



Revenue Watch Institute    Revenue Watch  
1700 Broadway, 17<sup>th</sup> Floor    190 Great Dover St  
New York, NY 10019    London, SE1 4YB  
USA    UK

Interest Representative Register ID 38716734025-85

**Revenue Watch Institute submission to the EU Commission**

**Re: New Communication on Raw Materials in 2010**

**Date: 13th September, 2010**

## **I. Information about the respondent - Revenue Watch Institute**

---

The Revenue Watch Institute is a non-profit policy institute and grant-making organization that promotes the responsible management of oil, gas and mineral resources for the public good. We work in Africa, Caucasus and Central Asia, Latin America, South East Asia and the Pacific and the Middle East. Our approach includes support to both government capacity (in negotiating extractive contracts, creating compliance and monitoring mechanisms and ensuring transparency) and improving external oversight to strengthen accountability (by providing extensive capacity-building for civil society, parliamentarians and the media). We also work at the international level on areas of relevant policy and regulation.

**Contact:**

Vanessa Herringshaw, Director, London. +44 7900 492631  
[vherringshaw@revenuewatch.org](mailto:vherringshaw@revenuewatch.org)    [www.revenuewatch.org](http://www.revenuewatch.org)

## **II Scope of submission**

---

In line with the core focus of Revenue Watch's expertise, the contributions below centre on the governance of revenues relating to raw materials.

They do not address other issues relevant to the Raw Materials Initiative relating to the environmental impacts of extraction, nor do they focus on the reduction in raw material dependency in Europe.

## **III Key recommendations**

---

There are a number of practical opportunities for action that would have positive effects across the three main objectives of the Raw Materials Initiative (strengthening states, investment climates and sustainable management of resources) and cross-cut a number of the public

consultation questions. Their relevance to each will be outlined below, but they can be summarized as follows:

**A. Mechanisms for systematic transparency of reserves, production, costs, revenues, subsidiaries and payments to government:**

**Country- and project-specific reporting requirements to improve trade and development**

*Using company reporting requirements*

- A1. International Financial Reporting Standard – current review for Extractive Activities
- A2. Listing requirements – current review of the EC's Transparency Directive
- A3. Dialogue through the G20 to create global reporting requirements – current opportunities created by recent US developments

*Other mechanisms*

- A4. Transparency requirements for EIB investments
- A5. The Extractive Industries Transparency Initiative

**B. Mechanisms to improve governance and security of supply in producing areas**

- B1. Capacity building for national governance and oversight of extractive revenues by governments and oversight actors
- B2. Capacity building for local governance and oversight of extractive revenues by sub-national governments and oversight actors
- B3. The Natural Resources Charter

<b>A. Mechanisms for systematic transparency of reserves, production, costs, revenues and payments to government</b>
--

*Using company reporting requirements – accounting and listing requirements*

There is currently no systematic disclosure of reserves, production, costs, revenues and payments to government for extractives on a global, comparative basis. However, there are mechanisms that could deliver such information on a company, country, and even project-specific, basis. These would use rules on company reporting that would require companies to disclose key information on a country- or project-specific basis for each country of operation.

Collectively, this would produce great global coverage. A multi-national listed in a territory or on a stock exchange requiring country-by-country reporting would then disclose this information for each and every country of operation. For example, if the EU applied such rules, a European, Russian or Chinese company listed on the London Stock Market, would need to report its reserves, production, revenues etc for every country of operation including operations in their own home countries. Information from multiple companies would also be collated to give a picture of raw materials in particular counties using company data.

This would bring four main benefits. Firstly, it would give insights into production per country, internal trading within large companies, and whether trade rules have been appropriately applied. Secondly, it would improve the investment climate by giving investors vital information on risk

and value where both vary greatly country-by-country. Thirdly, it will aid security of supply and development in producing areas, by giving local oversight groups the information they need to hold their governments to account for the use of resources and revenues in the public interest. Finally, it would give the information necessary to judge 'company concentration', a key determinant of raw material criticality that has yet to be assessed as part of the RMI.

There are two possible mechanisms that would have near global reach. Both use company reporting requirements.

#### **A1. New International Financial Reporting Standard (IFRS) for Extractive Activities**

The International Accounting Standards Board (IASB) is currently developing a new standard for Extractive Activities.

The key advantage of IFRSs is their broad geographical coverage. More than 110 countries already require or allow the use of IFRSs. All the EU members, South Africa, and Australia currently require companies to use the IFRSs. Other countries are on paths of 'convergence'. China is already "substantially converged". Other countries will require IFRS use soon - Brazil (December 2010); Canada (January 2011); India and Korea later in 2011; Mexico and Argentina in 2012. Other countries are on paths to convergence but the timeframe is not yet clear – these include the US, Japan, Indonesia and Russia<sup>1</sup>.

The European Parliament has already expressed its support for country-by-country reporting to become a requirement in a new extractives IFRS. However, the IASB has repeatedly delayed development of a new standard and its Working Group has recommended some but not adequate country-by-country reporting. The EU has expressed some frustration over the accountability of the IASB to governments and other stakeholders. EU membership of the Monitoring Board offers opportunities for influence directly to the IASB, as well as through Commission inputs to the Working Group.

For more details on this approach, please see below, in our response to question 12.

#### **A2. Listing requirements – current review of the EC's Transparency Directive**

DG Internal Markets is currently reviewing the Transparency Directive which determines the reporting requirements for companies listed on European stock exchanges.

The US has recently passed a law which sets a new precedent for country- and project-specific reporting requirements using listing requirements. Section 1504 of the new financial services reform bill requires all companies (foreign and US) registered with the Securities and Exchange Commission to disclose all payments related to minerals extraction, country by country and project by project.

---

<sup>1</sup> For the full geographical coverage see <http://www.ifrs.org/Use+around+the+world/Use+around+the+world.htm>

Inclusion of a country- and project-specific reporting requirement in the new Transparency Directive would add important companies to those covered by the US bill (e.g. Norilsk Nickel and Xstrata are listed on the London Stock Exchange but not in the US) and maintain the momentum for other markets to follow suit.

An IFRS would have more global reach than European listing requirements. However, the latter can be instigated more rapidly, would still have broad impact and would continue to build momentum for a global accounting standard.

For more details on this approach, please see below, in our response to question 12.

### **A3. Dialogue through the G20 to create global reporting requirements**

The US Senate Foreign Relations Committee approved language in the Foreign Relations Act noting that “the President should work with foreign governments, including members of the Group of 8 and the Group of 20, to establish domestic requirements that companies under the jurisdiction of each government publicly disclose any payments made to a government relating to the commercial development of oil, natural gas, and minerals.”<sup>2</sup> Further to this, President Obama has recently emphasized his intention to make the US listing requirements a “global standard,” noting in a July press release that “the United States is committed to working with other countries to ensure the implementation of similar disclosure requirements in other financial markets and will make this a priority in the year ahead.”<sup>3</sup>

The vital importance of China, Russia, Brazil and others in supplying Europe’s critical raw materials makes the G20 the natural forum for discussion of key topics. The issue of transparency may be useful entry point for dialogue. This should be assisted by the US government’s above-stated commitment to work with other governments to seek domestic requirements and listing requirements in support of greater transparency. We urge the EU to adopt a similar focus in this crucial area.

#### *Using other mechanisms*

### **A4. Transparency requirements for EIB investments**

Investments and development projects offer an opportunity for the EU to promote greater transparency in raw materials governance through the addition of transparency requirements to lending and export credit provisions made by the European Investment Bank (EIB) and national export credit agencies (ECAs).

Revenue Watch recommends that improved transparency requirements include:

- disclosure of extractive contracts (following the recommendations of the IMF Board approved Guide to Resource Revenue Management in 2005.)

<sup>2</sup> S. 2971, Foreign Relations Authorization Act, SEC. 408. (See the Sense of Congress relating to transparency for extractive industries.)

<sup>3</sup> <http://www.whitehouse.gov/the-press-office/statement-press-secretary-transparency-energy-sector>

- disclosure of payments to governments by companies (in line with the EITI and IMF Guide).
- disclosure of other key information – reserves, production, costs, revenues (in line with reporting requirements sought above through listing and accounting requirements).

For more details on this approach, please see below, in our response to question 12.

#### **A5. The Extractive Industries Transparency Initiative (EITI)**

In-country EITI implementation requires the generation of a multi-stakeholder process that builds a mechanism for constructive dialogue and agreement. This is often a rarity in many producing country contexts and has great value if implemented with commitment by the parties involved. Internationally, the EITI acts as a global arena to begin to establish new norms for transparency if there is broad endorsement and action. Though historically it has focused only on revenue transparency, there is growing pressure to expand its coverage to other key information covering costs, production etc. and to include the disclosure of contracts as part of the EITI.

To support this, the EU should:

- support developing countries in the implementation of the EITI, especially new members
- encourage EU member states to implement the EITI.
- Support expansion of the mandate of EITI beyond the focus on revenues alone.

#### **B. Mechanisms to improve governance and security of supply in producing areas**

Improving the governance of raw materials and the use of the revenues they generate in producing areas would reduce their misuse in fuelling conflict, human rights abuses and channel revenues more effectively into poverty reduction. This would be in line with the EU's development policies. However, it will also reduce the insecurity of supply due to conflicts and interventions by frustrated local populations who see no gain from extraction.

We strongly endorse the component of Recommendation 4 which calls for the promotion of "good governance, capacity-building and transparency in relation to the extractive industries in developing countries" to feature prominently in the Commission's new Communication on the Raw Materials Initiative.

There are four main practical mechanisms for EU action:

#### **B1. Capacity building for national governance and oversight of extractive revenues by governments and oversight actors**

The EU's development policy requires fostering sustainable economic and social development of mineral-rich but governance-poor countries. Its tax policy requires support for mechanisms that ensure the fair payment of taxes and a level playing field between

companies. The synergies between development and tax policies have been recognized recently in the EU with the publication of the new Communication on Tax and Development; this underlines the importance of supporting domestic revenue collection and management as the most appropriate and sustainable source of funding for development. It highlights the particular importance of the extractive industries and the need to support the transparent and accountable management of raw materials. Finally the EU Africa Union Partnership emphasizes the importance of work to combat corruption and illicit trade.

In coordinated support by the different DGs of the EU, we urge funding and technical assistance to:

- build and support the capacity of governments in governance-poor countries to establish an appropriate fiscal and legislative framework for extraction, to negotiate appropriate extraction deals, to collect the revenues that they are due and to spend these well in the public interest.
- build an equal capacity of oversight by parliaments, civil society and media in these countries, such that they have the technical understanding as well as the collective and financial strength to press for appropriate practice by governments and companies.

For more details on this approach, please see below, in our response to question 11.

## **B2. Build local capacity for governance and oversight of extractive revenues by sub-national governments and oversight actors**

Most of the research and support relating to the so-called 'resource curse' has been focused at the national level. Yet local governments often face huge challenges in managing the impacts of extraction, often with limited capacity to deal with the additional responsibilities. Revenue Watch urges funding and technical assistance to the sub-national level, to:

- build the capacity of local governments to deal with the financial pressures of extraction (local resource windfalls, pressures towards corruption and narrowing of the local economy) as well as the social and environmental effects.
- build an equal capacity of oversight by local parliaments, civil society and media in these local producing areas to hold central governments and companies to account.

For more details on this approach, please see below, in our response to question 11.

## **B3. The Natural Resources Charter**

The **Natural Resource Charter** is a set of twelve precepts created by an independent group of experts to assist resource-rich countries effectively harness their oil, gas and mining resources for the development benefit of their citizens.<sup>4</sup> The principles of the Charter encompass both technical and ethical dimensions of the entire decision chain for resource

---

<sup>4</sup> The Charter has been drafted by a group of international experts, including Prof. Paul Collier, Nobel Laureate Michael Spence, Prof. Anthony Venables, Prof. Thomas Heller, Prof. Michael Ross, Dr. Robert Conrad, Joe Bell Esq. and Karin Lissakers, Director of Revenue Watch Institute. The drafters of the Charter have a broad range of expertise within the fields of economics, policy-making and international law. Dr. Ernesto Zedillo, former President of Mexico, Chairs the newly formed Charter Oversight Board. The Natural Resource Charter is available at: [www.naturalresourcecharter.org](http://www.naturalresourcecharter.org)

development, from discovery through to the efficient investment of revenues. The Charter also provides guidance to extractive companies and their home-country governments on how to support resource-rich countries in achieving these goals. The Commission should:

- embed the principles of international best practice contained within the Charter into programs that support or promote resource extraction in producing countries.
- ensure the principles are also used in home country regulation of extractive companies.
- use the Natural Resource Charter as a framework for discussing natural resource governance on a global scale with the G20.

#### **IV. Responses to public consultation questions**

---

Please note: we have only provided responses in areas in which the Revenue Watch Institute has expertise and experience.

##### **POLICY AREA: DEFINING CRITICAL RAW MATERIALS**

***Question 1. Do you have any comments on the methodological approach, including the scope, to determine criticality at EU level? If so, please specify.***

We do think that the issue of ‘company concentration’ is vital in determining true raw material criticality. We note that this has not been incorporated in the assessments to date. However, with the increasing ‘buying up’ of reserves by companies and the phase of consolidation that reduced the number of large extraction companies, we would urge that this be addressed in future analyses.

It should be noted that the company reporting requirements recommended by Revenue Watch (see A1 and A2) would provide the kind of information necessary to make systematic, global analyses of company concentration possible.

***Question 5. The functioning of raw materials markets has not been dealt with. Do you think that further analysis of their functioning should be carried out? What actions should be proposed to increase their transparency?***

We do think that further analysis of the functioning of the raw materials markets is necessary. We also think that the company reporting requirements recommended by Revenue Watch (see A1 and A2) would provide an area of important future information to assist these analyses in an on-going and systematic basis.

##### **POLICY AREA: TRADE**

***Question 8. Do you have any comment regarding the main findings of DG Trade activity report? What activities should be prioritised? Are there, in your opinion, additional activities not mentioned in the report which should be pursued in this strategy?***

We would like to suggest that the company reporting requirements recommended by Revenue Watch (see A1 and A2) could provide additional information that might assist greatly in exploring inappropriate trade practices by companies and/or governments. Full reporting requirements (of country- and project-specific reserves, production, costs, revenues, payments and names of key subsidiaries) would assist in clarifying price manipulations and export restrictions.

## **POLICY AREA: DEVELOPMENT**

**We strongly endorse the component of Recommendation 4 which calls for the promotion of “good governance, capacity-building and transparency in relation to the extractive industries in developing countries”. We urge that it should feature prominently in the Commission’s new Communication on the Raw Materials Initiative.**

As 2008’s inaugural Communication noted, “over 50% of major mineral reserves are located in countries with a per capita gross national income of \$10 per day or less.” As Paul Collier has pointed out, Africa is almost certainly underexplored for minerals. Investors shy away from costly long-term investments in high risk areas. Any comprehensive EU-level strategy designed to address the sustainable supply of raw materials must therefore place a premium on strategic approaches to promoting transparency and accountability in those mineral-rich countries where weak governance and a lack of capacity are at issue. Our rationale for this recommendation is three-fold:

**First, poverty, conflict and weak governance are not conducive to ensuring adequate scale and stability of raw material supply for formal importers.** For example, the Democratic Republic of Congo is one of the most mineral-rich countries in the world – with significant coltan, cassiterite, diamonds, nickel, and cobalt reserves – and controls a high share of worldwide production of a few critical raw minerals, as defined by the Commission.<sup>5</sup> Yet its official production and export of these essential materials has not developed adequately, even in comparison to other countries in Africa. This performance comes after decades of civil war, much of it perpetuated and paid for by revenues from the informal extraction and smuggling of the resources themselves. This has restricted extraction and the development of export infra-structure.

Even in contexts of initial peace, local populations can quickly become antagonistic to extractive industries if they do not trust that they will benefit from them – especially if their poverty is in contrast to the relative wealth of extracting companies. Excluded from decision-making and denied any meaningful information about who is earning what, and where it is going, disgruntled local populations can prevent or interrupt extraction. For example, half of Peru’s social conflicts in 2009 related to large scale mining exploitation, according to the Office of the Ombudsman of the Republic. In Peru’s Amazon region, huge protests have blocked the development of new extraction in 2009 and 2010. In the Niger delta, the oil production of Shell’s subsidiary dropped by 85% from 2005 to 2008 as

---

<sup>5</sup> Namely, the DRC controls a large production share of cobalt (important for an array of heterogeneous economic uses) and tantalum (crucial to the production of cell-phones and other ‘daily use’ products.)

pipelines were attacked and employees were kidnapped<sup>6</sup>. Though this final example is taken from the oil sector, it shows the scale of impact on production that local instability and conflict can generate.

Without trust that extraction will bring benefits to the producing country and its population, blocks to extraction can also occur at the national level. Western companies were frustrated for years by a hiatus in the development of a new mining law in Indonesia, the result of previous decades in which benefits were felt to have accrued only to domestic elites and Western companies. If Europe is to secure sufficient and secure supplies, it must invest in approaches that ensure the accountability of, and trust in, both host governments and companies, especially multi-national based in Europe.

**Second, the design of a transparent and accountable raw materials sector would level the playing field between the European Union and emerging economies in the scramble for natural resources.** According to IMF Direction of Trade Statistics, by 2005, the total value of trade between China and Africa reached US\$36 billion; up from less than US\$10 billion in 2001. The growing role of companies from emerging countries, particularly China, Brazil and India, in resource-rich countries around the world presents a challenge for Europe. Efforts to meet this challenge require long-term strategic thinking. However reactionary fears that China and others are winning the resource diplomacy game through a willingness to disregard international environmental, labor, and governance norms should not be allowed to push Europe into a “race to the bottom” that will have long-term consequences for producing states and, at best, only short-term gains for European resource access. There are signs that emerging market players are warming to the importance of international norms as a means of creating more secure access to resources in unstable regions. At the same time, stakeholders within resource-rich countries are beginning to become disillusioned with some of the offers they have received from emerging market companies and governments. Europe’s forward-looking resource diplomacy should be premised on the notion that European investment in natural resources presents the hope of sustained economic development in target countries, and this requires policy coherence between Europe’s development and mineral resources strategy.

**Finally, Europe’s raw materials policy should be consistent with its development policy and its tax policy.** The EU’s development policy requires fostering sustainable economic and social development of mineral-rich but governance-poor countries. Its tax policy requires support for mechanisms that ensure the fair payment of taxes and a level playing field between companies. The synergies between development and tax policies have been recognized recently in the EU with the publication of the new Communication on Tax and Development; this underlines the importance of supporting domestic revenue collection and management as the most appropriate and sustainable source of funding for development. It highlights the particular importance of the extractive industries and the need to support the transparent and accountable management of raw materials.

---

<sup>6</sup> Akwani, Obi. “Shell Cuts Nigerian Jobs by 43 Percent.” *IMDiversity*. April 28, 2008.

[http://www.imdiversity.com/villages/global/business\\_finance/GlobalBusiness-ShellCutsJobs.asp](http://www.imdiversity.com/villages/global/business_finance/GlobalBusiness-ShellCutsJobs.asp)

<sup>6</sup> Mbachu, Dulue and Kwiatkowski, Alexander. “Shell’s Nigerian Exports Face 5th Month of Disruption.” *Bloomberg*. June 17, 2009.

[http://www.bloomberg.com/apps/news?pid=20601085&sid=a\\_xSA7yEMDA](http://www.bloomberg.com/apps/news?pid=20601085&sid=a_xSA7yEMDA)

**Question 11. What specific actions would you consider most relevant needed in the following areas:**

- **Good governance;**
- **Infrastructure / investments;**
- **Geological knowledge / skills.**

We see accountability as a crucial factor in generating drivers for good governance. Accountability, in turn, is not possible without information. Thus, mechanisms to improve transparency are a vital part of governance. Since these are specifically explored in response to the next question, they will not be presented here. However, our recommended mechanisms to improve transparency should also be seen as part of our response to improving governance.

In answering question 11, we will largely focus on approaches to improving governance and indigenous skills necessary to ensure appropriate extraction and the effective use of resulting revenues necessary to ensure development and security of supplies.

**Capacity building for national governance and oversight of extractive revenues by governments and oversight actors (relates to section B1. above)**

As noted above, the EU's development policy requires fostering sustainable economic and social development of mineral-rich but governance-poor countries. Its tax policy requires support for mechanisms that ensure the fair payment of taxes and a level playing field between companies. The synergies between development and tax policies have been recognized recently in the EU with the publication of the new Communication on Tax and Development; this underlines the importance of supporting domestic revenue collection and management as the most appropriate and sustainable source of funding for development. It highlights the particular importance of the extractive industries and the need to support the transparent and accountable management of raw materials. Finally the EU Africa Union Partnership emphasizes the importance of work to combat corruption and illicit trade.

Thus we urge the Commission to recommend additional support to build the capacity of governments in governance-poor countries to establish an appropriate fiscal and legislative framework for extraction, negotiate appropriate extraction deals, to collect the revenues that they are due and to spend these well in the public interest.

**Revenue Watch encourages the Commission's consideration of a robust program of knowledge exchange between stakeholders across raw material markets.** The Commission's current promotion of training and skill-building for mining and raw materials sector experts working within the EU, through programs such as the Erasmus Mundus Minerals and Environment Programme (EMMEP), is essential – but must be matched by external cooperation with developing countries, and a long-term investment in skill-building programs aimed at improving local expertise.

We would also like to emphasise that focus on government and private sector capacity is insufficient. It is true that these actors need the technical skills to do their work well. But

there is also a need to support the drivers and incentives that will ensure they do so in ways that fuel growth and poverty reduction, not corruption and conflict.

This is where capacity building for the actors that have the role of holding these actors accountable is vital. They need skills on a par with government and companies to analyse deals, track funds and their use, and instigate sanctions where appropriate. Thus **Revenue Watch recommends that whenever programs are created to build government and private sector capacity, parallel investments are made to build the capacity of key oversight actors - parliaments, civil society and media.**

Revenue Watch has been focusing on this for the past five years and is now attempting to institutionalize and strengthen our impact through the creation of a series of regionally based capacity building institutions, or 'Extractive Knowledge Hubs'. Each will be based in an existing academic or training institution, independent, locally staffed, financially sustainable and focused on meeting the local needs of actors in the region. Hubs are planned in Africa, the Caucasus and Central Asia, Latin America and South East Asia. We offer this model to encourage thinking about capacity building approaches that are long-term, locally owned but internationally supported.

**Capacity building for local governance and oversight of extractive revenues by sub-national governments and oversight actors (relates to section B2. above)**

Most of the research and support relating to the so-called 'resource curse' has been focused at the national level. Yet local governments often face huge challenges in managing the impacts of extraction, often with limited capacity to deal with the additional responsibilities.

This local need is heightened when local governments receive a proportion of revenues generated by extraction. Already overstretched, this can lead to enormous waste and corruption if poorly managed. Revenue Watch has been developing approaches to build local capacity to address these challenges through a program of four projects across three continents. These work with local governments, traditional authorities, local civil society and media and local parliaments where production is taking place.

Revenue Watch urges the Commission, in thinking through governance issues, to address explicitly the particularly needs and challenges at the sub-national level. In so doing, we also urge that support be provided not just for local governments, but also to build the oversight capacity of local parliaments, civil society and media in these local producing areas to hold central governments and companies to account.

**The Natural Resources Charter (relates to section B3. above)**

See B3 above.

*Question:12. Regarding transparency, what measures do you believe the EU should take to foster revenue transparency in the mining industry in raw material resource-rich*

**countries? What are your views regarding existing initiatives currently being taken in this area, namely by the Extractive Industries Transparency Initiative (EITI)?**

***Using company reporting requirements***

We feel that mechanisms that use company reporting requirements - through accounting and listing requirements - offer the greatest potential for creating a sea-change in transparency.

The results would not only provide vital information for all countries, including those whose leaders have been less progressive about improving their own internal transparency. They also have the potential to produce global, comparative information across companies and countries that would be useful in assessing trade flows and practices, reserves and production trends, country and company concentration.

To achieve these ends, company reporting requirements should include country- (and ideally project-specific reporting of the following types of information by each company:

- Reserve quantities
- Production volumes
- Production revenues
- Production and development costs
- Key subsidiaries and properties
- Payments to governments

At present, most reporting requirements allow companies to report information that is aggregated, for example by region or business line. But there is increasing pressure for this information to be presented on a country-specific basis for all countries of operation. Such reporting would benefit investors, companies and tax authorities in addition to citizens and parliaments, and would in turn foster improved governance and stability of supplies.<sup>7</sup>

In terms of mechanisms for establishing company reporting requirements, the most effective ones under consideration are international accounting standards and listing requirements.

**International Financial Reporting Standard (IFRS) for Extractive Activities (relates to section A1. above)**

Introducing country-by-country reporting through an International Financial Reporting Standard (IFRS) would be the most effective ways to increase transparency in the upstream extractive industries as they are applied automatically in more than 110 countries. All the EU members, South Africa, and Australia currently require companies to use the IFRSs. Other countries are on paths of 'convergence'. China is already "substantially converged". Other countries will require IFRS use soon - Brazil (December 2010); Canada (January 2011); India and Korea later in 2011; Mexico and Argentina in 2012. Other countries are on paths to convergence but the timeframe is not yet clear – these include the US, Japan, Indonesia and Russia<sup>8</sup>.

<sup>7</sup> For more information on how reporting requirements work to the advantage of these identified groups, please see Appendix I.

<sup>8</sup> For the full geographical coverage see <http://www.ifrs.org/Use+around+the+world/Use+around+the+world.htm>

Therefore, an IFRS appears the best mechanism for a truly global standard that would create a level playing field for companies operating in the extractive industries.

Also, this is the key time to address this mechanism since an IFRS for Extractive Activities is currently under development. A Discussion Paper was released in April 2010 and it contained a chapter considering country-by-country reporting.

As noted in the report on country-by-country reporting by the Task Force on Financial Integrity and Economic Development: "The European Parliament has already urged the International Accounting Standards Board to move beyond voluntary guidelines and support the development of an appropriate accounting standard requiring country-by-country reporting by extractive companies". (2009, p. 4). Further, the Commission has expressed its support for the "research work currently undertaken by the International Accounting Standards Board towards the possible inclusion of CBCR in an International Financial Reporting Standard for extractive industries."<sup>9</sup>

However, the Discussion Paper leaves room for improvement, including the lack of a commitment to require for disclosure of payments to governments, and in ensuring that data on all countries of operation are reported. Also, the IASB has yet to put the topic on its formal research agenda and has repeatedly delayed the timing for this decision.

**The EU should continue to express support for such an accounting standard, including requirements relating to all the information required, and oppose materiality thresholds that exclude reporting on any countries of operation. It should also use its position on the IASB's Monitoring Board to ensure more rapid progress in this essential area.**

**Listing requirements and the current review of the EC's Transparency Directive (relates to section A2 above)**

An alternative mechanism is to include reporting requirements in listing requirements for particular stock exchanges. Though an EU standard would have less international coverage than an IFRS, such a mechanism has the advantage that the requirement might be developed and implemented more rapidly than through the long process required for an IFRS and the Commission could regulate stock exchanges within the EU without the need for broader consensus.

Again, this is the perfect time for the EU to consider such an approach since the Transparency Directive, which outlines reporting requirements for companies listed on EU stock exchanges is currently being reviewed<sup>10</sup>.

---

<sup>9</sup> Ibid footnote 7

<sup>10</sup> [http://ec.europa.eu/internal\\_market/consultations/2010/transparency\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/transparency_en.htm)

We would like to draw your attention to historic legislation passed by the United States Congress on 15 July 2010 and signed into law by President Obama on 21 July 2010.

Provision 1504 (Disclosure of Payments by Resource Extraction Issuers) contained in the new Dodd-Frank Wall Street Reform and Consumer Protection Act (also known as the Financial Reform Bill) requires oil, gas and mining companies registered with the Securities and Exchange Commission (SEC) to publicly report how much they pay each government for access to their oil, gas and minerals<sup>11</sup>. This information must be presented annually on a country- and project-specific basis. It must be filed in an electronic format and the SEC must make this publicly available in a single on-line database.

This new listing requirement was passed because it is seen to be of value both to investors (in valuing companies and assessing risk) and to citizens in producing countries who will be able to use this information to improve the collection and use of revenues generated by natural resource extraction.

The US legislation has been supported by United Kingdom MP Chris Mullin (of the Labour Party), who introduced an early day motion in the UK Parliament urging the UK government to consider adopting legislation similar to the US legislation, requiring oil, gas and mining companies to fully disclose revenue payments to governments.<sup>12</sup>

It should be noted that this year the US Senate Foreign Relations Committee approved language in the Foreign Relations Act noting that “the President should work with foreign governments, including members of the Group of 8 and the Group of 20, to establish domestic requirements that companies under the jurisdiction of each government publicly disclose any payments made to a government relating to the commercial development of oil, natural gas, and minerals.”<sup>13</sup> Further to this, President Obama has recently emphasized his intention to make the US listing requirements a “global standard,” noting in a July press release that “the United States is committed to working with other countries to ensure the implementation of similar disclosure requirements in other financial markets and will make this a priority in the year ahead.”<sup>14</sup>

The Hong Kong stock exchange had already updated its stock listing rules in June 2010 to require new applicant oil, gas and mining companies to disclose “payments made to host-country governments”<sup>15</sup>

**We therefore urge the EU to use the opportunity of the review of the Transparency Directive to ensure greater transparency in extractive reporting, and support the global trend towards country- and project-specific reporting.**

---

<sup>11</sup> See [http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp1111&sid=cp111G9Nkr&refer=&r\\_n=hr517.111&item=&&sel=TOC\\_2843491&](http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp1111&sid=cp111G9Nkr&refer=&r_n=hr517.111&item=&&sel=TOC_2843491&)

<sup>12</sup> <http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=40521&SESSION=903>

<sup>13</sup> S. 2971, Foreign Relations Authorization Act, SEC. 408. (See the Sense of Congress relating to transparency for extractive industries.)

<sup>14</sup> <http://www.whitehouse.gov/the-press-office/statement-press-secretary-transparency-energy-sector>

<sup>15</sup> [http://www.hkex.com.hk/eng/rulesreg/listrules/mbrulesup/Documents/mb96\\_miner.pdf](http://www.hkex.com.hk/eng/rulesreg/listrules/mbrulesup/Documents/mb96_miner.pdf)

**Dialogue through the G20 to create global reporting requirements – current opportunities created by recent US developments (relates to section A3 above)**

It is clear that the G20 is supplanting the G7/8 as a forum for negotiating new rules for the global economy. We urge European Union to play a key role in working with the G20, which includes the most important minerals producing and consuming countries.

The Commission should urge the G20 to take up resource governance and try to reach agreement on international norms of transparency, environmental and human rights protection in the exploitation of extractive resources.

**The progress on reporting requirements for companies provides a clear entry point for global policy and practice that would create a huge improvement in transparency. In addition, the EU should encourage the G20 to endorse the Natural Resource Charter and EITI and to work toward an international commitment to good resource governance.**

International agreement on common principles for natural resource governance would create a level-playing field among producers and consumers of raw material that would prevent a destructive race to the bottom for accessing natural resources. France's Chair of the G-20 in 2011 offers a unique opportunity for the European Union to take a leading role in universalizing standards for natural resource governance.

**Transparency requirements for EIB investments (section A4 above)**

The Commission's support of good governance in developing resource-rich economies will be critical to its success in ensuring a sustainable supply of raw materials, for reasons already detailed here. In terms of practical EU actions for improving governance in producing countries, our recommendations are based on the conviction that transparency is an essential building block for good governance and accountability. Investments and development projects, for instance, offer an opportunity for the Commission to promote greater transparency (and impact governance) in raw materials markets through the addition of transparency requirements to investments made by the European Investment Bank (EIB). Revenue Watch recommends that **improved transparency requirements be built into lending and export credit provisions to companies and governments, to encourage:**

- **The disclosure of extractive contracts**

Consensus is emerging on the need to ensure extractive **contracts** are made public to build trust and accountability for revenues. IFIs have publicly expressed their support for contract disclosure. The IMF's Guide on Resource Revenue Transparency (June 2005) states that good practice requires that all signed contracts are publicly disclosed. Rashad Kaldany of the World Bank's International Finance Corporation (IFC) said that there is "no justification for secrecy... [as] all of these [extractive industry investment] agreements will be made public in [the] future"<sup>16</sup> Both the Extractives Industry Review (EIR) and the Canadian Round

<sup>16</sup> *The Economist*, "The Curse of Oil: the paradox of plenty." December, 2005

Tables recommended contract disclosure. Such an approach has been additionally supported by a recent joint study between Revenue Watch and Columbia University, which found that arguments for the need to protect confidential business information over concerns of commercial disadvantages are largely unjustified, with no strong defenders and few well-articulated defenses of contract secrecy, despite its pervasiveness.<sup>17</sup>

Requirements for contract transparency can be built into lending, aid and export credit conditions to companies and host governments through EU policy as follows:

- All EIB-supported extractive industry projects should disclose all contracts, principal and secondary, related to the EI operation to which the government is a party, including, *inter alia*: between host governments and companies (e.g. Host Government Agreements, Production Sharing Agreements, Power Purchasing Agreements, Concession Agreements) and between governments (e.g. Inter-Governmental Agreements.)

- In addition, all EIB-supported extractive industry projects should disclose all contracts and agreements affecting the ultimate payments made to governments, such as those involved in pricing methods of the companies and formulas that change government payments based on changes in commodity prices, project costs, or other factors.

- For any information that is removed from an EI contract, the client or government must provide a clear reason for confidentiality and the merits for confidentiality must be shown to outweigh the importance to the public. Key contract terms and clauses that may not be kept confidential because of their public importance include, *inter alia*: royalty rates, tax rates, tax exemptions, commodity based payment/purchase requirements, signing bonuses, pipeline/transit tariff structures, guidelines for the operation of special funds, social development requirements, revenue distribution requirements, power purchase requirements, stabilization clauses<sup>18</sup> (e.g. on taxation, environmental, social, labor rights regulations, etc.), economic equilibrium clauses, and dispute resolution mechanisms (e.g. international arbitration).

- **Disclosure of payments made to governments, along with other essential extractive project information**

---

<sup>17</sup> This report further notes that trade secrets are not typically in contracts and commercially sensitive information is a very vague term. It finds that little evidence exists to suggest that companies actually remove anything from such agreements even when they have the option, and that within the industry, supposedly confidential contracts are bought and sold, analyzed, and even ranked. See: Rosenblum, Peter and Susan Maples. *Contracts Confidential: Ending Secret Deals in the Extractive Industries*. Revenue Watch Institute, New York. July, 2009.

<sup>18</sup> We note the important findings of the March 2008, "Stabilization Clauses and Human Rights" project paper authored by Andrea Shemberg and conducted for the IFC and the United Nations Special Representative to the Secretary General on Business and Human Rights, which identifies significant concerns about the diverse impacts that stabilization clauses have in many countries. The report recommends that governments and investors publish contracts.

The EU and the EIB should establish guidelines for reporting on all common types of revenue payments arising from the extractive sector. This set of criteria would provide clear disclosure standards which should not vary or have to be negotiated on a project-by-project basis. This should include the following:

- All types of material project **payments** from extractive industry operations to the government must be disclosed, including, *inter alia*: royalty payments, taxes, profits/dividends, commodity-based payments, signing bonuses, pipeline/transit tariffs, dividends, acreage fees, rental fees, and social development funds.
- Revenue disclosure must be reported according to payments made to each level of government, e.g., federal government, regional/state government, and local municipalities.

But revenue information is even more meaningful if it can be judged against **other essential extractive financial information**, such as the scale of production and costs incurred. And there is growing international debate on the need to ensure that revenues are fairly distributed, and in particular, that taxes are paid appropriately in the locations where they are generated. At the project level, communities and local governments need to be able to access information on the revenue shares to which they are entitled. This is essential to support effective local planning and ensure good relations with local communities that protect a project's local 'license to operate'.

To ensure effective management and oversight, and to build trust with local communities and other stakeholders, we urge the EU and the EIB to develop **minimum reporting requirements** for the following in line with that sought from company reporting:

- Reserve quantities
- Production volumes
- Production revenues
- Production and development costs
- Key subsidiaries and properties
- Payments to governments

To be in line with the new US law on disclosure by extractive companies, requirements for reporting of revenues and other essential extractive project information should be as follows:

- For extractive projects receiving EU-support, revenue disclosure should be done on a project-level by key contractual parties.
- For extractive companies receiving support for operation in multiple locations, reporting should be published for each country of operation, i.e. payments to each government.
- For resource-rich countries receiving support, reporting should be done showing revenue receipts from each company at a minimum. More advantageous would be disclosure of revenue receipts from each extractive project.
- All reporting should be done on an annual basis, no more than 4 months after the end of the calendar or fiscal year.
- The information should be filed electronically and made available on the EIB's website.

**The Extractive Industries Transparency Initiative (EITI, relates to section A5 above)**

As stated in the first RMI Communication (2008), the Extractives Industry Transparency Initiative (EITI) is a global, voluntary framework through which extractive industries companies and governments disclose their reciprocal payments and receipts, which in turn they reconcile with the active involvement of local civil society. When EITI due process is followed appropriately, this results in data that is useful within the country to determine government receipts and any discrepancies with amounts paid by companies.

However, the process of EITI implementation in each country is as important as the information generated. EITI implementation requires the generation of a multi-stakeholder process that builds a mechanism for constructive dialogue and agreement. This is often a rarity in many producing country contexts and has great value if implemented with commitment by the parties involved. The EITI also reveals information on non-listed state resource companies.

To support this, Revenue Watch urges the EU to:

- support developing countries in the implementation of the EITI, especially new members
- encourage EU member states to implement the EITI to demonstrate that good standards are global standards.

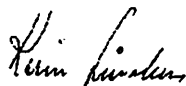
However, the EITI does not produce information that is fully comparable between countries and companies. Moreover, the revenue data collected under the auspices of the EITI is often aggregated to a degree that diminishes its value, especially to civil society and capital providers. Also, many governments whose countries could benefit from revenue transparency have declined to join the EITI, which after all remains a voluntary initiative.

Thus the EU should also support other international mandatory reporting approaches which complement the EITI.

***Question 13. Concerning the recent agreement between the European Commission and the African Union Commission, in your view, what concrete objectives, targets and deliverables should be included in such a partnership?***

Each of the recommended areas for action (A1-A5 and B1-B3) would provide concrete support to the commitments in the partnership agreement focused on 'Democratic Governance and Human Rights', specifically the objectives relating to local governance, anti-corruption, illicit trade in resources and the EITI.

Yours sincerely,



Karin Lissakers  
Director

Revenue Watch Institute

Deleted: ¶  
¶

## Appendix I

*How will country-by-country reporting of payments made by extractive companies benefit investors, companies, tax authorities, and citizens and parliaments?*

### **Investors**

Investors support the call for country-by-country reporting. For example, as Calvert recently stated:

“The extractive industries have unique exposure to material country-specific, tax/regulatory, and reputational risks. Exposure to these risks is heightened by the massive capital employed in the extractive industries, [and] the importance of natural resource access and management to the national security... Despite capital providers’ increasing demands for information that would enable a fuller assessment of these risks, current disclosure requirements are inadequate.”

Calvert goes on to say that country-by-country reporting requirements “would substantially improve investment decision making regarding the extractive industries sector.”<sup>19</sup>

Increasing the availability of such relevant information would therefore increase appropriate investment in developing extraction of raw materials. The recent financial crisis has highlighted the importance of increasing transparency and accountability for financial stability.

### **Companies**

Companies can build trust in their operations by demonstrating the financial contributions they are making in host countries, nationally and locally. With a global reporting standard requiring all companies to report key comparative information, those operating to good standards would be highlighted, leveling the playing field against those operating less scrupulously

The British-Australian mining company Rio Tinto published its total tax and royalty payments to each of 13 countries where these payments totaled USD \$10 million or more in its 2008 annual CSR report<sup>20</sup>. In 2009 the number of specific country disclosures had increased to 18 out of 29 countries where the company had operations. The disclosure practice of London based Anglo- American is similar to that of Rio Tinto. In its 2008 CSR report it published its total tax contribution to 10 countries.

As one of the largest producers of gold in the World, US based Newmont publishes its royalties and tax payments to the governments in each country of operation. Furthermore, even before its passage in the US Congress, Newmont expressed strong support of the US legislation which will now require publication of payments to governments by all companies regulated by the SEC, noting that “by introducing greater transparency into the process, [it]

---

<sup>19</sup> “Materiality of disclosure required by the Energy Security through Transparency Act,” Calvert, May 2010

<sup>20</sup> <http://www.publishwhatyoupay.org/en/resources/rio-tinto-takes-step-towards-transparency-publishing-payments-governments>

believe[d] this legislation [would] help promote increased accountability, which is in everyone's best interests."<sup>21</sup>

#### **Tax Authorities**

On April 21<sup>st</sup>, 2010, the European Commission issued a Communication on Tax and Development<sup>22</sup>, "to present concrete actions that could be taken to better promote the principles of good governance in the tax area (transparency, exchange of information and fair tax competition), both within the European Union and towards third countries. The general objective is to improve tax cooperation and tackle tax evasion and avoidance on as broad a geographical basis as possible." This development reflects increasing awareness of the critical importance of domestic resource mobilization to sustainable development and poverty reduction in poor countries. The Communication expressed support for continuing work to develop country-by-country reporting requirements for multi-national companies. Such information would help tax authorities assess and collect the taxes owed.

#### **Citizens and parliaments**

The movement for effective oversight of extractive activities and revenues has continued to develop strongly. Non-governmental watchdog organizations are becoming more skilled and active, reflected in the continued growth of the international 'Publish What You Pay' coalition. Parliaments too are putting laws, contracts and budgets under greater scrutiny. Country-specific information from companies will assist them to play this effective oversight role; support for such activities by these actors is also a recommendation of the Communication on Tax and Development. Showing the contributions companies make will help build support for the local 'license to operate' of extraction.

---

<sup>21</sup> <http://www.revenuewatch.org/news/092309.php>

<sup>22</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – Tax and Development: Cooperating with Developing Countries on Promoting Good Governance on Tax Matters". Brussels 21.4.2010. COM(2010)163 FINAL

## Appendix 2

Detailed information disclosure requirements.

### **1. Benefit streams to government:**

The significant components of the total benefit streams to government and its agencies should be disclosed. At a minimum, this would include separate disclosure of:

- royalties and taxes paid in cash
- royalties and taxes paid in kind (measured in cash equivalents)
- dividends
- bonuses
- license and concession fees.

### **2. Reserves:**

Reserves volumes (and valuation measures if consensus on means of valuation can be reached.)

### **3. Production volumes:**

Production volumes for the current reporting period should be disclosed.

### **4. Production revenues:**

Revenues from production should be disclosed, with separate disclosure of production revenue attributable to:

- sales to external customers
- transfers to downstream operations

### **5. Costs:**

The following costs should be disclosed:

- production costs
- development costs.

### **6. Key subsidiaries and properties:**

The names and locations of each key subsidiary and property should be disclosed.