



\*Sherpa

# Publish What You Pay

# OPEN DATA

## the extractive industries case-study

A spate of scandals hit the headlines in 2016, revealing the way in which some major companies have been involved in corruption, money laundering or tax evasion. The lack of corporate transparency that enables these practices needs to be tackled urgently. The huge amount lost by developing countries - essential to their development - could be used to fund basic services such as education and health, and be reinvested in setting up efficient public services.

Greater transparency is a first and necessary step in the fight against corruption. However, behind this concept of transparency, real issues of accessibility and data quality are at stake. Publishing data in itself is not enough if access is restricted and the format inoperable. To take the process of transparency all the way, this information needs to be published in an open data format making it comparable with other relevant data and easily presented. The exercise of publishing data is not an end in itself, and taking ownership of this data, analysing and disseminating it is also an important issue for improving corporate accountability.

However, open data is often not mandatory, and that is the case of the requirements imposed on extractive industries. In 2016, for the very first time, extractive

industries registered or listed in France had to disclose their payments made to governments, project by project, in every country where they have extractive activities. The publication of these 'payments to governments' represents a considerable step forward in terms of transparency and accountability of French extractive companies. However, while citizens, members of Parliament, journalists and non-governmental organisations are gradually becoming aware that this data exists, **a vital element is missing: the absence of a centralised register, in open data format, of these payments.**

The 4<sup>th</sup> Global Summit of the Open Government Partnership (OGP), which is held in Paris on the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> of December 2016, is an opportunity to make progress on this issue. The participating countries of the Partnership, as well as actors from the private sector and civil society, will have to discuss transparency rules, exchange ideas and good practices and make commitments on open data. The key topics will include the transparency of the private sector, which should enable the Summit to highlight the necessity of creating a platform bringing together centralised, open registers of all data published by multinational companies about their activities.

## Publication of payments to governments: one small step at a time for transparency

How much revenue does a country receive in exchange for the exploitation of its natural resources? Is the economic impact fair in relation to the value of the natural resources being exploited? Does this money genuinely benefit local people? These critical questions in the fight against poverty and corruption in countries that are, paradoxically, rich in natural resources have long been raised by civil society. Since the turn of the millennium, the coalitions of the *Publish What You Pay* movement have campaigned against opacity and corruption to make this sector more transparent, particularly through the introduction of obligations to disclose payments made to governments, i.e. publication of all the amounts paid by extractive industries to governments in the countries where they have extractive activities.

Following the adoption of the European directives, extractive industries registered or listed on stock markets in the Member States, particularly in France and the United Kingdom, are now obliged to publish these payments. The first reports were published in 2016. The same rules will be imposed on Canadian companies in 2017<sup>1</sup>. Similar measures are in place in the United States<sup>2</sup> and must be defended against repeated attempts by American oil companies to block and weaken them. The first reports should be available in 2019.

### Why is this information useful?

Publishing details on payments made to governments enables citizens to find out how much their country, their region or their local authority area receives (or doesn't receive) in exchange for the exploitation of natural resources extracted by French or British companies. They can compare the extraction revenue with similar projects, hold their government into account regarding the receipt of this revenue and how it is used. Subsequently, they can then ensure that it is reinvested in the development of their community.

However, publication is only a first step towards full transparency. In the transposition of the European directives, civil society actually wanted to broaden the transparency obligations to all countries where extractive groups operate, without restricting the scope to their extractive activities. In particular, that would have covered companies' activities in tax havens. In 2014, when the directives were transposed into French law, the members of *Publish What You Pay* also supported the centralisation of these reports in a register in open data format. That request fell on deaf ears among the Parliament's majority and the French government. However, the lack of a centralised register in an operable and comparable format has a direct adverse effect on the ultimate aim and effectiveness of such a measure: to fight against corruption and tax evasion.

### What are the transparency obligations for French and British extractive companies?

France and the United Kingdom transposed the European Accounting and Transparency Directives in 2014. These directives introduce an obligation for oil, gas, mining and logging companies to publish all payments made to governments, project by project, in each country in which they have exploitation or exploration activities, broken down into the following categories of payment:

- 1 production entitlements;
- 2 taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value-added taxes, personal income taxes or sales taxes;
- 3 royalties;
- 4 dividends;
- 5 signature, discovery and production bonuses;
- 6 licence fees, rental fees, entry fees and other payments for licences and/or concessions;
- 7 payments for infrastructure improvements.

It is worth noting that unlike France, the British voted to set up a central register, in open format, for these payments to governments.

1. Extractive Sector Transparency Measures Act (ESTMA), <http://www.nrcan.gc.ca/mining-materials/estma/18180>.  
2. Section 1504 of the Dodd-Frank Act, <https://www.sec.gov/news/pressrelease/2016-132.html>.

## Payments made to governments: the need for a centralised register in open data format

### A centralised register in open data format: what's the point?

France did not request the publication of the reports by French extractive companies in a centralised register in open data format. Consequently, the initial reports were published piecemeal this year without any monitoring system being put in place by the government. Although the impact assessment considered that this disclosure obligation should apply to 'approximately thirty companies', the members of Publish What You Pay – France were only able to identify 12 reports<sup>3</sup>, and have no clear way of knowing whether more should have been submitted. This lack of access to such information severely limits the scope and usefulness of the measure as well as the ability of citizens, NGOs, journalists or members of Parliament to use this data. Moreover, the reports published exhibit major disparities in their presentation, which further complicates comparative analysis<sup>4</sup>.

### During the OGP Summit, France has the opportunity to put things right

The issue of openness of data is increasingly being taken into account at the political level, particularly with regard to improving corporate transparency.

The 4<sup>th</sup> Global Summit of the Open Government Partnership (OGP) in Paris must be an opportunity to discuss access to information for citizens. Almost one year after the dramatic scandal of the Panama Papers, France, the host country, has repeatedly stated that it wants this summit to focus on the issue of corporate transparency and the fight against corruption.

As an important signal of change, the majority in the French parliament voted in September the implementation of a public country by country reporting applicable to all large companies in open data format, free of charge, centralised and accessible to the public<sup>5</sup>. The content of this reporting clearly lacks ambition and does not allow effective action to fight tax evasion<sup>7</sup> and yet, the open data requirement represents progress in terms of access to information.

### Why open format?

Open data is a format for published data which calls for the observance of very precise criteria: this data must be timely and comprehensive, accessible and usable, comparable and interoperable, and improve governance and citizen engagement<sup>5</sup>.

The open format enables users to have a free access to this data which is operable, and facilitates finding, accessing and exploitation of the data. The openness of the data allows the process of transparency to be taken all the way.

### About Publish What You Pay

*Publish What You Pay (PWYP)* is a global membership-based coalition of civil society organisations (CSOs) in over forty countries united in their call for an open and accountable extractive sector, so that oil, gas and mining revenues improve the lives of women, men and youth in resource-rich countries and that extraction is carried out in a responsible manner that benefits countries and their citizens.

## Recommendation:

All data related to corporate transparency, in the extractive sector as well as for other multinationals, should be published in a centralised register in open data format, in order to allow more effective action to be taken against illicit financial flows and corruption.

3. Total, Areva, Engie, EDF, Eramet, Maurel&Prom, Lafarge, Vinci, Saint-Gobain, Imerys, Rusal and Bouygues.

4. A more detailed analysis of this data is ongoing and a final report by the NGOs Oxfam France, Sherpa and ONE will be published in the course of 2017.

5. Preamble to the Open Data Charter <http://opendatacharter.net/principles/>

6. See paragraph 21, article 137 of the final version of the text, voted by the Assemblée nationale on the 8th of November 2016 <http://www.assemblee-nationale.fr/14/pdf/ta/ta0830.pdf>.

7. By setting a minimum number of subsidiaries for companies to be subject to this reporting in a country, the measure does not cover all the countries where companies carry on activities and therefore does not allow the detection of illegal tax evasion schemes. Only a single subsidiary is needed to carry out illegal tax evasion activities.



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