Research Insight

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Commodity trading transactions with producing country governments: corporate transparency still rare

The transaction point in extractive value chains where corruption risks are often highest is when trading companies deal directly with governments. Yet these interactions are still largely opaque. Recent research by RMF shows that very few of the companies making these trades disclose data about the payments they make. And disclosure is even more rare on data related to other direct transactions between trading companies and governments, in the form of resource-backed loans or swap agreements. Normalisation of the public disclosure of commodity trading transactions is critically important to support financial integrity and good governance of extractive resources.

The issues

Companies buying extractive commodities (metals, minerals, oil and gas) from governments or state-owned enterprises play a major role in maintaining financial flows for resource-rich producing countries. Sales of metals, minerals, oil and gas are a major source of revenue for many national economies, accounting for more than 50% of export earnings in a wide range of commodity-dependent countries.[1] Such trades are of strong public interest not only because of their contribution to government coffers but also because of the risks involved – bribery, corruption, fraud and related issues.[2]

Yet recent research by RMF shows that very few of the companies making these trades publicly disclose data on these payments to governments, national oil companies (NOCs) or other state-owned enterprises (SOEs). And the RMF study found even weaker public disclosure related to resource-backed loan or swap agreements between the trading companies and governments or SOEs.

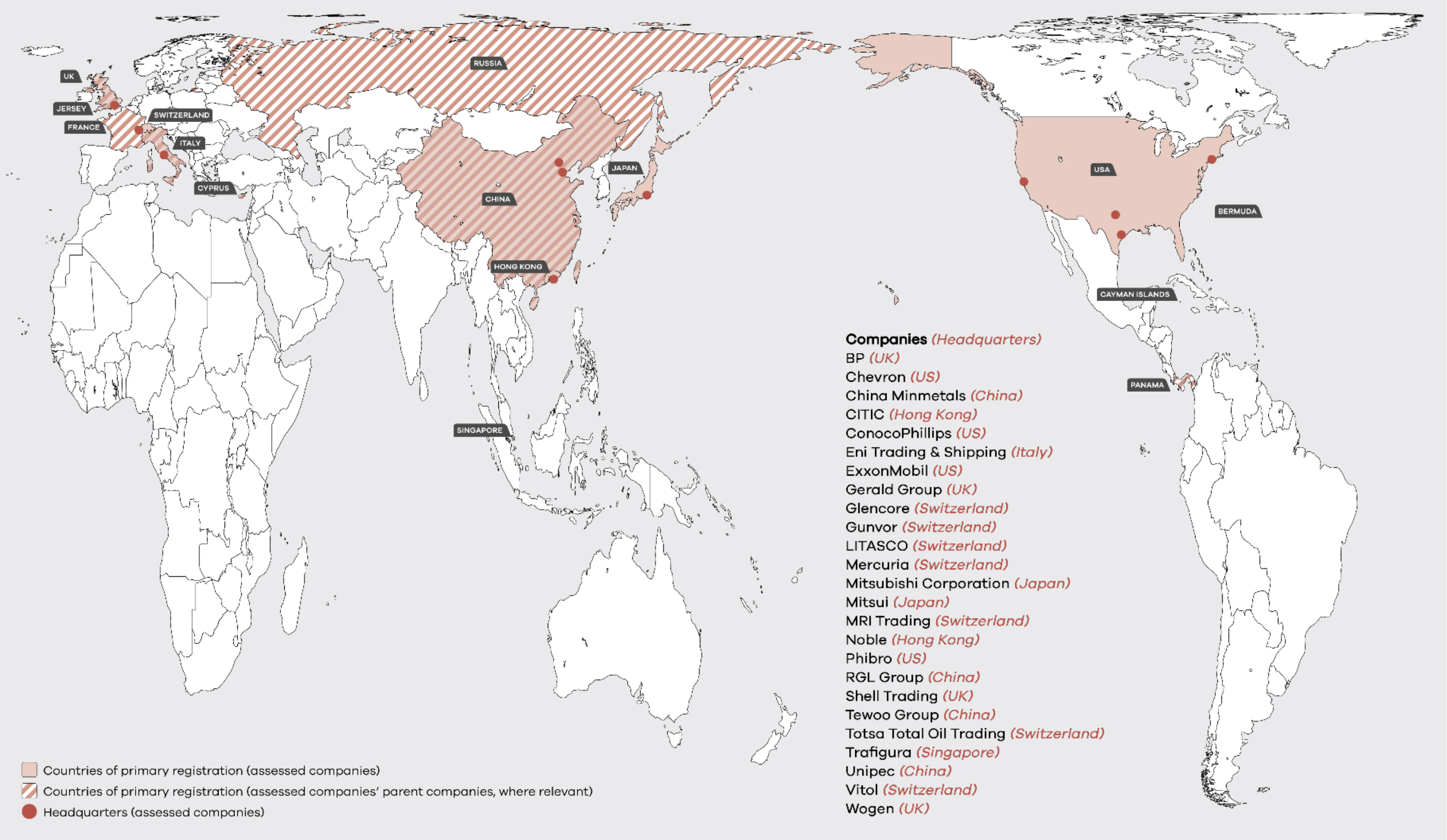
The opacity, and the importance of transparency, around these types of payment and debt financing has been repeatedly highlighted by OECD, UNCTAD, IMF, EITI, NRGI, and others.[3] In the case of EITI, the principles of governance transparency have been clearly articulated and codified in the EITI standard over the last few years.

The assessment

RMF recently published the first independent assessment of companies trading in extractive commodities on issues of ESG due diligence and transparency. The 25 companies assessed in the study include not only traditional trading companies but also integrated companies and international oil companies, all of which trade significant volumes of third-party products as well as marketing their own production. The study covers publicly-listed and privately-held companies as well as state-owned enterprises (SOEs), headquartered in a range of home countries (see Figure 1).

The study levels the playing field between these diverse companies by assessing them all against a common benchmark – a benchmark built upon international standards and norms[4] yet set at a relatively low level for this pilot edition. A key aim of the study is to encourage stronger implementation of existing guidance, and on the issue of payments transparency the study was designed to align with EITI's recent reporting guidelines for companies buying commodities from governments.

Figure 1 **Geographic and company scope of the study**



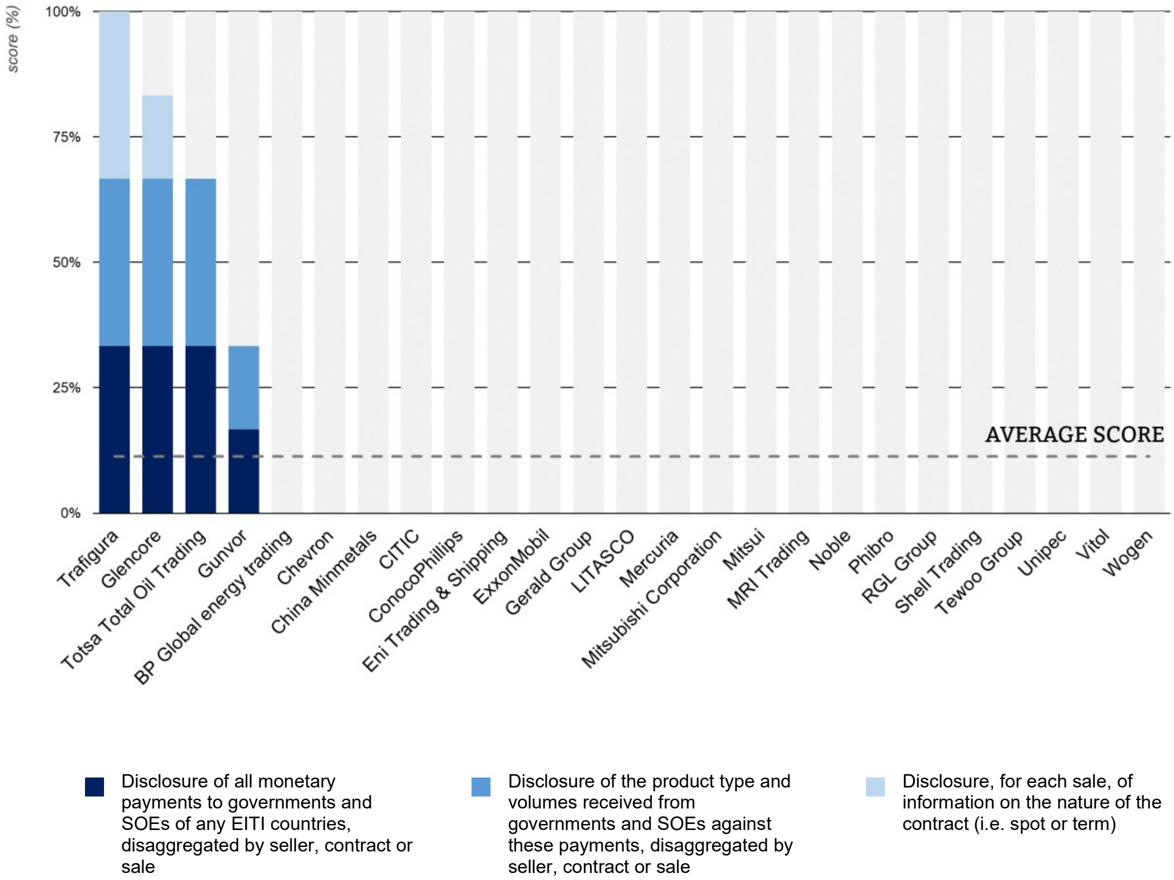
Very few companies disclose first trade payments

Encouragingly, some of the disclosing companies refer to the EITI reporting guidelines that were published last year with the aim to ensure the consistent disclosure of payments data for both EITI and non-EITI countries.[5]

All companies, whether operating in EITI or non-EITI countries, can use these guidelines to start reporting on this issue. All countries, whether producing countries or home countries of the companies involved, can enable good governance of the sector by enacting legislation to support such disclosures and expand the effective implementation of these principles to encompass the 90% of global oil trading that takes place outside EITI countries.[6]

However, despite the importance of 'first trade' transactions – when governments (or state-owned enterprises) sell their extractive resources to trading companies – the vast majority of companies in the study do not disclose what they pay for these purchases.

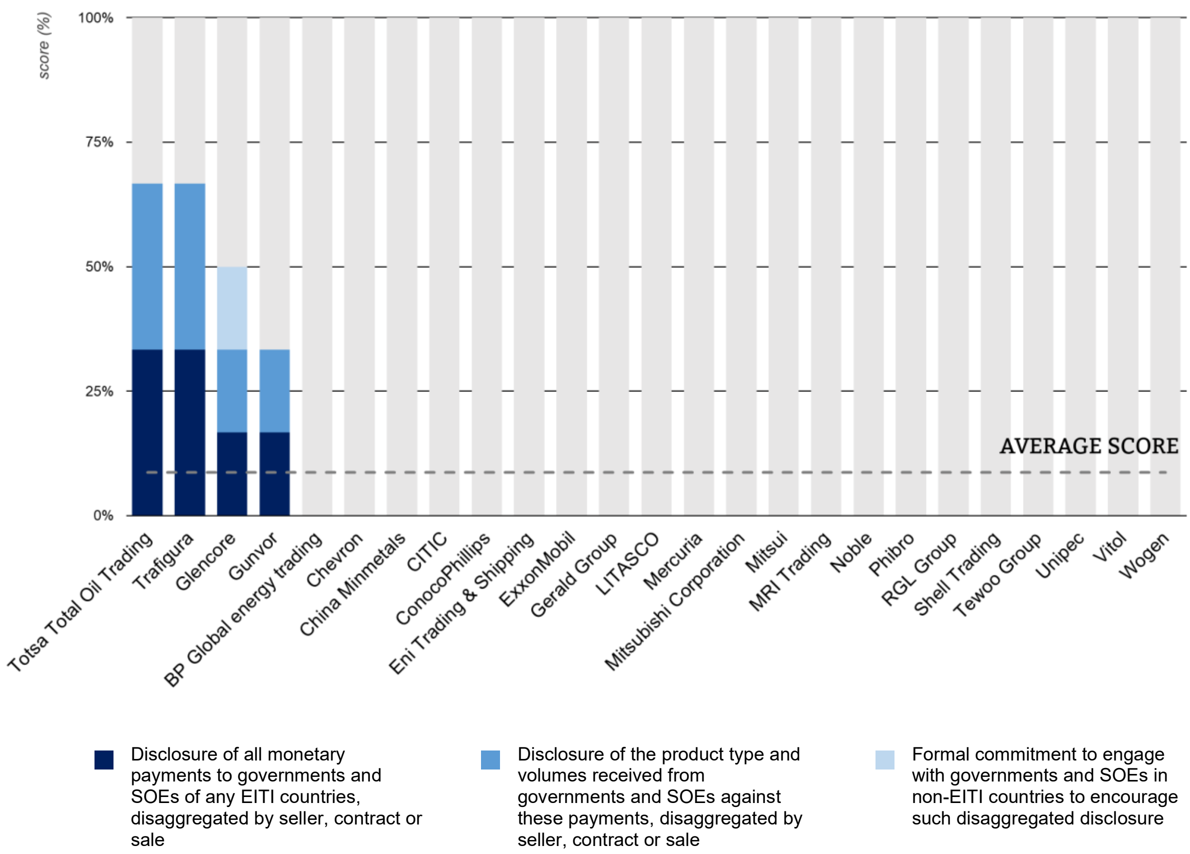
Figure 2 **Public disclosure of 'first trade' payments in EITI countries**
(Results from the RMF study - C.02.1)



Indeed when the study was published in March this year, only three of the 25 companies (Trafigura, Glencore and Gunvor) had disclosed any data on these payments. A fourth company (Totsa Total Oil Trading) released data a few weeks later. The EITI Standard requires EITI-implementing countries to make this publication mandatory, specifying that the data should be disaggregated by seller, contract or sale.

Moreover, public information was only found for these same four companies, whether in EITI or non-EITI countries. (see Figures 2 and 3).

Figure 3 **Public disclosure of 'first trade' payments in non-EITI countries**
(Results from the RMF study - C.02.2)



Resource-backed loans and swap agreements: disclosures even rarer

Resource-backed loan and swap agreements with trading companies are becoming increasingly used by producing countries to obtain financing in situations where more risk-averse lending institutions may be unwilling to provide it.

However, such arrangements have come under scrutiny due to the risks they can entail for the countries concerned, including over-indebtedness, commercial conflict of interest, and economic and political destabilization.

The study found that only two of the 25 companies (Trafigura and Glencore) publicly disclose information on these transactions.[7] And these rare disclosures relate only to arrangements with EITI countries. No company discloses any information on swap or resource-backed loan agreements with non-EITI countries.

Voluntary expectations show little impact on disclosure levels

The contribution of all stakeholders to the EITI in codifying good practice through the EITI Standard is invaluable in the context of the integrity of the international financial system and the economies and wellbeing of peoples of producing countries. However, the unequal application of requirements and expectations between implementing countries and supporting companies limits its overall impact.

On the one hand, the EITI Standard sets clear *requirements* on EITI implementing countries and SOEs to disclose the payments and financing they receive from trading companies. On the other hand, the EITI Standard simply *encourages* all companies buying oil, gas and/or minerals from EITI implementing countries to disclose details of these trades and agreements.

Companies can also become official 'supporters' of the EITI, on an individual basis. For those companies that have signed up as EITI supporting companies, the EITI Standard includes only non-binding '*expectations*', including an expectation that they disclose the payments they make to governments both in EITI countries and globally.[8]

The study results show that this non-binding expectation has had limited impact to date. While the four companies disclosing payments data are all EITI supporting companies, the other six EITI supporting companies included in the study have made no such disclosures. And while the EITI Standard and reporting guidelines cover disclosure of resource-backed loan and swap agreements, only two of the ten EITI supporting companies in the study disclose data on these transactions.[9]

Where transparency expectations on companies remain non-binding and compliance remains unmonitored (whether within EITI, industry associations, trade associations or multilateral institutions), there is a real risk that some companies will use these affiliations merely for reputational benefit and to publicly claim their support for transparency without taking action themselves.

Normalising transparency of commodity transactions

The political context of efforts to increase transparency in the extractive industries is critically important.[10] Other research by RMF has repeatedly shown that where countries enact binding requirements through legislation or regulation, companies respond better to the issues at hand. This is the case for example on disclosure of certain payments to governments by extractive companies, disclosures that have been made mandatory through legislation in several home countries (Canada, the UK and the EU among others). In the same way, the normalisation of good governance of extractive commodities can be enhanced by the enactment of national regulation and legislation by producing and home countries (whether or not they are subject to EITI implementation requirements). It is notable that Switzerland's payments to governments law adopted in 2020 contains a clause which would allow the Federal Council to apply the transparency provisions to commodity trading transactions as part of an international process.

In the meantime, companies that enter into financial transactions with producing country governments or SOEs can show leadership by strengthening their public disclosure related to payments, or resource-backed loan or swap agreements as well as other issues covered by the EITI Standard (disclosure of taxes, beneficial ownership), regardless of the jurisdiction where they take place.

In the absence of mandatory disclosure requirements, contractual constraints to full transparency of transactions data may exist in some countries, companies can at the very least make formal commitments to engage with governments of these countries to encourage stronger disclosure of this public interest information.

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[1] UNCTAD, 2019. State of Commodity Dependence 2019 [link]

[2] See EITI, 2019. Transparency in the first trade [link]

[3] See NRGI, 2021. Disclosures Pave the Way for Transparency in Resource-backed Loans [link]; Mihalyi, D., Adam, A. and Hwang, J., 2020. Resource-backed Loans: Potential and Pitfalls. NRGI [link]; OECD, 2016. Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives [link]; EITI, 2020. Resource-backed loans: Sustainable debt or pending threat? [link]; UNCTAD, 2020. Greater transparency in commodity markets [link]; and IMF, 2019. IMF Fiscal Transparency Code, pillar IV [link].

[4] Including for example the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [link], the EITI Reporting Guidelines for Companies Buying Oil, Gas and Minerals from Governments [link]; , the Swiss government's Guidance for the Commodity Trading Sector on Implementing the UN Guiding Principles on Business and Human Rights [link], and the Responsible Sourcing Programme of the London Bullion Market Association [link].

[5] EITI, 2020. Reporting guidelines for companies buying oil, gas and minerals from governments [link].

[6] NRGI, 2019. Big Sellers: Exploring the Scale and Risk of National Oil Company Sales [link]

[7] Two companies, Eni Trading & Shipping and MRI Trading confirmed that they have not established any agreements of this nature.

[8] The EITI Expectations state that where companies choose not to disclose in non-EITI countries, they should state why.

[9] With Eni Trading & Shipping, an EITI supporting company, confirming that it has not established agreements of this type.

[10] CCSI, 2021. Transparency in the Extractive Industries: Getting serious about politics to get serious about impact. Plus Politics Brief [link]

Responsible Mining Foundation

The Responsible Mining Foundation (RMF) is an independent research organisation that encourages continuous improvement in responsible extractives across the industry by developing tools and frameworks, sharing public-interest data and enabling informed and constructive engagement between extractive companies and other stakeholders.

As an independent foundation, RMF does not accept funding or other contributions from the extractives sector. www.responsibleminingfoundation.org

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