nigeria loses billions in oil, gas theft, October 2012, http://www.upi.com/Business_News/Energy-Resources/2012/10/25/Nigeria-loses-billions-in-oil-gas-theft/UPI-77851351181960/
[169] EITI 2016 Standard, https://eiti.org/document/standard, requirement 4.4.
[170] Huffington Post, Oil companies are funding mysterious Angolan research center that may not exist, August 2014, http://www.huffingtonpost.co.uk/2014/08/05/oil-transparency-africa-bp_n_5649291.html
[171] IIED, Localising transparency: exploring EITI's contribution to sustainable development, 2014, http://pubs.iied.org/16555IIED.html, page 42.
[172] EITI 2016 Standard, https://eiti.org/document/standard, requirement 6.1.
[173] Guardian, Shell spending millions of dollars on security in Nigeria, leaked data shows, August 2012, http://www.theguardian.com/business/2012/aug/19/shell-spending-security-nigeria-leak
[174] 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

The Government should extend reporting requirements to include payments to governments for transportation and export activities, payments to governments for social expenditures and payments to state security forces for security services.

5.9 Extractive companies traded on AIM and those registered or publicly listed in the UK Overseas Territories and Crown Dependencies

5.9.1 The Alternative Investment Market (AIM)

About 200 oil, gas and mining companies raise finance on the LSE's Alternative Investment Market (AIM).[175] As an exchange-regulated market, rather than EU member state-regulated, companies with securities traded on AIM are not currently in scope of the EU Directives or UK Regulations.[176]

The LSE, recognising that the extractives sector can be risk-prone for companies and investors, has issued a *Note for Mining, Oil and Gas Companies* (2009), which addresses the importance of transparency about assets and requires extractive companies applying for admission to AIM to disclose "any payments aggregating over £10,000 made to any government or regulatory authority or similar body … by the applicant or on behalf of it, with regard to the acquisition of, or maintenance of, its assets".[177] This requirement responds to the need to help prevent, and to reveal, questionable payments between companies and officials.

AIM is a leading international growth market for companies and needs to ensure continuing appropriate levels of corporate governance as the external environment changes and public expectations regarding corporate accountability become more demanding. Concerns have been raised about the sometimes poor governance and relatively weak regulation of AIM-traded extractive companies,[178] and extending mandatory reporting to them would help address such concerns.

Application of the UK mandatory reporting regulations' £86,000 disclosure threshold per payment or series of related payments will ensure that AIM extractive companies are not unreasonably burdened by having to report inconsequential payments.

PWYP UK has recently made these and related points in a submission to the LSE's AIM Rules Review, advocating that mandatory payment reporting be extended to AIM-traded extractive companies.[179]

5.9.2 The UK Overseas Territories and Crown Dependencies

The UK together with its Overseas Territories (OTs) and Crown Dependencies (CDs) constitutes one of the world's leading financial secrecy jurisdictions.[180] The Conservative Government pledged in 2015 to "lead the world on tax and transparency."[181] Just as the Government has recognised the importance of the OTs and CDs

[175] http://www.londonstockexchange.com/exchange/companies-and-advisors/aim/for-companies/information-search/aim-company-search-download-all.html

[176] The EU defines a regulated stock market in its Markets in Financial Instruments Directive (MIFID), EU Directive 2010/78/EU consolidated version (as amended and corrected): http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0039:20110104:EN:PDF

[177] http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/rules/guidance-note.pdf, page 4.

[178] Global Witness, "Little Brother's big secret": Radio 4 takes a hard look at London's junior stock exchange, September 2016, https://www.globalwitness.org/en/blog/little-brothers-big-secret-radio-4-takes-hard-look-londons-junior-stock-exchange/; Rights & Accountability in Development, Stock market compliance and human rights, n.d., http://www.raid-uk.org/content/stock-market-compliance-and-human-rights; 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

[179] PWYP UK, Submission to AIM rules review, September 2017, submission: http://www.publishwhatyoupay.org/wp-content/uploads/2017/09/PWYP-UK-submission-to-AIM-Rules-Review-08.09.2017.pdf

[180] Tax Justice Network, Financial secrecy index, http://www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf

[181] Conservative Party Manifesto 2015, https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf, page 11.

following the UK's lead on beneficial ownership disclosure as part of the fight against corruption,[182] the OTs and CDs should equally adopt mandatory reporting rules for their registered and publicly traded extractive companies. The Channel Islands Securities Exchange in Guernsey[183] might otherwise attract "forum-shopping" by extractive companies seeking to avoid application of the UK Regulations and the EU Directives.

Recommendation 9: Extractive companies traded on AIM and those registered or publicly listed in the UK Overseas Territories and Crown Dependencies
The Government should arrange with the London Stock Exchange to extend mandatory payment reporting to extractive companies traded on the Alternative Investment Market (AIM), and ensure that the UK Overseas Territories and Crown Dependencies introduce mandatory reporting regulations for their registered and publicly listed extractive companies.

5.10 Additional project-level disclosure for more meaningful accountability

5.10.1 Basis of preparation information

Many, but not all, companies reporting in HTML or PDF under the UK Regulations provide information on the basis of preparation. This good practice helps users understand the reports and the way the company has interpreted its disclosure obligations. We recommend that all companies be required to include information on the basis of preparation. For open data reporting, this could be included in the XML schema for output to a fifth CSV file.

5.10.2 Disclosure that no payments have been made

Where a company has made no in-scope payments above the £86,000 threshold during the year, either for particular projects or overall, it would be helpful for the company to report in any case, stating that they have nothing to disclose for the year or for the named project(s). This would enable stakeholders to discern between this situation and one of non-compliance, leaving all concerned better informed. Some companies are already doing this.

5.10.3 Project-specific contextual information

Current reporting under the Regulations and Directive omits key project-specific information that would give stakeholders a better understanding of whether disclosed payments are appropriate to the scale of extraction undertaken. For example, PWYP Netherlands member organisation SOMO analysed Royal Dutch Shell's reports on its FY 2015 payments in Gabon:

> *Case study example: Shell's payments in Gabon*
> Cases of corruption among political elites in Gabon have been widely documented, and corruption remains an issue in the country despite recent improvements.[184] Before divesting in March 2017, Shell operated five producing onshore oil fields in Gabon, a substantial part of the country's oil production.[185] In its FY 2015 and 2016 payments reports Shell lists only three currently producing Gabonese projects,[186] which indicates that projects have been aggregated and obfuscates which payments were made for which fields.

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[182] Guardian, UK could legislate to force tax havens to reveal offshore ownership, says Pickles, October 2015, http://www.theguardian.com/business/2015/oct/03/uk-could-legislate-to-force-tax-havens-to-reveal-offshore-ownership

[183] http://www.tisegroup.com/

[184] Gabon: https://freedomhouse.org/report/freedom-world/2016/gabon; https://qz.com/395572/a-fight-inside-gabons-kleptocratic-dynasty-reveals-the-complicity-of-french-business/; http://www.transparency.org/news/feature/corruption_perceptions_index_2016#table

[185] http://www.shell.com/media/news-and-media-releases/2017/shell-divests-gabon-onshore-interests.html; Shell's onshore fields in Gabon produced roughly 41,000 barrels of oil equivalent (boe) per day in 2016 (ibid.), out of a country total of about 200,000 boe/day (https://tradingeconomics.com/gabon/crude-oil-production).

[186] Shell: https://extractives.companieshouse.gov.uk/company/04366849; http://www.shell.com/sustainability/transparency/revenues-for-governments.html; http://go.shell.com/2wYbZ95

Total production figures for Shell's Gabonese operations in its 2015 Annual Report are not disaggregated per project and combine oil and natural gas, which have different market values.[187] The data also includes fields where Shell was not the operator and where payments are thus largely excluded from Shell's FY 2015 payments report. This makes it virtually impossible to assess whether the company's production entitlement payments to the Gabonese government constitute fair value for the oil and gas extracted.[188]

Additional project-level disclosure to help stakeholders assess the appropriateness of company payments is a necessary part of holding governments to account, because governments are duty-bound to ensure that their citizens receive fair recompense for the extraction of their country's finite natural resources. This is also a matter of addressing citizens' common suspicions that government officials collude with extractive companies, or are negligently lenient towards them, thereby robbing the country of revenues to which it is entitled.[189]

Project-level information needed comprises: (i) project status (exploration, development, exploitation) with date of first production if applicable, (ii) project partners (including identification of which is the operator), and (iii) production volumes. Here (i) will help stakeholders better understand the level of payments being generated; (ii) will be invaluable for cross-checking joint venture payments and avoiding double counting; and (iii) will help data users verify royalty and production entitlement payments against production achieved.

Recommendation 10. Additional project-level disclosure for more meaningful accountability
The Government should require all extractive companies to include in each payment report: (a) information on the basis of preparation (as many already do); (b) the name of every project for which no above-threshold payments were made; (c) for each project, information on (i) project status (exploration, development, exploitation) with date of first production if applicable, (ii) project partners if any (including identification of which is the operator), and (iii) production volumes.

5.11 Report monitoring and quality control

5.11.1 Incomplete reporting

As shown above, there are numerous instances of companies reporting incompletely, deficiently or inconsistently. Among other examples, at least three UK-registered companies omitted project-level payment data from their FY 2015 report to Companies House despite including such data in their report to the NSM. One of these companies corrected this with an amended report nine months later.

Civil society has contacted many companies whose reports lack required information, told them what was missing, and subsequently seen them file amended reports. One company omitted from the government payments table in its original FY 2016 report to the NSM more than half its payments, totalling $1.8 billion, and six of the nine countries to whose governments it had made payments. After we contacted this company, it uploaded to the NSM a revised report with an improved table.

5.11.2 Late reporting and failure to report

We have identified 11 companies reporting/announcing more than two months late on FY 2015 to Companies House and/or via the NSM.[190] Also, as discussed above, some in-scope companies may have failed entirely to

[187] Shell, Annual Report 2015, page 34.
[188] Shell says it complies with the UK's Reports on Payments to Governments Regulations 2014 (amended 2015), cites confidentiality obligations, competitive harm and costs as reasons for not providing more detailed breakdowns and provides more information at www.shell.com/payments
[189] See e.g. PWYP Malawi, Investigate Malawi's oil contracts, February 2017, http://www.publishwhatyoupay.org/pwyp-news/investigate-malawis-oil-contracts/
[190] I.e. more than 13 months after their FY-end to Companies House and/or more than 8 months after their FY-end via the NSM.

report on FY 2015. Civil society contacted the FCA in 2016 regarding two LSE Main Market-traded companies that we believed should have reported at the time, one of which eventually reported a year late, the other not.

In relation to incomplete and late reporting and failures to report, Companies House's guidance states: "The registrar will issue a notice on receipt of a valid complaint that an undertaking has not delivered a report which it should have delivered under the regulations, or does not meet the requirements of the regulations" (para 8) and that "If a report does not meet the specified requirements, it will be returned for correction, with an indication of the areas which need amendment" (para 11).[191]

However, there is little if any evidence of Companies House monitoring the quality of company reports or using its powers to return below-par reports for correction. Similarly, there is no evidence of the FCA monitoring reports to and via the NSM to ensure they comply with requirements. In future PWYP UK intends to test Companies House's statements by informing the registrar of selected cases where company reports appear to be overdue or appear not to meet requirements. PWYP UK will also inform the FCA of selected cases.

In contrast with the UK's apparently under-resourced monitoring and quality control of reports, Natural Resources Canada is said to have a small team of officials charged with these tasks. Natural Resources Canada makes clear its monitoring function and its powers to reject non-compliant and substandard reports and in extreme cases to recommend prosecution:

> "All incoming reports will be reviewed based on a validation checklist … as well as with the Technical Reporting Specifications. If a report does not meet the requirements of the checklist, NRCan will request corrections prior to linking it to the ESTMA website …
>
> "All reports may be subject to further ESTMA compliance verification and corrective measures may be ordered at any time following the report being published on the ESTMA website …
>
> "NRCan will be taking a risk-based approach to compliance verification, and will assess ESTMA reports based on an internal risk assessment framework to ensure ESTMA compliance and data integrity. Companies found to be at a higher risk of non-compliance may be flagged for further compliance verification, including requests for information/documents or audits…
>
> "If an entity is found to be willfully not compliant with reporting requirements or corrective measures, obstructs an audit, knowingly provides false or misleading information, or fails to comply with any other provisions … of the Act, NRCan may recommend prosecution to the Director of Public Prosecutions…"[192]

Recommendation 11: Report monitoring and quality control
The Government should resource a small team of officials to monitor company reporting and compliance, as is done in Canada, and ensure that company reports are subject to a compliance test before being accepted. Reports that are deficient in terms of the Regulations' requirements should be rejected, with the company required to submit an amended report. Appropriate action should be taken in line with the Regulations' penalties[193] and the FCA's Decision Procedure and Penalties Manual[194] towards companies seriously in default

[191] https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries/guidance-for-the-companies-house-extractives-service, paras 8, 11.
[192] Natural Resources Canada, Extractive Sector Transparency Measures Act (ESTMA) FAQs, August 2017, http://www.nrcan.gc.ca/node/18802/, pages 13, 14.

[193] Regulations 17-19.
[194] http://fshandbook.info/FS/html/FCA/DEPP

of their reporting obligations.

5.12 Extended public county-by-country reporting
Aggressive corporate tax avoidance and tax evasion in the oil, gas and mining industries, as in other economic sectors, are major matters of public, government and intergovernmental concern.[195] Civil society research has shown that leading oil, gas and mining companies make widespread use of subsidiaries located in tax havens and secrecy jurisdictions, presumably to avoid tax.[196]

As is clear from the many company reports that civil society has so far analysed, public disclosure of tax payments to governments does not currently show if these payments are appropriate to company profit levels per country – a matter for which governments, as well as companies, bear responsibility. For example, PWYP Netherlands member organisation SOMO found when researching Royal Dutch Shell's payments in Gabon that the company has five Gabon-related subsidiaries registered in two tax havens – Bermuda and the Cayman Islands,[197] making it impossible for stakeholders to investigate or discount whether Shell has reduced its Gabonese taxes by profit shifting. Gabon's citizens are entitled to know and understand the reality underlying the disclosed numbers.

Clearly, while the transparency and accountability objectives of the UK Regulations and chapter 10 of the EU Accounting Directive are commendable, current mandatory extractives disclosure requirements do not go far enough in revealing whether companies are paying their fair share of taxes in the right place at the right time. As the UK academics' report previously cited puts it:[198]

> "The lack of a reference point for assessing compliance with jurisdictional tax law means that civil society users are unable to judge whether governments are enforcing tax legislation in line with the spirit and letter of the law and whether companies are employing legal avoidance methods or adopting illegal tax evasion practices. [Payments to governments reports] are of great relevance to know what payments are being made to governments. However they are of limited use in communicating the reasonableness of those payments and whether such payments reflect what national governments should have received according to national tax. …
>
> "The definition of extractive industries in chapter 10 [of the Directive] does not currently take account of the integrated business models employed by a number of the groups involved in mineral production. The [UK] regulations adopt a form over substance approach which treats companies within a group as separate commercial enterprises. This ignores the reality which is that companies within a group form part of one coherent commercial enterprise. By employing profit shifting techniques designed to achieve a tax arbitrage groups operating in extractive sectors will also potentially present a distorted

[195] European Commission, The anti-tax avoidance package – questions and answers (updated), June 2016, http://europa.eu/rapid/press-release_MEMO-16-2265_en.htm; OECD and Platform for Cooperation on Tax, discussion draft: Addressing the information gaps on prices of minerals sold in an intermediate form, 2017, https://www.oecd.org/ctp/discussion-draft-addressing-the-information-gaps-on-prices-of-minerals-sold-in-an-intermediate-form.pdf; United Nations, Handbook on Selected Issues in Protecting the Tax Base of Developing Countries, 2015, http://www.un.org/esa/ffd/wp-content/uploads/2015/07/handbook-tb.pdf; Financial Times, Chevron loses landmark tax case on transfer pricing, April 2017, https://www.ft.com/content/9eaef50e-264f-11e7-a34a-538b4cb30025
[196] PWYP Norway, Piping profits, 2011, http://www.publishwhatyoupay.no/en/piping-profits; Offshore Energy Today, ITF accuses North Sea oil majors of secretive tax evasion schemes, August 2016, http://www.offshoreenergytoday.com/itf-accuses-north-sea-oil-majors-of-secretive-tax-evasion-schemes/
[197] Shell, Annual Report 2015, exhibit 8; Congressional Research Service, Tax havens: international tax avoidance and evasion, January 2015, https://fas.org/sgp/crs/misc/R40623.pdf
[198] E. Chatzivgeri, L. Chew, L. Crawford, M. Gordon and J. Haslam, Reports on payments to governments: a report on early developments and experiences, report for Publish What You Pay International Secretariat and Publish What You Pay UK, 2017, http://bit.ly/2rLmBnv, pages 21, 33-4.

> picture of the payments they make to governments under the current [reporting] regime. This is because taxes levied on profits earned by secondary service providers through intra-group receipts will not be reported. This means users of [payment] reports will not be able to discern for individual projects or operations in a specific territory the full amount of tax paid and to which government the tax was paid. The above suggests the need for a modification of the law."

The modification these writers propose is "to take account of the integrated business models employed … in the sector … through widening the scope of the definition of extractives industries [in the Regulations and Directive] as 'any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials *or activities connected therewith carried out by an associated enterprise*'".[199]

An alternative, proposed here, is to achieve a satisfactory level of public tax transparency on the part of extractive companies and all large and publicly listed business entities by requiring them to publicly disclose additional general financial information. Such public disclosure should be for every country where the parent company or any subsidiary has an operational, financial or trading presences – including tax havens – and should be consistent with the transfer pricing documentation required under the OECD/G20 Base Erosion and Profit Shifting (BEPS) action plan now being implemented by the UK Government for non-public multinational company reporting to HMRC for financial years starting on or after 1 January 2016.[200]

Recommendation 12. Extended public county-by-country reporting
To address aggressive tax avoidance by extractive and other companies, including profit shifting out of producer countries via tax havens and tax secrecy jurisdictions by transfer mispricing etc., the Government should implement and champion internationally extended public county-by-country reporting across all sectors. All large and publicly listed companies should be required to publish a report annually for every jurisdiction in which they have an operational, financial or trading presence, comprising data on earnings (turnover), profit or loss before tax, assets, number of full-time-equivalent employees, tax paid and accrued, and subsidiaries, in line with the OECD/G20 Base Erosion and Profit Shifting (BEPS) action plan and with the European Parliament's draft report on disclosure of income tax information of July 2017.[201]

6. CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusions

Achieving greater transparency and accountability in the extractive industries is a medium- to long-term task that will require sustained effort on the part of forward-thinking governments, progressive companies, responsible investors and civil society. We should remain confident that these laws are already helping deter

[199] Ibid., pages 35-6, emphasis added.
[200] OECD, Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, annex III to chapter V, http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm; UK 2016 legislation: http://www.legislation.gov.uk/uksi/2016/237/contents/made; UK 2017 policy statement: https://www.gov.uk/government/publications/country-by-country-reporting-updated/country-by-country-reporting-updated
[201] OECD, Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, annex III to chapter V, http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm; European Parliament, Disclosure of income tax information by certain undertakings and branches, July 2017, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0284+0+DOC+PDF+V0//EN

corruption and mismanagement in the sector and enabling more extractives revenues to be used for public benefit.

PWYP UK's submission is that the Regulations have gone a significant way towards achieving their objectives, albeit with weaknesses and limitations, and with associated incomplete and unsatisfactory company reporting, which need to be addressed. The Regulations' objectives remain entirely appropriate. No changes have occurred in the extractive industries or the wider global context to suggest that citizens of resource-rich countries no longer need information to hold their governments to account, including the greater insight available from project-level reporting, or that global standards of transparency in the extractives sector no longer need to be raised.

Is there a viable alternative or equivalent system? No. For comments on the limitations of the EITI, see section 4.4. And widespread scepticism exists about the effectiveness of other current arrangements for company reporting to prevent a broader spectrum of business malpractice.[202]

Are the Regulations and EU Directives, and similar laws in other jurisdictions, sufficient to stamp out corruption and mismanagement in the oil, gas and mining industries? Clearly not. But they are essential to maintain the current direction of travel towards a world where the extractive sector is well governed and trusted and delivers its potential to effectively improve the lives of millions of citizens in resource-rich countries for as long as these finite natural resources last and are exploited.

6.2 Recommendations

Urgent priorities:

1. Joint venture reporting
The Government should explicitly require companies to report their own and their subsidiaries' proportionate share of any in-scope joint venture payment they make either directly or indirectly via a joint venture operator or other entity on their behalf, regardless of whether they have a controlling or non-controlling interest in the joint venture. It should also clarify that in-scope payments made by companies and their subsidiaries to state-owned enterprises acting as joint venture operators must be reported.

2. Aggregation of projects
The Government should clarify that company reports may treat two or more legal agreements as "substantially interconnected", and therefore reportable as a single project, only where those agreements (a) are both operationally and geographically integrated, (b) have substantially similar terms and (c) are signed with the same government.

3. Identifying recipient government entities
The Government should clarify that company reports are required to identify by name each national or subnational government entity to which a payment has been made, rather than only provide the country name or only identify the government entity generically, such as by level of government.

4. Clarifying in-kind payments
The Government should clarify that where an in-kind (non-cash) payment is made in the form of oil, gas or another mineral, company reports must state both the value and the volume of each such payment separately, provide supporting notes to explain how the value has been determined, and avoid aggregating in a single figure cash and in-kind payments or any payments in kind for differently valued commodities.

[202] E.g. CORE (UK civil society coalition on corporate accountability), Response to Corporate Governance Reform Green Paper, February 2017, http://corporate-responsibility.org/wp-content/uploads/2017/02/170217_CORE-response-to-corporate-governance-green-paper_FINAL.pdf

5. Payments for the sale of oil, gas and minerals
The Government should actively and without further delay progress its Open Government Partnership National Action Plan and May 2016 Anti-Corruption Summit commitment to work with others to enhance company disclosure regarding payments to governments for the sale of oil, gas and minerals. These payments should be made a mandatory reportable payment type under the Regulations, and the Government should use its influence to achieve the same requirement under similar and equivalent legislation in other jurisdictions.

6. Accessibility of reports and information on reporting for companies and others
(a) Both the Companies House Extractives Service and the National Storage Mechanism (NSM/Morningstar) should provide an alphabetised annual index by company name, linking to the reports, so that users can see at a glance which companies have provided reports year by year, and quickly access the reports. The NSM/Morningstar should also, like Companies House, provide an application programming interface (API) so that users can gather the XML data (required for reports on financial years starting on 1 August 2016) digitally. The Government should explore possibilities for joint coordination between Companies House, the Financial Conduct Authority and the NSM/Morningstar to provide users with a single access point for all extractive payment reports submitted under UK legislation.
(b) Companies House should provide a prominent link to its guidance page on filing extractives payments to governments reports from the Extractives Service welcome and company filing webpages.[203] The Financial Conduct Authority (FCA) should clarify what it requires from companies in terms of "human readable" as well as machine-readable reports and provide clear, accessible and well-signposted online information on this for reporting companies and others.

Additional necessary improvements:

7. Tax disaggregation and definition
The Government should require companies to disaggregate different types of tax payments, such as corporate income tax, capital gains tax and withholding taxes, in their disclosures. It should also make the Regulations' definition of tax more comprehensive to require the reporting of all taxes other than consumption taxes and personal income taxes.

8. Inclusion of other payment types
The Government should extend reporting requirements to include payments to governments for transportation and export activities, payments to governments for social expenditures and payments to state security forces for security services.

9. Extractive companies traded on AIM and those registered or publicly listed in the UK Overseas Territories and Crown Dependencies
The Government should arrange with the London Stock Exchange to extend mandatory payment reporting to extractive companies traded on the Alternative Investment Market (AIM), and ensure that the UK Overseas Territories and Crown Dependencies introduce mandatory reporting regulations for their registered and publicly listed extractive companies.

10. Additional project-level disclosure for more meaningful accountability
The Government should require all extractive companies to include in each payment report: (a) information on the basis of preparation (as many already do); (b) the name of every project for which no above-threshold payments were made; (c) for each project, information on (i) project status (exploration, development, exploitation) with date of first production if applicable, (ii) project partners if any (including identification of which is the operator), and (iii) production volumes.

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[203] Guidance page: https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries/guidance-for-the-companies-house-extractives-service; welcome page: https://extractives.companieshouse.gov.uk/; company filing page: https://extractives.companieshouse.gov.uk/chsearch

11. Report monitoring and quality control
The Government should resource a small team of officials to monitor company reporting and compliance, as is done in Canada, and ensure that company reports are subject to a compliance test before being accepted. Reports that are deficient in terms of the Regulations' requirements should be rejected, with the company required to submit an amended report. Appropriate action should be taken in line with the Regulations' penalties[204] and the FCA's Decision Procedure and Penalties Manual[205] towards companies seriously in default of their reporting obligations.

12. Extended public county-by-country reporting
To address aggressive tax avoidance by extractive and other companies, including profit shifting out of producer countries via tax havens and tax secrecy jurisdictions by transfer mispricing etc., the Government should implement and champion internationally extended public county-by-country reporting across all sectors. All large and publicly listed companies should be required to publish a report annually for every jurisdiction in which they have an operational, financial or trading presence, comprising data on earnings (turnover), profit or loss before tax, assets, number of full-time-equivalent employees, tax paid and accrued, and subsidiaries, in line with the OECD/G20 Base Erosion and Profit Shifting (BEPS) action plan and with the European Parliament's draft report on disclosure of income tax information of July 2017.[206]

CONTACT

Miles Litvinoff, Coordinator, Publish What You Pay UK, mlitvinoff@pwypuk.org, 07984 720103

Publish What You Pay UK, c/o Publish What You Pay International Secretariat, CAN Mezzanine 7-14 Great Dover Street, London, SE1 4YR; http://www.publishwhatyoupay.org/members/united-kingdom/

[204] Regulations 17-19.
[205] http://fshandbook.info/FS/html/FCA/DEPP
[206] OECD, Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, annex III to chapter V, http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm; European Parliament, Disclosure of income tax information by certain undertakings and branches, July 2017, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0284+0+DOC+PDF+V0//EN