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Global standards for the extractive industry – ten years of the EITI and Publish What You Pay

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Bonn, 1 October 2012. Barely noticed by the public, the European Parliament's Legal Affairs Committee took a ground-breaking decision on 18 September 2012: in the future European mining companies are to disclose their payments to governments on a country-by-country and project-by-project basis. Before the year is out, the European Parliament intends to amend an EU Commission proposal, some of which is far more cautiously worded, and so raise the EU's legislation to a level similar to the USA's. The recently published rules implementing the Dodd-Frank Act in the USA require the country-by-country and project-by-project reporting of payments to governments.

Naturally, mining companies have put up a fight against these more stringent transparency rules. Under pressure from their domestic companies, many EU Member State governments, too, are still far from happy with the new EU legislation, fearing that their companies will face competitive disadvantages. But as with the introduction some years ago of tougher anti-corruption laws, which similarly emanated from the USA, Europe is in the process of catching up. A number of large German companies did not take those new rules seriously at the time and had to pay a high price for their ignorance. Siemens alone was fined US\$ 800 million in the USA in 2008 for bribing officials in developing countries.

As with the anti-corruption laws, the decisive aspect of the new transparency rules for mining companies is that they will be legally binding on all companies listed on US and European stock exchanges. Under the proposed EU directive, smaller companies will be subject to simpler reporting requirements than large ones. But the general rule, as in the USA, is that financial transfers to governments in excess of US\$ 100,000 or € 80,000 must be shown separately in company accounts.

There are, of course, many voluntary commit-

ments associated with international companies' "corporate social responsibility", but none of them is binding, and they are often unverifiable. The Extractive Industries Transparency Initiative (EITI), which 36 countries and many mining companies have now joined, is similarly based on the principle of voluntary participation. Only when the new legislation enters into force, however, will there be competition on equal terms: legislation is ultimately needed to make the conditions of competition the same for everyone. That is true at least of more than 80 percent of the world's mining companies. A growing number of companies based in emerging economies, such as the Chinese oil and gas corporation CNOOC, are now listed on the New York stock exchange and must comply with the relevant laws.

All this is also a success for the Publish What You Pay initiative, which will be ten years old in the next few days. It was launched by British non-governmental organisations and over the years has succeeded in bringing influence to bear to make the rules applicable to international corporations more transparent. Without it, the EITI initiative, which was launched by the then British Prime Minister, Tony Blair, at the World Summit on Sustainable Development held in Johannesburg in 2002, would not have come into being. In just a few years this quasi-official initiative has led to an international consensus on the need for greater transparency in the extractive industries sector, a consensus that is gradually being reflected in legislation, globally applicable corporate accounting standards and international development banks' credit conditions.

All these initiatives have been prompted by the realisation that a large proportion of the revenue from commodity exports is skimmed off in various ways, making it unavailable for investment in developing countries. It is estimated that as much as ten times the value of the OECD countries' development aid is lost to the developing countries as a result of corruption, tax evasion and – legal –

tax avoidance. It is no coincidence that many commodity trading companies have their registered offices in such tax havens as the Swiss Canton of Zug.

It is crucial that the commitment to transparency is made by everyone: by the governments of the developing countries, by the companies themselves and by the governments of their countries of origin, which pass the legislation applicable to these companies – and, it should be noted, to their activities at home and abroad. The next step will be to make the disclosure of contracts be-

tween mining companies and governments of developing countries the rule. Such contracts are usually confidential, which prevents public and even, as a rule, parliamentary control of the contractual basis for payments to governments. If the pressure on governments of industrialised and developing countries for greater transparency is maintained with the help of such civil society organisations as Publish What You Pay, international mining companies, including those in the emerging economies, will not be able to refuse to observe the new standards for ever.



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