

Good Natural Resource Governance: How Does the EU Deal with the Contestation of Transparency Standards?

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This is the accepted version of the chapter. The published version is: Vlaskamp, M.C. (2020) "Good Natural Resource Governance: How Does the EU Deal with the Contestation of Transparency Standards". In: Elisabeth Johansson-Nogués, Martijn C. Vlaskamp and Esther Barbé (eds), European Union Contested. Foreign Policy in a New Global Context. Heidelberg & New York: Springer, 95-112. DOI: 10.1007/978-3-030-33238-9_6

Abstract: *Transparency is an organizing principle of the norm of good governance. The EU has adopted a number of policies to promote this norm as a way to address corruption and cronyism in the natural resource sector of many countries. On the global scale, the EU supports the standards of the Extractive Industry Transparency Initiative. At home, the EU Accounting and Transparency Directives make it for EU companies mandatory to report payments to domestic and foreign authorities for oil, gas and timber extraction rights. This norm has been contested from different sides. China argues that economic development precedes good governance, instead of the other way around. Natural resource-rich countries see global standards as an intrusion of their sovereignty. The extractive industry in western countries claims that national policies could disadvantage them by creating an uneven playing field. The chapter argues that these contestations remained predominantly soft and did not affect the legitimacy of the organizing principle too much. None of the contesters openly challenged the principle of transparency, but they rather tried to reduce its importance or to change the standardized procedures that came from it. As the EU did not waiver, these efforts have so far not been very successfully.*

¹ Martijn C. Vlaskamp thanks the Beatriu de Pinós postdoctoral program of the Government of Catalonia's Secretariat for Universities and Research (Ministry of Economy and Knowledge) for funding (Grant number: 2017-BP-152). Research was also supported by the EU's Horizon 2020 Research & Innovation program (grant number 660245). Martijn thanks Carla Perucca for valuable research assistance and Alanna Irving for proofreading this text. The usual attribution of possible faults applies.

Since the 2000s, the organizing principle (type-2 norm) of 'transparency' has been propagated by NGOs and Western states as a way to promote the fundamental norm of good governance (type-1 norm) in countries rich in natural resources in the Global South. Providing openly accessible information about the payments from extractive companies to the authorities in these countries is seen as an effective way to address corruption and cronyism. After an initially more cautious approach, the European Union eventually embraced this norm and has situated itself in the vanguard of its promotion. In terms of standardized procedures (type-3 norms), the EU promotes both global and European measures to shed light on the governance of natural resources. Globally, the EU supports the Extractive Industry Transparency Initiative (EITI), which is a scheme for countries to improve their natural resource governance. At home, the EU updated 2013 provisions in its Accounting and Transparency Directives to make it mandatory for domestic extractive and logging companies to report their payments to foreign governments.

While few international and domestic actors would challenge 'transparency' directly, the norm is nevertheless subject to indirect forms of contestation. This chapter identifies three different norm contestation processes. First, transparency, and good natural resource governance in general, is presented as a consequence of economic development instead of being a prerequisite. This alternative model of development has been defended by China in the context of its engagement in Africa. The second contestation comes from resource-rich countries which do not implement global schemes such as EITI, as they see possible conflicts with the type-1 norm of sovereignty over their natural resources. Third, extractive companies argue that they subscribe to transparency as an organizing principle, but that the fundamental norm of economic freedom comes before standardized procedures, such as national policies to promote transparency. In other words, specific domestic regulations should not harm their economic position.

These three contestations do not stand on their own, but are interrelated and feed into each other. This chapter will map them and discuss how they have affected the legitimacy of the organizing principle of transparency. The chapter will discuss how these global norm contestations did also embolden domestic norm contesters within the EU. Did these global contestations make the EU less ambitious in its domestic policies to promote transparency as a tool for natural resource governance? Or, did the norm show resilience to the contestations from different sides?

The text will answer these questions by looking at primary and secondary sources published since 2010. This date has been chosen because in this year President Obama signed the US Dodd Frank Act into law,

which made it mandatory for US-registered companies to report payments to foreign governments for extraction contracts. As a result, both on the global scale, but also within the EU, the issue received an enormous impetus that culminated in the previously mentioned updates of the Accounting and Transparency Directives. In terms of primary sources, policy documents that preceded these regulations and the responses to the 2018 public consultation process for its review have been analyzed.

In the first section, the chapter will provide some background about transparency as an organizing principle for good natural resource governance. It will describe the reasoning behind the corresponding policies and how this norm has been diffused. Then, in the following section, the chapter will discuss how it is contested. The third section will look at the results of this contestation on the norm's legitimacy both globally and within the EU.

Transparency as an Organizing Principle of Good Natural Resource Governance

The Natural Resource Governance Institute² publishes a Resource Governance Index every year. For this index, they define natural resource governance as “the manner in which power is exercised and policies are made in the management of a country's oil, gas and mineral resources for development” (Natural Resource Governance Institute, 2019). For the latest edition in 2017, one hundred and fifty researchers evaluated eighty-one resource-rich countries in terms of value realization, revenue management and enabling environment³. The performance of less than a quarter of the assessed countries was evaluated as “good” or “satisfactory”; almost half of the states had a “poor” or “failing” record (Natural Resource Governance Institute, 2017, pp. 4–5). Almost all these countries were located in Africa, the Middle East or Southeast Asia. Poor natural resource governance is the rule in large parts of the Global South rather than the exception. The affected countries have few to no procedures established to make sure that the revenues of their natural resources benefit the public good. Many of the revenue streams are completely opaque and impossible for the public to follow. For example, a 2011 report by the International Monetary Fund (IMF) remarked that the authorities in Angola could not clearly tell them what had happened to 32

² The Natural Resource Governance Institute is an independent, globally operating NGO.

³Value realization covers the governance of allocating extraction rights, exploration, production, environmental protection, revenue collection and state-owned enterprises. Revenue management includes national budgeting, subnational resource revenue sharing and sovereign wealth funds. Enabling environment looks at the broader governance context and to what extent it contributes to good natural resource governance (Natural Resource Governance Institute, 2017, p. 7).

billion US dollars (USD) in oil revenues (amounting to 25 percent of the country's annual GDP) (International Monetary Fund, 2010, p. 9).

Hence, and as a result of a concerted effort of largely non-state actors since the late 1990s, transparency has been promoted as a principle to allow politicians and other decision-makers to be held accountable. Transparency, in the context of resource governance, has been defined by EITI as allowing external actors to access information about key aspects of a country's natural resource management, "including how licenses are allocated, how much tax, royalties and social contributions companies are paying, and where this money ends up in the government at the national and local level" (EITI, 2019). In theory, with this information, anti-corruption authorities, journalists and civil society can hold both the "corrupted" and the "corrupter" accountable for their behavior.

As an organizing principle, transparency is almost universally acknowledged. A unanimously accepted 2008 UN General Assembly Resolution, emphasized "that transparency and accountability are objectives that should be embraced and promoted by all Member States, regardless of their size, level of development or resource endowment" (UN General Assembly, 2008). Resolutions by the G20 and the African Union have supported this principle as well (G20, 2009). The principle has also been the basis of some specific global schemes, such as the Kimberley Process Certification Scheme for rough diamonds. This global certification and monitoring scheme was started in 2000 to shed light on the supply chain of these gems, to end the trade in so-called blood diamonds⁴. The 2011 OECD Due Diligence Guidance for Responsible Supply Chains of Minerals asks companies to be transparent about the origins of their natural resources to end the funding of armed conflicts by "conflict minerals" (e.g. in the Democratic Republic of the Congo).

The previously mentioned EITI is the leading global scheme to address the issue of poor natural resource governance and corruption. During the 1990s and early 2000s, numerous academic studies concluded that countries rich in oil, gas or minerals tend to achieve economic development more slowly, be more corrupt, be more likely to experience armed conflicts, and have authoritarian regimes more often than comparable countries without significant natural resource deposits (Collier and Hoeffler, 2002; Fearon and Laitin, 2003; Sachs and Warner, 2001; Sala-i-Martin and Subramanian, 2003). Around the same time, NGOs and media reports drew attention to cases in which Western companies had bribed governments

⁴ Participating countries are obligated to provide production data and every batch of diamonds carries a certificate stating that it has not contributed to the funding of an armed rebel group.

in the Global South for extractive contracts. As a consequence of these developments, EITI was launched by then UK Prime Minister Tony Blair in the early 2000s and received support from both NGOs and the industry. Civil society organizations saw transparency, as previously said, as a tool to tackle corruption. Companies opted for global schemes as a way to avoid national regulations in their home countries: domestic regulations could have created conflicts with host countries, put contracts at risk and made them less competitive in corruption-prone business environments. Extractive companies supported EITI as a shift away from company reporting in favor of government reporting. As all companies active in a EITI-compliant country would be subject to the same scrutiny, an even playing field would be guaranteed (Haufler, 2010). As the remainder of the text will show, the concern about an uneven playing field remains today the main concern of the Western industry with respect to transparency measures.

While EITI was initially set up as a voluntary process to bring transparency into the payments from companies to governments, it has evolved into a much broader instrument. If countries decide to adopt the EITI standard, they have to adapt their legal and institutional framework accordingly to comply with it. The current 2016 EITI Standard requires the disclosure of information with regards to the extractive value chain of oil, gas and mining products from the point of extraction, as well as how revenues make their way through the government and benefit the general public. These standards prescribe, for example, a transparent process for the allocation of licenses, openly available data about the revenues from natural resources and detailed information how they were spent. Participants are also encouraged to implement laws that make it mandatory to publish all contracts between extractive companies and the government. The oversight of the implementation of EITI is performed in every country by a national multi-stakeholder group that brings together representatives from the country's government, industry and civil society (EITI, 2017). If countries do not make sufficient progress, their membership can be suspended.

EITI has been widely hailed as an instrument to bring transparency to the extractive industry. The initiative has been endorsed once by the UN General Assembly, at least three times by the G20, and ten times by the G7/G8 (Lujala, Rustad and Le Billon, 2017). On its website, EITI lists, among others, the African Union and the Asian Development Bank as its supporters. It is worth mentioning that extractive companies can also be supporters and contribute economically to the initiative. As of 2019, 52 states are implementing the EITI standard (of which seven are suspended for non-compliance with the requirements). However, there are large political and geographical disparities. The large majority of the implementation countries can be found in sub-Saharan Africa. Not one of the oil-producing countries in the Middle East is a participant (the membership of the only exception, Iraq, was suspended due to inadequate progress).

Moreover, only a few of the world's great and mid-size power participate: not one of the BRICS has implemented this scheme. These numbers illustrate already that the practical implications of the organizing principle of transparency are more contentious than the unanimous UN General Assembly Declarations would imply.

Whether EITI is successful in its initial objectives is still debated. A number of studies argue that the effect on governance quality and resource-related corruption in a country is limited (Aaronson, 2011; Corrigan, 2014; Sovacool, Götz, Van de Graaf, and Andrews, 2016). A recent review of 50 evaluations confirmed these findings and said that corruption is only reduced when a country also has a strong civil society that can hold the government and companies accountable (Lujala et al., 2017). However, the study also concluded that the initiative had "succeeded in diffusing the norm of transparency [...] and institutionalizing transparency practices" (Lujala et al., 2017).

A result of this norm diffusion and limited effectiveness of EITI is a trend in the Global North to adopt regulations that make it mandatory for their extractive companies to be more transparent (something that many extractive companies had wanted to avoid with their initial support for EITI). Section 1504 of the Dodd–Frank Act of 2010, the so-called Cardin-Lugar Amendment⁵, obliged corporations which are registered with the US Securities and Exchange Commission (SEC) and which are engaged in the commercial development of oil, natural gas, or minerals, to disclose in an annual report the payments made to an American or foreign government. These legal stipulations required disaggregated reporting of payments to foreign governments from 90 percent of the world's largest internationally-operating oil and gas companies, and eight of the world's ten largest mining companies (Cust, 2018, p. 405). The 2013 EU's Accounting and Transparency Directives, which will be discussed in more detail below, and the 2015 Canadian Extractive Sector Transparency Measures Act go into the same direction. These policies complement EITI: by making companies accountable in their home countries as well, such regulations create more pressure to provide good data and cover larger parts of the extractive industry.

The EU has frequently expressed its support for EITI. Belgium, Denmark, the European Commission, Finland, France, Germany, the Netherlands, Sweden and the United Kingdom contributed financially to the initiative during 2017 (EITI, 2019). For the European Commission, EITI was initially a tool of development policy and therefore it framed the initiative principally into its relations with Africa. In the

⁵ The section was based on the Energy Security Through Transparency Act of 2009, a bipartisan bill sponsored by the Republican Senator Richard Lugar.

2007 Joint Africa-EU Strategy, enhanced cooperation between the signing parties was mentioned regarding the promotion of transparent and equitable management of natural resources such as EITI. In the Africa-EU Energy Partnership, the African Union Commission and the European Commission called for more countries to join EITI and to develop transparency guidelines for companies in the extractive sector (African Union Commission and European Commission, 2008). In numerous publications the EU has highlighted EITI as an adequate policy response to the issue of transparency and accountability in development. In response to a 2012 parliamentary question, then responsible Commissioner Piebalgs characterized the Commission as “very active in the EITI” and stated that it supported the “strengthening of the EITI standard” (European Commission, 2012).

However, only three EU Member States are implementing the standard. The United Kingdom joined EITI in 2014, Germany in 2016 and the Netherlands in 2018⁶. Moreover, it required the push from the US Dodd Frank Act to set a similar policy process into motion in the European Union. As a result of developments on the other side of the Atlantic, the European Parliament called on the Commission to “establish legally binding requirements for extractive companies to publish their revenue payments for each project and country they invest in, following the example of the US Dodd-Frank bill”(European Parliament, 2011) and to support EITI and the NGO-network Publish What You Pay. The result, Chapter 10 of the EU Accounting Directive, makes it mandatory for EU-registered companies that are active in the extractive industry or the logging of primary forests to report annually all payments (e.g. taxes, royalties and production entitlements) to governments above a threshold of 100,000 Euros a year (single and accumulated payments) on a country-by-country and project-by-project basis⁷ (European Union, 2013a). Article 6 in the EU Transparency Directive includes similar stipulations for publicly listed companies (European Union, 2013b). The legislation says explicitly that the reports by companies “should serve to help governments of resource-rich countries to implement the EITI principles and criteria and account to their citizens for payments such governments receive from undertakings active in the extractive industry” (European Union, 2013a). The Commission also declared that “the ultimate objective [of these policies is] to

⁶ France has announced that it wants to join EITI in the future.

⁷ Country-by-country means that companies have to provide information for every country they operate in, instead of publishing only information at global level. A project is an operational activity, which is governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. If a number of these contracts are interconnected, they are also considered a project (European Union, 2013a). In other words, for a company it is not enough to report that it paid amount X to the government of a country, but it also has to disclose each individual contract.

contribute to the strengthening of the EITI and to extend its scope to all resource-rich countries” (European Commission, 2013).

The Accounting Directive has now been transposed into national law by all EU Member States. Accelerated adoption by countries such as France and the UK means that global companies such as BP and Total published their first reports in 2016, while the majority of European companies started reporting in 2017. In 2019, the European Commission will review Chapter 10 of the Accounting Directive, and send a report with recommendations to the European Parliament and Council.

While the EU is a strong promotor of the EITI standard as a standardized procedure for better natural resource governance, this norm is not completely uncontested. Few actors would directly challenge transparency or good governance. Opposing transparency can create suspicions that one is hiding something. There are, however, a number of actors which try to contest it in different ways. As stated in the introduction, these contestations can be summarized into three categories: (I) contestations about the place of this norm in broader economic development, (II) contestations between the fundamental norm of state sovereignty and global standardized procedures (EITI), and (III) contestations between the fundamental norm of economic freedom and national standardized procedures (e.g. US Dodd-Frank Act or the EU regulations).

The most prominent contester of the first category is China, and especially with respect to their activities on the African continent. When China’s economy took off, it turned to Africa for natural resources and as a market for its manufactured goods. Zhao (2014, p. 1036) gives three main reasons for China’s engagement. First, while many Western companies found much of the continent far too complicated as environment for business, China was willing to go there. Second, having no colonial past, China could present its infrastructure investments (often used for the transportation of resources and paid with resource-related revenue) as some form of effective development aid. Third, China’s principle of ‘non-interference’ in domestic politics gave them an edge over Western competitors (both states and companies). The latter had to be more careful with their behavior on the African continent in terms of human rights implications and good governance due to potential backlash at home. China’s foreign direct investment in Africa grew exponentially between 2003 and 2012, going from under 100 million USD to multi billion dollars (Zhao, 2014, p. 1038). China sees policies to improve transparency in the natural resource governance of other countries therefore first and foremost through economic lenses. While China is not directly opposing transparency, and has in fact supported the previously mentioned UN and G20 resolutions, it was assessed for long time primarily as an abstract concept without any economic

advantages. From the Chinese perspective, economic development precedes good governance and not the other way around. As Li Ruogo, the head of China's Export-Import Bank told an audience in Cape Town: "[t]ransparency and good governance are good terminologies, but achieving them is not a precondition of development; it is rather the result of it" (Zhao, 2014, p. 1042). The contestation was thus about the place of transparency as a norm.

A number of states fall into the second category and contest global standardized procedures as they see a conflict with the fundamental norm of state sovereignty. An example from this group is Russia. Moscow has publically expressed its support for the organizing principle of transparency, but does not join EITI due to its potential to infringe on its sovereignty. The fear is that EITI could demand legislative changes for compliance and become an instrument to influence Russia's domestic policy. In particular, the idea that (potentially foreign-funded) NGOs would have considerable clout in the Russian national multi-stakeholder group, and could therefore influence the country's natural resource governance, is seen as problematic. As a solution, Russia has suggested an alternative membership for developed countries "which are not actual EITI members but actively support the initiative and introduce the required laws with local adjustments at the local legislative level" (Oussov, 2016). Similar arguments are stressed by many other resource-rich countries: while not opposing transparency publically, they resist to being subject to externally-established standards and see them as a potential threat to their natural resource sovereignty. Many countries in the Global South are suspicious about such schemes as they fear that former colonial powers (in Africa) or the United States (in Latin America) could use them for political objectives. In some cases, however, there is also a very simple explanation for this resistance from many governments in the Global South: the regimes have no interest in implementing measures that could uncover their corruption. It is relevant to keep in mind that in many countries, natural resource extraction is mainly in the hands of state-owned companies, which are often economically connected to the ruling elite in opaque ways.

A third group of contesters are globally-operating extractive companies. As mentioned previously, these actors are particularly concerned about potentially losing competitiveness if they are the only ones subject to transparency requirements in corruption-prone business environments. Among the biggest twenty-five oil and gas companies of the world, less than half are from Northern America or Europe. Two of the six largest Russian energy companies are not registered in the United States nor do they trade in the EU. Of the sixteen largest Chinese mining corporations with overseas operations, nine do not have any listings outside of the China. Two of the three largest Indian oil companies would also not be covered by

legislation in the USA, the EU or Hong Kong (Moran, 2013). As a consequence, many Western companies fear that unilateral legislation would harm their international competitiveness. Besides the possible competitive disadvantage, the industry fears additional costs. In the case of section 1504 of the Dodd-Frank Act, Securities and Exchange Commission staffers estimated that the cost of initial compliance with the rules would range from 44 million to 1 billion USD, and expected that the final amount would probably be closer to the top end. Moreover, for continuing compliance with the provision, the SEC predicted costs between 200 million and 400 million USD (Matthews, 2012). The American Petroleum Institute, along with a coalition of business groups, has therefore sued the SEC in a US federal court to challenge the implementation of Section 1504 because the SEC “disregarded its clear legal obligations to limit the costs and anti-competitive harm of the rule” (Carroll, 2012).

The estimated costs of the updates of the EU Accounting and Transparency Directives were lower, but still noteworthy. According to a Post-Implementation survey in the United Kingdom, the total costs (one-off and recurring) ranged between 190,000 Euros for a small company, and 9.8 million Euros for large companies. A 2018 survey for the European Commission, however, came up with much lower numbers: between 12,000 and 36,000 Euros per report (European Commission, 2018a, p. 41). Such economic concerns also played a role during the policy process to formulate the EU Accounting Directive. One of the biggest opponent of overly-strict standardized procedures was the Netherlands, due to the economic importance of Royal Dutch Shell. They promoted very high thresholds for reporting, a not-very-detailed level of information, and so forth. In an article in the Dutch newspaper *De Volkskrant*, several MEPs supported this viewpoint, such as Bas Eickhout (Greens/EFA) who was quoted: “Shell-policy is often Dutch policy. But this is more difficult in Europe” (Persson, 2012). Royal Dutch Shell took these accusations seriously enough to send a very critical open letter to a Dutch financial newspaper, in which it also recalled its engagement in EITI (Benschop, 2013). In spite of these cautious stances, policymakers were aware of the fact that the Dodd-Frank Act had at that time only left limited room for maneuver for European multinationals, as they were also listed in the United States stock exchange and therefore subject to the SEC. In a communication to the Dutch Parliament, the responsible Minister declared that he aimed for regulations as similar as possible to the SEC rules, in order to avoid extra administrative burdens for Dutch multinational corporations (Kamp, 2013).

Transparency Contested From Different Sides

In their contestation of the norm of transparency, the above described state or non-state actors used different modes of contestation and priorities.

The primary 'battlefield' for the first category, the place of the transparency norm, was Africa. Here a Western concept of development, which saw good governance and transparency as prerequisites to economic development, met an alternative view from China, which argued that the causality worked the other way around. Visible economic process, according to the Chinese model, was fundamental to abstract concepts and regulations (Renwick, Gu and Hong, 2018). Or, as Mouan (2010, p. 375) puts it, "the issues of transparency and accountability that (EITI) seeks to address are so remote and complex for poor people for whom immediate needs include access to safe and drinkable water, medicine, food and adequate housing". These priorities are also a result of China's own recent economic history and strategy, which is built on continuous economic growth (Renwick et al., 2018). Another factor is that many Chinese investors on the ground did not really know these concepts and were used to the highly non-transparent workings of the Chinese state apparatus (Zhao, 2014). Consequently, they perceived it as some vague Western idea and the lackluster application of it by some Western competing companies did not do much to change this idea (Mouan, 2010). In sum, norm contestation was based on the mode of justification: economic development, and improving the livelihood of the population, should trump the fundamental norm of good governance, which was seen as being of little practical use for these countries yet. This process could be qualified as soft contestation, as China did not openly challenge transparency, but took a position of "not yet". States in Africa could choose whether they opted for the Western or Chinese development model.

Similarly, in the case of the second norm contestation process, state sovereignty vs global standardized procedures, justification is the primary mode of contestation. Most Western actors see global standards, such as EITI, as the way to go for resource governance. However, not only Russia but also most countries in the Middle East and Africa argue that the state should lead national implementation, referring to the fundamental norm of state sovereignty. The previously mentioned 2008 UN General Assembly Resolution reaffirmed in this regard that "every State has and shall freely exercise full permanent sovereignty over all its wealth, natural resources and economic activities" (UN General Assembly, 2008). Not adopting the EITI standard is hence justified with its possible infringements of the country's sovereignty over its natural resources. Again, the norm contestation is soft contestation: while not challenging transparency per se, they only contest the practical implications at the level of standardized procedures that are based on it.

The third category, contestation by non-state actors with economic motivations, has played out largely in the US domestic realm. During the Obama Administration, the United States had been in the vanguard of the promotion of the norm of transparency for natural resource governance. After having adopted section 1504 of the Dodd-Frank Act, President Obama also promoted the country's membership in EITI "so that taxpayers receive every dollar they are due from the extraction of natural resources" (Obama, 2011). In 2014, the United States became the first G8 member and the largest economy to join EITI. The stipulations of the Dodd-Frank Act were from the beginning subject to negative lobbying by the American Petroleum Institute, the lobby group of the US oil industry. Their norm contestation was arguably the hardest form of contestation as they were out to directly revoke the standardized procedures (content of US Dodd Frank Act) that were motivated by the organizing principle of transparency. The industry's first mode of contestation was arbitration: they sued in court arguing that the US Securities and Exchange Commission, which was in charge of the implementation, overstepped its competences as this was not a matter of shareholder protection but of foreign policy. Moreover, they claimed that the provisions were violating the US constitution's first amendment, which guarantees free speech, as it obliged companies to disclose information that might be harmful for them. As a result of these complaints, the judges sent the implementation rules back to the SEC to overhaul them in 2013. A second version of the rules was adopted by the Securities and Exchange Commission in 2016. In the meantime, however, the Republican Party had won control over the two chambers of Congress. It first stopped further implementation of these provisions and then worked towards a complete abolishment. In one of his first acts, President Trump signed a Congressional Bill to revoke all reporting obligations until further notice (Snow, 2017). Due to these legal changes, a few months later the United States withdrew from EITI as an implementing country (though they are still a supporting country) (US Department of the Interior, 2017). In their letter, the US Department of the Interior explained that they would continue to support transparency to improve resource governance, but that these domestic changes no longer allow them to comply with the EITI standards. While somewhat indirectly, the case of the United States can also be seen as a case of justification. Domestic companies used arbitration within the country, but, once they had been successful, the United States referred to its state sovereignty when withdrawing from EITI.

In terms of contestation by extractive companies, there were some fears by NGOs that events in the United States could also inspire EU companies to demand weaker standardized procedures. And indeed, the other contestations caused some timid, soft contestation in the EU. Some European extractive companies used the first and second norm contestation processes, and especially the developments in the United States, as a motivation to question EU regulation in this area. In the review of country-by-

country reporting requirements for extractive and logging industries, issued by the European Commission, industry representatives expressed their worries about a potentially more difficult competitive position. The French multi-sector industry association representing large companies, AFEP (*Association Française des Entreprises Privées*), explicitly called for the repeal of the legislation as they feared that the repeal of the Dodd-Frank Act would create a competitive disadvantage for European companies (Penttinen, 2019). AFEP had also communicated its worries in a 2016 meeting with Commission officials in which it argued that this legislation would disfavor European companies compared to US and Chinese companies. Moreover, they remembered the fact that the French Supreme Court had already raised concerns similar to those of their US counterparts about a possible infringement of economic freedom (European Commission, 2018b, p. 12). The lobby group International Association of Oil and Gas Producers also said in their statement that Indian, Chinese and US competitors would not need to provide a similar degree of transparency and repeated that “this is relevant in the context of the ongoing review of the EU Accounting Directive which is required to take into account international developments, including issues of competitiveness” (International Association of Oil and Gas Producers, 2018). In other words, the extractive industry used the mode of justification and argued that the standardized procedures (provisions of the Accounting and Transparency Directives) were potentially in conflict with the norm of economic freedom, as they were disadvantaged by them. As these statements indicate, the global developments also affected the domestic norm contestation process in the EU. These norm contestation processes were, however, much softer than in the United States as the large majority of the industry did not want to overhaul regulations completely (see more details in the next section) (Penttinen, 2019).

Outcome of the Norm Contestation Process: Transparency Withstands

Despite these three different norm contestation processes, the organizing principle of transparency has withstood the pressure relatively well so far. In each of the three processes, different factors played a role and the EU contributed to some extent to them. This section will now discuss them one by one.

Since the early 2010s, China has changed some of its strategy in Africa. Confronted with increasing local complaints about exploitative behavior, and even anti-Chinese riots and election platforms, the government and companies decided to adjust some policies to improve China’s standing in the region. While still prioritizing economic development, investors discovered the hard way in a couple of countries that good resource governance was not just some woolly idea but a necessity when doing business (e.g.

when Chinese companies were not able to enforce extraction deals in Nigeria). In other words, as Zhao puts it, “Chinese companies began looking for the same guarantees that Western companies have long sought for in their investments”, which included also a politically and economically stable environment (Zhao, 2014, p. 1049). Moreover, with growing political clout, China wants to demonstrate that it also acts as a ‘responsible power’ and is therefore increasingly cautious in dealing in with overly corrupt and violent regimes to avoid international reputational harm. An example of this trend is the 2014 *Guidelines for Social Responsibility in Outbound Mining Operations* by the Chinese Chamber of Commerce of Metals, Minerals and Chemicals Imports and Exports (CCCMC), which is supervised by the Ministry of Commerce. These guidelines recommend that Chinese companies abroad “disclose all payments which are made to foreign government entities in countries of operation, including in-kind payments and infrastructure projects, in line with global transparency standards, in countries where those apply”, while specifically highlighting the EITI. An EITI study shows that Chinese companies, contrary to widely held beliefs, do actually not perform worse in terms of transparency in EITI countries than Western companies (EITI, 2016). The report states that:

“to date, there does not appear to be any cases in which a company based in China has refused to collaborate with a host country implementing the EITI. On the contrary, this review conducted by the EITI International Secretariat finds that an increasing number of Chinese companies are disclosing information in EITI countries where they are required to report” (EITI, 2016).

In conclusion, China nowadays takes a pragmatic stance towards this norm: the country might have their reservations about promoting it globally, but if it serves their own economic interests, they are willing to comply with it.

This change is also related to the second contestation, which places the fundamental norm of sovereignty over global standardized procedures, such as the EITI standard. The EU and other Western actors promote their understanding of good governance (in the same way as other fundamental norms like human rights) often through conditionality in Africa. For access to foreign direct aid or loans, the receiving states have to comply with external standards (Lujala, 2018). Countries that do not depend on external funding (such as oil producing countries in the Middle East) are much less inclined to join EITI. For example, oil-rich Equatorial Guinea, which was 85 out of 89 in the 2017 Resource Governance Index, has to implement the EITI standard as part of an application for a loan of the IMF (Government of Equatorial Guinea, 2018). The fact that, only a few months after the application, the country’s leading transparency activist was severely beaten up by security forces was used by the NGO Human Rights Watch as an example to show that the

government's application was not so much motivated by a particular desire for better resource governance (Human Rights Watch, 2018). Recent studies show a large discrepancy between signing up to the EITI standards and actually implementing them (Lujala, 2018). In other words, many of these countries want to project the image that they live up to the norms of transparency and good governance for economic reasons, while making the implementation process as slow and tedious as possible (Lujala, 2018).

In many cases, joining EITI or implementing good governance measures is not the result of a completely free choice: insisting on state sovereignty can also be a luxury that many states cannot afford themselves. For some time China presented an option to countries that looked for external economic aid without strings attached, which would respect the partner countries' sovereignty. The fact that China offered this alternative to Western actors or Western-dominated institutions (such as the IMF or the World Bank) strengthened the sovereignty norm (Zhao, 2014, p. 1038). However, as mentioned above, while China is still less concerned about good governance than the EU, they are increasingly more selective in their engagement in Africa. This has created an additional incentive for these countries to look for ways to demonstrate that they can provide a stable and trustworthy business environment.

With regard to norm contestation from the European extractive industry, the large majority did not call for the removal of the EU provisions, but rather requested more efforts to expand EITI implementation (European Commission, 2018a, p. 58). As in other cases, the industry's main concern was still an even playing field. The International Association of Oil and Gas Producers argued that EU and US rules would only capture 7 percent of global reserves of oil and gas, while EITI would at least capture 14 percent. According to them, "the 'value added' of the EU provisions is, therefore, not readily apparent. It would have been more efficient for the EU to use its considerable 'soft power' to influence some of the largest resource-rich countries of the world to implement the EITI Standard" (International Association of Oil and Gas Producers, 2018). The lobby group, in fact, indirectly suggested coercing countries into joining EITI by saying that "the European Commission could explore how to create linkages between the allocation of EU development aid and funds to countries joining the EITI system" (International Association of Oil and Gas Producers, 2018). The majority of the European companies that participated in the Public Consultation Process declared that they would not recommend any changes, and that they would prefer to wait some time to allow lessons to be learned from the initial reports submitted on the basis of the rules that are already applicable (Penttinen, 2019).

Most EU companies are aware of the fact that the norm of transparency is deeply enshrined in Western states and it would be hard to contest it openly (Partzsch and Vlaskamp, 2016). In fact, after the signature of President Trump to stop the implementation of section 1504 of the Dodd-Frank Act, even the President of the American Petroleum institute said that “the oil and gas industry strongly support[ed] transparency and ha[d] pursued this effort for over a decade through the Extractive Industries Transparency Initiative, a globally accepted framework” (Snow, 2017). How constructive and productive this participation has been may be a matter of discussion, but as this quotes illustrates, the majority of the Western industry wants to give at least the appearance of being concerned about transparency. This leads to a situation where some parts of the industry contest the norm in their country, while supporting and promoting it on the global scale. In the case of the EU, Publish What You Pay stated in a report that “industry representatives have sympathy with the underlying aims” and that some reports even go beyond what is legally required (Publish What You Pay, 2018). Leading multinational extractive companies and the most prominent NGOs in this area even sent a joint letter to the European Commission in which they affirmed that they believed that “transparency is essential to promote good resource governance” and formulated a joint list of recommendations (mainly improving the data quality and accessibility, and working towards a global even playing field) (Extractive Industry Representatives and Civil Society Representatives, 2019).

On the global level, norm contestation by other actors did not much affect the norm’s legitimacy. EITI has further grown in members in the past years. Initially, EITI was mainly a club of low-income economies. However, more mid-income and high-income countries are also joining the initiative, which gives it additional credibility. The fact that the United States (at least for some time), Norway, and EU Member States Germany, the Netherlands, and the United Kingdom implement the EITI standards sends a clear signal that these countries genuinely believe in the norm of transparency and do not only want to use EITI as a tool to get control over natural resource in the Global South.

In terms of domestic policies, Norway adopted similar policies to the EU in 2013. In 2014, Canada adopted the Extractive Sector Transparency Measures Act. Both regulations were very similar to the EU directives and are mutually accepted. As written above, one of the main concerns of the EU industry was red tape from a multitude of different national requirements. As a result of the developments in the United States, the EU’s directives are now the remaining gold standard. Other states and globally-operating extractive companies turn now to the EU requirements as benchmark.

Conclusion

This chapter discussed the contestation of the organizing principle of transparency to support the norm of good governance in the natural resource sector and how the EU coped with it. It explained how it has been contested indirectly in three different ways. First, by arguing that the fundamental norm of economic development comes before this organizing principle of transparency. According to the justification, good governance would be a result of economic development, not the other way around. Second, a number of countries rich in natural resources used the fundamental norm of sovereignty to justify the non-implementation of globally-established standardized procedures, such as the EITI standard. These contesters also did not oppose transparency per se, but maintained that their countries should find their own national standardized procedures to live up to this norm. Finally, extractive companies have contested national (or in the case of the EU, European) standardized procedures that required them to provide transparency about their payments for extraction contracts both domestically and abroad. The principle mode of contestation was a combination of referring to the fundamental norms of sovereignty and economic freedom. Again, the organizing principle of transparency was not criticized directly, but the standardized procedures that were implemented as a consequence.

In all three cases, the norm contestation did not remain at one level of Wiener's normative grid. This confirms findings in other chapters of this volume (Johansson-Nogués, Vlaskamp and Barbé, this volume). During the norm contestation process, other fundamental norms were used to justify preferences regarding standardized procedures. Moreover, the hierarchy was questioned. Almost all contestations could also all be characterized as soft contestations: none of the contesters went out to "destroy" the norm of transparency openly. The hardest form of contestation could be seen when the US oil industry successfully contested the stipulations of the US Dodd-Frank Act.

These results indicate that the norm's legitimacy has withstood until now. At the global scale, the norm does not have seen to have suffered too much from the events in the United States, and its resilience is further strengthened by China increasingly recognizing its merits. In fact, the EU has now become a global champion in this area whose rules have been emulated by other countries, as the United States has fallen away as standard-setter. There is no evidence that the EU considered changing its norm promotion, either in Africa or anywhere else.

There have also been no changes detected within the EU. In spring 2019, the European Commission reviews chapter 10 of the EU Accounting Directive. In their survey among industry representatives, the

Commission did not detect much appetite for larger changes. While the developments in the United States had caused fears about their competitive situation with respect to US companies, they argued that the bureaucratic and financial implications of current EU regulations were less than expected. Consequently, they preferred stability and predictability above new changes. For the EU industry it was more important to have an even playing field and it therefore urged the Commission to promote this norm, through EITI, even more aggressively.

In sum, this chapter draws a picture of a rather resilient norm: both domestically and globally the contestation processes did not have any major impact on its legitimacy. The EU played an important role in this resilience by establishing domestic standards to serve as a new benchmark and support EITI.

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