Victims of their own success abroad? Why the withdrawal of US transparency rules is hindered by diffusion to the EU and Canada

Victims of their own success abroad? Why the withdrawal of US transparency rules is hindered by diffusion to the EU and Canada

Bjorn Kleizen

Abstract: Recent years have seen significant efforts to reduce corruption in the oil, gas and mineral industries. Under the Obama administration, rules were adopted obliging stock-exchange listed extraction companies to disclose payments to domestic and foreign governments, an initiative which soon spread to the EU and Canada. Under Trump, however, policy preferences changed, and the disclosure requirements were withdrawn. This article investigates how diffusion of US disclosure rules has mitigated the effects of the withdrawal process through insights on norm diffusion, market power and rules applicable beyond states' territorial borders. It is argued that when 1) rules with broad external applicability 2) diffuse to multiple influential jurisdictions and 3) address large multinationals in 4) an internationally interdependent sector, global standards of regulation may emerge. As these conditions are largely (although not entirely) fulfilled, it is likely that most large US multinationals will remain at least partially subject to payment disclosure obligations.

Keywords: diffusion, territorial extension, extraterritoriality, extractive industries, market power

1. Introduction

When discussing the external impact of regulation adopted by influential states, researchers mostly do so in a unilateral fashion, assuming that legislators in one legal order adopt a certain policy, and parties in other legal orders subsequently comply with or emulate this policy (Bradford, 2012; Lavenex, 2014; Scott, 2014; Manners, 2002). Foreign companies may e.g. be forced into compliance through the extraterritorial applicability of certain rules (Scott, 2014), or lawmakers may opt to emulate foreign regimes in their domestic legislation (Manners, 2002). However, one issue that remains unaddressed is what happens when, in a global market dominated by multinationals, externally applicable rules spread to other jurisdictions, but the policy preferences of the original legislator subsequently change.

This issue recently came to the forefront with the US's withdrawal of SEC Rule 13q-1 implementing Section 1504 of the Dodd-Frank Act.[i] This Rule concerns transparency requirements regulating the disclosure of payments made to both domestic and foreign governments in the extractive industries, i.e. the oil, gas and minerals sectors (Sovacool et al., 2016). Removing these requirements formed part of the new Trump administration's effort to reduce the regulatory burden facing companies. However, as the transparency in the extractive industries norm had already diffused across various states (Lavenex, 2014), the EU and Canada were receptive to the emulation of US rules on the matter.[ii] Through the strong international integration of extraction markets, and the dominance of multinationals (Vogel, 1997), these emulated externally applicable rules could potentially undermine the effectiveness of the repeal process in the US; resulting in US lawmakers being adversely affected by their rules' normative appeal abroad.

Using legal comparative analysis, this article will examine the original and revised SEC Rules implementing Section 1504 of the Dodd-Frank Act, how these were inspired by the Extractive Industries Transparency Initiative (EITI) public-private-partnership, the regime's

diffusion to the EU and Canada, as well as its withdrawal under Trump. This analysis is not only relevant with regard to the history, spread and enactment of enforcement rules for an underlying norm (Ewald, 1995), but can also indicate to what extent the EU and Canada chose to align with US rules. Furthermore, to examine to what degree US multinationals remain faced with disclosure rules pursuant to EU and Canadian law, reports currently published by the 10 largest US multinationals in terms of oil production under Canadian law and the United Kingdom's (UK) implementation of the EU Directives are analyzed. Based on this explorative analysis, we will induce under what conditions a combination of emulation and extraterritorial applicability limits the powers of legislators in determining the level of regulation applying to large companies.

As such, the article is aimed, first, at suggesting a model for a previously unstudied externalization phenomenon, and second at merging insights on the external effects of regulation from various branches of legal and social science scholarship (Lavenex, 2014). Simultaneously, as the article provides an exploratory case study, it mainly aims to suggest causal relationships that may lead to a lock-in effect hindering US deregulation, providing a preliminary model that should be tested in follow-up studies in more general populations (Gerring, 2004). Section 2 elaborates on the extant theoretical insights. Section 3 describes the norm diffusion process, the diffusion of disclosure obligations between the US, EU and Canada and examines the extent to which oil groups remain faced with similar obligations under EU and Canadian law following the US retraction. Section 4 is devoted to theory-building based on the extractive industries case, and examines the conditions under which we might expect diffusion processes to hinder efforts to lower regulatory requirements. Finally, the article rounds up with several concluding remarks.

Theoretical framework: diffusion and extraterritoriality

For the purposes of this article we consider a set of concepts drawn from both the social sciences and legal scholarship. With regard to the former, we will draw on conceptualizations from international relations and the policy sciences on the diffusion of norms and rules across jurisdictions (Sikkink, 1998; Kelley, 2008; Damro, 2012; Börzel & Risse, 2012). These concepts provide a powerful tool to explain how the US disclosure rules have spread to the EU and Canada. In drawing on this literature, the article follows Finnemore & Sikkink (1998) in interpreting a norm as standards of appropriate behavior, with an intersubjective component that depends on a society or community's shared moral observance regarding its observance or non-observance. Thus, when utilizing the term "norm", the article does not refer to legal provisions. Instead, norms as interpreted here designate underlying normative standards, whose observance the law is attempting to regulate through the establishment of rights and obligations (McAdams, 1997). When referring to legal rules, the article opts for terms such as measures, obligations and rules to avoid confusion with underlying norms. Complementing the discussion of contributions from the social sciences, we will draw on the insights on the external applicability of internal regulation developed in legal scholarship (Scott, 2014).

2.1 Normative diffusion

Recent decades have seen an upswing in research considering the importance of international norms in shaping national policies. From a norm lifecycle perspective, emergent norms are argued to compete with their incumbent counterparts, with the former sometimes displacing the latter in champion states (Kelley, 2008). Finnemore & Sikkink (1998) and Sikkink (1998) argue that such a process may gradually spread a norm until a tipping point is reached, at which sufficient influential actors and states support the norm to start what is coined a 'norm cascade'. In this stage of a norm's lifecycle, it expands rapidly across states due to it being perceived as legitimate, by raising the esteem of the adopting state or by signaling

conformity with norms prevailing in the international sphere (Fukuda-Parr & Hulme, 2011; Börzel & Risse, 2012; Miller, 2003; Lenz & Burilkov, 2016). In this regard, Kelley (2008) argues that conditionality and sanctioning may sharply increase around the cascade stage of a norm's lifecycle, as states and international actors – potentially including states with substantial influence over what is perceived normal and legitimate in the international sphere – begin to add additional weight to adherence to the norm (Manners, 2002; Finnemore & Sikkink, 1998).

Beyond the role of both transmitting and adopting states, IGO's may play a vital part in fostering the emergence and cascade of norms. Constructivists in particular argue that IGO's, after being founded by their member states, often develop an internal logic of appropriateness and worldview (Kelley, 2008). Thus, they may begin to champion norms independently of their member states, potentially providing a powerful impetus for the spread of norms on the state level. NGO's possess a similar role (Haddad, 2013; Fukuda-Parr & Hulme, 2011), although they lack the coercive and/or rule-making powers possessed by IGO's and states. Nevertheless, through lobbying activities and voluntary partnerships they may continue to foster the diffusion of norms. Thus, both types of organizations may play an important part in both the emergence and the cascade of norms.

In the last stage of a norm's lifecycle, it gradually becomes internalized by the adopting states (Finnemore & Sikkink, 1998; Kelley, 2008; Fukuda-Parr & Hulme, 2011). Carrying out certain norms may become habit and self-evident for many actors, including national politicians, governments and IGO's. At this stage, contestation of the norm is likely reduced (Kelley, 2008), barring the emergence of new norms that challenge the internalized standards. In the latter case, the new emergent norm will face a powerful *status quo*, with norm entrepreneurs having to convince and gradually internalize the new norm with proponents of the incumbent regime – in essence starting a new norm lifecycle.

2.2 Market power and externally applicable rules

In the context of a state or entity's capability of fostering norm diffusion it is moreover relevant to point to the role of market power. Bradford (2012) and Vogel (1997) argue that substantial markets such as the US, the EU and China can use their economic size as leverage, forcing foreign jurisdictions or private actors to comply with or emulate unilaterally adopted measures. A failure to do so could deprive actors of access to vital markets (Bradford, 2012; Vogel, 1997). Thus, even if a third country does not genuinely support a norm underlying a given regime it may be forced to show at least some degree of pragmatic conformity.

However, to effectively use market power a jurisdiction needs more than economic size (Damro, 2012). Additional necessary conditions are that the regulating market cannot be circumvented by undertakings, and that the jurisdiction possesses sufficient propensity and capability to impose stringent levels of regulation (Bradford, 2012; Damro, 2012; Vogel, 1997). Moreover, while market power may manifest itself passively due to the stringency of norms adopted in a jurisdiction, a more active approach may be taken as well. Influential markets such as the US, China and the EU can use their economic leverage over third states to e.g. negotiate beneficial trade agreements or impose conditionality requirements (Lavenex & Schimmelfennig, 2009). Another potential method is for states to utilize their market power by adopting externally applicable rules. These rules, instead of being based on the presence of an actor within a jurisdiction, may e.g. be triggered by conduct in – or effects on – that jurisdiction's market (Scott, 2014). Legal scholars have devoted substantial attention to such unilaterally adopted rules with extraterritorial application – a model for regulation that often edges to the limits of a legislator's jurisdictional powers (Scott, 2014).

Scott (2014) argues that two variants of externally applicable rules may be distinguished. The first concerns rules that are entirely extraterritorial, meaning they may be applied even without any link to the regulator's territory. The second concerns territorially

extended rules, i.e. rules which do require a territorial link with the regulating state, but only tenuously (Scott, 2014). An example is legislation triggered by a company's activities in a state, but aimed at influencing wider conduct outside the territory of that state. For instance, the applicability of many competition law obligations is triggered due to the presence or effects of a company on a state's market, but the scope of these rules may extend to conduct such as mergers that are conducted largely abroad (Griffin, 1999). Scholars regularly utilize the term extraterritoriality to designate both variants of externally applicable rules, but in this contribution we will utilize Scott's (2014) distinction between extraterritorial and territorially extended rules to maintain a strict conceptual clarity. When referring to both variants, the broader phrasing 'externally applicable' is utilized.

Distinguishing between extraterritoriality and territorial extension is relevant given the controversial nature of externally applicable legislation. There are several bases for legislative jurisdiction that are recognized under customary international law. Of these, the two arguably most commonly relied upon principles are territoriality and nationality – with territoriality in particular being the basis for jurisdiction in large swaths of market legislation (Scott, 2014). However, as the territoriality principle flows from the sovereignty of the legislating nation-state, it follows that restraint must be shown to not impede the territorial sovereignty of other states through extraterritorial rules (Van Alsenoy & Koekkoek, 2015). Consequently, territorially extended rules offer a more legitimate compromise than true extraterritoriality, as under the former a rule is justified due to some territorial connection to the legislating state, while still allowing for external effects of the rule (Scott, 2014). The European Court of Justice (ECJ) has e.g. been relatively receptive to territorially extended rules, even when a substantial portion of the regulated effects and/or conduct took place outside the EU (De Baere & Ryngaert, 2013; Dobson & Ryngaert, 2017). US courts have similarly accepted territorial extended rules

that e.g. asserted effects-based jurisdiction in anti-trust laws, although it is notable that US courts have denied external applicability in other instances (Griffin, 1999; Painter et al., 2011).

Regardless of utilized technique, externally applicable rules offer states tools to influence the conduct of actors beyond their borders. The objectives of these rules may differ substantially, however. Some rules – e.g. in competition law – primarily regulate internal affairs, while recognizing that the issue has facets that warrant external applicability (De Baere & Ryngaert, 2013). Other measures are aimed more explicitly at altering the conduct of foreign parties in a valued direction. Such measures are often directed at attaining strongly normative objectives, such as transparency or sustainable development (Kleizen, 2015), and US payment disclosure rules and its EU and Canadian emulations seem heavily based on this second rationale. When adopted by jurisdictions with sizeable market power, externally applicable rules may force foreign undertakings to comply with these rules to access an essential market (Bradford, 2012), thus offering a potent soft power instrument (Bradford, 2012; Vogel, 1997; Damro, 2012).

3. A legal comparative analysis of payment disclosure rules

3.1 EITI and norm diffusion

The US disclosure rules are traceable back to the EITI public-private-partnership and a civil-society publish what you pay campaign in the late 90's (EITI, 2017). Transparency in the extractive industries initially emerged as a norm due to mismanagement of oil payments, particularly in Angola, which had pressured companies to remain non-transparent on their dealings with the national oil company (EITI, 2017). Founded on initiative of the UK government in 2002-2003 (Aaronson, 2011; Sovacool et al., 2016), countries participating in EITI cooperate with civil groups and companies to increase the transparency of industry

operations, *inter alia* by publishing corporate revenues and payments to governments (Sovacool & Andrews, 2015; European Commission, 2011a p.11-12; EITI, 2003). The initiative is aimed at tackling corruption, particularly in resource-rich developing countries and states with weak governance systems – i.e. those states suffering from the so-called resource curse (Listhaug, 2005; Firger, 2009; Sovavool & Andrews, 2015).

The initiative spread significantly since its inception (Aaronson, 2011). In 2003 roughly 20 states – including both Western countries and resource-rich states – participated in the London conference setting out the original EITI objectives (EITI, 2003), as well as a number of civil society groups and multinationals. In 2004, G8 countries chose to support the initiative and committed to the use of voluntary partnerships and the support of governments in resource-rich countries (Sovacool et al., 2016; G8, 2004). Over the years, both EITI's institutional framework and its membership have grown substantially. EITI reported 31 countries as compliant to its standards in 2015, and another 18 as candidate states (EITI, 2016; Sovacool et al., 2016). Thus, after the norm's initial emergence in the 90's, a tipping point was reached with the founding of EITI, after which a cascade quickly followed (Finnemore & Sikkink, 1998; Fukuda-Parr & Hulme, 2011).

However, EITI remains subject to the voluntary cooperation of governments, companies and civil society, potentially limiting its impact (Firger, 2009; European Commission, 2011a, p.16; Aaronson, 2011; Sovacool et al., 2016). This issue, combined with the international commitments made by the G8 countries on increasing support for the EITI in 2011 (Lynn, 2011), led the US Congress to reason that legislative action was required to achieve a more effective payment disclosure regime. The Congress therefore included Section 1504 on the disclosure of payments by resource extraction issuers in the Dodd-Frank Act, which adds Section 13(q) to the 1934 Securities Exchange Act. Section 1504 requires the SEC to adopt implementing rules, with the first version published in 2012 (SEC, 2015). Consequently, it

became the first country to implement hard law inspired on the payment disclosure regime of EITI – an initiative soon emulated by the EU and Canada, which also subscribed to the G8's 2011 conclusions. This is consistent with the Kelley's (2008) prediction that during the cascade stage – or in this case arguably during transition to the internalization stage – sanctioning of a norm may increase. What is interesting in the extractive industries case, moreover, is that the supplementary hard-law enforcement rules also spread to several jurisdictions, creating a secondary policy diffusion process, following diffusion of the original norm.

3.2. Payment disclosure under the US Dodd-Frank Act

While the US was thus the first mover in terms of hard law, the SEC's initial implementing rules proved controversial due to their broad scope – an issue that would stall the entry into force of Section 1504 substantially. They *inter alia* refused companies the right to an exemption for payments made to governments that banned the publication of certain payments, and did not allow the removal of confidential information from final published compilations. Industry groups therefore challenged the Rule before the District Court of Columbia (Sovacool et al., 2016; SEC, 2015), which determined that the lack of a possibility for exemptions increased the burden on companies more than necessary and that the publication the annual report including confidential information was unnecessary.[iii] The SEC was thus required to reformulate its rules in accordance with the judgment; a process which would last until 2016. Although the legal effects of the Rule were delayed substantially, it and the Dodd-Frank Act proved vital in stimulating the EU and Canada to adopt similar legislation.

The final version of the SEC Rule was applicable to all extractive companies listed on a US stock exchange, operational in the "*commercial development of oil, natural gas, or minerals"*.[iv] The Rule considers commercial development to mean exploration, extraction, processing and export of oil, natural gas or minerals, thus potentially capturing an array of both upstream and downstream activities (SEC, 2016, p.25). The obligations are extended to the

subsidiaries of listed undertakings, provided that these subsidiaries fall under the definition of being controlled by the parent pursuant to Exchange Act accounting requirements.

Moreover, companies were to disclose various types of payments to governments – both US and foreign – related to commercial activities in the extractive industries, provided they met the *de minimis* threshold of USD 100.000, including taxes, royalties, fees, production entitlements, bonuses, dividends, payments for infrastructure improvements and so-called community and social responsibility payments. The choice of these types of payments is largely designed to follow the system established by EITI (SEC, 2016, p.43). Regarding the contents of the reports, undertakings are *inter alia* required to disclose payment type, total amount paid per project, the government to which the payment was made, as well "*sufficiently detailed additional information to permit a reasonable user of the information to identify project's specific, subnational, geographic location."* Other important requirements concern the identification of the receiving government as well as the project to which the payments relates. This *inter alia* implies that all reporting should be done at the project level, a requirement intended to ensure sufficient granularity to promote the accountability of (sub)entities providing payments to governments (SEC, 2016, p.77-78) – and another element emulated by the EU and Canada.

The 2017 inauguration of the Trump administration signaled a change in US policy preferences, however. The new incumbent seemingly prefers a more minimal role for government, arguably constituting a new emergent norm, and one in conflict with the transparency norm underlying the disclosure rules (Finnemore & Sikkink, 1998). Consequently, the disclosure of payments rules were targeted under the new administration. Utilizing the Congressional Review Act, which allows Congress to adopt joint resolutions to overrule recently adopted regulations by administrative entities, Rule 13q-1 was retracted.[v] Given that

Section 1504 of the Dodd-Frank Act required implementation through SEC rules to take effect (Lynn, 2011), the US regime has effectively been disapplied.

3.3 Emulation by the EU

In 2011 the European Commission drafted proposals to amend of the EU Accounting and Transparency Directives. These proposals *inter alia* included an EU-wide country-by-country payment disclosure scheme for the extractive industries – with the revised Directives being adopted in 2013 (European Commission, 2011c; European Parliament, 2014).[vi] The preambles set out the goals of the disclosure requirements, noting that the measures are aimed at the increased transparency of payments made to governments in resource-rich countries. Moreover, in its 2011 press release announcing the revisions, the Commission notes that it "*is responding to international developments in particular the inclusion of a requirement to report payments to governments in the Dodd Frank Act in the United States"*, as well as the 2011 G8 summit (European Commission, 2011b; European Commission, 2011c). This is reiterated in the EU's legislative proposals, with the 2011 Accounting Directive proposal mentioning that "*this proposal is comparable to the US Dodd-Frank Act, which was adopted in July 2010, and requires extractive industry companies (oil, gas and mining companies) registered with the Security and Exchange Commission (SEC) to publicly report payments to governments"* European Commission, 2011c). While EU actors thus already supported the underlying norm of transparency in the sector, the US's hard-law initiative does seem to have influenced the EU's choice to legislate and regulatory design. The remainder of this paragraph illustrates that the EU – barring a few notable additions – largely imitated the US Dodd-Frank Act regarding substantive requirements.

Despite the similarities between the rules adopted in the US and the EU, there are notable areas in which the EU decided to go beyond the Dodd-Frank Act, particularly by including wider applicability triggers. These additions will be discussed first, before we turn to

largely identical provisions. First, Article 42(1) of the Accounting Directive provides that not only listed companies, but also large non-listed undertakings fall under the scope of the reporting requirements. Beyond achieving wider regime coverage, this addition was intended to ensure a level playing field on which listed and non-listed companies share the same regulatory burden. Under the Accounting Directive, large undertakings are defined as those undertakings which meet two of the three following criteria: having a balance sheet total of at least EUR 20.000.000, a turnover of at least EUR 40.000.000 and/or having an average of 250 employees during the relevant financial year.[vii] These requirements seem flexible enough to capture a variety of extractive companies, including the larger subsidiaries of multinationals.

Second, the EU has made the addition of applying the disclosure requirements to public-interest entities. Particularly notable is that while the aforementioned size requirements are relevant to purely private companies, such considerations are irrelevant to public-interest entities active in the extractive industry. This is apparent in the wording of Article 42(1), which reads: "*Member States shall require large undertakings and* all public-interest entities *active in the extractive industry or the logging of primary forests to prepare and make public a report on payments made to governments on an annual basis [emphasis added]*." Third, it is notable that the measure addresses not only EU Member States, but is applicable to all limited liability companies in the 31 EEA states. This includes Norway, which already had legislation in place compliant with the new Directives, and is a resource-rich country in terms of oil, timber and gas (Listhaug, 2005). Finally, the EU rules go beyond their US counterparts by including logging undertakings within their scope, where the US rules only address the mining, oil and gas industries (European Commission, 2013).

Thus, while its rules are heavily inspired on Dodd-Frank Act and SEC Rule 13q-1, the EU has included a number of revisions that widen the application criteria of their payment disclosure regime, potentially increasing the degree to which third countries and third-country

companies are affected by the rules. Simultaneously, as the applicability of the regime to both large and public-interest entities is subject to the condition that the undertaking in question is governed by the laws of the Member States, the external effects of both extensions of the payment disclosure regime will likely remain reasonably modest. For instance, public-interest entities in resource-rich countries that are neither listed on an EEA stock exchange, nor an entity required to disclose annual financial statements under the EU Accounting Directives, will remain outside the scope of the rules. Moreover, Article 42(2) of the Accounting Directive implies that if a parent is not an undertaking governed by the laws of the Member States, only the subsidiary will required to report its payments. While such a limitation is more consistent with territoriality principle, it reduces the potential external effects of the Directives' disclosure provisions by allowing third-country multinationals to compartmentalize their EU activities in a dedicated subsidiary – keeping other operations beyond the rules' scope. Thus, the territorial triggers of the Directives serve as important limits of the EU regime's reach.

Regarding substantive obligations imposed on addressees, the EU's rules are largely similar to the SEC rules under the Dodd-Frank Act. Mostly following its US counterpart, EU rules require the disclosure of production entitlements, profit taxes, bonuses, license fees, royalties, dividends, payments for infrastructure improvements and licenses, and rental or entry fees (European Commission, 2011a) passing a *de minimis* threshold of EUR 100.000.[viii] Pursuant to Article 43(2), reports are *inter alia* required to disclose total amount of annual payments to each government and the relevant project concerned. It should furthermore be noted that Article 46 of the Accounting Directive allows undertakings to be exempted from reporting requirements if they have submitted a report pursuant to a third country regime which has been assessed by the Commission as equivalent to the EU's disclosure rules. Commission Implementing Decision 2016/1910 subsequently established that the Canadian rules comply with the Directive's equivalence criteria.

3.4 Emulation by Canada

The third jurisdiction[ix] to implement hard-law inspired on EITI norms is Canada, whose Extractive Sector Transparency Measures Act (ESTMA) entered into force in 2015 (Milin, 2016; Bildfell, 2016). Canadian considerations on the desirability of ESTMA focus heavily on international commitments made to fight corruption by enhancing transparency in the extractive industry, as is made clear by e.g. Section 6 of the ESTMA. These commitments form part of its broader Corporate Social Responsibility Strategy, developed in 2009 and revised in 2014, which seeks to comprehensively foster ethical standards and "*promote Canadian values"* in the extractive industries (Global Affairs Canada, 2018). The Canadian government moreover refers to commitments made by its Prime Minister towards the G8 in supporting EITI, as well as Canada's purpose of aligning measures with the emerging obligations under US and EU law (Global Affairs Canada, 2018; EITI, 2013). Indeed, as with the EU's directives, the Canadian ESTMA closely resembles the original rules adopted under the US Dodd-Frank Act (Bildfell, 2016). Thus, the diffusion of reporting obligations seems to have been facilitated by the Canadian government's earlier internalization of the transparency norm – notably as part of a broader set of norms of ethical corporate conduct (Finnemore & Sikkink, 1998) – in the extractive industries. This evidences that, after the cascade and during internalization stages of a norm's lifecycle, an increase in sanctioning may occur (Kelley, 2008). Simultaneously, the design of ESTMA seems partially based on preventing regulatory mismatches between Canadian obligations and those of the EU and the US. Thus, aspects of market power theory are also visible, with Canada ensuring its rules' compatibility with sizeable external markets.

While, overall, the Canadian economy is relatively small compared to those of the EU and the US, it is one of the world's leading markets in terms of energy resources (Forrester et al., 2015), making any legislation on extractive companies adopted by Canadian legislators highly relevant internationally (Milin, 2016). Moreover, given that its market is heavily

interwoven with the US energy markets, its external effects following the removal of the SEC's rules in the US may be expected to be substantial.

The ESTMA includes considerably wide triggers for the application of its disclosure rules compared to the original US rules (Bildfell, 2016). A combined reading of Sections 2 and 8 defines organizations covered as:

1. those entities engaging in the commercial development of oil, gas or minerals in Canada or elsewhere, or those entities controlling another entity engaged in the commercial development of oil, gas or minerals, *and*;

2. being listed on the Canadian stock exchange, having a place of business in Canada, doing business in Canada, or satisfying any of the following criteria in at least one of its two most recent financial years:

- having CAD 20.000.000 in assets in Canada

- generating 40 million CAD in revenue,

- employing on average 250 employees during the relevant financial year.

As most criteria are alternative instead of cumulative, a large variety of undertakings is potentially covered by the rules. Notable is the provision that entities controlling subsidiary undertakings active in Canada are also covered by the ESTMA, as this extends the rules to parent undertakings of domestic subsidiaries – provided these parents simultaneously meet the other size, revenue, asset, stock exchange listing or location of business criteria. However, the definition excludes other subsidiary companies from its scope when these cannot be considered extractive companies active in Canada under Sections 2 and 8. Thus, while the issue of subsidiary companies being created to limit the application of rules to a portion of the company

is reduced, it is not completely removed, likely limiting the external effects generated by ESTMA.

Regarding substantive reporting requirements, Section 2 of the ESTMA provides that taxes, royalties, fees, production entitlements, bonuses, dividends and infrastructure improvement payments are covered – a list largely identical to US and EU rules. Sections 2(h) and 9(2) moreover provide that further regulations may be adopted to include other payment categories or alter the minimum value threshold of payments, although no such regulations have been adopted yet. Finally, it is noteworthy that ESTMA – like EU and US rules – also includes an equivalence clause, with Section 10(1) allowing the Minister to determine that reports filed in another jurisdiction that "*achieve the purposes of the reporting requirements under this Act"* form an acceptable substitute to ESTMA reports. Since 2015, EEA and EU reports drafted under the Accounting and Transparency Directives are accepted as substitutes under ESTMA (Natural Resources Canada, 2017).

3.4 Applicability of EU and Canadian rules to US multinationals

Per January 2018 sufficient reports have been filed pursuant to ESTMA and UK disclosure rules, two regimes in force for a relatively long time (and one being an implementation of EU law obligations), to perform a tentative exploration of the reporting obligations of the largest US multinationals. This section therefore examines to what extent these multinationals remain affected following the retraction of US rules. Due to space limitations, the discussion is limited to the upstream oil industry. All consulted reports are listed in the Appendix.

Eight out of the ten largest US extractive groups in terms of oil production, i.e. ExxonMobil, ConocoPhillips, Devon Energy, Marathon Oil Corporation, Apache Corporation, Hess Corporation, EOG Energy, and Chevron (Energy Information Administration, 2009;

Forbes, 2017; Statista, 2016), remain partially covered by EU and Canadian rules through their subsidiary companies' activities in these markets. While the entire group is listed in the US, ExxonMobil e.g. owns a variety of subsidiaries in Canada and Esso in the UK. Indeed, ExxonMobil has filed several reports in the UK, while Canadian ExxonMobil subsidiaries have filed reports pursuant to ESTMA. Together, these reports detail several hundreds of millions in CAD and GBP – mostly in taxes, fees and royalties.

Similarly, subsidiaries from Chevron, Marathon Oil Corporation, Apache Corporation, and ConocoPhillips have submitted reports with sizeable payments pursuant to both the Canadian and UK disclosure rules. Chevron Canada's 2016 ESTMA report e.g. totals 3 billion CAD and notably mentions payments to Nigerian and Indonesian governments, with production entitlement payments to Indonesia making up the bulk of value. Devon Energy, a company mainly focused on North America, has submitted a single consolidated report for all its Canadian-based subsidiaries (Devon Energy, 2017). The report mainly lists tax payments, but also several instances of infrastructure payments, with a combined total of roughly 80 million CAD.

Hess Corporation and EOG Energy, while not having submitted reports yet, are likely covered by EU Directives through their substantial operations and subsidiaries in Europe in the event of making payments larger than the *de minimis* threshold (Hess Corporation, 2017; EOG Energy, 2017, p.5). However, Anadarko and Occidental Petroleum are mainly focused on areas outside the EU and Canada (Anadarko, 2017, p.7-13). These companies have not yet filed payment disclosure reports, and their annual reports suggest no activities or subsidiaries which are likely covered by either the EU's or Canada's territorially extended legislation (Anadarko, 2017; Occidental Petroleum, 2017).

As undertakings are only required to submit reports in the event of making relevant and sufficiently large payments, full evidence will only become available after the EU and Canada

have completed several reporting cycles. Nevertheless, two observations may be presented at this stage. First, most of the dominant US multinationals will continue to be addressed – even if to a lesser degree – by the EU's and Canada's mandatory payment disclosure regimes, obliging them to retain payment tracking mechanisms, disclose potentially sensitive payments and imposing a substantial administrative burden (SEC, 2016, p.175-179, 185). Second, the EU's and Canada's choice to limit their regimes to subsidiaries (and in some ESTMA cases their controlling parent) offers foreign companies a method to partially – in some cases largely – shield themselves from current rules by establishing jurisdiction-specific subsidiaries. While EU and Canada-listed entities are completely caught, including subsidiaries in foreign countries, only individual, although often still sizeable, subsidiaries of US multinationals – and some controlling parents under ESTMA – will face reporting requirements. Given that many multinationals own subsidiaries for specific national markets, the effects of the US overruling process have not been completely negated.

4. An emerging global minimum standard?

Although the EU and Canadian 'regulatory nets' are not wide enough to capture smaller operators or all operations by foreign multinationals, one could argue that the diffusion of the transparency norms underlying EITI, and their subsequent implementation in territorially extended regulation, has resulted in an emerging global standard, applicable to almost most multinationals to at least some extent. In this section several necessary and conducive conditions for such a phenomenon to occur are explored. Based on the extractive industries case and existing insights on market power, norm diffusion and externally applicable rules, the section proposes two market-related prerequisites, a diffusion prerequisite and two conducive factors that allow for the creation of global minimum standards.

First, a sector must be *sufficiently globalized*, meaning that a substantial portion of companies operate in multiple national markets and that these markets are interdependent (Vogel, 1997; Hamner, 2001). Without sufficiently globalized and interdependent markets, a large portion of the commercial activities that legislators would want to legislate will operate in only one or a few jurisdictions. As such, the chance that a legislator can exert jurisdiction based on the territoriality principle – and thus effectively impose its market power – is substantially reduced (Bradford, 2012; Perkins & Neumayer, 2012). Second, the market must be dominated by a relatively low amount of large transnational undertakings (Perkins & Neumayer, 2012), such as is the case in an oligopolistic or monopolistic international market structure. If a high number of small suppliers characterizes the sector, these companies may trade among themselves without being operative in multiple markets, even if the market is substantially globalized in terms of goods flows (Hamner, 2001).

These first two conditions logically flow from the territorially principle as a basis for jurisdiction, reflecting that companies must – depending on the territorial triggers underlying the regime (Scott, 2014) – somehow be present in or affect a jurisdiction to be confronted by its legislation. Even if legislators utilize a form of effects-based jurisdiction, the small size of targeted companies and/or the largely local nature of the sector would imply that only a limited number of jurisdictions would be substantially affected. Truly extraterritorial rules, while hypothetically capable of achieving full coverage, would run into both legal and enforceability issues. When both conditions are present, however, it is highly likely that large companies in the world market will be active in several jurisdictions, confronting them with multiple regimes (Bradford, 2012; Perkins & Neumayer, 2012; Meyer et al., 2010). The oil industry examined earlier reflects these conditions well. Due to the dominating position of a few dozen multinationals, rules adopted by a legislator have are likely to apply to at least some of the subsidiaries of these multinationals, even when listed abroad.

Another prerequisite is that the underlying norm has been internalized by various states, and is being incorporated into substantially similar hard-law obligations (Kleizen, 2015). While the spread of a norm may follow a variety of diffusion processes, ranging from e.g. passive emulation to conditionality-based diffusion, it is argued that once the norm cascade stage is reached, an increase in sanctioning may occur (Kelley, 2008). In the case of the payment disclosure rules, the underlying principles of transparency in the extractive industries had already cascaded between a considerable number of governments, while substantial clout for the support of EITI was gathered in the context of the 2011 G8 summit (Sovacool et al., 2016). This normative resonance with multiple jurisdictions paved the way for the subsequent US adoption of government payment disclosure rules and, in turn, their emulation by the EU and Canada. Moreover, the strong similarities between the EU and Canadian regimes does not only provide theoretical support for the assertion that the rules were emulated from the Dodd-Frank Act, but also ensures that equivalent norms remain relevant in large sections of the world.

Furthermore, when multiple states adopting both the norm and its legal implementation include externally applicable triggers, the global minimum standard may become substantially strengthened. Although not a strictly necessary condition, as sufficient globalization of the market is e.g. also conducive to increasing the amount of market operators addressed by a legislator's rules, broad externally applicable triggers ensure that the reach of the obligations goes beyond the sum of states adopting them (European Commission, 2011a, p.40). External applicability is also conducive to the 'hardwiring' of the rules in the global regime (Moe, 1989), as jurisdictions that attempt to repeal their rules remain faced with the external reach of foreign regimes. As mentioned earlier, this means that states are likely to utilize territorial extension, as complete extraterritoriality is highly controversial both politically and under international law (De Baere & Ryngaert, 2013; Scott, 2014). The design of these territorial triggers is then important in determining the limits and non-divisibility of the net (Bradford, 2012), and thus

contributes substantially to the degree to which the global minimum standard is comprehensive. On this point the payment disclosure regime remains at best an incomplete global minimum standard, allowing multinationals to partially avoid it through the usage of subsidiaries.

Noteworthy is furthermore that the market power of legislators seems to have played a role in the final design of the payment disclosure rules, with the EU and Canada opting to regulate in line with the US to prevent contradictory reporting requirements (Damro, 2012). Furthermore, once adopted, the market power of the regulating jurisdictions contributes to the degree to which the regulatory net achieves coverage of relevant market operators. The size of both the EU and Canadian extractive markets has ensured that the largest US multinationals remain addressed by similar rules after withdrawal of Rule 13-q1. However, it must be noted that substantial market power on part of the adopting jurisdictions is also not a strictly necessary condition for either the diffusion or the coverage that a norm and its enforcing rules achieve. Regulators may e.g. emulate norms and/or rules for other reasons than market access (e.g. saving costs by emulating existing legislation (Miller, 2003)). Similarly, the coverage achieved by the regulatory net, while at least partially dependent on the market power of regulating states, may also be influenced by e.g. the amount of legislating states or geographical proximity to states with high concentrations of multinationals.

5. Discussion and conclusion

The analysis of the multilateral effort to regulate the disclosure of extractive undertakings' payments to governments suggests, albeit through a single case study, that a global minimum standard may emerge when a market is sufficiently globalized and dominated by a number of large companies, and when sectoral regulation with broad external applicability diffuses between influential jurisdictions. While not achieving full coverage, layering effects

such as those observed with the EU and Canadian rules could have important instrumental and normative implications. Instrumentally, globalized markets such as those encountered in the extractive industries offer policy-makers the opportunity to formulate a conscious strategy to (partially) 'hardwire' policy preferences (Moe, 1989). When states cooperate to create rules that are applicable to each other's companies, the layering of these various rules may create a difficult to remove multilateral framework. Should electoral turnover introduce a government favoring a conflicting norm, it must generate substantial international support to completely remove the regulatory framework. By recognizing multilateral policy windows for higher market standards, policy-makers could thus actively make use of the global minimum standard to pass regulation that is somewhat protected from electoral turnover (Moe, 1989).

The normative implications follow from its possible use as a regulatory strategy. One may point to the potential of such global minimum standards to cover rule addressees throughout the world. The externally applicable elements of such legislation may spread the rules' effects to jurisdictions that do not necessarily support such legislation, while the regulatory framework is difficult to remove unilaterally. From the perspective that governments should address common concerns, such standards may thus be considered desirable (Dobson & Ryngaert, 2017). Conversely, the global minimum standard may arguably threaten national sovereignty, particularly in the absence of a global consensus on a norm (De Baere & Reyngaert, 2013; Dobson & Ryngaert, 2017). In terms of norm life-cycles, the creation of a global minimum standard may thus entrench an existing norm *vis-á-vis* a new emergent norm, potentially reducing the former's contestability.

Simultaneously, this article has shown that while the diffusion of payment disclosure rules to the EU and Canada has created a layering effect, the design of territorially extended legislation may introduce considerable gaps in the regulatory net – limiting its use as an instrumental strategy and mitigating the normative implications. Given the controversial nature

of externally applicable rules, it is likely that most jurisdictions will utilize territorially extended rules, instead of truly extraterritorial rules. Depending on the design of these territorial triggers, the global net may become stronger or weaker. For instance, the EU's focus on large companies established or listed in its Member States, or Canada's focus on Canadian market activities, introduces the opportunity for multinationals to establish market-specific subsidiaries. Such subsidiaries would be caught by the EU's and Canada's legal 'triggers', but the lack of triggers that extend disclosure rules to other elements of multinationals (with the exception of ESTMA's extension to controlling parents) limits the regime's external applicability substantially. While the EU's and Canadian regimes therefore reduce the effects of the US retraction of Rule 13-q1, they have not eliminated them.

In sum, the diffusion of externally applicable payment disclosure rules has led to an emerging global minimum standard, but one that only achieves incomplete coverage. However, with influential legislators such as the EU increasingly favoring territorially extended rules (Scott, 2014) and the ongoing globalization of markets, we may expect such standards to appear more frequently and comprehensively in the future. One example is in conflict minerals regulation. The US, again under the Dodd-Frank Act, decided to target potential users of conflict minerals from the Democratic Republic of Congo with due diligence requirements, requiring them to report the origin of utilized raw materials. The EU emulated these rules in the Conflict Minerals Regulation, which entered into force in 2017.[x] With the Trump administration now also considering the removal of these rules, a similar situation to the one discussed in this paper may arise (White House, 2017; U.S. Department of the Treasury, 2017, p.29). Again, the effect of US deregulation would be reduced due to international market integration. Moreover, in the conflict minerals case the definition of 'Union importer' – the entity required to file due diligence reports in the EU – is broader than the territorial triggers of the payment disclosure rules, as the definition is not linked to an EU legal person. However, setting up subsidiaries

likely remains a method to avoid the application of the EU's regime to the entirety of a multinational.

---

[i] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, hereinafter: Dodd-Frank Act

[ii] Norway adopted similar rules (SEC, 2015). However, as these comply with the requirements of the EU's directives, we focus on the overarching EU regime.

[iii] United States District Court for the District of Columbia Case 1:12, *American Petroleum Institute, et al. v. Securities and Exchange Commission and Oxfam America, Inc.* [2013] Civil Action No. 12-1668-JDB

[iv] SEC Rule 13q-1

[v] House Joint Resolution 41, 14 February 2017

[vi] Respectively Directive 2013/34/EU and Directive 2004/109/EC

[vii] Article 3(4) Accounting Directive

[viii] Article 41(5) Accounting Directive

[ix] Discounting Norwegian and UK laws, which were drafted in accordance with and anticipation of the future EU Directives

[x] Regulation 2017/821

Acknowledgements: The author would like to thank two anonymous reviewers for their valuable comments, especially regarding norm diffusion and the conditions presented in section 4. The author would also like to thank the members of the RENFORCE/CLEER External Effects of EU Law project group, in particular discussant Prof. dr. Cedric Ryngaert and organizer dr. Ingrid Koning, for their valuable comments during a seminar on an early draft version of the paper.

Notes on contributors: Bjorn Kleizen, LLM, MSc, is a doctoral student at the University of Antwerp, Faculty of Social Sciences, Department of Political Sciences, Research group Public Administration & Management. The author is also a contributor to the RENFORCE/CLEER External Effects of EU Law project (Utrecht University/Asser Institute).

References

Aaronson, S.A. (2011), 'Limited partnership: business, government, civil society, and the public in the Extractive Industries Transparency Initiative (EITI)', *Public Administration and Development,* 31: 50-63

Bildfell, C. (2016), 'The Extractive Industries Transparen'cy Measures Act: critical perspectives', *McGill International Journal of Sustainable Development Law,* 12(2): 233-274

Börzel, T.A., and Risse, T. (2012), 'From Europeanisation to Diffusion: Introduction', *West European Politics,* 35(1): 1-19

Bradford, A. (2012), 'The Brussels Effect', *Northwestern University Law Review,* 107(1): 1-68

Damro, C. (2012), 'Market Power Europe', *Journal of European Public Policy,* 19(5): 682-699

De Baere, G., and Ryngaert, C. (2013), 'The ECJ's Judgment in *Air Transport Association of America* and the International Legal Context of the EU's Climate Change Policy', *European Foreign Affairs Review,* 18:3, pp.389-410

Devon Energy (2017)a, 2016 letter to shareholders and form 10-k, retrieved on 16-6-2017 from: http://s2.q4cdn.com/462548525/files/doc_financials/Annual/DVN-2016-10-K-Letter-to-Shareholders.pdf

Dobson, N.L., and Ryngaert, C. (2017), 'Provocative climate protection: EU 'extraterritorial' regulation of maritime emissions', *International & Comparative Law Quarterly* 66(2): 295-333

EITI (2013), *Canada commits to reporting requirements*, retrieved on 13-1-2018 from: https://eiti.org/news/canada-commits-to-reporting-requirements

EITI (2015), Country status against the EITI rules (2007-2016), retrieved on 10-4-2017 from: https://eiti.org/countries-archive

European Commission (2011)a, *Commission staff working paper part II – Impact assessment for financial disclosures on a country by country basis*, retrieved on 12-5-2017 from: http://ec.europa.eu/internal_market/accounting/docs/sme_accounting/review_directives/20111025-impact-assessment-part-2_en.pdf

European Commission (2011)b, *Proposal for Directive on transparency requirements for listed companies and proposals on country by country reporting – frequently asked questions,* retrieved on 10-12-2017 from: http://europa.eu/rapid/press-release_MEMO-11-734_en.htm

European Commission (2011)c, *Proposal for a Directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings,* retrieved on 10-12-2017 from: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011PC0684

European Commission (2013), New disclosure requirements for the extractive industry and loggers of primary forest in the Accounting (and Transparency) Directives (Country by Country Reporting) – Frequently asked questions, retrieved on 26-5-2017 from: http://europa.eu/rapid/press-release_MEMO-13-541_en.htm

European Parliament (2014), Briefing: The Extractive Industries Transparency Initiative: state of play, retrieved on 15-5-2017 from: http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140758/LDM_BRI(2014)140758_REV1_EN.pdf

Ewald, W. (1995), 'Comparative jurisprudence (II): the logic of legal transplants', *American Journal of Comparative Law,* 43: 489-510

Firger, D.M. (2009), 'Transparency and the natural resource curse: examining the new extraterritorial information forcing rules in the Dodd-Frank Wall Street Reform Act of 2010', *Georgetown Journal of International Law* 41(4): 1043-1095

Finnemore, M., and Sikkink, K. (1998), 'International norm dynamics and political change', *International Organization*, 52(4): 887-917

Forrester, P., Howie, K., and Ross, A. (2015), 'Energy superpower in waiting: new pipeline development in Canada, social license and recent federal energy reforms', *Alberta Law Review*, 53(2): 419-451

Fukuda-Parr, S., and Hulme, D. (2011), 'International norm dynamics and the end of poverty: understanding the millennium development goals', *Global Governance*, 17: 17-36

Gerring, J. (2004), 'What is a case study and what is it good for?', *American Political Science Review*, 98(2): 341-354

Global Affairs Canada (2018), *Canada's Enhanced Corporate Social Responsibility Strategy to Strengthen Canada's Extractive Sector Abroad*, retrieved on 12-1-2018 from: http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng

Griffin, J.P. (1999), 'Extraterritoriality in US and EU antitrust enforcement', *Antitrust Law Journal*, 67: 159-199

Haddad, H.N. (2013), 'After the norm cascade: NGO mission expansion and the coalition for the International Criminal Court', *Global Governance*, 19: 187-206

Hamner, K.J. (2001), 'The globalization of law: international merger control and competition law in the United States, the European Union, Latin America and China', *Journal of Transnational Law & Policy*, 11(2): 385-405

Hess Corporation (2017), 2016 annual report, retrieved on 14-6-2017 from: http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NjY3NTM4fENoaWxkSUQ9Mzc1Mzg0fFR5cGU9MQ==&t=1

Kelley, J. (2008), 'Assessing the complex evolution of norms: the rise of international election monitoring', *International Organization,* 62(2): 221-255

Kleizen, B. (2015), *Externalizing EU Law, Policy and Values – Europe's Global Identity, Mechanisms of Rule Transfer and Case studies on Illegal Logging in Bosnia and Herzegovina,* retrieved on 1-6-2016 from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2706564

Lavenex, S. (2014), 'The power of functionalist extension: how EU rules travel', *Journal of European Public Policy,* 21(6): 885-903

Lavenex, S., and Schimmelfennig, F. (2009), 'EU rules beyond EU borders: theorizing external governance in European politics', *Journal of European Public Policy,* 16(6): 791-812

Lenz, T., and Burilkov, A. (2016), 'Institutional pioneers in world politics: regional institution building and the influence of the European Union', *European Journal of International Relations,* http://dx.doi.org/10.1177%2F1354066116674261

Listhaug, O. (2005), 'Oil wealth dissatisfaction and political trust in Norway: a resource curse?', *West European Politics,* 28(4): 834-851

Lynn, D.M. (2011), 'The Dodd-Frank Act's specialized corporate disclosure: using the securities laws to address public policy issues', *Journal of Business & Technology Law,* 6(2): 327-355

Manners, I. (2002), ‘Normative Power Europe: a contradiction in terms?’, *Journal of Common Market Studies* 40(2): 235-258

Meyer, K.E., Mudambi, R. and Narula, R. (2010), ‘Multinational enterprises and local contexts: the opportunities and challenges of multiple embeddedness’, *Journal of Management Studies* 48(2): 235-252

Milin, Z. (2016), ‘Mapping recent developments in transparency of extractive industries’, *Business and Human Rights Journal* 1(2): 321-326

Miller, J.M. (2003), ‘A typology of legal transplants: using sociology, legal history and Argentine examples to explain the transplant process’, *The American Journal of Comparative Law,* 51(4): 839-885

Moe, T.M. (1989), 'The politics of bureaucratic structure, in: Chubb, J.E. & Peterson, P.E. (eds.) *Can the government govern?,* Washington, D.C.: The Brookings Institution

Natural Resources Canada (2017), Substitution process and determination, retrieved on 23-6-2017 from: http://www.nrcan.gc.ca/mining-materials/estma/18196

Painter, R., Dunham, D., and Quackenbos, E. (2011), ‘When courts and Congress don’t say what they mean: initial reactions to *Morrison v. National Australia Bank* and to the extraterritorial jurisdiction provisions of the Dodd-Frank Act’, *Minnesota Journal of International Law,* 20(1): 1-25

Perkins, R., and Neumayer, E. (2012), ‘Does the ‘California effect’ operate across borders? Trading- and investing-up in automobile emission standards’, *Journal of European Public Policy,* 19(2): 217-237

Scott, J. (2014), ‘Extraterritoriality and territorial extension in EU law’, *The American Journal of Comparative Law,* 62(1): 87-126

SEC (2015), Enhancing the Transparency of Resource Extraction Revenue Payments, retrieved on 22-6-2017 from: https://www.sec.gov/news/statement/disclosure-of-payments-by-resource-extraction-issuers.html

SEC (2016), Disclosure of Payments by Resource Extraction Issuers, retrieved on 23-6-2017 from: https://www.sec.gov/rules/final/2016/34-78167.pdf

Sikkink, K. (1998), 'Transnational politics, international relations theory, and human rights', *PS: Political Science and Politics* 31(3): 516-523

Sovacool, B.K., and Andrews, N. (2015), 'Does transparency matter? Evaluating the governance impacts of the Extractive Industries Transparency Initiative (EITI) in Azerbaijan and Libera', *Resources Policy* 45: 183-192

Sovacool, B.K., Walter, G., Van de Graaf, T., and Andrews, N. (2016), 'Energy governance, transnational rules, and the resource curse: exploring the effectiveness of the Extractive Industries Transparency Initiative', *World Development*, 83: 179-192

U.S. Department of the Treasury (2017), *A financial system that creates economic opportunities: capital markets,* retrieved on 15-12-2017 from: https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset_Management-Insurance.pdf

Van Alsenoy, B., and Koekkoek, M. (2015), 'Internet and jurisdiction after *Google Spain*: the extraterritorial reach of the 'right to be delisted'', *International Data Privacy Law,* 5(2): 105-120

Vogel, D. (1997), 'Trading up and governing across: transnational governance and environmental protection', *Journal of European Public Policy,* 4(4): 556-571

White House (2017), President Trump Takes Action to Get Washington Out of the Way, retrieved on 19-1-2017 from: https://www.whitehouse.gov/briefings-statements/president-trump-takes-action-get-washington-way/

Word count (including core text, references, endnotes (no tables or figures were used)):

8499

Online appendix – Consulted reports

1. ExxonMobil Group reports:
- ExxonMobil Canada Energy (2017), Extractive Sector Transparency Measures Act Report, retrieved on 14-6-2017 from: http://cdn.exxonmobil.com/~/media/global/files/other/2017/exxonmobil-canada-energy-estma-report-31jan2017.pdf - ExxonMobil Canada Investments Company (2017), Extractive Sector Transparency Measures Act Report, retrieved on 14-6-2017 from: http://cdn.exxonmobil.com/~/media/global/files/other/2017/exxonmobil-canada-investments-company-estma-report-30nov2016.pdf - ExxonMobil United Kingdom (2016), Payments to governments 2015, retrieved on 14-6-2017 from: http://www.exxonmobil.co.uk/UK-English/files/2015_Transparency_Payment_Report_UK.pdf Companies House (2017)e, Extractives services: Esso Exploration and Production UK Limited, retrieved on 15-6-2017 from: https://extractives.companieshouse.gov.uk/company/00207426
2. Chevron
- Chevron Canada (2017), Extractive Sector Transparency Measures Act Report, retrieved on 14-6-2017 from: http://www.chevron.ca/documents/ESTMA-Reporting-Template-Chevron-Canada.pdf - Companies House (2017)c, Extractives services: Chevron North Sea Limited, retrieved on 15-6-2017 from: https://extractives.companieshouse.gov.uk/company/01546623
3. Devon Energy
Devon Energy (2017), Extractive Sector Transparency Measures Act: annual report 2016, retrieved on 19-4-2017 from: http://www.devonenergy.com/documents/Operations/DVN-ESTMA-2016-Annual-Report.pdf
4. Marathon Oil:
- Marathon Oil Canada Corporation (2017), Extractive Sector Transparency Measures Act Report, retrieved on 15-6-2017 from: http://www.marathonoil.com/content/documents/globalOperations/ESTMA_Report_-_FINAL.pdf

- Companies House (2017)f, Extractives services: Marathon Oil West of Shetlands Limited, retrieved on 15-6-2017 from: https://extractives.companieshouse.gov.uk/company/ZE21E7F7
5. ConocoPhillips
- ConocoPhillips Canada Resources Corp (2017), Extractive Sector Transparency Measures Act Report, retrieved on 14-6-2017 from: http://www.conocophillips.ca/Documents/2016_ConocoPhillips_Canada_ESTMA.pdf
6. Apache Corporation
- Companies House (2017)a, Extractives services: Apache North Sea Production Limited, retrieved on 15-6-2017 from: https://extractives.companieshouse.gov.uk/company/07720972 - Apache Finance Canada Corporation (2017), Extractive Sector Transparency Measures Act Report, retrieved on 16-6-2017 from: http://www.apachecorp.com/Resources/Upload/file/Canada/Apache_Canada_ESTMA_Report_2016.pdf