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UNITED KINGDOM

COMPARING UK EITI AND MANDATORY PAYMENTS TO GOVERNMENTS DATA FOR 2016: ASSESSMENT REPORT

A comparative study of *UK EITI Report for 2016* payment data and mandatory 2016 data for extractive companies' payments to the UK government disclosed under UK and other EU member state regulations implementing the EU Accounting and Transparency Directives.

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Miles Litvinoff (mlitvinoff@pwypuk.org), Publish What You Pay UK

EXECUTIVE SUMMARY

PWYP UK has made a comparative study of UK EITI 2016 data and 2016 payments to UK government entities published by oil, gas and mining (extractive) companies under the UK Reports on Payments to Governments Regulations and equivalent regulations in other EU member states. The study explores the degree of consistency between disclosed company payments to the UK government under the two reporting regimes.[1,2]

The assessment was made to understand better how the EITI and mandatory reporting may complement each other in practice, to explore a sample of extractives data in greater depth, and to contribute to discussions about "mainstreaming" or "systematic disclosure" in the EITI.[3]

Of 58 extractive companies reporting under the UK EITI on 2016, 29 had by September 2018 also published a UK or other EU mandatory payments report for the same or an overlapping period. Of these 29 companies, data published by 16 showed only a minor variance (< 10%) between the two sets of total reported payments to the UK government. The remaining 13 companies showed 10% or larger variances, which were investigated further. Variances were both positive (UK EITI payments greater than mandatory UK payments disclosed) and negative (UK EITI payments less than mandatory UK payments), ranging in magnitude from less than 12% to more than 9,000%.

Several obvious potential reasons for variances were considered and partly eliminated at an early stage. PWYP UK then contacted the 13 companies with 10%-or-over data variances – in several cases via the industry body Oil & Gas UK – to request clarification of these differences. In the event, differences of scope between the two regimes determining how some main payment types were reported have proved significant, although the nature of such differences varies considerably

[1] 2016 was the latest year for which UK EITI data were available in September 2018.
[2] The UK Reports on Payments to Governments Regulations 2014 are available at http://www.legislation.gov.uk/uksi/2014/3209/contents/made. For explanation of the UK and EU mandatory reporting requirements, see http://www.publishwhatyoupay.org/wp-content/uploads/2017/11/PWYP-UK-fact-sheet-UK-regulations-rules-for-reports-on-payments-to-governments-EU-Directives-updated-October-2016-1.pdf and http://www.publishwhatyoupay.org/wp-content/uploads/2014/09/PWYP-fact-sheet-on-EU-Accounting-and-Transparency-Directives.pdf
[3] https://eiti.org/systematic-disclosure

between companies. Company responses to PWYP UK's email inquiries have confirmed that the main factor is differential inclusion and exclusion of subcategories of payments within the overall payment types, especially taxes. In addition, inclusion of subsidiary companies in UK EITI reporting that were not included, or that disclosed separately or for less than 12 months, in mandatory reporting, is a significant factor.

Careful analysis and dialogue with companies were needed to fully understand the disclosure variances. The extent to which such issues arise in other countries that implement the EITI, and where operating companies also report payments under mandatory disclosure rules (either in the UK, other EU member states, Canada or Norway), remains to be seen.

None of the above, however, should detract from the benefits of both EITI and mandatory payments to governments reporting for stakeholders and oversight actors such as citizens of resource-rich countries, civil society more broadly, parliamentarians, journalists and investors. While the EU mandatory reporting requirements were designed to – and do – complement the EITI, data users need to be aware of the potential for significant variances and likely causes.

ACKNOWLEDGEMENTS

PWYP UK would like to thank the companies that responded helpfully to requests for clarification, Oil & Gas UK,[4] Quentin Parrinello of Oxfam France and PCQVP France, and Mike Earp of the UK Oil and Gas Authority for helpful comments on an earlier draft. Any errors are those of PWYP UK alone. It is hoped that all stakeholders – in government, industry and civil society – will find the study useful.

STUDY AIMS

- To understand better how the EITI and mandatory reporting regulations complement each other in the UK context.
- To explore a sample of extractives data in greater depth.
- To check the consistency of company disclosures under the two transparency regimes and address questions arising from cross-checked data.
- To contribute to discussions about "mainstreaming" or "systematic disclosure" in the EITI.[5]

METHODLOGY AND INITIAL FINDINGS

PWYP UK accessed the *UK EITI Report for 2016* PDF and online data,[6] together with UK-reporting companies' 2016 mandatory data on payments to the UK government, published mainly at

[4] https://oilandgasuk.co.uk/

[5] As reported on GOXI: "The UK EITI is due to begin a study to assess the usability and comparability of the publication of company payments under the EU Transparency and Accountability Directive[s]. If the data submitted under the Directive[s] are consistent, then they could be used as a lighter and more timely mechanism for collecting company data on payments to government – a more systematic disclosure mechanism: "UK oil and gas – negative government revenue but rosy future", June 2018, http://extractiveindustries.ning.com/profiles/blogs/uk-oil-and-gas-negative-government-revenue-but-rosy-future?xg_source=msg_mes_network

[6] https://www.gov.uk/government/publications/extractive-industries-transparency-initiative-payments-report-2016

https://extractives.companieshouse.gov.uk (UK-incorporated companies reporting to the UK Registrar, Companies House) and at http://www.morningstar.co.uk/uk/NSM (UK-listed companies reporting to the UK Listing Authority, the Financial Conduct Authority), or in two cases mandatory reports published under other EU member state equivalent law.[7]

PWYP UK compiled a comparative database to identify variances between the two sets of data.[8]

Company coverage

- Number of companies reporting under the UK EITI on payments made in 2016: 58 (41 oil & gas, 17 mining & quarrying).[9]
- Companies eliminated from the UK EITI vs mandatory data comparison because they had not by September 2018 published a mandatory report under the UK or equivalent EU regulations: 29 (13 oil & gas, 16 mining & quarrying). Companies are not required to report under the UK Regulations or EU Directives if during the year in question they were not "large" or publicly listed on a regulated stock exchange, or if they made no payments above the disclosure threshold (£86,000 / €100,000).[10]
- The initial survey sample therefore comprised the remaining 29 companies reporting under the UK EITI on 2016 that had also published a mandatory payments report for 2016 (28 oil & gas, 1 mining & quarrying).[11]

Negative payments (repayments)

Oil & gas companies' many negative tax payments – i.e. government tax repayments to these companies – recorded in the UK EITI 2016 data range in total size per company from £299,000 to £183.38 million. The *UK EITI Report for 2016* states: "Although 2016 saw higher production and lower expenditure, profitability was lower and, overall, there was a net repayment of tax to oil and gas companies … [This] reflects the low level of oil (and gas) prices and companies' varying exposure across their portfolios to the four main phases of upstream activity … some [companies] received significant repayments of tax paid in previous years."[12]

These tax repayments explain why total payments to the UK government by all UK EITI 2016 disclosing oil & gas companies were £464.7 million negative, and total payments by all in-scope

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[7] The mandatory report by Maersk North Sea Oil Ltd for 2016 was published as part of A.P. Moller Maersk's consolidated report on payments to governments at https://goo.gl/k8t9S3 under Danish law. The mandatory report by Total E&P UK Ltd for 2016 was published as part of Total Group's registration document including its report on payments to governments at https://goo.gl/Dzdt2b under French law.

[8] https://goo.gl/tngiWX

[9] Two UK EITI 2016 reporting companies, Ithaca Energy UK Ltd and Total E&P UK Ltd, own two other UK EITI reporting companies, Ithaca SPL Ltd (formerly Summit Petroleum Ltd) and Maersk Oil North Sea UK Ltd, respectively: http://www.ithacaenergy.com/media/news/acquisition-completion; https://www.total.com/en/media/news/press-releases/total-acquires-maersk-oil-for-7-45-billion-dollars-in-share-and-debt-transaction. In 2016 Maersk Oil North Sea UK Ltd was part of A.P. Moller Maersk.

[10] For explanation, see http://www.publishwhatyoupay.org/wp-content/uploads/2017/11/PWYP-UK-fact-sheet-UK-regulations-rules-for-reports-on-payments-to-governments-EU-Directives-updated-October-2016-1.pdf and http://www.publishwhatyoupay.org/wp-content/uploads/2014/09/PWYP-fact-sheet-on-EU-Accounting-and-Transparency-Directives.pdf

[11] Oil & gas companies Ithaca Energy UK Ltd and Ithaca SPL Ltd disclosed 2016 payments in a consolidated mandatory report. Aggregate Industries was the only mining & quarrying company in the initial survey sample. BHP Billiton, although known globally for mining & quarrying, operates in the UK North Sea as an oil & gas company.

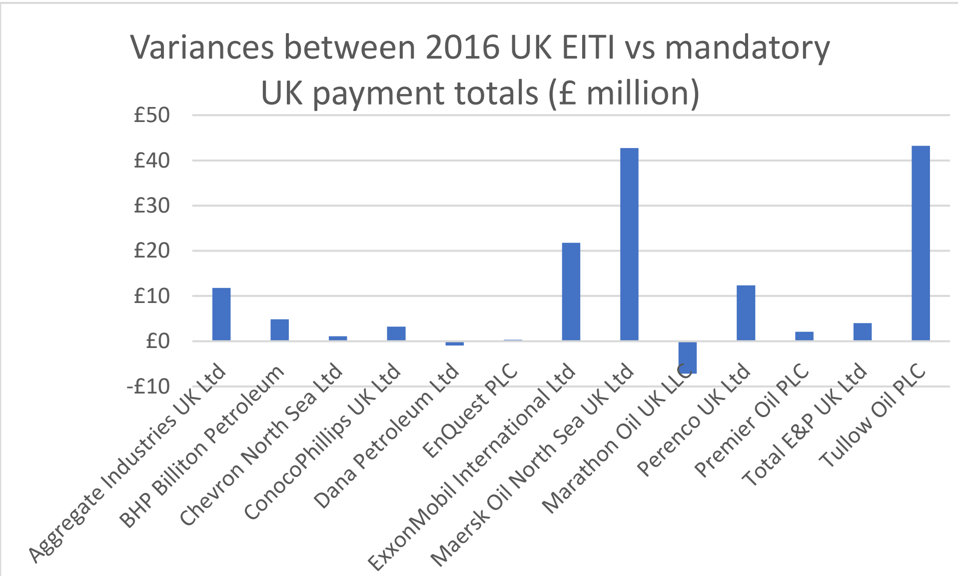
[12] *UK EITI Report for 2016*, https://www.gov.uk/government/publications/extractive-industries-transparency-initiative-payments-report-2016, pp. 10-11, 18.

extractive companies, including mining & quarrying, were £409.8 million negative.[13]

DATA VARIANCES[14]

- Of the 29 companies reporting on 2016 via both the UK EITI and a mandatory report, 16 (all oil & gas)[15] showed a variance of less than +/-10% between total UK payments as disclosed under the UK EITI vs under mandatory reporting.[16]
- +/-10% is the threshold at which this study considers a variance significant. Data disclosed by the above 16 companies was therefore excluded from further analysis.
- The remaining 13 companies (12 oil & gas, 1 mining & quarrying) reporting via both the UK EITI and the UK or other EU member state regulations showed a variance of +/-10% or more between total 2016 UK government payments disclosed under the two regimes. Their reported payments were analysed more closely.
- Of these latter 13 companies, in most cases the mandatory payment total was larger than the UK EITI total, giving a positive variance in £ million in Figure 1; in two cases the UK EITI total was larger, giving a negative variance:

Figure 1



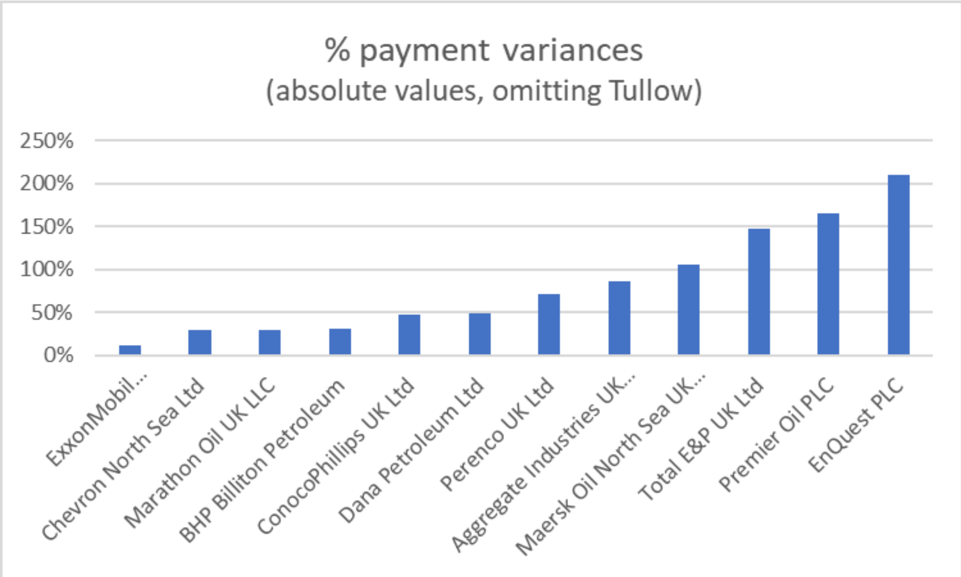
Notes to Figure 1:

i. Variances range from less than £1 million to more than £40 million.
ii. BHP Billiton's variance derives from total UK payments made in its fiscal year July 2015 to June 2016. Using BHP's next fiscal year, July 2016 to June 2017, would result in a larger variance of £26.9 million.
iii. ConocoPhillips's UK mandatory data is aggregated from two company reports under the UK Regulations: ConocoPhillips (UK) Limited and ConocoPhillips Petroleum Company UK Limited.
iv. ExxonMobil's UK mandatory data is disclosed under the name Esso Exploration and Production UK Limited.

[13] *UK EITI Report for 2016*, reconciliation table 2.12, pp. 78-9; table 2, p. 11, and table 3, p. 12.
[14] Base data available at https://goo.gl/tngiWX
[15] Including Ithaca Energy UK Ltd and Ithaca SPL Ltd when their separate UK EITI disclosures are combined for comparison with the consolidated mandatory report.
[16] Variance % calculated with the formula: "(mandatory report total minus UK EITI report total) / UK EITI report total".

- Percentage variances, both positive and negative, for the 13 companies range in magnitude upwards from around 12%. Tullow (over 9,000%) is the outlier, excluded from Figure 2:

Figure 2



Note to Figure 2:

i. Tullow, excluded here because inclusion would distort the scale, shows a variance of 9,084%. Tullow's UK EITI 2016 total disclosed payments = -£476,000; UK mandatory total payments = £42,763,000. The company has explained the variance in considerable detail: see "Company clarifications and explanations" below.

Considering obvious reasons for variances

As OpenOil showed in a pilot comparison of 2014 EITI and mandatory (and voluntary equivalent) payment data,[17] it is important to check obvious potential reasons for variances, such as: EITI and mandatory reports covering different fiscal years/reporting periods; reports using different currencies or exchange rates; reports including different main payment types ("revenue streams") or otherwise disclosing on different bases. Because both regimes require cash-based reporting, cash- vs accruals-based reporting does not arise as a factor.

<u>Fiscal year</u>

All 13 companies reported to the UK EITI on calendar year January to December 2016. However, BHP Billiton's financial statements and mandatory payment reports are based on a fiscal year from July to June. BHP's July 2015 to June 2016 mandatory report, which overlaps with the first half of the UK EITI 2016 year, was used for comparison; its mandatory report on July 2016 to June 2017 would have shown a larger variance (169%). As the company's response to PWYP UK's request for clarification shows (see below), the timing difference is the main factor in BHP's data variance.

<u>Currency and exchange rate</u>

All UK EITI 2016 payments and receipts have been calculated in GBP (£). Several 2016 mandatory reports use USD, Euros or Swiss Francs (CHF), which PWYP UK has converted to GBP at a published exchange rate current at the close of the reporting period. Dialogue with companies has identified cases where differences in exchange rate help explain variances (see below); companies tend to use an average exchange rate for the year, whereas PWYP UK applied an end-of-year rate.

[17] http://openoil.net/2016/04/14/how-do-mandatory-disclosures-relate-to/

Payment types (revenue streams) and differences in scope

Payment types reported under the UK EITI are intended to match those required under UK and EU mandatory reporting,[18] and the EU 2013 Directives in turn were intended to match the EITI concerning payment types.[19] UK EITI payment types comprise: income, production and profit taxes; royalties; fees; and infrastructure payments.[20] The other EITI and mandatory payment types – bonuses, production entitlements and dividends – are absent from the UK domestic extractives fiscal regime.[21]

Although no differences in main payment types appear to explain variances between UK EITI and mandatory 2016 data, two relevant aspects of payment type scope are noted in the *UK EITI Report*. First, for oil & gas companies, "mainstream corporation tax paid … is not related to their UK extractive activities and is therefore out of scope of the UK EITI so should not be reported" – unless, "if the company/group has not [disaggregated its Ring Fence Corporation Tax (RFCT) and Supplementary Charge (SC)] payments as distinct from its mainstream CT payments under the group payment arrangement … then they are to report the total [corporation tax] payment made in the period".[22] In most cases, therefore, UK EITI reconciliation of corporation tax is limited to Ring Fence Corporation Tax (RFCT) and Supplementary Charge (SC) only.[23] By contrast, mainstream corporation tax payments relating to upstream (extractive) activities overseas are fully within the scope of UK and EU mandatory reporting.[24]

Second, the interest element of tax payments and repayments is included in UK EITI disclosures[25] but is not a stated requirement in the payment types listed in the UK Regulations or EU Directive. Several companies in the survey state that they have excluded interest payments/repayments from their mandatory reporting.

Third, at least one company excluded negative payments (repayments) from its mandatory report while including these, as required, in its UK EITI report.

On these and similar points, see the "Company clarifications and explanations" section, which follows.

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[18] The UK EITI Multi-Stakeholder Group (MSG) agreed "to shadow the Reports on Payments to Governments Regulations 2014 where practicable. These regulations implement the 2013 EU Accounting Directive" – *UK EITI Report for 2016*, p. 71.

[19] The Accounting Directive requires mandatory reporting to "include types of payments comparable to those disclosed by an undertaking participating in the Extractive Industries Transparency Initiative" – http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0034, recital 44 and article 41 (5) (definition of payment types).

[20] For a company-by-company comparison of main payments types included and excluded, see Appendix 1.

[21] Minor issues arise regarding the UK EITI's 2016 definition and inclusion of payment types: (i) Oil & gas company payments to the Crown Estate (TCE) were not disaggregated between fees (marine licence fees, onshore lease payments, rents) and royalties, despite this being required by the EITI Standard. (ii) Mining & quarrying company payments to TCE were not disaggregated between (or identified separately as) fees vs royalties, again in contravention of the Standard. (iii) Mining & quarrying company payments to the Coal Authority (comprising fees, royalties and other payment types) were not fully disaggregated.

[22] *UK EITI Report for 2016*, p. 70.

[23] RFCT is "charged on the profits a company earns from carrying out oil and gas extraction activities in the UK" for "exploration, development and production", with specific rules relating to allowances, interest and transfer pricing that do not apply to mainstream UK corporation tax: *UK EITI Report for 2016*, p. 43.

[24] At least one company, BHP Billiton, has included mainstream corporation tax in its UK EITI data – see "Company clarifications and explanations" below.

[25] *UK EITI Report for 2016*, p. 19.

COMPANY CLARIFICATIONS AND EXPLANATIONS

PWYP UK contacted all 13 companies showing 10%-or-over data variances and requested by email explanations of the significantly different data disclosed under the two regimes. Responses, comments and clarifications provided by 12 of these companies, in alphabetical order, and in certain cases directly quoting companies' email communications, are as follows.

Aggregate Industries UK Ltd: variance £11.8 million / 86%
Company response: The mandatory report includes UK government payments excluded from the UK EITI report: carbon tax payments under the EU's emissions trading system and the UK's carbon reduction commitment scheme £0.8 m; business rates £4.9 m; corporation tax paid in respect of Channel Islands operations £0.2 m; employers' national insurance contributions £4.3 m.

PWYP UK comment: The company's response explains the variance, especially when exchange rate differences (CHF to GBP) are factored in. Business rates and employers' national insurance contributions are arguably a property tax and an employee tax respectively and out of scope of both mandatory reporting and the UK EITI.

BHP Billiton Petroleum: variance £4.9 million / 31%
Company response: The main reason for the variance is the differentiation between the UK EITI's calendar year basis and the company's mandatory reporting based on its financial year to 30 June. The UK EITI 2016 net refund of £16.0 m includes a tax refund of $24.4 m (roughly £19.9 m) received in the second half of the financial year to 30 June 2016,[26] but it necessarily excludes tax paid in the first half of the company's 2015/16 financial year, i.e. in 2015. The mandatory report also includes tax payments in respect of the company's head office and marketing offices of $2.3 m (£1.1 m),[27] which are excluded from the UK EITI data as out of scope. The company further notes that while mainstream corporation tax is outside the scope of the UK EITI, it can be required to be reported under the UK EITI nevertheless,[28] and therefore "may not be a reconciling item" between mandatory and UK EITI data "and, indeed, is not in the case of BHP".

PWYP UK comment: The company's response explains the variance, especially when exchange rate differences (USD to GBP) are factored in.

Chevron North Sea Ltd: variance £1.1 million / 29%
Company response: "The two reporting schemes … have different reporting criteria. Chevron North Sea Limited has fully disclosed all payments … under both the EU Accounting Directive and the UK EITI. Chevron fully complies with all UK tax laws and welcomes the publication of the UK's 2016 EITI report. All Chevron payments included within the scope of EITI have been fully reconciled and thereby agreed by [the UK tax authorities]."

ConocoPhillips UK Ltd: variance £3.3 million / 47%
Company response: The UK EITI report includes interest paid on corporation tax of £0.3 m and interest repaid on PRT repayments of £4.5 m, both excluded from the company's mandatory reports,[29] giving a net repayment of £4.2 m. ConocoPhillips's UK EITI data also includes payments by

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[26] BHP Billiton, *Economic contribution and payments to governments report 2016*, https://bit.ly/2dlTDUY, p. 14, footnote 5.
[27] As explained in BHP Billiton, *Economic contribution and payments to governments report 2016*, https://bit.ly/2dlTDUY, p. 21.
[28] On mainstream corporation tax, see "Payment types (revenue streams)…" on page 6 above, and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/703503/uk-eiti-oil-gas-guidance-2017.pdf
[29] Re ConocoPhillips' two 2016 mandatory reports, see note iii to Figure 1 above.

subsidiary Burlington Resources (Irish Sea) Limited of £0.9 m.[30] Repayment of £4.2 m + payment of £0.9 m explains the net variance of £3.3 m.

PWYP UK comment: The company's response explains the variance. ConocoPhillips also stated that none of its UK-incorporated parent companies met the requirement of UK Regulations 8(1)(a) and 2 in terms of being "large" (or publicly listed) in 2016; hence the three subsidiaries published separate mandatory reports.

EnQuest PLC: variance £0.4 million / 210%

Company response: The variance comprises: inclusion in the UK EITI data and exclusion from the mandatory report of a minor sum for tax interest repayments; an inadvertent mandatory minor over-reporting of fees paid (OGA levy); and inclusion in the mandatory report of £0.38 m fees, mainly for works authorisations and for drilling/completion applications, outside the scope of the UK EITI.

PWYP UK comment: The company's response explains the variance. Fees for works authorisations and for drilling/completion applications are arguably outside the scope of UK and EU mandatory reporting as well as of the UK EITI.[31]

ExxonMobil International Ltd (Esso): variance £21.8 million / 12%

Company response: The UK EITI data includes figures for both Esso Exploration & Production UK Limited and XTO UK Ltd. The mandatory report excludes XTO UK Ltd because the latter company does not qualify on an entity basis as a "large undertaking". The UK EITI data also includes interest payments and repayments, excluded from the mandatory report.

PWYP UK comment: The company's response explains the variance.

Maersk Oil North Sea UK Ltd: variance £42.7 million / 105%

Company response: The UK EITI data includes tax refunds to Maersk Oil UK of £41 m [£29.7 m PRT plus £12 m RFCT + SC]. The mandatory report of A.P. Moller Maersk includes only payments and not refunds/repayments.

PWYP UK comment: The company's response explains the variance to within a few per cent. Exchange rate differences (USD to GBP) would probably explain the rest.

Marathon Oil UK LLC: variance £7.2 million / 29%

Company response: The UK EITI payments derive from operations of two entities: Marathon Oil West of Shetlands Limited (UK offshore Foinaven area) and Marathon Oil UK LLC (offshore Sea Brae area). Marathon Oil West of Shetlands Limited "is engaged in the development and production of oil and gas from the Foinaven area … Marathon's Brae area interests are held in a separate entity, Marathon Oil UK LLC."

PWYP UK comment: The company's response explains the variance. Marathon Oil UK LLC has not submitted a mandatory report because it is registered as a UK branch of US-incorporated Marathon Oil UK LLC, a foreign company, unlike UK-incorporated Marathon Oil West of Shetlands Limited, which has reported.

[30] Burlington's mandatory report is at https://extractives.companieshouse.gov.uk/company/03440053. PWYP UK had been unaware that Burlington is a subsidiary of ConocoPhillips UK.

[31] In the UK Regulations, http://www.legislation.gov.uk/uksi/2014/3209/contents/made, regulation 2 (1) ("Interpretation") states that fees to be reported comprise "licence fees, rental fees, entry fees and other considerations for licences or concessions"; this would appear to exclude fees for works authorisations and for drilling and completion applications.

Perenco UK Ltd: variance £12.4 million / 71%
Company response: "The two reporting schemes … have different reporting criteria. Perenco UK has fully disclosed all payments … under both the EU Accounting Directive and the UK EITI. Perenco UK fully complies with all UK tax laws and welcomes the publication of the UK's 2016 EITI report. All Perenco UK payments included within the scope of EITI have been fully reconciled and thereby agreed by [the UK tax authorities]."

Premier Oil PLC: variance £2.1 million / 165%
Company response: The variance results primarily from a difference in the period for which Premier included in its reporting three UK exploration and production companies acquired in late April 2016 from E.ON.[32] The results for these three entities were included for the full 12 months in the UK EITI data. In the mandatory report, based on Premier's consolidated results, the results of these entities were included only from the point of acquisition, i.e. just 8 months.

PWYP UK comment: The company's response explains the variance.

Total E&P UK Ltd: variance £4.0 million / 147%
Company response: Reasons for the variance are: inclusion in the mandatory report, and exclusion from the UK EITI data, of "corporation tax on profits taxed outside the ring fence";[33] inclusion in the UK EITI data, and exclusion from the mandatory report, of PRT interest repayments; proportionate disclosure of joint venture payments in the mandatory report,[34] vs reporting of such payments at 100% via UK EITI; payments included in Total's 2015 mandatory report, because made by the company in December 2015, but not recorded as received until 2016 by the UK government and therefore included in the UK EITI 2016 data; USD to GBP currency conversion (Total uses a 2016 average rate, whereas PWYP UK used an end-of-year rate).

PWYP UK comment: The company's response explains the variance.

Tullow Oil PLC: variance £43.2 million / 9,084%
Company response: Tullow paid nil RFCT and SC in 2016 as per the UK EITI data but paid US $52.2 m (approx. £42.4 m) mainstream corporation tax (outside the ring-fence) in 2016, which it included in its mandatory report. A PRT refund of $1.1 m (approx. £0.8 m) is included in both reports. The difference of approx. £0.8 m in fees (including OGA levy) between the EITI and mandatory data results from Tullow only reporting licence fees paid directly to the UK government under the EITI, whereas in its mandatory report it includes amounts paid via operators of joint ventures.[35]

PWYP UK comment: The company's response explains the variance, especially when exchange rate

[32] https://www.offshoreenergytoday.com/premier-completes-uk-north-sea-assets-buy-from-e-on/
[33] Total's preferred wording, broadly equivalent to what is referred to elsewhere in this study and in the *UK EITI Report for 2016* as "mainstream corporation tax".
[34] PWYP UK welcomes Total's decision to provide proportionate disclosure under mandatory reporting of all joint venture project payments, whether made directly, or indirectly via joint venture operators, as in keeping with the intentions of the transparency legislation and least likely to result in reporting gaps and duplication: see PWYP UK, "Guidance for reporting payments to governments", March 2017, http://www.publishwhatyoupay.org/wp-content/uploads/2017/03/Civil-society-reporting-guidance-for-companies-March-2017-1.pdf. Proportionate joint venture reporting is also encouraged by the Canadian government for Canada's equivalent Extractive Sector Transparency Measures Act (ESTMA): Natural Resources Canada, "FAQs", http://www.nrcan.gc.ca/node/18802/ ("3. Who must report under the ESTMA?", "5. Must non-operating members in a joint operation also report the payments that have already been reported under the ESTMA by the operator?", "6. Must non-operating members of a joint operation report the payments that have been made for them by the operator …?", "7. How do businesses report on joint operating agreements in situations of joint control …?").
[35] Like Total, Tullow has chosen to disclose its proportionate share of joint venture payments in its mandatory reporting, which PWYP UK welcomes. See preceding footnote.

differences (USD to GBP) are factored in.

CONCLUSIONS

Of the 13 companies whose UK EITI 2016 and mandatory 2016 reports show a 10%-or-more total UK payments variance, most have engaged with this study by providing helpful explanations and clarifications. In many cases companies have shown a commendable willingness to go into detail and to respond to follow-up questions.

Company responses demonstrate that several factors need to be taken into account when comparing UK EITI vs UK mandatory report data, and that the nature of such differences varies between companies.

First, and most obviously, where different reporting periods are involved – in this study, BHP Billiton is the only example – this can be make a major difference.

Second, various inclusion and exclusion requirements and/or decisions within main payment types, and in some cases varying interpretations of payment type scope, also impact the data significantly:

- Inclusion in mandatory reports and exclusion from the UK EITI (because generally out of scope) of oil & gas companies' mainstream corporation tax payments – Total, Tullow – and/or tax payments relating to non-UK operations – BHP Billiton, Tullow.
- Inclusion in the UK EITI and exclusion from mandatory reports of interest on tax paid and repaid, and/or repayments *per se* – ConocoPhillips, EnQuest, ExxonMobil/Esso, Maersk, Total.
- Disclosure on a proportionate share basis in mandatory reports of payments made directly as joint venture operator, and inclusion of such payments at 100% in the UK EITI – Total.
- Disclosure on a proportionate share basis in mandatory reports of payments made indirectly via other companies operating joint ventures, and exclusion of such payments from the UK EITI – Tullow.
- Inclusion in mandatory reports and exclusion from the UK EITI of other payment subtypes: business rates and employment-related payments – Aggregate Industries; carbon reduction commitment payments – Aggregate Industries; fees such as for works authorisations and drilling/completion applications – EnQuest.

A third important factor is the inclusion of subsidiary companies in the UK EITI that are not included, or that disclose separately or for a different period, in mandatory reporting – ConocoPhillips and Burlington; ExxonMobil (Esso) and XTO UK Ltd; Marathon Oil UK; Premier Oil.

Fourth, differences in currency exchange rates applied also affected several data variances. Most companies appear to use a mid-year average, which indeed may be the industry norm.

Reconciling UK EITI with mandatory data is therefore not necessarily simple or straightforward, even when main payment types are intended to be complementary. Informed dialogue with companies appears the only way to fully understand the significant variances. Lack of clarity in places in the EU and UK mandatory requirements has arguably led to some companies' unpredictable inclusion and exclusion decisions – although the EU and UK mandatory reporting regimes are far too useful to be condemned for this relatively minor correctable weakness.

Aside from Norway, which has begun to implement systematic disclosure,[36] the extent to which such complications arise in other countries that implement the EITI, and where operating companies also report payments under mandatory disclosure rules – whether they disclose in the UK, other EU member states or Canada[37] or Norway[38] – remains to be seen.

Implications for the potential "mainstreaming" or "systematic disclosure" of UK EITI data (see "Study aims" on page 2) need to be carefully considered.

Both the EITI and mandatory payments to governments reporting provide hard-won mechanisms to deter corruption and mismanagement, and opportunities for citizens of resource-rich countries and other oversight actors to hold governments and companies to account for their stewardship of the planet's non-renewable natural resources and of the resulting financial flows. Civil society organisations,[39] parliamentarians,[40] journalists,[41] investors[42] and companies themselves[43] can reap important public benefits from the two extractive industry transparency regimes. Comparing EITI vs mandatory reports is only one of numerous approaches to using extractives data that civil society is currently exploring as part of its work to bridge the gap between transparency and full accountability.[44]

Appendix 1: Main payment types reported under the UK EITI vs the UK Regulations

Company	*UK EITI report payment types*	*Mandatory report payment types*	*Are main payment types in the two reports similar or different?*
Aggregate Industries UK Ltd	Tax, payment to TCE (could be licence fees or royalties)	Tax, royalties	Similar
BHP Billiton Petroleum	Tax	Tax	Similar
Chevron North Sea Ltd	Tax, licence fees, OGA levy	Tax, 2 x fees (one of these possibly OGA levy)	Similar
ConocoPhillips UK Ltd	Tax, licence fees, OGA levy	Tax, fees	Similar
Dana Petroleum Ltd	Tax, licence fees, OGA levy	Tax, 2 x fees (one of these possibly OGA levy)	Similar
EnQuest PLC	Tax, licence fees, OGA levy	Tax, fees	Similar

[36] See https://www.eiti.no/
[37] Canada: https://www.nrcan.gc.ca/mining-materials/estma/18180
[38] Norway: Forskrift om land-for-land rapportering; in English: https://www.publishwhatyoupay.no/en/node/16414
[39] Civil society: http://www.publishwhatyoupay.org/wp-content/uploads/2017/11/2017-11-PWYP-submission-to-UK-review-final.pdf
[40] Parliamentarians: https://www.britac.ac.uk/sites/default/files/Mining Policy Brief 2.pdf
[41] Journalists: https://resourcegovernance.org/blog/how-can-journalists-overcome-extractives-sector-opacity
[42] Investors: https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf
[43] Companies: https://eiti.org/benefits
[44] http://www.publishwhatyoupay.org/our-work/using-the-data/

ExxonMobil International/ Esso Exploration and Production	Tax	Tax	Similar
Maersk Oil North Sea UK Ltd	Tax, licence fees, OGA levy	Tax, fees	Similar
Marathon Oil UK LLC	Tax, licence fees, OGA levy	Tax	Different[45]
Perenco UK Ltd	Tax, licence fees, OGA levy, payments to TCE	Tax, 3 x fees (licence fees, OGA levy, payments to TCE)	Similar
Premier Oil PLC	Tax, licence fees, OGA levy	Tax, fees	Similar
Total E&P UK Ltd	Tax, licence fees, OGA levy, payments to TCE	Tax, fees, payments to TCE	Similar
Tullow Oil PLC	Tax, licence fees, OGA levy	Tax, fees	Similar

[45] Marathon is the only company showing a significant difference between main payments types reported, but this explains little of the variance in total disclosed UK payments. Marathon's 2016 licence fee and OGA levy payments total £392,000 in the UK EITI data. These payments, made by the non-mandatory-reporting entity Marathon Oil UK LLC (as the company informed PWYP UK), account for only 1.6% of the company's total UK EITI 2016 recorded payments of £24.4 million.