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Publishing More Payments: How the UK can continue to lead the international transparency debate

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Following the UK's active support of extractive industry transparency as G8 President, this policy memo:

- Analyses emerging trends that make revenue transparency salient for policymakers
- Sets out some solutions to remaining challenges
- Identifies key strategies to ensure the UK remains a leader in delivering on the transparency agenda

Executive summary

UK policy makers have been at the forefront of efforts to improve resource governance since the early 1990s. The UK has been a leading actor in the Extractive Industry Transparency Initiative (EITI) and became a signatory in July 2013. Having supported the EU's new Transparency and Accounting Directives it now has two years to turn them into domestic law. The UK has a key role to play given the collective size of extractive companies on the London Stock Exchange (LSE) (see Table A). The challenge for UK policy makers is to make sure these initiatives are effective and to find other mechanisms to improve further transparency and governance in the management of natural resources. We identify key areas for further work, drawing on the expert views contributed to the Blavatnik School of Government's Challenges of Government Conference held in December 2012[2].

1 Hugo Batten and Yulia Taranova are members of the 2013 MPP student cohort at the Blavatnik School of Government

2 The Blavatnik School of Government's Challenges of Government Conference in 2012 brought together academics, policy makers, extractive companies, and politicians who have led global and national efforts to improve natural resource management. Participants included Ngozi Okonjo-Iweala (Nigeria's Finance Minister), Dashdorj Zorigt (former Minister for Mineral Resources and Energy, Mongolia), Debra Valentine (Group Executive, Rio Tinto), and Professor Paul Collier (Blavatnik School of Government).

I. Why now? The need for further action

There are three emerging trends that make revenue transparency from natural resources salient for UK policymakers.

Firstly, *resource-rich developing countries have expressed frustration* that an emerging consensus on best practices for resource development is yet to translate into better outcomes for developing countries. They say developed economies have offered a range of suggestions on improving transparency but have not matched this by complying with initiatives like EITI or by putting real pressure on extractive companies domiciled in their jurisdictions to improve performance on transparency. The adoption of the EU Transparency and Accounting Directives and the implementation of the US Dodd-Frank Act are therefore important tests of developed country resolve.

Secondly, *the UK must sustain the leadership shown in 2013 to maintain its credibility.* While the UK has long been a supporter of EITI, it faced public criticism in 2011 for refusing to sign up itself. Committing to the EITI process and emphasizing resource revenue transparency as part of its G8 Presidency in 2013 have brought the UK back to the centre of efforts to improve transparency. Intelligent policy suggestions and sustained implementation will be required to keep it there.

Thirdly, *this is an opportune moment to broaden the coverage and increase the consistency of transparency requirements.* There is a chance to broaden coverage through expanding EITI membership and undertakings, such as Canadian Prime Minister Harper's recent announcement that Canada will develop regulation to ensure transparency for companies listed on the Canadian stock exchange. There is a corresponding opportunity to ensure that requirements in multiple jurisdictions are consistent both to reduce the compliance burden on companies and developing governments and to offer comparable data across jurisdictions.

Table A

The London Stock Exchange lists many of the world's largest extractive companies such as BP, Royal Dutch Shell, Rio Tinto and Anglo American.
There are 362 extractive companies listed ranging from Royal Dutch Shell with a market capitalisation of £150 billion to Botswana Diamonds at £6 million.
The LSE lists 25% of the global mining companies by value and 15% of the global oil & gas companies by value.
In total, the LSE covers £950 million out of an estimated £5.25 trillion of the extractive sector's market capitalisation.
Source: Revenue Watch Institute, 2012 data

II. Debate: emerging consensus on policy, challenges and solutions

1. Emerging consensus on best practice for natural resource management

There is a consensus on key policy steps to achieve improved natural resource management in general. This recipe involves: (1) setting a benchmark price for the natural asset so as to decouple potentially volatile revenues from recurrent spending; (2) creating a sovereign wealth fund that can be used for financial stabilization, infrastructure investment and human capital; (3) investing heavily in growth-generating infrastructure to ensure revenues are spent productively and the platform for long-term economic diversification is laid.

2. Remaining challenges

Despite this consensus, countries have faced intractable challenges in achieving effective natural resource management. Among the key barriers to improved management are: (1) internal, legacy fiscal structures within countries, leading to distributional conflicts, as seen between state and federal governments in Brazil; (2) underlying political and social conditions that are insufficient to support and implement institutional decision-making; (3) vested interests who rely on opacity in revenue distribution actively to undermine reform attempts.

3. Increased transparency as a key solution

Preliminary solutions to these challenge include: furthering institutional capability; developing formal technology transfer mechanisms; and adjusting intellectual property rules to the benefit of developing countries. However, transparency is vital in building trust between all partners. The political calculus of vested interests must be changed, and citizens should be enabled to hold their governments and foreign investors to account. The development of more rigorous transparency measures are consistent with creating closer relationships with large resource companies to provide them with corruption-free, stable operating environments and so stimulate investment.

III. Key issues: Implementing and exceeding existing frameworks

The UK government has taken a lead in this area. Prime Minister Cameron highlighted resource revenue transparency as one key area when he set out the UK's 3Ts agenda – Trade, Tax and Transparency – for the G8 in 2013. To sustain momentum, the UK needs to address two issues.

1. How can UK policy makers ensure the EITI and EU Directives are most effective and continue to develop as tools to deliver transparency?

- *Ensure early implementation of the rules*: It is essential to allow testing periods and collection of feedback from parties involved.
- *Introduce better data practices*: Improve the presentation of data to make it more accessible for the general public; ensure consistency with IMF accounting practices; and build a general-access database to make data more useable. The EITI, for example, is moving towards 'real-time' data publication to ensure that data can be used effectively on-the-ground to promote better governance.
- *Improve 'smart transparency'*: Expand the range of metrics measured beyond cash payments to include contracts, in-kind expenditures, tax arrangements.
- *Support additional harmonization between regulatory regimes*: There remain critical differences in the regulatory regimes of the EU and US. For example, US rules require disclosure of indirect payments, whereas the proposed EU directives only ask companies to reveal direct payments (see Table B). Big players like Royal Dutch Shell and BHP are subject to both due to their dual listing. Given Canada is commencing the regulatory design process and the US Securities and Exchange Commission (SEC) has been asked by domestic courts to reconsider elements of the Dodd-Frank Act, there is scope to achieve greater consistency between regimes.
- *Increase the use of incentives and disincentives to deliver real performance*. For example, through commenting publically on declining transparency and EITI findings more broadly.

2. What can UK policy makers do beyond the EITI and the EU Directives to assist developing country governments better manage natural resource revenues?

- *Improve transparency across the full natural resource value chain*: Ensuring revenue transparency is only one part of the natural resource value chain. Decisions on where and when to extract or negotiations on initial contracts, for example, are equally subject to inappropriate capture. As a practical example, Norway, a global leader in natural resource governance, is in discussions with Guinea to assist in developing the legal capabilities to re-design early resource contracts.
- *Map the various institutions and initiatives to ensure efforts to foster transparency are not duplicated or rendered meaningless by excessive proliferation*: There are now a variety of government and non-government organisations producing metrics and reports that assess governance in some form in resource-rich developing countries. Some degree of aggregation and re-division of labour needs to be centrally driven and coordinated.

Recommendation

Real transparency in the use of natural resources appears to be a journey and not a destination. The American Petroleum Institute's partial success in its lawsuit against the SEC to overturn elements of Dodd-Frank indicates that the road may not be completely smooth. The UK has staked its claim as a champion of transparency in 2013. In the area of natural resource revenues, it now needs to redouble efforts if its noble ambitions are to meet the needs of the citizens of resource rich-countries around the globe.

Table B

	Proposed EU Transparency and Accounting Directives	**EITI – Extractive Industries Transparency Initiative (2002)**	**US Cardin-Lugar Amendment / Section 1504 of the Dodd-Frank Financial Reform and Consumer Protection Act (2012)**
What is the UK role?	The European Parliament voted in favour of new Directives on June 12, 2013, but they are yet to receive the European Council's formal approval. UK Prime Minister David Cameron strongly backed the company reporting rules in November 2012, then at his insistence the subject featured on the G8 summit agenda in June 2013	UK Prime Minister Tony Blair launched EITI at the World Summit on Sustainable Development in 2002 and the UK government hosted the 2003 conference that agreed the EITI Principles. The UK started its own EITI process on July 9, 2013, following other OECD countries which had launched processes in 2011	Not applicable to the UK. US Senators Cardin and Lugar sponsored the Amendment, which was passed on July 10, 2010 and approved two years later by the Securities and Exchange Commission (SEC)
When are the rules effective?	Rules are likely to apply to fiscal years beginning on or after January 1, 2016	UK has till January 2016 (2.5 years) to complete validation	Reports required on or after September 30, 2013
Which industries are mentioned?	Oil, natural gas, minerals <u>and</u> logging of primary forest	Oil, natural gas or minerals	
Which companies must comply?	Companies listed on European Economic Area markets, <u>plus</u> large unlisted undertakings registered in EEA	All extractive industry companies operating in the country, including private and state-owned enterprises.	Any issuer listed on a US exchange, regardless of the size
Which payments are required to be disclosed?	Direct benefits relating to exploration, prospection, discovery, development, and extraction activities		Direct <u>and</u> in-kind payments (e.g. infrastructure improvements) relating to a commercial development, but not services accompanying the development
Payments to which government bodies are to be disclosed?	National and local governments, including agencies controlled by authorities		In the US: federal government only; overseas: different levels of agencies
Voluntary or mandatory?	Mandatory	Voluntary	Mandatory

Sources: EU Accounting and Transparency Directives; Section 1504 of the Dodd-Frank Financial Reform and Consumer Protection Act; EITI Rules 2011 edition