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Commodities and the Extractive Sector

Can transparency foster prosperity, progress and development in the EU and Switzerland?

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Key messages

The priority for resource-rich developing countries is to transform their extractive resources into prosperity, progress and development.

Commodity trading plays a key role in the supply chain. The role of traders and that of their home-countries, are crucial in fostering progress and development in resource-rich countries.

There is broad consensus about the importance of increased transparency and better regulations for better development outcomes.

Yet there is no common understanding among different stakeholders of what is *necessary, realistic and implementable*.

1. Background

The extractive sector is the mainstay of many developing countries. It has, and will continue to play a significant role in the development of resource-dependent economies. If managed well, including in terms of transparency and revenue administration, the extractive sector can be a strong vector of growth, providing significant opportunities for countries to transform and diversify their economies. However, if poorly managed, gas, oil and minerals can lead to the *paradox of plenty* or *resource curse*, which is a situation where resource-abundant countries experience less economic growth and lower development outcomes due to a decline in the competitiveness of other economic sectors, volatility of natural resource revenues, government mismanagement of resources and/or bad institutions.

In recent years, thanks to the increased global demand, notably from China and other emerging markets, and high commodity prices, many resource-dependent - mainly African - countries have experienced unprecedentedly high growth rates. The challenge now is to leverage this high growth to make it truly transformative and inclusive, with long-term benefits for human and economic development.

Regulatory and fiscal reforms, as well as trade and industrial policies, conducted at the national and regional level, for the transformation of economies from their commodity dependency are indispensable to reap the benefits of the current boom. At the same time, countries and citizens need to ensure that they get a *fair share* of the revenues derived from their resources. This necessitates, as a first step, to operate in a transparent and well-governed global environment. It also requires a regulatory setting that is realistic and

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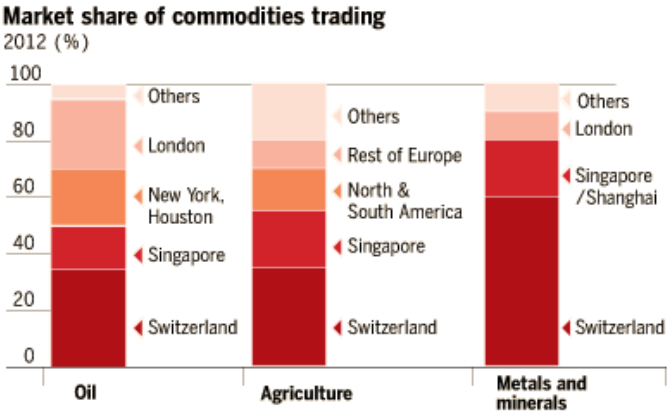
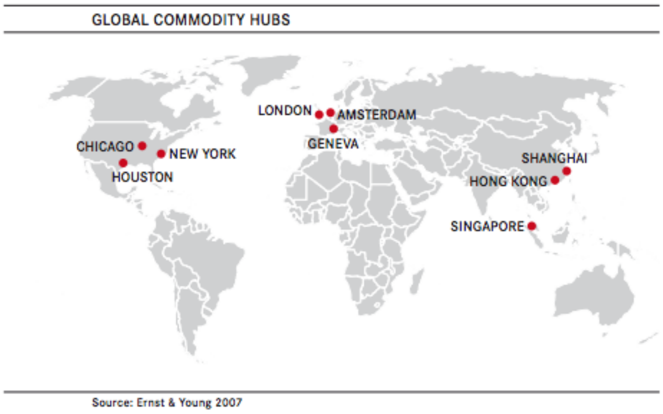
implementable by all stakeholders – governments, extractive industries, financial institutions and commodity traders. Today, there is a consensus about the importance of increased transparency and better regulations for better development outcomes. But there is yet to be a common understanding of what is *necessary, realistic and implementable* among different stakeholders.

2. Shared responsibility

Commodity trading houses are a relatively small club of companies that trade physical commodities from producers to retailers and consumers around the world. They play a pivotal role in the supply chain. They are estimated to be worth over a trillion dollars of annual revenue and to control more than half of the world's traded commodities.[2] The top five accounted for some US$629 billion in revenue in 2010. In the oil sector, Switzerland holds 35% of the commodity trading market share, while London holds 25%, Houston/New York 10% and Singapore 15%. In the Metals and Mining sector, Switzerland is the major commodity hub, with 65% of the market, while Singapore controls 20% and London 10% respectively.



Source: Financial Times, 26.03.2013



Source: Berne Declaration, 2011

Given the nature of the extractive sector, the responsibility of making it work for development is a shared one. ***Resource-dependent countries*** are primarily responsible for the efficient management of their resources and the revenues derived from them. However, ***home countries of extractive industries*** have an equally critical role to play in global governance to ensure that their companies operate in an ethical and transparent manner. This is not only crucial for resource-dependent countries, but also good for their own businesses because transparency can foster a regulatory level-playing field and prevent reputational risks.

Besides extractive industries, physical ***commodity traders*** have an equally important role to take on, as do ***their home countries*** or countries where they are registered. They are both significant players in the global commodity market structure. A recent study showed that the amounts paid by Swiss traders to the ten largest Sub saharan African oil-producing countries amounted to at least US$ 55 billion in the last three years, a sum equivalent to twice the amount of foreign aid flows to these countries, and 28-times the amount of Swiss aid to the continent[3]. Yet, they are still not fully part of the global transparency debate despite their growing importance in the commodity value chain in the last decade. Their role is likely to grow: for instance, they are expected to become more important players as banks retreat from commodity trading as a result of stricter regulations, capital constraints and lower profitability due to stable prices for commodities[4]. Furthermore, in recent years, many trading houses have extended their scope and reach while expanding control of supply chains as they acquire downstream assets in producing, logistics and storage facilities (Deloitte, 2013).

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[2] http://www.reuters.com/article/2011/10/28/us-commodities-houses-idUSTRE79R4S320111028

[3] Gilles, A, M. Guéniat & L. Kummer (2014). Big spenders: Swiss trading companies, African oil and the risk of opacity. Study prepared by Berne Declaration, Swissaid and Natural Resource Governance Institute.

[4] See Financial Times March 31, 2014: Banks' retreat empowers commodity trading houses. Neil Hume, Commodities Editor.

It is therefore timely to discuss the role of the extractive sector and commodity trading in development, and in particular to what extend transparency and regulatory reforms can foster prosperity, progress and development in resource-dependent developing countries, in particular in Africa.

3. Key challenges for developing countries

The priority for resource-rich developing countries is to transform their extractive resources into prosperity, progress and development. But many have been trapped in poverty, poor human development and rising inequality. Changing this dire state of affairs requires creating economic linkages between the extractive sector and the rest of the economy, being able to develop a thriving industrial sector capable of absorbing the bulging youth population, creating productive employment, and diversifying the economy away from commodity dependence.

To tap the full potential from resource revenues, greater transparency can significantly enhance available capital by means of good taxation, efficient government spending and sound overall fiscal management. While resource-rich countries need to take full responsibility for their transformative agenda, without coordinated efforts from countries, where multinational extractive industries and commodity trading houses are domiciled, these countries will not be able to harness the full potential of their resources. In this regard, it is crucial to get companies on board in the debate. Mandatory regulations are a big leap in the transparency debate, which can play an effective role. In addition, corporate self-regulation and private sector initiatives should be encouraged, to stimulate business (innovative) solutions, ownership and responsibility. Engaging in constructive dialogue, combining private and civil society initiatives, appropriate incentives and mandatory regulation might helpfully contribute to enhance transparency and governance.

The key challenge is therefore to foster public debate that serves the interests of all those that are crucial to advance the agenda of development: resource-rich countries, countries where companies are domiciled and the corporate sector itself. The debate must be able to bring the balance between economic interests and development objectives, and needs to come up with actionable outcomes that will be implemented. Resource-rich but otherwise poor countries must transform now because resources are extracted only once and as the global demand for commodities is set to continue to rise, so will the challenges if not addressed. Global leaders have a role to play to remain on the cutting edge of competitiveness as new players catch up to gain market shares and it is therefore in their interest to act collectively by finding synergies, despite their different approaches.

4. The international community – fields of action

4.1. Transparency initiatives: A necessary condition

Although not the only solution to address all the challenges facing countries plagued by the resource curse, transparency is an important pre-condition to shed some light on revenues derived from the extractive sector. Increased transparency, when it comes to contracts, revenue collection, revenue management and government spending, can indeed significantly contribute to reducing inequality, by raising public awareness on important aspects of resource (mis)management, through the entire supply chain from exploitation conditions down to distribution of rents. Transparency therefore matters because it has the potential to hold to account (i) the government, who is the custodian of resources and the manager of rents from the resources on behalf of the people; and (ii) extractive industries and traders, to whom the state has delegated the authorisation to turn resources into economic benefits. In the quest of transparency it should be kept in mind however that increasing transparency rules and regulations entail some cost - for the industry and developing countries, such as administrative costs for governments, and compliance costs for companies. Issues of confidentiality may also arise. Transparency initiatives, including regulatory measures, should thus trive to be cost effective (e.g. avoiding unnecessary burden and duplication), to maximise the net benefit they seek to achieve.

It is important to distinguish between **two perspectives** of looking at transparency, which have different implications for accountability: **(i) a country's administrative transparency**; and **(ii) corporate transparency**. A *country's administrative transparency* with regard to resource management allows citizens to hold their governments accountable and reveal possible corruption cases on contract allocation, revenues received, production shares received, expenditure and rent distribution etc. Similarly important is *corporate transparency of businesses* (including trading houses) and multinational corporations (MNCs), so that governments themselves are able to hold private sector actors accountable for practices, such as profit shifting, transfer pricing, trade mispricing and illicit financial flows (UNECA 2013). In the context of these international financial transactions, practices used to evade and avoid taxes play an important role. Such practices are often seen, also in developing countries, as being connected with a business model frequently used by MNCs, which is designed to ensure that profits become subject to taxation in places where tax rates are particularly low or non-existent, notably through transfer pricing practices. According to various studies, companies notably involved also in the commodities industry have a strong tendency to make use of this practice (World Bank 2012).[5]

At the international level, there are already a number of debates and initiatives aimed at the promotion of transparency and accountability in the extractive industries to increase the development impact in resource-rich countries. For instance, the Extractive Industry Transparency Initiative (EITI) requests companies in compliant countries to disclose taxes and other payments made to government in the oil, gas and mining sectors. At the end of 2013, the scope was extended to cover production figures, licensing ownership and revenue allocation made by governments once revenue is collected. Another supported initiative is the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.[6] The European Union (EU) decided to additionally strengthen this guidance by introducing new measures not long ago. The US has respectively passed legislations[7] to request companies listed in their stock markets to disclose payments made to governments in foreign countries. In the EU, the new Accounting Directives and the revised Transparency Directive (both adopted in 2013) introduce a new obligation for listed, large non-listed and public interest entities with activities in the extractive industry and the logging of primary forests to report the payments they make to governments. Both legislations are yet to be implemented, due to different reasons.

At the level of the OECD, Action 13 of the Action Plan on Base Erosion and Profit Shifting[8] (BEPS) requires governments to increase transparency by stemming tax evasion activities. With this action, MNCs will also be required to report on a country-by-country level by providing all relevant governments with needed information on their global allocation of income, economic activity and taxes paid among countries. This is expected to help tax authorities to identify malpractices. Table 1 gives an overview of the regulatory approaches.

Except for the US legislation that potentially covers exporting companies, provided they are listed in the US, most multilateral initiatives so far cover mainly activities of extractive industries. In this respect, ***trading*** activities remain largely outside the scope of the current legal frameworks and trading companies remain therefore largely unaccountable and have no obligations to disclose their financial accounts or their payments to governments with whom they deal. This is quite important in particular in the oil sector: in addition to receiving payments from extractive industries (in the form of taxes, royalties etc.), many resource-dependent countries also receive in-kind proceeds in the form of barrels of oil due to their production sharing agreements. In this regard, they deal directly with commodity traders which therefore remains largely uncovered by the current home states regulatory frameworks while the host states are starting to close the gap under the EITI framework for state-owned oil sales and revenues collected in-kind (Rule 4.1.c).

5 Containing a number of analyses on the subject. The study also provides a detailed explanation of the practice of transfer pricing.
6 http://www.oecd.org/corporate/mne/mining.htm
7 Section 1504 of the US Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.
8 http://www.oecd.org/ctp/BEPSActionPlan.pdf

Table 1: Overview of regulatory initiatives

Initiatives	Scope	Expected impact on extractive sector	Impact on commodity trading
Regulatory framework for host countries:			
The Extractive Industries Transparency Initiative (EITI)	Joining the EITI is voluntary but once countries join, implementation of standards becomes mandatory. Objective: Obligation to full disclosure of taxes and other payments made by oil, gas and mining companies to governments.	By disclosing this information, the countries' citizens are able to hold their governments accountable for their revenue management. Scope has been extended in 2013 to include production figures, licensing ownership, disclosure by state owned companies, revenue allocation into state, local and other accounts etc. Publication of contracts is encouraged.	The revised standard requires the publication of states sales to commodity traders[9]. However, it does not cover refiners' sales to commodity traders. The new rules also do not cover non-oil commodity trading.
Regulatory framework for home countries			
Section 1504 of US **Dodd Frank Wall Street Reform and Consumer Protection Act (2010)**	Requires US listed "resource extractive issuers" to disclose taxes, royalties and other payments made to the US and foreign governments.	With a US$100,000 threshold for reporting payments in the most recent fiscal year, the world's leading oil, gas and mining MNCs and extractive companies from the BRICS listed in the US are obliged to disclose their payments.	"Resource extraction issuers" include companies involved in exports of oil, natural gas and minerals. The Securities and Exchange Commission (SEC) clarified that these could include companies engaged only in exports. **Commodity traders listed in the US technically therefore fall under the purview the Act.**
The **EU Transparency and Accounting directives (2012)**	Requires the disclosure of payments to governments on a *country and project* basis by listed and large non-listed companies with activities in the extractive industry.	It is designed to actively increase revenue transparency and foster better governance in the extractive sector.	The EU regulations **do not include trading activities**.
Canada is expected to pass similar legislations to the US and EU ones respectively by June 2015			
France plans to transpose the EU directive by January 2015; Italy, Germany, Sweden, Denmark and Finland have announced similar initiatives			
Norway passed its legislation in January 2014.			

[9] An IMF study of 2012 reported that 80% of world petroleum reserves are controlled by state companies and that 15 out of 20 largest oil companies are state owned.

Other initiatives to improve transparency			
OECD's Action Plan on Base Erosion and Profit Shifting (BEPS)[10]	Increased transparency by stemming tax evasion activities, so that e.g. countries with great natural resource abundance are able to collect their revenues and decrease illicit flows.	The Action Plan comprises 15 actions equipping governments with domestic and international instruments needed to address tax avoidance.	Does not specifically apply to commodity trading activities.
G20	Fully endorsed the OECD Action Plan on BEPS in their meetings in St. Petersburg in September 2013 and delivery is due 24 months later.	The G20 endorsement for the first time brings non-OECD and G20 countries together on tax matters, hinting at the increased commitment to enhance transparency and fight illegal tax fraud.	Does not specifically apply to commodity trading activities
G8 countries under UK presidency in 2013	Pushed for the promotion of greater transparency and tax compliance	The Lough Erne Declaration, despite failing to signal any binding commitment, calls for information exchange, mandatory disclosure of information to the public, and the duty and information provision to help developing countries collect taxes owed to them	Does not apply to commodity trading activities

On the ***financial*** side[11] however, their activities are covered by the current financial regulations, all strengthened since the financial debacle of 2008. Table 2 shows the key financial regulations affecting commodity companies.

[10] In terms of the international changes that are underway, the most relevant is probably that of country-by-country reporting by MNEs. The OECD is in the process of finalising a reporting template for all MNEs to report to tax authorities where they operate – see here for latest draft and details of the consultation process: http://www.oecd.org/ctp/transfer-pricing/public-consultation-transfer-pricing-documentation.htm

The relevance here is that this type of reporting will provide a simple 'red flag' system to allow identification of the most egregious misalignments between profit and the location of actual economic activity (this is the focus, and language, of the OECD's Base Erosion and Profit Shifting initiative) – which in turn can help tax authorities to allocate scarce resources to explore or challenge the underlying transfer prices, on e.g. copper.

At the moment the OECD template would provide data privately to tax authorities, in contrast to the original proposal for the information to be public. One (very welcome) possibility would be for Switzerland to take a lead in making this information public to obtain the benefits of 'many eyes' checking, and to support the accountability of tax authorities and governments to their citizens, as well as of MNEs to tax authorities.

[11] As commodity traders move to integrated business models, to include "shadow banking activities", in the form of lending (i.e. pre-payment transactions as firms pay cash upfront for commodity delivery on-time) and securitisation (sales from commodities feed into special purpose vehicles which issue bonds to investors), they have become under increasing scrutiny of policy makers and financial supervisors. The main reason is that there are fears that mega-companies, that are too big to fail, might potentially be a source of systemic risk. A potential collapse would have ripple effects on the global market and cause serious disruptions in commodity markets in which commodity trading companies play a market-making role.

Table 2: Key regulations affecting commodity companies

Regulation	Main regulatory changes	Impact on commodity traders
Basel III (worldwide) ▪ Scope: bank companies ▪ Full effect: 2018 ▪ Transition: from 2013	**Deleveraging of banks' balance sheets given new requirements** ▪ Maximum leverage ratio ▪ Minimum target capital ▪ Minimum liquidity ratio ▪ Credit-valuation adjustments	**Tightening access to financing as banks lower trade-finance exposures** ▪ Less availability of letters of credits, especially for higher-risk counterparties ▪ Difficulty to raise syndicated loans ▪ Higher costs across all trade-finance products
Dodd-Frank Act (US) ▪ Scope: "swap dealers" ▪ In effect from: July 2010[1] **EMIR[2] (EU)** ▪ Scope: all derivative trading[3] ▪ In effect from: 2013 **MiFID II[4] (EU)** ▪ Scope: systemic financial institutions[5] ▪ In effect from: 2014/15 earliest	**Stronger regulation of over-the-counter derivatives** ▪ Central clearing and reporting ▪ Capital and margin requirements ▪ Reporting to central trade repository ▪ Daily mark-to-market/collateral needs ▪ Trading on organized trading venues ▪ Position limits ▪ More regulatory oversight/intervention	**Increasing complexity and cost intensity of trading operating model** ▪ Systems and processes upgrades given new reporting requirements ▪ Increased working-capital needs (clearing fees, margin, collateral) ▪ Compliance upgrades (tracking trading thresholds, position limits, etc.)
Volcker Rule (US) ▪ Scope: banks, financial institutions ▪ In effect from: July 2010 ▪ Implementation from: Q4/2012[1]	**Limits to banks' trading activities** ▪ Ban of proprietary trading (financial, physical) ▪ Potential limits to banks' ownership/ control of physical trading assets (eg, storage)	**Changes to competitive set as banks exit/spin off commodity trading** ▪ Less market making, less hedging tools (further rising trade-finance costs) ▪ Banks to spin off commodity-trading units, potentially sell physical assets ▪ New opportunities for traders in paper trading, physical assets, M&A

1 Implementation from: Q4/2012 (further clarifications to rule likely after 2012 presidential election).
2 European Market Infrastructure Regulation.
3 Exemption: central clearing not required for trading by "nonfinancial" firms for hedging purposes or other trades below a certain clearing threshold.
4 The Markets in Financial Instruments Directive II.
5 Exemptions: commodity traders if trading is an "ancillary" business and dealing on own account and not a subsidiary of a financial group.

Source: Ascher, J. et al. (2012).

4.2. Voluntary initiatives and corporate social responsibility

The role that ***companies*** can play in development has gained in prominence, not only at the local level where they have a decisive economic role through investment and employment creation, but increasingly in international debates where they are solicited to make ethics part of their core business. There is a growing recognition that as the extractive sector becomes more sophisticated and vertically integrated, new approaches and standards, inclusive of private actor, are needed.

A number of voluntary codes and mechanisms already exist globally, many of them focusing on working conditions and human rights. Although laudable initiatives are generally seen to have a positive effect, research (Newitt, 2013) suggests that it is difficult to measure the long-term impact of these standards on working conditions. Similarly, in the extractive sector a number of voluntary initiatives have emerged as important tools to address issues, such as the environment, the prevention of corruption, due diligence to prevent the use of conflict minerals, social and ethical issues. These initiatives are recognised and acknowledged as bringing forward a broad sense of corporate responsibility, in particular when companies operate in difficult contexts (such as in fragile states or countries with weak institutions).

Although not solely applicable to the extractive sector and commodity trading business, corporate social responsibility (CSR) is increasingly becoming a ***core business*** element. Ethical corporate conduct is seen by some companies as crucial to gain a social license to operate, through positive (or preventing negative) business impacts on its employees, consumers, communities and society as a whole. Many companies have stepped up efforts to enhance corporate self-regulation as an integral part of their business models to ensure active compliance with laws, ethical standards and international norms. In the extractive sector, businesses are discussing ways to contribute to more inclusive development by creating ***shared value***. This goes beyond CSR and is a new way of doing business by reconceiving the intersection between society and corporate performance.

The conclusions of recent research[12] to assess the impact of CSR in Europe have however been disappointing. It did not bring out any convincing evidence of the role CSR played so far in Europe and doubted its effectiveness in developing countries (Sogge, 2013). While this conclusion does not deny the importance of CSR as a principle, it does call for a more realistic assessment of the types of initiatives, standards and norms that are being developed, and how far they will meet the stated development objectives, if those can be measured at all. In the commodities trading sector, such attempts to involve the industry need to be tailor-made to the reality of the sector, since trading businesses generally do not have a physical presence in resource-rich countries.

4.3. Addressing illicit financial flows

A number of studies (OECD 2013; AfDB et al. 2013) converged to acknowledge the magnitude of illegal and illicit financial flows[13] that scourge development prospects in developing countries, including resource-dependent poor countries. The OECD estimated that IFFs accounted for US$850-1,000 million per year as a result of tax evasion and other trade malpractices. As highlighted by the 2012 African Economic Outlook (OECD), if these flows had been invested productively in Sub Saharan Africa, the region as a whole would have probably been in a position to meet its Millennium Development Goals (MDGs) by 2016, as poverty rates would have fallen by 4-5% annually.

The share of illicit capital flows attributed to extractive industries and commodity trading is however difficult to quantify with exactitude. But, the sheer size of missing flows to developing countries suffices to highlight the importance of addressing this challenge through international cooperation and action in an attempt to curb this plight.

IFFs illustrate a number of fundamental challenges for developing countries:

1. As they are stepping up efforts to mobilise domestic resources, revenue forgone due to IFFs to some extent increases the fiscal burden on a local population that is often poor or has limited capacity to pay;
2. The complacency of certain countries, that are active in attracting investments and bank deposits, render developing countries powerless to act on their own, if they have the capacity to act in the first place. They are often equally losing tax revenue on a large scale;
3. It represents a challenge for development policy: IFFs often end up in banks hosted by the same countries that provide financial development aid. Worse, illicit financial outflows often far outweigh aid inflows in those countries.

The OECD has taken the lead to develop guidelines[14] to address transfer pricing for multinationals and tax administration. At its last meeting held in Mexico in April 2014, the Global Partnership for Effective Development Co-operation further underscored the need for effective partnerships for effective taxation and domestic resource mobilisation for development. It recognises the decisive need for political will on all sides, to come to grips with the challenges of IFFs, the dual responsibility for both developed and developing countries to combat this scourge and the need for a paradigm shift in development cooperation in order to bring coherence between rhetoric and actions. Among the ten principles to enhance international engagement to support developing countries in revenue matters, the importance of a "whole government" approach to maximise policy coherence and aid effectiveness is particularly highlighted.

Addressing the loopholes and contradictions in the current system therefore requires bold political decisions. The issue is no doubt complex and opinions among the international community differ. Nonetheless, it will deserve taking firm positions on identifying and imposing sanctions on IFFs, where necessary; tackling abuses of tax havens; being more systematic in information exchange, in particular when there are serious suspicions of IFFs; criminalising corruption and money laundering practices; and strengthening legal mechanisms to restitute stolen assets.

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12 http://csr-impact.eu/documents/documents-detail.html?documentid=22

13 The OECD's definition of the term *illicit financial flows* includes (a) abusive transfer pricing between subsidiaries of the same group for the purposes of tax avoidance (b) tax evasion and (c) manipulative trade mispricing. Further classifications are (d) money laundering and (e) bribery. The term covers financial transactions by companies as well as by private individuals. Source https://www.eda.admin.ch/content/dam/deza/en/documents/Publikationen/Briefing-Papers/20140401-DP-BRIEF-Unlautere-und-illegale-Finanzfluesse_EN.pdf

14 http://www.oecd.org/ctp/transfer-pricing/transfer-pricing-guidelines.htm

In addition, to close the loop, it requires bringing corporation to the debate. Again, there is no agreement yet as to the optimal balance and synergy between strengthening mandatory regulations and self-regulatory measures for MNCs; and to what extent there is a political will to ask them to disclose their accounting information about sales location and profits.

5. Building on synergies and differences in European and Swiss approach

Although approaches differ, the European Union and the Federal Council of Switzerland have taken an active role in addressing challenges pertaining to governance and transparency in the extractive sector. While Switzerland has focused mainly on commodity trading activities, essentially due to the strategic importance of the sector for its economy, the EU has, for its part, mainly led initiatives regarding extractive industries.

The European approach combines a series of regulatory and voluntary measures in various fields of actions, regulations on transparency and accountability require extractive companies listed on EU stock markets as well as large unlisted industries to publish what they pay to resource-rich countries' governments on a project and country level. While ***not applicable to the trading business***, this is a laudable initiative because it will allow public scrutiny to follow the money. European countries, members of G8 and G20 have for their part taken on commitments regarding transparency in tax matters and illicit capital flows, although binding commitments are yet to follow. But these remain insufficient, in particular because ***trading*** activities remain outside the scope of EU regulatory frameworks, although an attempt was made in 2011 to recognise the importance of physical markets in a Communication on Tackling the Challenges in Commodity Markets and Raw Materials.[15] However, recent financial regulations may also have a bearing on trading activities in the extractive sector; for example, the European Market Infrastructure Regulation (EMIR) will increase transparency in derivative trading, including the trade in commodity derivatives in keeping with the international standards by the G20 and the Financial Stability Board (FSB).

In 2013, the Swiss authorities published a background report on commodities (Swiss Government 2013) to examine the issue of commodity trading. The report emphasised the importance of the sector for the Swiss economy and highlighted the related possible challenges for development. The report made a series of recommendations to reduce risks and address potential negative side effects the sector could have in developing countries. Subsequently, in March 2014, the Swiss government prepared a report[16] on the status of the implementation of the recommendations particularly highlighting legislative and voluntary efforts made so far, not only regarding the trading aspect, but also in the financial aspect of the sector. According to Recommendation 8 of the background report, the Swiss authorities recommend examining "*the consequences of a potential introduction of transparency requirements – similar to those of the USA and the EU – for the Swiss commodity sector"* and that *"Switzerland should, moreover, advocate internationally a global standard that foresees transparency requirements that are clearly understandable and as similar as possible for all companies active in the extraction of resources*."

There is a general policy debate about the merits of industry self-regulatory approach as opposed to a mandatory institutional approach in an attempt to provide a balanced and nuanced framework that takes into account the competitiveness of the trading industry, while remaining coherent with development objectives. At the same time, a concerted effort is required among the leading trading hubs: while one leader may set the benchmark for high standards, it is important to have coordinated efforts to avoid losing a competitive edge over those that have a light-touch approach towards regulations.

Leading commodity trading hubs, such as those present in the EU and in Switzerland, but also globally, need to engage in constructive dialogues while seeking synergies and complementarity among their different approaches. Failure to do so might pose reputational risks both for their industries and for the countries where companies are domiciled. More importantly, it will antagonise their efforts and actions in support of developing countries with respect to development, human rights, social and environmental standards.

15 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0025:FIN:en:PDF
16 http://www.news.admin.ch/NSBSubscriber/message/attachments/34217.pdf

6. Way forward

In an effort to move the debate forward, a number of key questions need to be thoroughly addressed while ensuring coherence and complementary among them.

C**oncerted efforts are necessary in developing countries to strengthen transparency, accountability and governance structures at national and at regional levels.** While development partners have their own priorities in supporting developing countries, all countries must be prepared to align themselves to already existing initiatives. They must also be prepared to work together to avoid duplication and to foster complementary support.

Europe is a major location for such commodity trading activities (see diagram p.2), However, it faces fierce competition from other business hubs outside Europe, which have increased their share of the market[17]. Mindful of such competition, some countries may be reluctant to engage in or support regulatory reforms, for fear of driving businesses out, and still not succeed in addressing the challenge at hand. While there is insufficient evidence of the general trend of companies moving away from Europe because of regulatory issues, much will depend on the countries' continued ability to remain attractive, including in creating a sustainable and competitive legal, economic, and political environment for conducting business[18]. It is therefore important to maintain a balance between regulatory and voluntary efforts in a way that companies continue to operate in a business friendly environment without having to comprise on their responsibility in resource-rich countries where they operate.

In this regard, the Swiss government proceeded to a comprehensive policy review, and based on that, presented a proposal to the Parliament. One of the main areas of focus is to address the transparency gap in the commodity trading sector, in addition to the gaps related to payments to governments and state-owned enterprises in the oil sector. As mentioned in a recent policy document19, Switzerland is contemplating to launch a multilateral initiative to implement transparency rules together with other countries, whose industries are present in the extractive sector, and could promote this issue on the agenda of regional organisations and engage in close cooperation with countries hosting Swiss companies.

A pragmatic approach would therefore seem to be to form a small group of like-minded, pioneering countries and to move forward in a coordinated manner, towards a levelled playing field. It seems clear that a global approach is most desirable and it is important that all efforts target as much the corporate dimension (i.e. the activities of commodity trading businesses) as they address state responsibilities (i.e. responsibilities of states that are home to resources and home to headquarters of extractive industries).

[17] See http://www.news.admin.ch/NSBSubscriber/message/attachments/30136.pdf
[18] See http://www.news.admin.ch/NSBSubscriber/message/attachments/30136.pdf
[19] "Il est aussi envisageable que la Suisse lance une initiative multilatérale pour mettre en œuvre des règles sur la transparence avec d'autres Etats dont les entreprises sont fortement représentées dans le secteur des matières premières. Elle pourrait par exemple mettre cette thématique à l'agenda d'organisations régionales ou envisager une collaboration plus étroite avec les Etats où siègent des entreprises suisses." See Swiss Government (2014a, p. 16), http://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2014/2014-06-25/ber-f.pdf

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