

Board Paper 22-9-A

Building on achievements

A proposal to improve the EITI, by providing better EITI Reports, making implementation simpler, and the EITI a stronger platform for wider reforms.

For decision

I submit the attached cover note from the Secretariat, a draft revised standard (Board Paper 22-9-B) and a number of background papers. Further background papers are available online. Our main task in Oslo will be to focus on outstanding policy decisions. These are **underlined** on the following pages. The structure of the paper follows the paper we considered in Lusaka (Building on Achievements Board Paper 21-2-A). I suggest that we begin by working our way through the outstanding policy issues:

Proposal 1: Contextual information

Proposal 2: Description of revenue allocation

Proposal 8: Data quality

Proposal 9: Disaggregation

Proposals 10, 11 and 12: State-owned enterprises (SOEs)

Proposal 13: Sale of in-kind revenues

Proposal 14: Social expenditures

Proposal 15: Transit fees

Proposal 16 and 17: Licenses and beneficial ownership

Proposal 18: Contracts

Proposal 25: Expert Panel

Proposal 26 and 27: What and how to validate

Proposal 28: When to validate

Proposal 33: Policy notes

I suggest that we should go through these proposals and try to reach broad Board-wide agreement so that we can proceed to final drafting.

Some of the issues considered in Lusaka were agreed subject to detail. This is a challenge because detail matters and needs to be agreed. However, it would not be time well spent for the whole Board to consider the revised standard line-by-line. If we have time once we have considered the outstanding policy issues, I suggest that we consider some issues where there is already considerable consensus.

The following background papers are attached to this cover note:

22-9-C: Consultation on contract transparency

22-9-D: Expert panel

22-9-E: Options for nuanced assessment

22-9-F: Financing Validation

22-9-G: Review of EITI reporting and Validation deadlines

The following background papers are available on request:

- Adapted implementation
- Guidance on developing a workplan;
- Draft template for annual activity reports;
- Reporting on social expenditures; and
- Sub-national implementation.

Before we start our deliberations in Oslo, I suggest that we consider next steps. The standard will of course require edits after our meeting in Oslo. As I said in Lusaka we anticipate a process using circulars to consider final drafts, though I don't rule out that smaller groups may need to meet before Sydney.

It is of course inevitable in a process like this that we focus on points of disagreement, but I am personally very pleased that we already have reached agreement on many important proposals and are making solid progress towards a significantly strengthened EITI.

Best wishes to all,

Clare Short

1 Comprehensive, reliable, use of data, impact and validation

The following sections address the proposals discussed in Lusaka (Board paper 21-2 Building on achievements), indicating how they have been addressed in the revised EITI Standard (Board paper 22-9-B). Proposals that are underlined indicate areas where there are significant policy issues that still need to be considered by the Board. Brackets under the heading contains summaries of Minutes from our meeting in Lusaka.

Proposal 1: Contextual information should be required.

(Agreement that this should be required, subject to agreeing detailed provisions.)

See requirement 3.1-3.5 requires a description of: the fiscal regime (3.1), information on the extractive industries contribution to the economy (3.2), production data (3.3), overview of extractive industry projects (3.4) and state participation in the extractive industries (3.5). This section has developed since Lusaka to include information on extractive industry projects and on state participation.

Proposal 2: It is proposed that each country is required/encouraged to include a description of how extractive industries' revenues are distributed.

(Agreement that this should be required, subject to agreeing detailed provisions.)

As requested, the provisions have been detailed. See requirement 3.6 – 3.7, which includes provisions that (a) requires EITI Reports to explain where revenues that are not recorded in the budget have been distributed, (b) encourages EITI Reports to include further information on revenue management and expenditures.

Proposal 3: Earmarking for programmes or regions.

(Agreed, subject to agreeing detailed provisions. No discussion on whether this would be required).

As requested, the provisions have been detailed. See requirement 3.7.a, where the government is encouraged to set targets and objectives for the use of revenues that are earmarked for specific programmes or regions.

Proposal 4: Mainstreaming EITI data and governments system.

(Agreement that this should be encouraged.)

As requested, the provisions have been detailed. See requirement 3.7.b-e Implementing countries are encouraged to link EITI to other public financial information, including: (1) reconciliation of EITI data with

other budget data, (2) references to budget and expenditures information, (3) price and revenue forecasts and (4) a description of linkages between EITI and public financial management processes in the country.

Proposals 5 and 6: Comprehensive data.

(Agreement that this should be required, subject to agreeing detailed provisions.)

As requested, the provisions have been detailed. See requirement 4. EITI data must be comprehensive, i.e., it should cover all material payments by companies and a complete account of government revenues. Section 4.1 addresses the scope of the EITI reporting process, i.e., the types of payments and revenues covered. Section 4.2 addresses the reporting process, ensuring that the EITI Report provides a comprehensive reconciliation of government revenues and company payments. Section 4.3 addresses the key steps in the preparation of the EITI Report.

Proposal 7: Subnational transfers.

(Agreement that this should be required where mandated by law or other revenue sharing mechanisms, subject to agreeing detailed provisions.)

As requested, the provisions have been detailed. See requirement 4.2.b.iii. The EITI Report must disclose any transfers between national and subnational government entities that are mandated by law or revenue sharing mechanisms. The revenue sharing formula, if any, should be disclosed. The multi-stakeholder group is encouraged to include a reconciliation of these transfers where feasible. A background paper is available from the Secretariat.

Proposal 8: Data quality.

(Agreement that this should be required, subject to agreeing detailed provisions.)

As requested, the provisions have been detailed. See requirement 5. Drawing on the existing EITI Criteria, it is a “requirement that payments and revenues are reconciled by a credible, independent administrator, applying international auditing and assurance standards, with publication of the administrator’s opinion regarding that reconciliation including discrepancies, and an informative summary of the work performed to help intended users understand the nature of the assurance conveyed”. The current requirements place too much emphasis on whether the MSG is content with the work, and do not adequately address whether the independent administrator’s work was in line with international auditing and assurance standards.

The Board has already agreed to develop standardised terms of reference for independent

administrators. In consultation with independent administrators, two options have been put forward: (1) an agreed upon procedure based on ISRS 4400 and ISRS 4410, and (2) A limited assurance or reasonable assurance engagement in accordance with the International Standard on Assurance Engagements (ISAE) 3000. The Board could also approve additional methodologies.

An outstanding issue relates to whether companies should be required to provide a confirmation letter from their external auditor. This is currently encouraged. Four options have been put forward: (1) encouraged (status quo); (2) required when the MSG/ independent administrator request it; (3) required unless independent administrator deems it unnecessary; (4) Required (but MSGs can seek an exemption from the Board).

Proposal 9: Disaggregation.

(By company and revenue stream, agreed to be required, subject to detail. Disaggregation by project, deferred.)

See requirement 4.3 c. It is required that the data in the EITI Report is disaggregated by individual reporting company and by each revenue stream.

Proposal 10,11 and 12: State-owned enterprises (SOEs).

(Agreed to be required, subject to detail).

As requested, the provisions have been detailed. See requirements 4.2b.i and 3.5.a-c. This includes a requirement that the reporting process comprehensively addresses the role of state-owned enterprises. Where applicable, any payments to SoEs and/or transfers between SOEs and other government entities are required to be disclosed (4.2.b.i). As part of the section on contextual information, the EITI Report must disclose information of state participation in the extractive industries including (1) a description of the prevailing rules and practices that govern the exchanges between the SOE and the government; (2) disclosures by the SOEs on their quasi-fiscal expenditures and (3) that the government and/or state owned enterprises disclose their level of beneficial ownership in mining, oil and gas companies operating within the country, and any changes in the level of ownership during the reporting period.

Proposal 13: Sale of in-kind revenues.

(Deferred, aspiration to be required, subject to detail.)

As requested, the provisions have been detailed (see proposal 4.1(c)). It is proposed that where the sale of in-kind revenues constitutes a material proportion of extractive industry revenues, the government and state owned enterprise/s are required to disclose the volumes sold and revenues received.

SOEs are often responsible for selling the state's share of production, with prices and buyers often

remaining unknown, making it difficult to establish whether a fair price is obtained. Several implementing countries including Iraq, Indonesia and Congo have addressed the “monetisation of in-kind revenues”. There are concerns about the feasibility of compelling buyers to participate in a reconciliation process, and the disclosure, reconciliation and publication of data at “per shipment” level. The Secretariat suggests that: 1) the published data should be disaggregated commensurate with the reporting of other payments and revenue streams, 2) Where practically feasible, the MSG is encouraged to task the independent administrator with reconciling the volumes sold and revenues received by including the buying companies in the reporting process.

Proposal 14: Social expenditures.

(Agreed to be required when contractually binding, subject to detail.)

As requested, the provisions have been detailed. See requirement 4.1.d. In many countries, companies make significant social expenditures in addition to conventional tax payments. It is proposed to require that where contractually binding social expenditures are material, the EITI Report must disclose and, where possible, reconcile these transactions. A background paper is available from the Secretariat.

Proposal 15: Transit fees.

(Agreement that this should be strongly encouraged, subject to agreeing detailed provisions.)

As requested, the provisions have been detailed (see proposal 4.1(f)). It is proposed that where revenues from the transportation of oil, gas and minerals are material, the government and state owned enterprise/s are required to disclose the revenues received. Where practically feasible, the MSG is encouraged to task the independent administrator with reconciling material payments and revenues.

Proposal 16 and 17: Licenses and beneficial ownership.

(Agreed to be required, subject to detail.)

As requested, the provisions have been detailed, with options for whether implementing countries are required or encouraged to require their licensees to disclose who their beneficial owners are. See requirement 3.8.

It is included that (1) implementing countries must publically disclose information regarding the licenses of companies covered by the EITI reporting process; and (2) implementing countries are required to publically disclose information regarding license allocations made during the accounting period covered by the EITI Report.

Proposal 18: Contracts.**(Agreed to be referenced, subject to detail and consultations.)**

As requested, the provisions have been detailed, with options for whether contract disclosure should be required, encouraged or left to the discretion of implementing countries. The Board may wish to consider a combination of these options. See requirement 3.9. The outcomes of the consultation with implementing countries are attached (Board Paper 22-9-C).

Proposal 19: Civil society participation.**(Agreed to establish a working group in Sydney.)**

This proposal relates to reviewing the implementation and effectiveness of the provisions on civil society participation. As agreed, a working group will be established at the Sydney Board meeting.

Proposal 20: Workplan.**(Agreed, guidance to be developed.)**

As requested, the provisions have been detailed. See requirement 1.4. A guidance note on how to develop a workplan is available from the Secretariat.

The workplan forms the basis for all implementing activities. In order to enhance the national dialogue about what implementing countries want to achieve with the EITI, it is proposed that the workplan must set out objectives for implementation that are linked to the EITI principles and reflect national priorities for the extractive industries. This may include areas beyond revenue transparency, such as contracts and licensing, or revenue allocation. The multi-stakeholder group is required to agree the objectives in consultation with key stakeholders.

Proposal 21 and 22: Use of EITI data.**(Agreed to be encouraged.)**

As requested, the provisions have been detailed. See requirements 6.2 and 3.6(a). It is required that the EITI data files are published, and that summary data from each EITI report is submitted electronically to the EITI International Secretariat. MSGs are encouraged to make EITI Reports machine readable, and to code or tag EITI Reports and data files so that the information can be compared with other publically available data. MSGs are encouraged to reference the national revenue classification, and international standards such as the IMF Government Finance Statistics Manual.

Proposal 23: Annual activity reports.**(Agreed to be required.)**

As requested, the provisions have been detailed. See requirement 7.2. It is proposed that the multi-stakeholder group will be required to submit annual activity reports detailing efforts to meet and/or maintain compliance with each EITI requirement, including progress in delivering on the objectives identified in the workplan. The annual activity reports will be a means for implementing countries to review and communicate the outcomes and impact of EITI implementation. A draft template of the annual activity report is available from the Secretariat.

Proposal 24: Annual review of EITI Reports.**(Agreed.)**

This proposal does not imply any changes to the EITI Standard. The Board agreed that all EITI Reports should be compiled and analysed annually, with particular reference to timeliness, comprehensiveness, data reliability, and whether the discrepancies have been addressed. The Secretariat is drafting terms of reference for an external review of the most recent (typically 2010) EITI Reports from compliant countries, with a view to refining the methodology and repeating the exercise on a regular basis. Draft terms of reference will be distributed via circular following the Oslo Board meeting.

Proposal 25: Expert panel.**(No decision, Secretariat to draft terms of reference and cost overview.)**

This proposal does not imply any changes to the EITI Standard. As requested, the Secretariat has developed the attached draft terms of reference for the Expert panel for consideration by the Board (see background paper 22-9-D).

Proposal 26 - 27: What and how to validate.**(More work required on options for nuanced assessment.)**

As requested, the Secretariat and Board members representing the various constituencies have developed options for nuanced assessment (see background paper 22-9-E). It is proposed that the current pass/fail assessment is retained, and that it is complemented by more nuance. The purpose is to incentivize implementing countries to innovate and to recognize those countries that go beyond the EITI's minimum requirements, including activities that are specifically encouraged in the EITI Standard.

It is proposed that the Board considers the following two options:

(1) That the current met/unmet assessment is complemented by a nuanced assessment noting where implementation is exceeding the minimum requirements¹. Each requirement would be assessed as 'unmet', 'met' or 'met and exceeded'; and

(2) That the current met/unmet assessment is complemented by a nuanced assessment noting (i) where implementation is exceeding the minimum requirements, and (ii) progress with meeting the requirements². Each requirement would be assessed as 'unmet with limited progress', 'unmet with meaningful progress', 'met' or 'met and exceeded'. The main difference from the present system and option 1 above, is that where a requirement is unmet, the validator would assess progress in meeting the requirement. The overall assessment of 'no progress' and 'meaningful progress' that is contained within the current EITI Rules, would thus be applied to each requirement.

In both options, the threshold for achieving compliance would be that all requirements are assessed as 'met'. Specific guidance on assessing each requirement along the suggested 'nuance', including criteria for meeting and exceeding a requirement, would be provided in the standard terms of reference for validators.

Proposal 28: When to validate.

(Agreed.)

See requirement 1.6. It was agreed in Lusaka that Validation of compliant countries should take place every three years. Policy Note 3 – "EITI Board decisions on determining the status of implementing countries" has been incorporated in requirement 1.6 and chapter 3.6.

Some further modifications have been suggested since Lusaka to reflect procurement of the Validator by the International Secretariat. Notably, it is suggested that the deadline to submit a final Validation Report endorsed by the MSG is replaced with a deadline for when validation will commence (on a "ready or not" basis). This will reduce the tendency for validation to become an iterative process, and address the "rushed validation" problem seen in many cases.

Proposal 29: Who validates.

(Agreed.)

See chapter 3.4. It was agreed in Lusaka that procurement and contracting for Validation will be overseen by the EITI Board and the Secretariat. The Secretariat will administer the tender process for each

¹ This option is based on proposal 27c in Building on achievements.

² This option is based on proposal 27b in Building on achievements.

Validation, and draw on a small pool of accredited validators. Implementing countries will have an opportunity to select a validator from a shortlist prepared by the Secretariat based on the review of technical and financial proposals resulting from the Validation tender. The contract will be between the validator and the Secretariat.

Proposal 30: Financing validation.

(Agreed, subject to detail.)

As requested, the Secretariat and Board members representing various constituencies have identified options for financing Validation (see background paper 22-9-F). In Lusaka, the Board agreed in principle that the EITI International Management should finance and procure validation, instead of the current arrangement where validation is paid for and procured by implementing countries, often with bilateral donor support.

It is proposed that the Board considers the following three options for increasing Secretariat funds to accommodate Validation costs: MDTF contribution, increased contributions, or membership. The working group on Validation has stated a preference for Validation being financed through the WB MDTF (option 1). The Management Committee of the MDTF has been consulted and has not stated any objection though there could be some minor restrictions.

Proposal 31: Condensing to seven requirements (agreed, further discussion and drafting needed).

As requested, the requirements have been condensed. See chapter 2 (Board Paper 22-9-B).

Proposal 32: Adapted implementation.

(Agreed, subject to detail and guidance note.)

As requested, the provisions have been detailed. See requirement 1.5. It is proposed that implementing countries may seek Board approval for exemptions from the implementation requirements on constitutional, financial or practical grounds. This provision formalises already established ad hoc practice (i.e. Nigeria initially excluding the mining sector, Iraq covering export sales). A background paper is available from the Secretariat.

Proposal 33: Policy notes.

(Agreed, subject to detail.)

The current policy notes have been integrated into the revised standard as set out below. As requested, the Secretariat has also identified options for consideration by the Board on the implications of a second failed validation, lack of report timeliness, and failure to publish annual activity reports (see Board Paper 22-9-G). This would imply further changes to policy notes 3 and 5, as reflected in the revised Standard (see requirements 1.6-1.7). Specifically, the Secretariat recommends (i) a generic rule for extensions applicable to all deadlines established by the Board; (ii) revision or removal of the concept of a maximum candidacy period; (iii) temporary suspension of countries that do not meet the required deadlines for publishing EITI Reports and annual activity reports; and (iv) a more flexible policy in instances where there are valid concerns about whether a Compliant country has maintained compliance with the EITI requirements, including commissioning a Secretariat Review (rather than calling for a new Validation), and allow for downgrading to Candidate status where appropriate.

Policy Note 1 – “Clarification on validation indicator 4” was repealed by the EITI Board 16 February 2011 as is no longer relevant.

Subject to agreement on proposal 29, **Policy Note 2** – “Guidance note for implementing countries on procuring an EITI validator” is no longer applicable. The procedures for procurement of the Validator by the International Secretariat are set out in chapter 3 and further elaborated in standardised documents (e.g., RFPs, terms of reference, contract) to be approved by the Board prior to any validation procured by the secretariat.

Policy Note 3 – “EITI Board decisions on determining the status of implementing countries” has been incorporated in requirement 1.6, with the recommended changes indicated above.

Subject to agreement on proposal 30, **Policy Note 4** – “Financing validation” is no longer applicable given procurement of the Validator by the International Secretariat.

Policy Note 5 – “Temporary suspension and delisting of EITI implementing countries” has been incorporated in requirement 1.7, with the recommended changes indicated above.

Policy Note 6 – “Participation of civil society” contains recommendations on civil society engagement in the EITI. As with previous editions of the EITI Rules and policy notes, these recommendations will be available as a point of reference should there be any cases where the revised Standard does not provide adequate guidance on provisions related to civil society participation.

2 Transition to the revised standard

It is desirable that the revised EITI Standard comes into effect as soon as possible after it has been agreed. However, implementing countries will also need time to adjust, as there are EITI Reports, Validations and Secretariat Reviews underway based on the 2011 edition of the EITI Rules. It is proposed that the Secretariat develops transition arrangements for consideration by the Board in Sydney. This should include a training and capacity building strategy for the revised Standard. Seeking to ensure that the rules are at all times clear, predictable and without inferring significant obligations not initially foreseen, it could be envisaged that the revised Standard comes into force on 1 January 2014. Deadlines that fall due before 1 January 2014 would be retained. The Board would establish new (or reaffirm existing) deadlines for all countries, including EITI reporting and Validation deadlines. In agreeing new deadlines, the Board will place a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI brand. Where necessary the Board may grant countries an exemption from new/modified requirements for a limited period of time (e.g., in order to conclude a reporting cycle that is already well advanced).

Introduction/Foreword

[A new introduction and foreword is required, explaining the Building on Achievements process. It will need to make it clear that the Principles remain untouched, but that the criteria, requirements and policy notes have been succeeded by a reduced number of requirements. The 2011 Rules will need to be available in case of any lack of clarity with the new arrangements.]

Chapter 1: The EITI Principles

[No changes. As per page 10 of the EITI 2011 Rules.]

A diverse group of countries, companies and civil society organisations attended the Lancaster House Conference in London (2003) hosted by the UK Government. They agreed a Statement of Principles to increase transparency over payments and revenues in the extractives sector. These became known as the EITI Principles and are the cornerstone of the initiative.

The EITI Principles

- 1 We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
- 2 We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
- 3 We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
- 4 We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
- 5 We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
- 6 We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.
- 7 We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
- 8 We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
- 9 We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.
- 10 We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
- 11 We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.

- 12 In seeking solutions, we believe that all stakeholders have important and relevant contributions to make - including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors and non-governmental organisations.

Chapter 2: Requirements for EITI implementing countries

How to read this chapter

This chapter sets out the requirements that must be adhered to by countries implementing the EITI. The process for applying for EITI Candidate status is explained in section 2.1 below. The detailed provisions a government intending to implement the EITI has to follow is then set out in section 2.2, requirement 1.

There are two groups of implementing countries: Candidate and Compliant countries. EITI candidacy is a temporary state which is intended to lead, in a timely fashion, to compliance with the EITI Standard. In order to become EITI Compliant, implementing countries must demonstrate through Validation that they have met the implementation requirements set out in section 2.2 of this chapter. The implementation requirements are summarised in Table 2.

The requirements set out here are minimum requirements and implementing countries are encouraged to go beyond them where stakeholders agree that this is appropriate. Stakeholders are encouraged to consult additional guidance materials on how to best ensure that the requirements are met, available via www.eiti.org.

Table 1 – Sign-up steps

1. The government is required to issue an unequivocal public statement of its intention to implement the EITI.
2. The government is required to appoint a senior individual to lead on the implementation of the EITI.
3. The government is required to commit to work with civil society and companies, and establish a multi-stakeholder group to oversee the implementation of the EITI.
4. The multi-stakeholder group must have a current workplan, fully costed and aligned with the deadlines established by the EITI Board.

Each of these requirements are set out in full in section 2.2. below.

Table 2- Implementation requirements

The EITI Requires:

1. Effective oversight by the multi-stakeholder group (incorporating the sign-up steps detailed in Table 1 above).
2. Timely publication of EITI Reports.
3. EITI Reports that include contextual information providing an overview of the extractive sector.
4. EITI Reports that are comprehensive, including full government disclosure of extractive industry revenues, and disclosure of all material payments to government by oil, gas and mining companies.
5. EITI requires a credible assurance process applying international standards.
6. That EITI reports are comprehensible and publically accessible, and contribute to public debate.
7. That the multi-stakeholder group takes steps to act on lessons learned and review the outcomes and impact of EITI implementation.

Each of these requirements are set out in full in section 2.2. below.

Comment [DR1]: This chapter sets out the requirements. The EITI Criteria (previous chapter 2) and policy notes 3 and 5 have been incorporated.

2.1 Sign-up

A government intending to implement the EITI is required to undertake a number of steps before applying to become an EITI Candidate (see implementation requirement 1 below). When the country has completed these steps and wishes to be recognised as an EITI Candidate country, the government should lodge a Candidate Application in writing to the EITI Board (see Box 1).

Box 1 – Applying to become an EITI Candidate

When the country has completed the sign-up steps and wishes to be recognised as an EITI Candidate country, the government, with the support of the multi-stakeholder group (MSG), should lodge a Candidate Application, using the standard application form.¹ The application should describe the activities undertaken to date and provide evidence demonstrating that each of the sign-up steps have been completed. The application should include contact details for government, civil society and private sector stakeholders involved in the EITI.

The EITI Board will review the application and assess whether the sign-up steps have been completed. The International Secretariat will contact stakeholders at the national level to ascertain their views on the sign-up process, and seek comments from supporting governments, international civil society groups, supporting companies and supporting organisations and investors. The Secretariat will work closely with the senior individual appointed to lead on EITI implementation in order to clarify any outstanding issues. The Board's Outreach and Candidacy Committee will make a recommendation to the EITI Board on whether a country's application should be accepted. The EITI Board will make the final decision.

The EITI Board has stated a preference to make decisions on admitting a Candidate country at the regular EITI Board Meetings. Where there is a long period between meetings, the EITI Board will consider making a decision via Board Circular.

When the EITI Board admits a Candidate, it also establishes deadlines for publishing the first EITI Report and submitting a final Validation Report endorsed by the MSG to the EITI Board. An implementing country's first EITI Report must be published within 18 months from the date that the country was admitted as a Candidate. The Validation Report must be submitted within three years from the date that the country was admitted as a Candidate. Further information on deadline policies is available in section 1.4 below.

¹ Available from the International Secretariat.

2.2 Implementation requirements

EITI implementation requirement 1 The EITI requires effective oversight by the multi-stakeholder group

Overview - The EITI requires effective multi-stakeholder oversight including a functioning multi-stakeholder group (MSG) involving companies and the full, independent, active, and effective participation of civil society. This requirement addresses the key elements, including: (1.1) government commitment, (1.2) government oversight, (1.3) the establishment of a multi-stakeholder group, and (1.4) agreeing a workplan with clear objectives for EITI implementation, and a timetable that is aligned with the deadlines established by the EITI Board (1.6-1.8).

Comment [DR2]: New requirement, combining old requirements 1-7.

1.1 The government is required to issue a public statement of its intention to implement the EITI

It is required that the statement is made by the head of state or government, or an appropriately delegated government representative.

Comment [DR3]: Based on current requirement 1, with some modifications.

1.2 The government is required to appoint a senior individual to lead on the implementation of the EITI

The appointee should have the confidence of all stakeholders, the authority and freedom to coordinate action on EITI across relevant ministries and agencies, and be able to mobilize resources for EITI implementation.

Comment [DR4]: Based on current requirement 3, with some modifications.

Comment [DR5]: Current requirement 3.c.

1.3 The government is required to work with civil society and companies, and establish a multi-stakeholder group (MSG) to oversee the implementation of the EITI

- a) The government is required to ensure that companies and civil society are fully, independently, actively and effectively engaged in the process. It is required that there is an enabling environment with regard to relevant laws, regulations, and administrative rules as well as actual practice in implementation of the EITI. Any obstacles to civil society or company participation must be removed. Stakeholders, including but not limited to members of the multi-stakeholder group:

Comment [DR6]: Combines current requirements 2 and 4.

Comment [DR7]: Based on current requirements 6 and 7.

Comment [DR8]: Current requirement 2.c.

Comment [DR9]: Based on current requirement 2.b. and 6.e, with minor modifications.

- i. must refrain from actions which result in narrowing or restricting public debate in relation to implementation of EITI;

Comment [DR10]: Current requirement 2.d.

- ii. should be able to speak freely on transparency and natural resource governance issues;

Comment [DR11]: Current requirement 2.e.

- iii. must be substantially engaged in the design, implementation, monitoring and evaluation of the EITI process, and ensure that it contributes to public debate;

Comment [DR12]: Current requirement 2.a, 6.a and Criterion 5.

- iv. have the right to communicate and cooperate with each other; and

Comment [DR13]: Current requirement 2.f, with minor modifications.

- v. must be able to operate freely without restraint or coercion.

Comment [DR14]: Current requirement 6.g, with some modifications.

- b) In establishing the multi-stakeholder group, the government should:

- i. ensure that the invitation to participate in the group was open and transparent;
- ii. ensure that stakeholders are adequately represented (this does not mean that they need to be equally represented). The multi-stakeholder group must comprise appropriate

Comment [DR15]: Current requirement 4.h.ii.

Comment [DR16]: Current requirement 4.h.iii.

Comment [DR17]: Current requirement 4.a.

- stakeholders, including, but not limited to, the private sector, civil society and relevant government ministries. Each stakeholder group has the right to appoint their own representatives, bearing in mind the desirability of pluralistic and diverse representation;
- iii. ensure that senior government officials are represented on the multi-stakeholder group;
 - iv. ensure that there is a process for changing group members which does not include any suggestion of coercion or attempts to include members who will not challenge the status quo; and
 - v. consider establishing the legal basis for the group.
- c) It is required that the multi-stakeholder group agrees clear public terms of reference (TORs). The TORs should at a minimum include provisions on:

Comment [DR18]: Current requirement 4.c.

Comment [DR19]: Current requirement 4.h.i.

Comment [DR20]: Current requirement 4.h.iv.

Comment [DR21]: Current requirement 4h.vi.

Comment [DR22]: Current requirement 4.g.

The role, responsibilities and rights of the multi-stakeholder group

- i. It is required that the members of the multi-stakeholder group have the capacity to carry out their duties. Due consideration should be paid to addressing potential capacity constraints affecting civil society and company participation, including through access to capacity-building or resources.
- ii. Civil society groups involved in EITI as members of the multi-stakeholder group must be operationally, and in policy terms, independent of government and/or companies.
- iii. The multi-stakeholder group should undertake effective outreach activities, including through communication (media, website, letters, etc.) with citizens, civil society groups and companies, informing them of the government's commitment to implement EITI, and the central role of companies and civil society, as well as widely disseminating the public information that results from the EITI process (e.g., the national EITI report); and
- iv. The fundamental rights of civil society and company representatives substantively engaged in EITI - including but not restricted to members of the multi-stakeholder group - must be respected.

Comment [DR23]: Current requirement 4.f.

Comment [DR24]: Current requirement 6.d.

Comment [DR25]: Current requirement 6.f.

Comment [DR26]: Current requirement 6.b and 7.a, with minor modifications.

Comment [DR27]: Current requirement 6.i.

Approval of workplans, EITI Reports and annual activity reports

- v. It is required that the multi-stakeholder group approves annual workplans, EITI reports and annual activity reports.
- vi. The multi-stakeholder group should oversee the EITI reporting process, and validation in accordance with chapter 3.

Comment [DR28]: Current requirement 4.g.

Comment [DR29]: Current requirement 4.g.

Internal governance rules and procedures

- vii. The MSG should agree procedures for nominating MSG representatives, decision-making, length of tenure and frequency of meetings.
- viii. There should be sufficient advance notice of meetings, and timely circulation of documents prior to their debate and proposed adoption.
- ix. The multi-stakeholder group must keep written records of their discussions and decisions.

Comment [DR30]: Modification of current requirement 6.c.

Comment [DR31]: New provision, reflecting best practice.

1.4 The multi-stakeholder group must have a current workplan, fully costed and aligned with the deadlines established by the EITI Board

The workplan must:

- a) Set objectives that are linked to the EITI principles and reflect national priorities for the extractive industries. This may include areas beyond revenue transparency, such as i.e. contracts

Comment [DR32]: Current requirement 5, with some modifications.

Comment [DR33]: Draws on current requirements 5, 20 and 21, where the MSG "are encouraged to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public government operations and in business"

and licensing or revenue allocations. The multi-stakeholder group is required to agree the objectives in consultation with key stakeholders, and endorse the workplan.

- b) **Include** measurable and time bound activities to achieve the agreed objectives. The scope of EITI implementation should be tailored to contribute to the desired outcomes and impact that have been identified during the consultation process. The workplan should :
 - i. address any potential capacity constraints in government agencies, companies and civil society that may be an obstacle to effective EITI implementation;
 - ii. address **the** scope of EITI reporting, including consideration of how to deal with technical reporting issues, such as comprehensiveness and data reliability (see requirements 4 and 5); and
 - iii. **identify and address any potential legal or regulatory obstacles to EITI implementation.**
- c) **Identify** domestic and external sources of funding and technical assistance where appropriate in order to ensure timely implementation of the agreed workplan.
- d) **Be** made widely available to the public, for example published on the national EITI website and/or other relevant ministries and agencies websites, in print media or in places that are easily accessible to the public.
- e) **Be** reviewed annually in the annual activity report as per requirement 7.2.
- f) Include a timetable for implementation that is aligned with the reporting and validation deadlines established by the EITI Board (see 1.6, below).

Comment [DR34]: Current requirement 5.b.ii, with some modifications.

Comment [DR35]: Current requirement 5.b.ii, with some modifications.

Comment [DR36]: Current requirement 5.d, with some modifications.

Comment [DR37]: Current requirement 5.c, with some modifications.

Comment [DR38]: Current requirement 5.b.i with some modifications.

Comment [DR39]: New provision, drawing on current requirement 5.f.

1.5 **Adapted implementation**

Should the MSG wish to deviate from the implementation requirements it may in its candidacy application or at any other time seek EITI Board approval. The request should be made well in advance of the reporting process and the MSG should set out its reasoning for seeking an exemption, e.g., on constitutional, financial, or practical grounds. In all decisions relating to such requests, the Board will place a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI r5.

Comment [DR40]: New provisions, as per proposal 32 in *Building on achievement*.

Comment [DR41]: Formalises an established ad hoc process (e.g., Nigeria initially excluding mining, Iraq covering export sales, etc).

1.6 **Reporting and validation deadlines**

a) **EITI reporting deadlines**

The EITI requires timely publication of EITI Reports (see requirement 2). Failure to meet this requirement may result in temporary suspension or delisting. In the event that EITI reporting is significantly delayed, the multi-stakeholder group should take steps to ensure that EITI reports are issued for the intervening reporting periods so that every year in the series is subject to reporting.

Comment [DR42]: The following provisions reflect the current rules, as found in Policy Note 3 and Policy Note 5.

b) **EITI Validation deadlines**

Candidate countries are required to undergo Validation within two and a half years of becoming a Candidate. Where Validation verifies that a Candidate country has met all of the requirements the Board will designate that country as EITI Compliant. Compliant countries will be required to undertake Validation every three years thereafter.

If a Candidate country has undertaken Validation within two and a half years, but the Validation shows that no meaningful progress has been made toward achieving EITI Compliant status, and

that there is little evidence of a sincere intention to implement EITI in line with the Principles, the Board will de-list the country from the list of Candidate countries. In assessing “meaningful progress” the Board will have regard to: (1) The EITI process – in particular the functioning of the multi-stakeholder group and clear, strong commitment from government; (2) The status of EITI reporting, and progress in meeting the requirements for regular and timely reporting as per requirement 2.

If the Candidate country has made meaningful progress but does not achieve compliance, the Board will set out the remedial actions needed to achieve compliance.

The MSG may request a waiver of the requirement to undergo Validation if the remedial actions necessary for achieving compliance are not complex and can be quickly undertaken. If the Board deems that a Validation is not necessary, the Board will waive the requirement for a Validation and empower the EITI International Secretariat to prepare an assessment for the Board. The waiver request must be submitted well in advance of the end of a validation deadline, and the country must be prepared to undertake a Validation in the event that the waiver is denied. The Board does not envisage granting a waiver unless it is confident that the International Secretariat’s assessment can be undertaken quickly and objectively.

Based on an assessment and recommendation by the International Secretariat, the Board may conclude that all requirements have been met and designate the country as EITI Compliant.

c) Annual activity reports

Multi-stakeholder groups are required to publish annual activity reports (see requirement 7.2). The report of the previous year’s activities must be published by 1 July of the following year. The EITI Board will establish appropriate deadlines for new Candidate countries. If the annual activity report is not published within six months of this deadline (i.e. by 31 December the following year), the country will be temporarily suspended until the International Secretariat confirms that the outstanding activity report is published.

d) Extensions

Failure to meet the deadlines set out in section (a), (b) and (c) above may result in suspension or delisting.

An implementing country may apply for an extension if it is unable to meet any of the deadlines specified above. The Board will apply the following test in assessing any extension requests:

1. The request must be made in advance of the deadline and be endorsed by the MSG;
2. The Board will only grant an extension if the MSG can demonstrate that it has been making meaningful progress towards meeting the deadline and has been delayed due to exceptional circumstances. In assessing “meaningful progress” the Board will have regard to:
 - (i) the EITI process – in particular the functioning of the multi-stakeholder group and clear, strong commitment from government; and
 - (ii) the status of EITI reporting. The Board will take into account progress in meeting the requirements for regular and timely reporting.

The exceptional circumstance(s) must be explained in the request from the MSG.

1.7 Suspension and delisting

a) Temporary suspension

Where it is manifestly clear that the EITI Principles and requirements are not in a significant aspect adhered to by an implementing country, the EITI Board may temporarily suspend or delist that country. The EITI Board may also temporarily suspend or delist countries that fail to publish EITI Reports on a regular and timely basis in accordance with requirement 2.

Where the EITI Board is concerned that adherence to the EITI Principles and requirements are compromised, it may task the EITI International Secretariat with gathering information about the situation and submitting a report to the EITI Board.

Suspension of an implementing country is a temporary mechanism. The EITI Board shall set a time limit for the implementing country to address breaches of the EITI Standard. If the EITI Board is satisfied that corrective measures have been undertaken in that period, the suspension will be lifted. If the matter is not resolved to the satisfaction of the EITI Board by the agreed deadline, the country will be de-listed i.e., lose its status as an EITI implementing country.

Temporary suspension will not alter reporting or Validation deadlines, unless the EITI Board agrees that an extension is warranted. The Board will not sanction the commencement of Validation during the suspension period. At all stages in the process, the EITI Board shall ensure its concerns and decisions are clearly communicated to the implementing country.

Suspended countries will be considered a "Candidate country (suspended)" or a "Compliant country (suspended)" for the period of suspension, with their suspended status clearly indicated on the EITI website and elsewhere.

b) Voluntary temporary suspension

Countries that are experiencing exceptional political instability or conflict may apply for voluntary temporary suspension for up to one year. The government should lodge an application for voluntary temporary suspension with the EITI International Secretariat, which will submit the application to the EITI Board for decision. The government's application should note the views of the EITI multi-stakeholder group.

The government may apply to lift the suspension at any time. The application should document the steps agreed by stakeholders to re-start the EITI implementation and Validation process, and the work plan to achieve compliance. The government should lodge an application to lift a voluntary suspension with the EITI International Secretariat. The Secretariat will submit the application to the EITI Board for decision. The EITI Board will consider setting new reporting and Validation deadlines as appropriate. The Board will not sanction the commencement of Validation during the suspension period. If the suspension is in effect for more than one year, the EITI Board will consider whether to de-list the country.

Voluntarily suspended countries will be considered as a "Candidate country (suspended)" or a "Compliant country (suspended)" for the period of suspension, with their suspended status clearly indicated on the EITI website and elsewhere.

c) De-listing

If an implementing country has been subject to voluntary suspension or temporary suspension, and the matter has not been resolved to the satisfaction of the EITI Board to the effect that such suspension has been lifted, the country will be de-listed, i.e. lose its status as an EITI

implementing country. De-listing may also occur if an implementing country does not meet the Validation requirements as set out in chapter 3.6, or the reporting requirements as set out in requirement 2.

A de-listed country may reapply for admission as an EITI Candidate country at any time. The EITI Board will apply the agreed procedures with respect to assessing Candidate applications. It will also assess previous experience in EITI implementation, including previous barriers to effective implementation, and the corrective measures implemented.

1.8 Appeals

In decisions relating to the application of these rules, the Board will place a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI. The implementing country concerned may petition the EITI Board to review its decision regarding temporary suspension, de-listing or the country designation as Candidate or Compliant following Validation.. The EITI Board will consider such petitions with regard to the facts of the case, the need to preserve the integrity of the EITI and the principle of consistent treatment between countries. The Board's decision is final. The country concerned may, prior to the notice periods under Article 8 of the Articles of Association, appeal a decision of the EITI Board made in accordance with the first paragraph to the next ordinary Members' Meeting.

EITI implementation requirement 2
The EITI requires timely publication of EITI Reports

Overview - EITI Reports are most useful and relevant when they are published regularly and contain data that is timely. Requirement 2 establishes deadlines for timely EITI Reporting.

- 2.1 Implementing countries are required to produce their first EITI Report within 18 months of being admitted as a candidate. Thereafter, implementing countries are expected to produce EITI Reports on an annual basis.
- 2.2 EITI Reports should cover data no older than the second to last complete accounting period (e.g., an EITI Report published in calendar/financial year 2014 should be based on data no later than calendar/financial year 2012). MSGs are encouraged to explore opportunities to publish EITI Reports as soon as practically possible.

Comment [DR43]: Current requirement 5.e.

Comment [DR44]: Current requirement 5.e.

EITI implementation requirement 3
The EITI requires that EITI Reports include contextual information that provides an overview of the extractive sector

Overview - In order to be comprehensible and useful, EITI Reports will be required to include contextual information and references to other publically available information about the extractive industries. This should include: information on: the legal framework and fiscal regime (3.1), the extractive industries contribution to the economy (3.2), production data (3.3), overview of extractive industry projects (3.4), state participation in the extractive industries (3.5), revenue allocations (3.6 -3.7) licensing (3.8), and contracts (3.9).

- 3.1 **The EITI Report must describe the legal framework and fiscal regime**
- a) This must include a summary description of the fiscal regime, including the level of fiscal devolution, an overview of the related laws and regulations, and information on the roles and responsibilities of the relevant government agencies.
 - b) Where the government is undertaking reforms, the MSG is encouraged to ensure that the report outlines these developments.
- 3.2 **The EITI Report must disclose, where available, information about the contribution of the extractive industries to the economy for the fiscal year covered by the EITI Report, including:**
- a) Size in absolute terms and as a percentage of GDP, including an estimate of informal sector activity.
 - b) Fiscal revenues (including taxes, royalties, bonuses, fees, and other payments) in absolute terms and as a percentage of total fiscal revenues, total government expenditure, and GDP.
 - c) Exports in absolute terms and as a percentage of total exports of goods and services.
 - d) Employment in absolute terms and as a percentage of total formal sector employment.
 - e) Key regions/areas where production is concentrated.
- 3.3 **The EITI Report must disclose production data for the fiscal year covered by the EITI Report, including:**

Comment [DR45]: New requirement per proposal 1 in *Building on achievements*

Comment [DR46]: New requirement per proposal 1 in *Building on achievements*

Comment [DR47]: New requirement per proposal 1 in *Building on achievements*

- a) Physical production by commodity, and value of production by commodity and state/region (when relevant).
- b) Physical exports by commodity, and value of exports by commodity and state/region of origin (when relevant).

3.4 The EITI Report must provide a list of key companies in the extractive sector (private and state-owned), a list of existing large projects, and new large projects that will start production (within the next two years)

3.5 The EITI Report must disclose information on state participation in the extractive industries, including, where relevant:

- a) An explanation of the prevailing rules and practices that govern exchanges between government and state owned enterprises, including how SOEs are financed (i.e. whether the SOE is obligated to transfer all revenue to the state and receives periodic transfers to cover expenditures, whether the SOE retains and reinvests net earnings, etc.).
- b) Disclosures from SOEs on their quasi-fiscal expenditures.
- c) Disclosures from the government and/or state owned enterprises of their level of beneficial ownership in mining, oil and gas companies operating within the country, and any changes in the level of ownership during the reporting period. This should include details regarding free equity, carried interest and other similar arrangements as appropriate. Where there have been changes in the level of government and/or SOE ownership during the reporting period, the government and/or SOEs are [required/encouraged] to disclose the terms of the transaction, including where appropriate details regarding valuation. Where the government and/or SOEs have provided loans or loan guarantees to mining, oil and gas companies operating within the country, details on these transactions should be disclosed in the EITI Report.

Comment [DR48]: New proposals arising from discussions with stakeholders SOE disclosures.

Comment [DR49]: New provision, a proposal 11 in *Building on achievements*.

Comment [DR50]: New provision, a proposal 12 in *Building on achievements*.

3.6 The EITI Report must describe the distribution of revenues from extractive industries, cash and in-kind

- a) MSGs are encouraged to reference the national revenue classification, and international standards such as the IMF Government Finance Statistics Manual;
- b) Where the government revenues, cash and in-kind, are not recorded in the national budget, the allocation of these revenues must be explained, with links provided to relevant financial reports as appropriate of e.g. sovereign wealth/development funds, sub-national governments, state-owned companies, and other extra-budgetary entities.

Comment [DR51]: New requirement per proposal 2 in *Building on achievements*.

3.7 The multi-stakeholder group is encouraged to include further information on revenue management and expenditures in the EITI Report, for example:

- a) Where extractive revenues are earmarked for specific programmes or geographic regions, the report may describe these special allocations and detail the methods for ensuring accountability and efficiency in their use.
- b) A reconciliation of data in EITI Reports to data recorded in government budgets and accounts.
- c) Links to the publicly available records on budgeting and expenditures.
- d) Timely information that will further public understanding of the volatile and finite nature of extractive industry revenues, including production, price and revenue forecasts, current and projected non-resource revenues, and the non-resource fiscal balance; and promote public debate around issues of revenue sustainability and resource dependence.

Comment [DR52]: New requirement per proposal 3 and 4 in *Building on achievements*.

- e) A description of the linkages between EITI and the country's annual budget and public financial management processes. These could include: establishing mechanisms for EITI Reports to feed into and draw from the annual budget process and the preparation of budget documents; jointly address the recommendations from EITI Reports with the appropriate public sector authority (auditor general, tax authority, parliament); adding external measures of budget transparency (e.g. Open Budget Index) and public expenditure efficiency (e.g. PEFA scores) to the reconciliation report.

3.8 Licenses

License holders

- a) Implementing countries are required to publicly disclose information regarding each of the licenses of companies covered in the EITI Report, including:
 - i. license holder(s);
 - ii. license type, and coordinates of the license area;
 - iii. date of application, granting, duration of the license; and
 - iv. information about any transfers of licenses during the accounting period of the EITI Report.
- b) The EITI Report must contain a reference (link) to the publicly available registry or sources containing such license information.
- c) Implementing countries are [required/encouraged to require] licensees to disclose who their beneficial owners are, meaning the natural person(s) who ultimately own or control the licensee, and to make this information publicly available.

Comment [DR53]: New requirement per proposal 16 in *Building on achievement*

License allocations

- d) Implementing countries are [required] to publicly disclose information regarding each license allocation made during the accounting period covered by the EITI Report, including:
 - i. names of applicants and names of the recipient(s) of the awarded license (including all members of an applicant or recipient consortium, if applicable);
 - ii. the bid criteria, and the terms of the awarded license;
 - iii. Summary of technical and financial capabilities of the license recipient(s), including compliance with technical and financial criteria; and
 - iv. any deviations from the applicable legal and regulatory framework.
- e) The EITI Report must contain a reference (link) to the publicly available sources of information on license allocations.

Comment [DR54]: Agreed in principle that this should be required.

Definitions

- f) The term license implies disclosure of
 - i. licenses, titles or permits by which the government confers to a company(ies) rights to explore or exploit oil, gas and/or mineral resources;
 - ii. where such licenses, titles or permits are supplemented or supplanted by agreements that provide the terms attached to the grant and exercise of the right to explore and/or exploit;

- the full text of any such agreement (which could include concessions, service contracts, joint venture agreements or other agreements attached);
 - the full text of any annexed information that modifies or directly impacts the agreement mentioned above or its execution, which could include provisions on financial terms, work program, the geographic perimeter of the license, accounting rules, the duration of the contract, social or environment obligations of the company, and stabilization clauses;
 - the full text of any alteration to the terms of the original agreement or any amendment regarding the sorts of provisions noted above.
- iii. Where there are concerns about disclosure of exploration agreements, the MSG may agree to redact information about the commodity being explored.

Exceptions from licensing disclosure [requirement] for significant barriers

- g) Where sub-national entities issue licenses there can be significant practical barriers to the disclosures set out in sections (a) and (d) above. If this is the case, it is required that the multi-stakeholder group agrees an approach for engaging and phasing in disclosure of license information by these entities. Any significant barriers preventing disclosure of license information by sub-national entities should be documented by the multi-stakeholder group and be clearly indicated in the workplan (ref. 1.5 on adapted implementation).

3.9 Contracts

[Option 1 – disclosure of all contracts required]

- a) The government is required to publicly disclose any contracts that establish the terms related to the exploration or exploitation of oil, gas and minerals.
- b) The contracts must be publicly available on a single government website or another easily accessible location. The EITI Report must provide an overview of the contracts and a reference to the location where the contracts are published.
- c) The term ‘disclosure of contracts’ implies disclosure of:
- i. The full text of any agreement regulating rights to explore or/and exploit oil, gas and mineral resources (including but not limited to production sharing agreements, risk agreements and Joint Venture Agreements); and
 - ii. The full text of any annex, addendum or rider that establishes details relevant to the agreement mentioned above or its execution; and
 - iii. The full text of any alteration to the terms of the original agreement.

Comment [DR55]: New requirement per proposal 18 in *Building on achievement*

Option 2 – disclosure of future contracts required, with some exemptions

- a) The government is required to publicly disclose any future contracts that establish the terms related to the exploration or exploitation of oil, gas and minerals, *unless the MSG seeks an exemption with specific reasoning.*
- b) Same as option 1.
- c) Same as option 1.

- d) The government is encouraged to disclose any existing contracts that establish the terms related to the exploration or exploitation of oil, gas and minerals.

Option 3 – disclosure of contracts encouraged

- a) The government is encouraged to publicly disclose any contracts that that establish the terms related to the exploration or exploitation of oil, gas and minerals.
- b) The contracts should be publicly available on a single government website or another easily accessible location. The EITI Report should provide an overview of the contracts that are available and a reference to the location where the contracts are published.
- c) Same as option 1.

Option 4 – discretionary closure of contracts

- a) The government may wish to publicly disclose any contracts that establish the terms related to the exploration or exploitation of oil, gas and minerals.
- b) The government may wish to make the contracts publicly available on a single government website or another easily accessible location. The multi-stakeholder group may wish to include in the EITI Report an overview of the contracts that are available and a reference to the location where the contracts are published.
- c) Same as option 1.]

EITI implementation requirement 4

The EITI requires that EITI Reports are comprehensive, including full government disclosure of extractive industry revenues, and disclosure of all material payments to government by oil, gas and mining companies

Comment [DR56]: New requirement
Combining current requirements 9, 11, 14,

Overview - An understanding of company payments and government revenues inform public debate about the governance of the extractive industries. In order to be useful, this data must be comprehensive, i.e., it should cover all material payments by companies and a complete account of government revenues. Section 4.1 addresses the scope of the EITI reporting process, i.e., the types of payments and revenues covered. Section 4.2 addresses the reporting process, ensuring that the EITI Report provides a comprehensive reconciliation of government revenues and company payments. The final section (4.3) addresses the key steps in the preparation of the EITI Report.

4.1 Defining the scope of the EITI Report

In advance of the reporting process, the multi-stakeholder group is required to agree which payments and revenues are material and therefore should be disclosed, including appropriate materiality definitions and thresholds. Payments and revenues are considered material if their omission or misstatement could significantly affect comprehensiveness of the EITI report. A description of each revenue stream and the related definitions and thresholds should be included in the EITI Report. In establishing materiality definitions and thresholds, the MSG should consider the size of the revenues streams relative to total revenues. The MSG should document the options considered and the rationale for establishing the definitions and thresholds.

- a) The following revenue streams should be included:
 - i. The host government's production entitlement, e.g. so-called profit oil;

- ii. national state-owned company production entitlement;
 - iii. profits taxes;
 - iv. royalties;
 - v. dividends;
 - vi. bonuses (such as signature, discovery, production);
 - vii. licence fees, rental fees, entry fees and other considerations for licences and/or concessions;
 - viii. any other material benefit to government as agreed by the multi-stakeholder group.
- Any revenue streams or benefits should only be excluded where they are not relevant or where the MSG agrees that their omission will not materially affect the final EITI Report.
- b) **Sale of in-kind revenues:** Where the sale of in-kind revenues are a material proportion of extractive industry revenues, the government, including state owned enterprises, are required to disclose the volumes sold and revenues received. The published data must be disaggregated to levels commensurate with the reporting of other payments and revenue streams (see requirement 4.3(c)). Reporting could also break down disclosures by the type of product, price, market, and sale volume. Where practically feasible, the MSG is encouraged to task the independent administrator with reconciling the volumes sold and revenues received by including the buying companies in the reporting process.
- c) **Infrastructure provisions and barter arrangements:** Where agreements based on infrastructure provisions or other barter-type arrangements play a significant role, the multi-stakeholder group is required to agree a mechanism for incorporating benefit streams under these agreements into its EITI reporting process. To be able to do so, the MSG needs to gain a full understanding of the terms of the contract, the parties involved, the resources which have been pledged by the government, the value of the balancing benefit stream, e.g. infrastructure works, and the materiality of these agreements relative to conventional contracts. Where the multi-stakeholder group concludes that these agreements are material, the multi-stakeholder group is required to develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams. Where reconciliation of key transactions is not feasible, the multi-stakeholder group should agree an approach for unilateral company and/or government disclosures to be attached to the EITI Report.
- d) **Social expenditures:** It is required that the multi-stakeholder group establish whether social expenditures required by law or the contract with the government that governs the extractive investment are material. Where material, the EITI Report must disclose and, where possible, reconcile these transactions.
- i. Where such benefits are provided in-kind, it is required that the EITI Report discloses the nature and the deemed value of the in-kind transaction.
 - ii. Where the beneficiary of the social expenditure is a third party (i.e. not a government agency), it is required that the name and function of the beneficiary is disclosed.
 - iii. Where reconciliation is not feasible, the EITI Report should include unilateral company and government disclosures of these transactions.
 - iv. Where material social expenditures are made on a discretionary basis, the multi-stakeholder group is encouraged to disclose and, where possible, reconcile these transactions in the EITI Report.
- e) **Transportation:** Where revenues from the transportation of oil, gas and minerals are a material proportion of extractive industry revenues, the government and state owned enterprise/s are required to disclose the revenues received. The published data must be disaggregated to levels commensurate with the reporting of other payments and revenue streams (see requirement

Comment [SB57]: New requirement, per proposal 13 in *Building on achievements*.

Comment [DR58]: Current requirement 9.f.

Comment [DR59]: New provision, as proposal 14 in *Building on achievements*.

Comment [DR60]: New provision, as proposal 15 in *Building on achievements*.

4.3(c). The EITI Report could include:

- i. a description of the transportation arrangements including: the product; transportation route(s); the companies and government entities, including SOEs, involved in transportation;
- ii. definitions of the relevant transportation taxes, tariffs or other relevant payments, and the methodologies used to calculate them;
- iii. disclosure of tariff rates and volume of the transported commodities;
- iv. disclosure of revenues received by government entities, including SOEs, in relation to transportation of oil, gas and minerals; and
- v. where practically feasible, the MSG is encouraged to task the independent administrator with reconciling material payments and revenues associated with the transportation of oil, gas and minerals.

4.2 **Ensuring comprehensive reporting**

- a) The EITI Report must provide a comprehensive reconciliation of government revenues and company payments, including payments to and from state owned enterprises, in accordance with the agreed scope.
- b) The government is required to comprehensively disclose all revenues received from oil, gas and mining companies in accordance with the agreed reporting templates, i.e., the total government revenues for each of the agreed benefit streams. This includes revenues from companies not considered material.
 - i. Where applicable, the multi-stakeholder group must ensure that the reporting process comprehensively addresses the role of state owned enterprises, including payments to government entities, including SOEs, from oil, gas and mining companies, and transfers between SOEs and other government agencies.
 - ii. It is required that the multi-stakeholder group establish whether direct payments from companies to sub-national government entities are material. Where material, the multi-stakeholder group is required to ensure that company payments to sub-national government entities and the receipt of these payments are disclosed and reconciled in the EITI Report.
 - iii. Where transfers between national and sub-national government entities that are related to the extractive industries are mandated by a national constitution, statute or other revenue sharing mechanism, the multi-stakeholder group is required to ensure that such transfers, where material, are disclosed in the EITI Reports. The EITI Report should disclose the revenue sharing formula, if any, as well as any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the amount that was transferred. The multi-stakeholder group is encouraged to reconcile these transfers where feasible. The multi-stakeholder group is encouraged to ensure that any material discretionary or ad-hoc transfers, are disclosed and where possible reconciled in the EITI Report.
 - iv. Where there are constitutional and/or significant practical barriers to the participation of sub-national government entities, the MSG may wish to seek an exemption from these requirements in accordance with requirement 1.5.
- c) All companies making material payments to government are required to comprehensively disclose these payments in accordance with the agreed reporting templates. An entity should only be exempted from reporting if it can be demonstrated that its payments and revenues are not material.

Comment [DR61]: New requirement per proposal 10 in *Building on achievements*

Comment [DR62]: New requirement per proposal 7 in *Building on achievements*

4.3 **Preparation of the EITI Report**

- a) The EITI Report must be prepared by an independent administrator. The independent administrator must be perceived by the multi-stakeholder group to be credible, trustworthy and technically competent.
- b) The multi-stakeholder group is required to approve and endorse:
 - i. the scope of the EITI Report, the definition of “all material payments and revenues” that applies, and the reporting templates (see section 4.1);
 - ii. the time period to be covered by the EITI Report;
 - iii. the terms of reference for the independent administrator, including appropriate provisions relating to safeguarding confidential information and to the level of disaggregation for the publication of data (see requirement 4.3(c));
 - iv. the appointment of the independent administrator; and
 - v. the final EITI Report prior to publication.
- c) The EITI Report must present the data on company payments and government revenues by individual reporting company and by each revenue stream [and by project].
- d) The EITI Report must clearly state if any companies or government entities failed to report comprehensively and assess whether this is likely to have had material impact on the stated figures. Based on the government’s disclosure of total revenues as per requirement 4.2(b) the independent administrator should indicate the coverage of the reconciliation exercise.
- e) The EITI Report must include an opinion from the independent administrator on whether the EITI data is comprehensive. Where there are weaknesses in the comprehensiveness of the EITI Report, the independent administrator may wish to make recommendations to improve the process.

EITI implementation requirement 5

EITI requires a credible assurance process applying international standards

Overview - Requirement 5 seeks to ensure that there is a credible process that produces data that stakeholder can rely on. The EITI seeks to build on existing audit and assurance systems in government and industry, confirm the reliability of other published data, and to promote international best practice and standards. Section 5.1 requires that EITI Reports describe the audit and assurance practices in government and industry, and whether they are in line with international standards. Section 5.2 addresses the methodology for the independent administrator. It is a requirement that payments and revenues are reconciled by a credible, independent administrator, applying international auditing and assurance standards. Section 5.3 addresses the assurances that need to be provided by the reporting entities, including auditor certification. Section 5.4 empowers the independent administrator to make an assessment of the comprehensiveness and reliability of the data.

5.1 Review of audit and assurance practices

- a) The MSG is encouraged to review the audit and assurance procedures undertaken by the participating companies and government entities, including relevant laws and regulations, any reforms that are planned or underway, and whether these procedures are in line with international standards.² A summary of the MSG’s findings could be included in the EITI Report.

² For companies: the International Standards on Auditing (ISA) issued by the International Auditing and Assurance Standards Board (IAASB). For public entities: the International Standards of Supreme Audit Institutions (ISSAI) issued by the International Organization of Supreme Audit Institutions (INTOSAI).

Comment [SB63]: Some new requirements here. They are not considered onerous. Most MSGs have reviewed these issues in addressing requirements 12 and 13. Adding this information to the EITI Report helps address wider concerns about strengthening financial management.

Comment [SB64]: A new requirement. Not onerous. Most countries already do this. To be supported with a guidance note from the EITI International Secretariat.

5.2 Reporting methodology

It is a requirement that payments and revenues are reconciled by a credible, independent administrator, applying international auditing and assurance standards, with publication of the administrator's opinion regarding that reconciliation including discrepancies, and an informative summary of the work performed to help intended users understand the nature of the assurance conveyed.

(a) The independent administrator appointed to produce the EITI Report must be perceived by the multi-stakeholder group as credible, trustworthy and technically competent.

(b) The multi-stakeholder group and the independent administrator are required to agree terms of reference in accordance with procedures endorsed by the EITI Board. These include:

- (i) An agreed upon procedure based applying international standards similar to ISRS 4400 and ISRS 4410 based on template terms of reference agreed by the EITI Board.
- (ii) A limited assurance or reasonable assurance engagement in accordance with the International Standard on Assurance Engagements (ISAE) 3000 "Assurance Engagements other than Audits or Reviews of Historical Financial Information" as issued by the IAASB.
- (iii) Other procedures as agreed and endorsed by the EITI Board.

Should the multi-stakeholder group wish to substantially adapt or deviate from these agreed upon procedures, approval from the EITI Board must be sought in advance (see requirement 1.5). The proposed approach and rationale must be clearly stated and argued in an application endorsed by the multi-stakeholder group. In considering such applications, the EITI Board will consult specialist advisors, and have regard to a range of factors including: the number of reporting entities, compliance costs, any constitutional, legislative and contractual constraints, and opportunities to test and strengthen the reporting process over time through successive EITI Reports.

5.3 Assurances to be provided to the independent administrator

[There are four options under discussion regarding confirmation letter from company external auditors:

- Option 1** encouraged (status quo);
- Option 2** required when the MSG/ independent administrator requests it
- Option 3** required (but MSGs can seek exemption where independent administrator says it's not needed)
- Option 4** required (but MSGs can seek an exemption)

For illustrative purposes, option 2 is elaborated below:

- a) It is required that the terms of reference outlines what information should be provided to the independent administrator by the participating companies and government entities to achieve the required level of assurance. This may require that:
 - i. companies attach a confirmation letter from their external auditor that confirms that the information they have submitted is comprehensive and consistent with their audited

Comment [SB65]: Based on EITI Criterion 3. The current requirements (#10 #16 and #17) do not adequately reference this. In many cases validators have found significant weaknesses in the work done by independent administrators. But the countries have passed validation because "the multi stakeholder group is content".

Comment [DR66]: Current requirement 10.

Comment [SB67]: To be supported via template ToRs

financial statements. Where the company operates internationally, endorsement by the group external auditor is preferable. The MSG may wish to phase in this procedure so that the confirmation letter could be integrated in their auditor's normal work program. This requirement would not apply to companies that are not required to have an external auditor at national or international levels. In such cases, it is recommended that a senior company official signs off on the completed company reporting form as a complete and accurate record of tax payments;]

- ii. a senior government official from each participating government entity certifies that the completed government reporting is a complete and accurate record of revenues received. Where relevant and practicable, government reporting entities are encouraged to obtain from their external auditor an opinion on the accuracy of the government's disclosures to the independent administrator.
- b) A narrative summary of the agreed procedures should be included in the EITI Report.

5.4 Assessment and recommendations from the independent administrator

- a) It is required that the EITI Report includes an assessment from the independent administrator on the reliability of the data on company payments and government revenues, an informative summary of the work performed to help intended users understand the nature of the assurance conveyed.
- b) It is required that the EITI Report documents whether the participating companies and government entities had their financial statements audited in the financial year/s covered by the EITI Report. Any gaps or weaknesses must be disclosed. Where audited financial statements are publically available, it is recommended that the EITI Report advises readers on how to access this information. This requirement only applies to the companies and government entities within the agreed scope of the reporting process.
- c) It is required that the EITI Report provides an assessment by the independent administrator of whether all companies and government entities within the agreed scope of the reporting process provided the information required to achieve the necessary assurance. Any gaps or weaknesses in reporting to the independent administrator must be disclosed in the EITI Report, including naming any entities that failed to comply with the agreed procedures. The independent administrator may wish to make recommendations for modifying the disclosures required from participating companies and government entities for future reporting cycles.
- d) It is required that the EITI report discloses each instance where a discrepancy has been identified. Where possible, the independent administrator should seek to explain those discrepancies, and where necessary make recommendations for remedial actions (see requirement 4.3.d and 7.1).
- e) The independent administrator may wish to make recommendations about the prevailing audit and assurance procedures (as described in requirement 5.1), and reforms needed to bring them into line with international standards. Where previous EITI Reports have recommended corrective actions and reforms, the independent administrator should comment on the progress in implementing those measures.

EITI implementation requirement 6

The EITI requires that EITI Reports are comprehensible, publicly accessible, and contribute to public debate

Comment [DR68]: New requirement drawing on current requirement 18.

Overview - Regular disclosure of natural resource revenue streams and payments from extractives companies is of little practical use without public awareness and understanding of what the figures mean and public debate about how resource revenues can be put to good use. Requirement 6 aims to engage stakeholders in dialogue about natural resources revenue management.

- 6.1 The multi-stakeholder group must ensure that the EITI Report is comprehensible, publicly accessible and contribute to public debate.** Key audiences should include civil society, companies, the media and parliamentarians. The multi-stakeholder group is required to:
- produce paper copies of the EITI Report, and ensure that they are widely distributed;
 - make the EITI Report available on-line, and publicise its availability;
 - ensure that the EITI Report is comprehensible, including by ensuring that it is written in a clear, accessible style and in appropriate languages; and
 - ensure that outreach events – whether organised by government, civil society or companies – are undertaken to spread awareness of and facilitate dialogue about the EITI Report across the country.
- 6.2** It is required that the EITI data files are published, and that summary data from each EITI Report is submitted electronically to the EITI International Secretariat according to a specified format. MSGs are encouraged to make EITI Reports machine readable, and to code or tag EITI Reports and data files so that the information can be compared with other publicly available data. As per requirement 3.6(a), MSGs are encouraged to reference national revenues classification systems, and international standards such as the IMF Government Finance Statistics Manual.
- 6.3** The multi-stakeholder group is encouraged to:
- Produce brief summary reports, with clear and balanced analysis of the information;
 - Summarize and compare the share of each revenue stream to the total amount of revenue that accrues to each respective level of government;
 - Where legally and technically feasible, consider automated on-line disclosure of extractive revenues and payments by governments and companies on a continuous basis (for instance, in cases where extractive revenue data is already published regularly by government or where national taxation systems are trending towards on-line tax assessments and payments). Such continuous government reporting could be viewed as interim reporting, and as an integral feature of the national EITI process which is captured by the reconciled EITI Report issued annually; and
 - Undertake capacity-building efforts, especially with civil society and through civil society organisations, to increase awareness of the process, improve understanding of the information and data from the reports, and encourage use of the information by citizens, the media, and others.

Comment [DR69]: Current requirement 18.e.

Comment [DR70]: Current requirement 18.d.i, with minor modifications.

Comment [DR71]: Current requirement 18.d.ii, with minor modifications.

Comment [DR72]: Current requirement 18.d.iv.

Comment [DR73]: Current requirement 18.d.v, with minor modifications.

Comment [SB74]: A new requirement but not onerous. These files are routinely prepared as part of the reporting process and many countries now make them available.

Comment [DR75]: New provision.

Comment [DR76]: Current requirement 18.c.i, with minor modifications.

Comment [DR77]: Drawing on current requirement 11.e.

Comment [DR78]: New provision.

EITI implementation requirement 7

The EITI requires that the multi-stakeholder group takes steps to act on lessons learned and review the outcomes and impact of EITI implementation

Overview: EITI Reports lead towards the fulfilment of the EITI Principles by contributing to wider public debate. It is also vital that lessons learnt during implementation are acted upon, that discrepancies identified in the EITI Report are explained and, if necessary addressed, and that EITI implementation is on a stable, sustainable footing.

7.1 The multi-stakeholder group is required to take steps to act on lessons learned and address discrepancies and recommendations from the independent administrator**Comment [DR79]:** Drawing on current requirement 17 and 20.**7.2 The multi-stakeholder group is required to review the outcomes and impact of EITI implementation**

- a) The multi-stakeholder group (MSG) is required to publish annual activity reports.³ The annual activity reports must include:

Comment [DR80]: Drawing on current requirement 21c.

- i. A summary of EITI activities undertaken in the previous year;
- ii. An assessment of progress with meeting and maintaining compliance with each EITI requirement;
- iii. An overview of the MSG's responses to the recommendations from reconciliation and validation in accordance with provision 7.1.a. Multi-stakeholder groups are encouraged to list each recommendation and the corresponding activities that have been undertaken to address the recommendations; and
- iv. An assessment of progress with achieving the objectives set out in its workplan, including the impact and outcomes of the stated objectives.

- b) All stakeholders should be able to participate in the production of the annual activity report and reviewing the impact of EITI implementation. Civil society groups and industry involved in EITI, particularly, but not only those serving on the MSG, should be able to provide feedback on the process and have their views reflected.

Comment [DR81]: Drawing on current requirement 20.

- c) The multi-stakeholder group is required to submit a Validation Report in accordance with the deadlines established by the Board (see requirement 1.6).

Comment [DR82]: Current requirement 20.

³ A standard template is available from the Secretariat.

Chapter 3: The Validation Guide

This chapter provides the provisions related to Validation. The purpose of Validation is to assess EITI implementation, with reference to the requirements outlined in chapter 2. The task of the validator is to assess whether the EITI requirements have been met, in accordance with the Validation methodology and the standard terms of reference for validators set out in this chapter.

3.1 An overview of Validation	1
3.2 Steps in the Validation process	1
3.3 Procurement of the validator	2
3.4 The Validation methodology	3
Annex A: Standard terms of reference for validators	5
Annex B: Standard template for Validation Reports	8

3.1 An overview of Validation

Validation is an essential feature of the EITI process. It serves assess performance and promotes dialogue and learning at the country level. It also safeguards the integrity of the EITI by holding all EITI implementing countries to the same global standard.

Validation is an external, independent evaluation mechanism, undertaken by a validator procured by the International Secretariat. It is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the EITI Standard. Validation should also document EITI impact and lessons learned, as well as any concerns stakeholders have expressed, and recommendations for future implementation of the EITI.

Given the multi-stakeholder nature of the EITI and the importance of dialogue, Validation is a consultative process. EITI stakeholders have an opportunity throughout the Validation process to comment on the effectiveness of EITI implementation, to provide opinions on the fulfilment of the EITI's requirements, and to make suggestions for strengthening the process. In addition to consulting with stakeholders, the validator must carefully analyse the EITI Reports and meet with the reconciler to discuss the strengths and weaknesses of the process. The multi-stakeholder group (MSG) plays a central role in ensuring that the Validation process is thorough and comprehensive.

As noted in chapter 2, there are two groups of implementing countries: **Candidate** and **Compliant** countries. Candidate status is for a finite period that leads, in a timely fashion, to the achievement of Compliant status. Candidate countries are required to undertake Validation within two and a half years of becoming a Candidate. Where Validation verifies that a country has met all of the EITI requirements, the Board will designate that country as EITI Compliant. Compliant countries will be required to undertake Validation every three years thereafter. If Compliant status is not achieved, the country may in some circumstances retain its status as a Candidate country for an additional period of time. In all decisions on Validation, the Board places a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI. The Board's Validation Committee reviews and comments on all draft and final Validation Reports. The validator is required to address these comments in the final report. This process ensures that the EITI Board has sufficient information in order to determine the country's status following Validation. Further information about Validation deadlines, rules and procedures for determining a country's status following Validation is available in chapter 2, requirement 1.6-1.7.

3.2 Steps in the Validation process

- 1. The International Secretariat informs the multi-stakeholder group about the commencement and schedule for Validation.** The International Secretariat will oversee the process throughout in collaboration with the MSG.

2. **Procurement of a validator.** Section 3.3 sets out the steps and modalities for procurement.
3. **Validation.** The validator assesses the adherence to the EITI Standard by assessing compliance with seven EITI requirements (see section 3.4). Validation is a consultative process. The validator should meet with the multi-stakeholder group, the organisation contracted to reconcile the figures disclosed by companies and the government and other key stakeholders, including companies and civil society not in the MSG. The validator is required to consult available documentation, including:
 - The EITI work plan and other planning documents such as budgets and communication plans;
 - The MSG's terms of reference, and minutes from MSG meetings;
 - EITI Reports, and supplementary information such as summary reports and scoping studies;
 - Communication materials;
 - Annual activity reports; and
 - Any other information of relevance to validation.
4. **Draft Report.** The validator should produce a draft Validation Report, using the standard template available in annex B.
5. **The EITI Board's Validation Committee reviews the draft Validation Report** to ensure that it is comprehensive and provides an adequate basis for establishing the country's compliance with the EITI requirements.
6. **The validator produces a final Validation Report.**

Validation is considered complete when:

 - A final Validation Report, addressing the comments by the Validation Committee, the MSG and other stakeholders, is agreed and endorsed by the multi-stakeholder group and the EITI Board;
 - The final Validation Report is publicly available.
7. **The EITI Board analyses the final Validation Report** and decides on the status of the implementing country (see chapter 2, requirement 1.6 – 1.7). In all decisions on Validation, the EITI Board will place a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI brand. In cases where the evidence provided by the validator does not adequately support the conclusion of whether a requirement is met or unmet, the Validation Committee may call upon the validator for a hearing. In the event that the final Validation Report does not provide sufficiently detailed information regarding compliance with the EITI's requirements, the Board may also task the International Secretariat with providing supplementary information. Any disagreements from the government, the multi-stakeholder group or the EITI Board over the Validation Report should first be dealt with by the validator working with these groups. If the disagreement can be resolved, the validator should make the appropriate amendments in the Validation Report. If a disagreement cannot be resolved, it should be noted in the report. Serious disagreements with regard to the Validation process should be presented to the EITI Board and Chair, who will try to resolve them. The Board and Chair have the authority to reject complaints that they consider to be trivial, vexatious or unfounded (see chapter 2, requirement 1.8).

3.3 Procurement of the validator

The International Secretariat will oversee the procurement of the validator. The following section presents the key steps in the process.

3.3.1 The International Secretariat informs the multi-stakeholder group of the initiation of the Validation process.

The International Secretariat will inform the multi-stakeholder group of the initiation of the Validation process, and prepare terms of reference for Validation. The terms of reference will set out:

- a) Validation objectives and deliverables;
- b) The Validation process, including procedures for reviewing and commenting on draft and final Validation Reports;
- c) The role and responsibilities of the MSG, including

- i. an overview of documents to be provided to the validator prior to the commencement of Validation; and
- ii. required input to the standard terms of reference for the validator such as
 - Background information on the country's participation in the EITI (i.e. the establishment and functioning of the multi-stakeholder group);
 - Commentary on recent events and developments of relevance to the Validation process;
 - An overview of current and former members of the multi-stakeholder group; and
 - Links to the EITI work plans and annual activity reports.
- d) An indicative timetable for Validation.

3.3.2 Procurement and contracting of the Validator by the International Secretariat.

The International Secretariat will procure an EITI validator from a list of accredited organisations pre-approved by the EITI Board, pursuing a competitive bidding process that is open to all accredited validators. The EITI Board reserves the right to revise the list of accredited validators at any time.

The International Secretariat will assess the technical and financial proposals in accordance with the selection criteria set out in the standard terms of reference for validators. In conducting its review, the International Secretariat shall have regard to, inter alia:

- a) The treatment of conflicts of interest;
- b) The adequacy of the proposals vis-à-vis the objective of Validation and the Validation methodology;
- c) Opportunities for partnership with local firms; and
- d) The coherence of the validator's technical and financial proposals.

Based on the results of this assessment, the International Secretariat will develop a shortlist of potential Validation teams and present a recommendation to the MSG. The MSG must give their non-objection to the proposed validator. Where the MSG disagrees with the International Secretariat's recommendation, it may in consultation with the International Secretariat, select one of the other shortlisted validators.

The Validation contract shall be between the International Secretariat and the approved validator. The contract will further clarify the validator's responsibilities and obligations to the EITI Board and the International Secretariat. It will include guidance on, inter alia:

- Ensuring strong communication and efficient information exchange between the International Secretariat, the MSG and the validator throughout the Validation process;
- Reporting any difficulties or irregularities encountered in the Validation process; and
- Dispute resolution mechanisms.

Stakeholders wishing to raise concerns regarding the procurement of the validator, the terms of reference or the contract may contact the International Secretariat, which will refer complaints to the EITI Board as warranted.

3.4 The Validation methodology

In accordance with the standard terms of reference for validators (see annex A), and based on an analysis of relevant documents and drawing on feedback from stakeholders, the validator is required to assess a country's compliance with the seven EITI requirements.

Each requirement should be assessed as "met" or "unmet". While some of the requirements lend themselves to an objective assessment, others are more complex, inter-linked and may require subjective judgement by the validator. In assessing the requirements, the validator must assign one of the following designations to each requirement:

[Option 1:]

Requirement met and exceeded: EITI implementation meets and exceeds the minimum requirement.

Comment [DR1]: In accordance with proposal 27c in *Building on achievements*.

Comment [DR2]: Subject to Board agreement on proposal 26 and 27 in *Building on Achievements*.

Requirement met: EITI implementation meets the required standard (Note: Threshold for compliance).

Requirement unmet: Limited or some progress in EITI implementation, but further action required for the requirement to be considered met.

Option 2:

Requirement met and exceeded: EITI implementation meets and exceeds the minimum requirement.

Requirement met: EITI implementation meets the required standard (Note: Threshold for compliance).

Requirement unmet with meaningful progress: Some progress in EITI implementation, but further action required for the requirement to be considered met.

Requirement unmet with limited progress: Little evidence of progress toward compliance. Considerable additional actions required for the requirement to be considered met.]

Specific guidance on assessing each requirement in accordance with this scale is provided in the standard terms of reference for validators. For each requirement, the rationale underpinning the validator's assessment should be clearly stated, and the validator should cite key documentary evidence and stakeholder views. [Where the country has made meaningful or limited progress but has not fully met the requirements, the validator should make recommendations for achieving compliance. Where the country has met the requirement, the validator should make recommendations for further improving implementation (exceeding the requirement) where appropriate, and taking stakeholder views into account.]

Comment [DR3]: In accordance with proposal 27b in *Building on achievements*.

Comment [DR4]: Subject to Board agreement on proposal 26 and 27 in *Building on Achievements*.

Annex A: Standard terms of reference for validators

Validation of the Extractive Industries Transparency Initiative in [Implementing Country]

Terms of reference for the validator

The text [in brackets] provides guidance for completing the terms of reference. This text should not appear in the final draft.

1. Background

[This section will provide general background information and a summary of EITI implementation, including (1) the establishment and functioning of the multi-stakeholder group; (2) status of EITI reporting; (3) a summary of implementation with reference to the EITI work plans and annual activity reports.]

2. Validation Objectives

Validation is an essential feature of the EITI process. It serves two critical functions. First, it promotes dialogue and learning at the country level. Second, it safeguards the EITI brand by holding all EITI implementing countries to the same global standard. Validation is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the EITI Principles and Criteria. The Validation Report should also document the impact of EITI, lessons learned, as well as any concerns stakeholders have expressed, and recommendations for future implementation of the EITI.

There are two groups of implementing countries: **Candidate** and **Compliant** countries. Candidate countries are required to undertake Validation within two and a half years of becoming a Candidate. Where Validation verifies that a country has met all of the EITI requirements, the Board will designate that country as EITI Compliant. Compliant countries will be required to undertake Validation every three years thereafter. If Compliant status is not achieved, the country may in some circumstances retain its status as a Candidate country for an additional period of time. The rules and procedures that is applied by the EITI Board in determining a country's status following Validation are set out in requirement 1.7-1.8. In all decisions on Validation, the Board places a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI.

3. Scope of services and Validation methodology

The validator's task is to assess EITI implementation in accordance with the requirements and methodology as set out in the EITI Standard. The validator is required to assess a country's compliance with the seven EITI requirements set out in Chapter 2. Chapter 3 sets out the main steps in the Validation process, including the methodology that validators are required to follow when assessing compliance with the EITI requirements.

The validator is required to assess each requirement as "met" or "unmet", in accordance with the assessment tables provided in the standard template for validation reports (annex B). While some of the requirements lend themselves to an objective assessment, others are more complex, inter-linked and may require subjective judgement by the validator. As noted in Chapter 3.4, the validator must assign one of the following designations to each requirement:

[Requirement met and exceeded: EITI implementation meets and exceeds the minimum requirement.

Requirement met: EITI implementation meets the required standard. Threshold for compliance.

Requirement unmet: Limited or some progress in EITI implementation, but further action required for the requirement to be considered met.

Requirement met and exceeded: EITI implementation meets and exceeds the minimum requirement.

Requirement met: EITI implementation meets the required standard. Threshold for compliance.

Requirement unmet with meaningful progress: Some progress in EITI implementation, but further action required for the requirement to be considered met.

Requirement unmet with limited progress: Little evidence of progress toward compliance. Considerable additional actions required for the requirement to be considered met.]

For each requirement, the rationale underpinning the validator's assessment should be clearly stated, and the validator should cite key documentary evidence and stakeholder views. [Where the country has made meaningful or limited progress but has not fully met the requirements, the validator should make recommendations for achieving compliance. Where the country has met the requirement, the validator should make recommendations for further improving implementation (exceeding the requirement) where appropriate, and taking stakeholder views into account.]

The validator's findings should be presented in a Validation Report, using the standard template available in Annex B.

4. Detailed guidance to the validator on assessing compliance with the EITI Requirements

Detailed guidance to the validator on assessing compliance with the EITI requirements is available in the assessment tables in the standard template for Validation Reports (annex B). In some cases, the validator should ensure that specific evidentiary requirements have been satisfied. In other cases, there are different approaches that a country might take to achieve compliance, and thus the evidentiary requirements are illustrative, and it is not necessary to see each piece of evidence in order to assess the requirement as met.

5. Preparation of the Validation Report

The Validator's findings should be presented in a Validation Report, using the standard template available in annex B.

The Validator is required to submit a draft Validation Report for review by the EITI Board's Validation Committee. The Validation Committee will review the draft Validation Report to ensure that it is comprehensive and provides an adequate basis for establishing the country's compliance with the EITI requirements.

The Validation Committee's comments on the draft Validation report, and any comments from other stakeholders, must be addressed in the final version of the Validation Report. The final version of the Validation Report should be formally endorsed by the multi-stakeholder group. The final Validation Report should be published and made widely available, including in local official languages.

The EITI Board will review the final report and decide on the status of the country in accordance with the provisions set out in Chapter 2, requirement 1.7-1.8. In cases where the evidence provided by the validator does not adequately support the conclusion of whether a requirement is met or unmet, the Validation Committee may call upon the validator for a hearing. If there is any disagreement regarding Validation, then this is dealt with in the first instance locally by the validator, with the EITI Board only called in to help in cases of serious dispute.

6. Time schedule

The schedule for the completion of the assignment is set out in the table below. It is expected that the Validation team will conduct their investigations and interviews with stakeholders in <place> in <date>. A draft Validation Report is expected to be completed by <date>. The validator will receive comments from the Validation Committee by <date>. A final Validation Report, endorsed by the multi-stakeholder group must be submitted by <date> with copies to the EITI International Secretariat and the multi-stakeholder group. Pending a review by the EITI Board, the EITI International Secretariat may seek additional clarification from the validator for a period of four weeks, i.e. until <date>.

Request for Proposal issued	<date>
Deadline for validator proposals	<date>
Contract award	<date>
Contract signing	<date>
Inception period	<date>
Filed visit/s	<date>
Submission of draft Validation Report	<date>

Comments on the draft by the MSG	<date>
Comments on the draft by the Validation Committee	<date>
Submission of the final Validation Report	<date>

7. Data and facilities to be provided by the Client

The multi-stakeholder group is required to make the following documents available to the validator prior to the inception period:

- Terms of reference for multi-stakeholder groups;
- Minutes from multi-stakeholder group meetings;
- Scoping studies;
- EITI Reports;
- Press releases and other communication materials;
- Work plans;
- Annual activity reports; and
- Any other information of relevance to Validation.

The validator will be responsible for logistical arrangements, with assistance from the International Secretariat and/or the implementing country where required.

8. The Role of the EITI International Secretariat

The International Secretariat, on behalf of the Board, will oversee the Validation process. The validator is expected to maintain close contact with the Secretariat throughout the Validation exercise. Where needed, the Secretariat will provide advice and training regarding the application of the Validation methodology. The validator is obliged to report any difficulties or irregularities encountered during the Validation process to the EITI International Secretariat.

9. Conflicts of Interest

In order to ensure the quality and independence of the Validation exercise, validators are required to notify the EITI International Secretariat of any actual or potential conflict of interest, together with recommendations as to how the conflict can be avoided.

10. Schedule of Payments

The schedule of payments shall be as follows:

<x %> upon the Client's receipt of a copy of the Contract signed by the Consultant; and

<x %> upon the Client's receipt of the final report, acceptable to the Client.

Annex B: draft standard template for Validation Reports

Comment [DR5]: To be completed.

Draft 27 January 2013

Board Paper 22-9-C

Consultation on contract transparency

For information

In Lusaka, Board members agreed to proposal 18 b that 'implementing countries may decide to make contracts public'. There was consensus to explore encouragement or requirement of contract transparency. The Secretariat was tasked with consulting implementing countries, exploring options for exemptions, such as redaction or application only to future contracts, and propose wording for the 2013 EITI Standard.

This paper contains the outcomes of the consultation with implementing countries.

CONSULTATION ON CONTRACT TRANSPARENCY

Table of Contents

1. Summary	2
2. Background	2
3. Outcome of the consultation	3

1. Summary

A consultation with implementing countries on contract transparency took place from 9 November – 11 January 2013¹. The outcomes of the consultation are summarised in section 3 below. Implementing countries were requested to indicate which of the following options they prefer the future standard should include:

- Option 1 That the EITI Standard in the future should **require** all EITI implementing countries to publicly disclose, on a single government website, any contracts that establish the terms attached to the grant and operation of an exploration or exploitation license.
- Option 2 That the EITI Standard in the future should **require** all EITI implementing countries to publicly disclose, on a single government website, any contracts that establish the terms attached to the grant and operation of an exploration or exploitation license, **with some exceptions**. Such exceptions may include limiting disclosure to future contracts, and/or to contracts which give rise to material oil, gas and mining payments by companies to governments, and/or allowing for redaction of commercially sensitive information.
- Option 3 That the EITI Standard in the future should **encourage** (but not require) all EITI implementing countries to publicly disclose, on a single government website, any contracts that establish the terms attached to the grant and operation of an exploration or exploitation license. Option 2 and 3 could be combined, with the disclosure of certain contracts required and the disclosure of all contracts encouraged.
- Option 4 That the EITI Standard in the future would simply state that implementing countries **may wish** to publicly disclose, on a single government website, any contracts that establish the terms attached to the grant and operation of an exploration or exploitation license. The EITI Rules would not mandate nor encourage such disclosures.

2. Background

In Lusaka, Board members agreed to proposal 18 b that ‘implementing countries may decide to make contracts public’. There was consensus to explore encouragement or requirement of contract transparency. The Secretariat was tasked with consulting implementing countries, exploring options for exemptions, such as redaction or application only to future contracts, and propose wording for the 2013 EITI Standard.

¹ Consultation letter available from <http://eiti.org/files/Contract%20disclosure%20consultation.pdf>.

3. Outcomes of the consultation

The outcomes of the consultation are summarised in table 1. Attached below are also copies of the response received from each country. The Secretariat expects that more countries will submit their views in the coming weeks.

Table 1 – Summary of consultation on contract transparency

Country	Option 1	Option 2	Option 3	Option 4	Comments
Albania		√			
Azerbaijan			√		
Burkina Faso	√				Prefers to publish the contracts in official gazette rather than on a website.
Central African Republic				√	
Chad	√				
Congo	√				
Ghana	√				
Guatemala	√				
Guinea	√				
Indonesia		√			Option 3 in an interim period of 3 years.
Kazakhstan				√	
Liberia	√				
Mongolia	√				
Norway		√			
Tanzania		√			
Timor Leste	√				
Togo	√				
Yemen		√			

Albania:

Dear Tim,

I discussed with Deputy Minister about the Contract Disclosure and Deputy Minister supported Option 2, after discussing with him we discussed it on MSG meeting.

On the MSG meeting held on the date 18.12.2012 the members discussed the issue of Contracts Disclosure and decided to recommend Option No. 2. During the discussion mostly composed of representatives of the government and the companies were for Option 2 and the representatives of civil society defended Option 1.

Best,
Shkelqim

Azerbaijan:



STATE OIL FUND OF THE REPUBLIC OF AZERBAIJAN

№: *dnf/1/EITS-72*

14 January 2013

Ms. Clare Short
Chair
Extractive Industries Transparency Initiative

Baku, January 2013

Dear Clare,

Thank you for your letter of November 22nd, 2012 regarding the proposals on contract disclosure.

I believe that the strategy review for improving the EITI standard will embolden positive developments in the process. I have already expressed my view on some issues reflected in the review ("Building on achievements"). In response to your letter, I would like to express the position of the government of Azerbaijan particularly on the contract disclosure consultations.

I support the efforts for increasing transparency around contracts, as all of society – government, private sector and citizens will benefit from this. However, it can be applied only on a voluntary basis, in other word, on mutual agreement of both the companies and implementing countries. I think that the first and second proposals indicated in the letter can potentially involve unintended legal consequences. It would be highly irresponsible by the Board to require from implementing countries a disclosure that can become a liability and lead to future financial claims by international companies. Thus, EITI Standard should **encourage**, but not require the disclosure of any contracts that establish the terms attached to the granting of an exploration or development license.

Yours sincerely,

Shahmar Movsumov,
Chairman of the National Committee on EITI

CC: Jonas Moberg, Head, EITI Secretariat
Dyveke Rogan, Country Manager, EITI Secretariat

Burkina Faso:

MINISTRE DE L'ECONOMIE
ET DES FINANCES

SECRETARIAT GENERAL

SECRETARIAT PERMANENT
DE L'INITIATIVE POUR LA
TRANSPARENCE DES INDUSTRIES
EXTRACTIVES (SP-ITIE)

N° 2012 ----- MEF/SG/SP-ITIE

000015

BURKINA FASO
Unité - Progrès - Justice

Ouagadougou, le 07 JAN 2013

Le Secrétaire Général,
Président du Comité de Pilotage de l'ITIE-BF

A

Madame Clare Short,
Présidente du Conseil d'Administration
de l'ITIE

-OUAGADOUGOU-

Objet : Propositions sur la divulgation des contrats

Madame la Présidente,

Le Comité de Pilotage de l'ITIE du Burkina Faso a l'honneur de vous faire parvenir ses propositions, dans le cadre des consultations initiées par l'ITIE pour l'amélioration de sa stratégie future notamment à travers la divulgation des contrats signés entre les gouvernements des pays adhérents à l'ITIE et les sociétés extractives opérant dans ces pays.

Après examen des quatre (04) options, le Comité de Pilotage de l'ITIE-BF opte pour la première (01) option étant donné que les contrats miniers, pétroliers ou gaziers sont signés au nom et pour l'intérêt des citoyens. Toutefois, au regard des risques liés à la cybercriminalité telle que le piratage, nous suggérons que la **publication se fasse au journal officiel des pays adhérents, en lieu et place des sites internet.**

En vous réitérant nos remerciements pour votre accompagnement constant, je vous prie de croire, **Madame la Présidente**, en l'assurance de ma considération distinguée.

 **Tibila KABORE**
Chevalier de l'Ordre National

Central African Republic:

Bonjour Monsieur Tim,

Bonne et heureuse année 2013.

Comme vous le savez, la situation à Bangui est un peu difficile mais avec l'implication de tous elle se règlera. Le gouvernement vient de décider ce matin lors d'un conseil extraordinaire des Ministres l'adoption de l'option 4 qui dispose que la norme ITIE, à l'avenir, simplement mentionnée que les pays mettant en oeuvre l'ITIE le souhaitant, pourraient divulguer publiquement sur un site internet gouvernemental unique, tout contrat établissant des conditions d'octroi et de fonctionnement des licences d'exploitation et / ou d'exploitation.

Les règles de l'ITIE n'exigeraient, ni n'encourageraient ces divulgation.

Merci de prendre en compte la proposition du Gouvernement centrafricain

Chad:



Congo:

MINISTRE DE L'ECONOMIE DES FINANCES DU PLAN
DU PORTEFEUILLE PUBLIC ET DE L'INTEGRATION

REPUBLIQUE DU CONGO
Unité * Travail * Progrès

CABINET

N° 006 /MEFPPI-CAB

10 8 JAN 2013

Le Ministre d'Etat

A

**Monsieur le chef du secrétariat international de
l'initiative transparence dans les industries extractives (ITIE)
Oslo**

Objet : consultation de l'ITIE au sujet de la divulgation des contrats

Monsieur,

Nous vous félicitons pour l'initiative de consultation au sujet de la divulgation des contrats qui lient les entreprises multinationales à nos Etats.

Le Congo publie par tradition lesdits contrats au journal officiel de la république et dans d'autres supports médiatiques tel que le réseau internet.

Les avantages de cette publication consistent principalement en la bonne information des citoyens et des entreprises engagées dans la compétition.

Le Gouvernement de la République du Congo soutient en conséquence l'option 1 de votre proposition et réitère sa ferme volonté de pérenniser la mise en œuvre de l'ITIE.

En vous adressant nos meilleurs vœux pour cette année 2013, nous vous prions de bien vouloir recevoir, Monsieur, l'expression de notre parfaite considération.



Gilbert ONDONGO
CABINET

Ghana:

Dear Jonas,

Thanks for seeking the views of the Ghana EITI and the MSG on the issue of Contract Disclosure. I wish to convey to you the position of the Ghana EITI MSG and the Chair of the Ghana EITI.

In line with the draft GHEITI Bill which is currently on the way to Cabinet for approval, we wish to inform you that Ghana EITI MSG has chosen the option one which requires all EITI implementing countries to publicly disclose on a single government website any contracts that establish the terms attached to the grant and operations of an exploration or exploitation license and project by project reporting.

Regards

FRANKLIN ASHIADEY
GHEITI COORDINATOR

Guatemala:

Estimada Aida,

A nivel técnico Guatemala no tendría ningún problema en que la divulgación de los contratos fuera un requisito obligatorio. Al respecto los contratos de Hidrocarburos son publicados en el Diario Oficial una vez son firmados y las licencias de Minería son parte de un expediente que es público también. La respuesta oficial como país, ya que también implica un criterio político y no solo técnico, será remitida a ustedes por la actual Comisión Presidencial de Transparencia y Gobierno Electrónico –COPRET, Presidida por la Licenciada Taracena.

Saludos cordiales

Ekaterina Parrilla
Viceministra de Desarrollo Sostenible
Ministerio de Energía y Minas
República de Guatemala
Tel: (502) 2419-6464 Fax: (502) 2476-3175
www.mem.gob.gt

Guinea:



Indonesia:

Dear Wouter,
I think Option 2 would be easier to implement, or Option 3 for 3 years, then Option 2 afterward.

Best,
Erry

Kazakhstan:

Dear Dyveke!

Concerning the consultations on contracts transparency the state bodies of the Republic of Kazakhstan considered the 4th variant of the given standards as the most preferable. Now the decision of the state bodies presented to the Prime-Minister of the Republic of Kazakhstan Mr. Serik Akhmetov for consideration and approving. As soon we get his decision we'll inform the Secretariat.

Lyazzat

Liberia:

Fortunately, our local EITI legislation (LEITI Act of 2009), requires us to also reconcile "what ought to have been paid", and review the process by which each material concession right was awarded. Our LEITI website (www.leiti.org.lr) provides access to contracts, concessions and licenses assigned in respect of the oil, mining, agriculture, and forestry sectors. This allows citizens, journalists and other users identify and compare specific provisions on priority issues like net returns, work program commitments and social and environmental obligations. We believe this kind of transparency will, in the long term, improve the investment climate in Liberia and strengthen the extractive sectors' accountability.

Our reasoning in Liberia is simple. There is an unambiguous correlation between the payments/receipts that are reconciled under the EITI principle and the contracts/concessions signed. To connect the dots we encourage the EITI Board to move towards contract transparency. The EITI should raise the bar so that it is seen as leading the process in enhancing transparency and accountability. Countries are yearning to do more because we have seen over the years that the EITI threshold (payment/receipts reconciliation) is not enough to achieve the level of transparency and accountability needed to transform a country. The EITI must continue to lead the process.

Given that a number of countries have taken steps to embrace contract transparency, we support the proposal that EITI require and emphasize contract disclosure in its new standards. It is an example of how EITI can export good practices, and support countries like Liberia and others that are actively working hard to achieve exemplary extractive sector governance.

Samson S. Tokpah, Head of Liberia EITI Secretariat

Mongolia:

Dear Wouter,

We are instructed to convey the answer that Mining Ministry of Mongolia is supports a Contract disclosure. The official answer will follow shortly.

--

Гүнээ хүндэтгэн мэндчилсэн

ОУИТБС-ын Ажлын албаны зохицуулагч Ш. Цолмон

With best wishes and regards,

Sh. Tsolmon, Mongolia EITI Secretariat Coordinator

Norway:



EITI International Secretariat
Ruseløkkveien 26
0251 OSLO
Att. Jonas Moberg

Deres ref.

Vår ref.
08/1064-

Dato
14.01.2013

RE: EITI CONSULTATION ON CONTRACT DISCLOSURE

Reference is made to EITI's letter November 26, 2012. EITI implementing countries are asked to comment on whether the revised EITI rules should encourage or require that contracts between governments and extractive companies are publicly disclosed.

Out of the four options described in the letter, the second one is the preference of the Norwegian Ministry of Petroleum and Energy. The Ministry supports in principle that contracts related to revenue streams between governments and extractive companies are disclosed. However, based on the proposed definition of the term "contract", in Norway these contracts contain commercially sensitive information that should not be disclosed according to Norwegian Law.

Legislation related to the revenues from the Norwegian petroleum sector is public information and applicable to all petroleum companies operating in Norway.

Yours sincerely

Ole Anders Lindseth
Director General

Erik Dugstad
Deputy Director General

Postadresse

Kontoradresse

Saksbehandler
Jon Andun Kvalheim
22246240
Org. nr. 977 161 630

<http://www.oed.dep.no/> postmottak@oed.dep.no Sentral: 22 24 90 90

Tanzania:

Attention: Jonas Moberg,

Please refer to your letter of 9th January 2013 on the subject above.

My preference would be option 2 which gives some flexibility. Some companies are very sensitive about contracts, especially those operating in more than one country.

They are usually reluctant to disclosure what they are doing in other country. So the appearance of some flexibility may give them some comfort.
Best regards,

Judge Bomani

Timor Leste:

Dear Rogan,

I'm aware the deadline has passed for comments but just to let you know Timor Leste's position on contract disclosure. OPTION 1 is our preferred option.

Timor Leste will be pushing for strong contract disclosure and publication of disaggregated information as basis for the new EITI.

Regards,
Alfredo Pires
Minister of Petroleum and Mineral Resources
Timor Leste

Togo:

INITIATIVE POUR LA TRANSPARENCE
DANS LES INDUSTRIES EXTRACTIVES
SECRÉTARIAT TECHNIQUE

REPUBLIQUE TOGOLAISE
Travail - Liberté - Patrie

N° 002 / ITIE/ CP/2012

Lomé, le 07 JAN 2013

Le Président

A

Monsieur Jonas MOBERG
Chef du Secrétariat International
Ruselokkveien 26
0251 Oslo, Norvège

Objet : Consultation de l'ITIE au sujet de
la divulgation des contrats.

Monsieur Le Chef du Secrétariat International,

J'accuse réception de votre lettre du 23 novembre 2012, relative à la divulgation des contrats.

Après consultation des membres du Comité de Pilotage et du Conseil National de Supervision, le gouvernement togolais a opté pour la divulgation obligatoire du contenu des contrats. En effet, ces préoccupations sont déjà prises par le nouveau code minier en projet qui est déjà adopté en Conseil des ministres et transmis à l'Assemblée Nationale pour être voté comme loi.

Nous pensons et nous croyons que cette disposition facilite la participation de toutes les parties prenantes à une décision consensuelle sur le développement durable du pays dans un cadre de vie apaisé.

Vous renouvelant les reconnaissances du gouvernement togolais pour le soutien du Secrétariat International à la qualité de la mise en œuvre de l'ITIE au Togo, veuillez agréer, Monsieur le Chef du Secrétariat International, l'assurance de ma considération distinguée.



El Hadj Taïrou AGBIEGUE.

SECRÉTARIAT TECHNIQUE ITIE-TOGO – 4412, Blvd Jean-Paul II – TELEPHONE (228) 22 26 89 90 – E-mail : itietogo@yahoo.fr

Yemen:

Dear Eddie,

I can inform you again on the government reply : We as Yemen EITI Council and National Secretariat have forwarded your consultation request to the government of Yemen represented by the Prime Minister and Minister of Oil with our Recommendation that the government should go with Option One : The Reply from the GOV. was as follows : " The Prime Minister addressed the Minister of Oil that the Government of Yemen shall agree with Option One starting from the new contracts and agreements " This means option one is not applied on any previous agreements or contracts or licences only applied to any new agreements or contracts or licences ."

My Respect

Mohammed

Board Paper 22-9-D

Expert Panel

Draft for discussion

In Lusaka, the EITI International Secretariat was tasked with developing a new proposal for the EITI Expert Panel that would include draft Terms of Reference and a cost overview. This paper contains:

- **Draft terms of reference** for a small panel of distinguished experts to assess a selection of implementing countries each year. In particular, it would (1) review the country's EITI experience and impact to date; (2) put forward proposals for how the EITI can make a greater impact in that country; and (3) put forward proposals on how the EITI can make a greater impact globally. Being about impact rather than compliance, this work would not overlap with that of the validators and the assessment would not specifically be with reference to the EITI requirements;
- **The estimated cost of the panel**, which is estimated to be around \$260,000 each year to be paid from the EITI's own budget.

This paper is for consideration by the Board.

EXPERT PANEL

Table of Contents

1. Summary.....	2
2. Background.....	2
3. Draft Terms of Reference.....	3
3.1 Introduction	3
3.2 Membership of the panel.....	4
3.3 Responsibilities of the panel.....	4
3.4 Support.....	5
4. Issues for further consideration	5
5. Draft costings.....	6
7. Next Steps	6

1. Summary

It is proposed that a distinguished Expert Panel be established after the Sydney Conference to review the EITI experience in given countries and to put forward proposals for how the EITI can make a greater impact in that country. The findings could feed in to the annual global report and the EITI website as another means of incentivising progress and innovation. The Expert Panel would not be involved in Validation or otherwise in determining a country's compliance, but be tasked by the Board to assess impact.

It is foreseen that this panel would be of sufficient stature and capability to stimulate significant national and international debate on improving natural resource management. They are expected to engage with Heads of State and other key leaders to put forward ambitious ideas.

The Secretariat is of the view that a panel would be straightforward to establish, with the Board appointing a few, possibly four to six, distinguished experts, mainly from implementing countries. Members of the panel would visit a small selection of implementing countries each year. The mandate could be reviewed every two or three years. The panel would be supported by the Secretariat. The panel is likely to cost around \$260,000 per year. These functions and costs are expected to replace other forms of evaluation of the work of the EITI.

2. Background

The 2011 Evaluation revealed the difficulty to assess the overall impact of EITI implementation. Nonetheless, the Board considers it important to establish whether natural resource governance

has improved in EITI implementing countries and whether progress against the EITI Principles is being made. It is also important that countries are provided with support and ideas on how the EITI process can be best used in their country to support improved natural resource management and sustainable development, beyond the EITI requirements.

The Strategy Working Group (SWG) therefore considered the possibility of an Expert Panel to review progress against the EITI Principles on a rolling basis in a selection of EITI implementing countries. The findings could feed in to the annual global report and the EITI website as another means of recognising and incentivising progress and innovation. The Expert Panel would not be involved in Validation or otherwise in determining a country's compliance, but be tasked by the Board to analyse impact.

Ahead of the Board's meeting in Lusaka it was proposed that

... the Board in Sydney appoints an Expert Panel to review EITI's impact globally and in implementing countries, for an initial period of two years.

Although there was no decision at the meeting, the Secretariat was asked to develop a Terms of Reference and a cost overview, and come with a revised proposal to the Board in Oslo.

3. Draft Terms of Reference

3.1 Introduction

3.5 billion people live in resource-rich countries. Still, many are not seeing results from extraction of their natural resources. And too often poor governance leaves citizens suffering from conflict and corruption. The EITI was formed to change this.

The EITI is a global standard to ensure transparency of payments from natural resources. The EITI has a robust yet flexible methodology that ensures a global standard is maintained throughout the different implementing countries. The EITI Board and the international Secretariat are the guardians of that methodology. Implementation itself, however, is the responsibility of individual countries and they often develop the core standard to explore and improve other aspects of the governance of extractive resources. Thus the EITI is a global standard to promote revenue transparency, but with national level implementation that uses the standard as a minimum platform. The EITI Rules establish the methodology countries need to follow to become fully compliant with the EITI.

The EITI Board has set out its intention to assess and encourage EITI impact at the global and national level. As part of that intention, the Board has established an Expert Panel with a mandate to assess performance beyond compliance with the EITI requirements which is undertaken by EITI validators and to make recommendations for greater impact at the national and global level. In order to deliver on this mandate, the Panel will be mindful of the 12 EITI Principles agreed by stakeholders in 2003 and upon international best practice for the management of the natural resource sector.

This paper sets out the terms of reference for the Expert Panel. The specific terms of reference for individual country assessments will be partially determined by the key challenges faced in those countries with reference to the objectives set out in the MSG's workplan.

3.2 Membership of the panel

The panel will consist of four to six distinguished experts from a range of backgrounds related to the natural resource governance, with at least half from resource-rich countries.

3.3 Responsibilities of the panel

It is foreseen that the panel would visit a small selection of implementing countries each year as advised by the EITI Board. In these countries, the panel would (1) review the country's EITI experience and impact to date; (2) put forward proposals for how the EITI can make a greater impact in that country; and (3) put forward proposals on how the EITI can make a greater impact globally.

Being about impact rather than compliance, this work would not overlap with that of the validators and the assessment would not specifically be with reference to the EITI requirements.

The Expert Panel will present brief published country reports to the Head of State following each country review, and an annual report to the Board including detailed advice on the improving the impact of the EITI. The panel will draw on a robust evidence base to inform its findings. It will seek and reflect the views of key stakeholders in the visited countries and academics, policy makers, companies, civil society leaders, journalists, parliamentarians, and other interested parties.

Specifically the Expert Panel's country reports will include the following:

- A brief review of the country's EITI experience including key dates and milestones, activities, data, and innovations.
- An assessment of the impact on this work on:
 - national policy making - including tax regimes, contract negotiations, policy frameworks;
 - public debate – including coverage in the media, parliament, party political debate, other political and religious forums, amongst communities, extractive industry workers, and government officials;
 - government and company practice - including improved accounting and data collection capability, levels of tax collection, identification of cases of fraud or mismanagement;
 - investment – both in terms of levels and quality, but also risk ratings;
 - country and company reputation – exploring links with governance, business, and bribery indices.
 - Specific country level objectives – such as those set out in the national EITI workplan.
- Specific recommendations for how the EITI or other natural resource efforts can make a greater impact in the country, including national oil, gas and mining policy, fiscal and contractual regime, expenditure, etc.; structure of the governance of the sector and

institutional reforms; future objectives and targets for the EITI programme; embedding EITI into the country systems and making linkages with other key transparency and accountability efforts such as on public expenditure.

The Expert Panel's annual reports to the Board would include:

- A brief outline of countries visited and key findings and recommendations;
- An assessment of EITI's impact globally – key indicators could be developed to guide this assessment;
- Recommendations to the Board on how the EITI could make a greater global impact, including on structure of the standard itself or of the reports.

The Expert Panel may also be asked by the Board to provide advice on other matters related to the EITI from time to time.

The Expert Panel will complete its work and submit final reports in accordance with the timetable agreed with countries and with the Board.

3.4 Support

The Expert Panel's work will be supported by the EITI International Secretariat.

4. Issues for further consideration

4.1 Selection and composition of the panel

The panel will consist of four to six distinguished experts from a range of backgrounds related to the natural resource governance, with at least half from resource-rich countries. The panel would be selected by the Board based on recommendations and exploration by a special Board Working Group established to propose nominations.

The panel should be selected with attention to seeking a balance of regions, gender, and age. The nominees might be selected from the fields of politics, academia, business, activism, media, or faith.

If there is any doubt about the partiality of an individual in relation to a country under assessment, or if every member is not available to participate in all country assessments, the panel should be sufficiently diverse to enable one or two individuals to be omitted without unbalancing the team.

4.2 Selection of the assessed countries

The panel would select countries to be assessed based on recommendations by the EITI Board. These would be based on size of the extractive sector; size of the economy; levels of poverty; progress on EITI; diversity of countries in terms of sector, region, and regime; and an assessment of the relevance of lesson learning. Then the panel would write to the Head of State and the EITI Multi-Stakeholder Group of the country seeking a formal invitation to make the assessment. Without an invitation from both the Government and the Multi-Stakeholder Group, no assessment

should be undertaken.

It is envisaged that three to five countries are visited each year.

4.3 Support to the panel

The Expert Panel would not be expected to undertake its own desk studies, travel and logistics. There are three options to address this:

1. Anthony Richter suggested in Lusaka that the panel oversee work evaluation done by an independent consultancy firm.
2. A consultancy firm could provide the background support.
3. The EITI International Secretariat could provide the background support, but contribute to the substance.

4.4 Relationship to the EITI Board and Secretariat

In order to achieve independence, attractiveness, and prestige, it is proposed that the panel be independent of the Board. Whilst its reports would be considered by the Board, they would have no approval or redress functions.

5. Draft costing

There are 37 implementing countries with three to four new countries signing up each year with 1-2 being suspended or delisted. It is foreseen that the Expert Panel does not seek to review all of the countries but to assess a three to five a year from 2014.

It is expected that the costs of travel, logistics and incidentals for four persons with up to two weeks in each country, plus one support staff, would be about \$50,000 per visit. With an average of four reviews per year, the cost would be around \$200,000.

If desk reviews and logistics are to be provided by the EITI International Secretariat, it would equate to the equivalent of about 0.5 of a senior policy person and 0.5 of an admin person, with a total cost to the Secretariat of about \$60,000 for salary and other staff costs.

If the evaluations, or just desk reviews and logistics, are to be provided by a separate secretariat, e.g. a private consultancy firm, the costs would be considerably higher. Much of the desk review information is already in-house in the EITI International Secretariat. This has not been investigated in detail, but is estimated to be in the order of \$150,000.

6. Next Steps

The Secretariat welcomes the views of the Board on the development of this Panel. Should a sub group of the Strategy Working Group be established to consider the content and issues in this paper in more detail?

Board Paper 22-9-E

Options for nuanced assessment

For decision

In Lusaka, it was agreed that the “pass/fail system” of validation needs to be retained and that the Board recognised the need to go beyond this. The EITI International Secretariat was tasked with further developing the nuanced assessment proposal. This paper sets out two options for a nuanced assessment model for consideration by the Board.

The Secretariat recommends that the current met/unmet assessment is complemented by a nuanced assessment noting (1) where implementation is exceeding the minimum requirements, and (2) progress with meeting the requirements. Each requirement would be assessed along the following scale:

Requirement met and exceeded: EITI implementation exceeds minimum requirement.

Requirement met: EITI implementation meets the required standard. (Note: Threshold for compliance).

Requirement unmet with meaningful progress: Some progress in EITI implementation, but further action required for the requirement to be considered met.

Requirement unmet with limited progress: Little evidence of progress toward compliance. Considerable additional actions required for the requirement to be considered met.

OPTIONS FOR NUANCED ASSESSMENT

Table of Contents

1. Recommendation	2
2. Background	2
3. Options for nuanced assessment of EITI requirements.....	3
4. Assessing implementation objectives	5
Annex B: draft standard template for Validation Reports.....	8

1. Recommendation

The Secretariat recommends that the current met/unmet assessment is complemented by a nuanced assessment noting (1) where implementation is exceeding the minimum requirements, and (2) progress with meeting the requirements. Each requirement would be assessed along the following scale:

Requirement met and exceeded: EITI implementation exceeds minimum requirement.

Requirement met: EITI implementation meets the required standard. (Note: Threshold for compliance).

Requirement unmet with meaningful progress: Some progress in EITI implementation, but further action required for the requirement to be considered met.

Requirement unmet with limited progress: Little evidence of progress toward compliance. Considerable additional actions required for the requirement to be considered met.

2. Background

The working group on Validation has identified a number of options for a revised validation model. The outcomes of these discussions were summarised in Board Paper 21-2-F¹ considered by the Board in Lusaka. In Lusaka, the Board reached consensus on proposal 26 that:

...as at present, Validation should assess progress against all EITI Requirements and determine whether they are met or unmet. What is being validated will change in line with the proposal to revise and simplify the requirements as set out below.

¹ All proposals related to the strategy review are available from <http://eiti.org/about/strategy-review>

The Board recognised the need to go beyond a pass/fail assessment, and considered the following options for a more nuanced assessment:

Proposal 27a

It is proposed that the current pass/fail assessment is complemented by more nuanced assessments. This could be done through a simple numerical grading (or awarding of for example stars). The awarding would be complemented by narrative reports.

Proposal 27b

It is proposed that the nuanced assessment is applied to all requirements. It could for example elaborate on the present no progress - meaningful progress - Compliance distinctions in the present Rules, adding a fourth distinction for where countries have exceeded the minimum requirements.

Proposal 27c

Alternatively, it is proposed that a nuanced assessment is only applied to innovations and efforts to exceed requirements.

It was agreed that more work was required to elaborate the details of a nuanced assessment. The EITI International Secretariat was tasked with further developing the nuanced assessment proposal.

3. Options for nuanced assessment of EITI requirements

In accordance with the Validation methodology specified in section 4.4 of the 2011 edition of the EITI Rules, it is a requirement that the Validation Report contains “a comprehensive and detailed assessment by the validator of the country’s compliance with each requirement, taking into account stakeholder views”. Each requirement should be assessed as “met” or “unmet”.

It is proposed that in the future, the current met/unmet assessment should be complemented by a more nuanced assessment. The purpose is to incentivize implementing countries to innovate and to recognize those countries that go beyond the EITI’s minimum requirements, including activities that are specifically encouraged in the EITI Standard.

The Secretariat has identified two options for consideration by the Board:

- | | |
|----------|---|
| Option 1 | That the current met/unmet assessment is complemented by a nuanced assessment noting where implementation is exceeding the minimum requirements. Each requirement would be assessed as “unmet”, “met” or “met and exceeded”. This option is based on proposal 27c in Building on Achievements. |
| Option 2 | That the current met/unmet assessment is complemented by a nuanced assessment noting (1) where implementation is exceeding the minimum requirements, and (2) progress with meeting the requirements. Each requirement would be assessed as “unmet with limited progress”, “unmet with meaningful progress”, “met” or “met and exceeded”. This option is based on proposal 27b in Building on Achievements. |

The details of these options are set out below.

Option 1: Assessment noting where implementation is exceeding the minimum requirements.

The present rules state that “the requirements set out here are minimum requirements and countries are encouraged to go beyond them where stakeholders agree that this is appropriate” (p.12). The current Validation system, which assesses progress against the EITI requirements, does not recognise implementing countries that have exceeded the minimum.

In this option, the validator would assess compliance with each requirement as well as assess whether implementing countries have taken steps to exceed the minimum requirements. Each requirement would be assessed along the following scale:

Requirement met and exceeded: EITI implementation exceeds minimum requirement.

Requirement met: EITI implementation meets the required standard. Threshold for compliance).

Requirement unmet: Limited or some progress in EITI implementation, but further action required for the requirement to be considered met.

The main change from the present system is that the validator’s assessment would take note of efforts to i.e. extended EITI reporting or delivered on aspects that are ‘encouraged’ in the rules. This would incentivise implementing countries to innovate and strengthen implementation, addressing the risk that Compliance becomes and end itself.

Specific guidance on assessing each requirement along this scale, including criteria for exceeding a requirement, would be provided in the standard terms of reference for validators. As at present, the validator would provide a narrative summary of each requirement. It is proposed that this is complemented by assessment tables for each requirement (see annex A for illustration). Where a country has met the requirement, the validator should make recommendations for further improving implementation, exceeding the requirement, where appropriate, and taking stakeholder views into account.

Option 2: Assessment noting (1) where implementation is exceeding the minimum requirements, and (2) progress with meeting the requirements.

The main difference from the present system and option 1 is that where a requirement is unmet, the validator would assess progress in meeting the requirement. The present overall assessment of “no progress” and “meaningful progress” would thus be applied to each requirement.

The current EITI Rules require that the validator provides an overall assessment of whether the EITI requirements are met, whether there is meaningful progress or no progress towards achieving compliant status.

Drawing on this distinction, and in addition to assessing compliance with each requirement, this option would require the validator to assess whether implementing countries (1) have taken steps to exceed the minimum EITI requirements (as per option 1); and (2) progress towards achieving

compliance. Each requirement would be assessed along the following scale:

Requirement met and exceeded: EITI implementation exceeds minimum requirement.

Requirement met: EITI implementation meets the required standard. Threshold for compliance.

Requirement unmet with meaningful progress: Some progress in EITI implementation, but further action required for the requirement to be considered met.

Requirement unmet with limited progress: Little evidence of progress toward compliance. Considerable additional actions required for the requirement to be considered met.

Where compliance have not been achieved, this added nuance would enable the validator and the Board to better distinguish between implementing countries that are making meaningful progress, and are thus eligible to retain their status as a Candidate country for an extended period, from countries where there has been little or no progress in meeting the required standard. It would also increase transparency and understanding of the methodology used by the validator and the Board to assess whether countries comply with the EITI standard, and more clearly indicate the areas where further improvements are needed.

The added nuance may facilitate the work of the Validation Committee and the Secretariat in terms of reviewing validation reports. It would provide a clearer indication of the specific issues that the validator needs to address in final validation reports as well as determine specific remedial actions in cases of non-compliance.

It should be noted that the Secretariat has put forward a paper on the consequences of countries that do not achieve compliance following a second validation². It may be that a more nuanced assessment could be helpful in situations where compliance has not been achieved, but where the EITI is making a significant contribution in challenging circumstances and substantive progress is being made.

As per option 1, specific guidance on assessing each requirement along this scale, including criteria for meeting and exceeding a requirement, would be provided in the standard terms of reference for validators. This could be complemented by assessment tables for each requirement (see annex A for illustration). Where the country has made meaningful or limited progress, the validator should make recommendations for achieving compliance. Where the country has met the requirement, the validator should make recommendations for further improving implementation, exceeding the requirement, where appropriate, and taking stakeholder views into account.

4. Assessing implementation objectives

The 2011 Evaluation of the EITI noted the lack of links between the detailed requirements and the broader objectives of the EITI, as captured in the EITI Principles. "If the Standard were more in line with its own Principles and if it had more focus on strategic partnerships beyond the sector, EITI would be more likely to reach its objectives", EITI 2011 Evaluation.

² Ref. Board circular 138

Proposal 20³ in Building on achievements sought to more clearly link implementation with the EITI Principles by encouraging a discussion within the multi-stakeholder groups about desired outcomes and 'what should be achieved' with the EITI. Related to this is proposal 23, that the multi-stakeholder group should be required to submit annual activity reports that details progress against the EITI requirements and the objectives agreed in the workplan.

Assessing the country objectives with EITI

In accordance with proposal 20, it is envisaged that the multi-stakeholder group will be required to agree broader objectives aiming to deliver on the EITI principles, and reflecting core domestic policy objectives for governance of the extractive industry. In some cases, the objectives will be directly related to the EITI requirements. For example, an MSG may choose to progressively lower the materiality threshold to a low level, by international standards, so as to capture and reconcile a greater proportion of payments and revenues. Alternatively the MSG could agree to an ambitious program of EITI dissemination activities in affected communities. In other cases, the objectives will be related to new areas of work, often but not exclusively linked to the EITI requirements. An implementing country may for example chose to extend EITI to other sectors or address governance gaps in other parts of the extractive industry value chain.

The objectives will be specified in the MSG's workplan. In the assessment of the workplan (i.e., the assessment of requirement one), the validator would review the workplan and other supporting evidence and assess (1) whether the objectives have a clear aim which will lead to systemic improvements; (2) stakeholder consultations associated with the development of the workplan and objectives; and (3) the rationale underpinning the chosen objectives and associated activities. In accordance with section 3 above, specific guidance on assessing the requirement, including criteria for meeting and exceeding the requirement, would be provided in the standard terms of reference for validators.

Assessing the achievement of objectives

In accordance with proposal 23, it is foreseen that the multi-stakeholder group will be required to submit annual activity reports detailing efforts to meet and/or maintain compliance with EITI requirements, including progress in delivering on the objectives identified in the workplan.

In the assessment of the annual activity report (i.e. the assessment of requirement seven), the validator would review the annual activity report and other supporting evidence, and assess (1) progress and effort in achieving the objectives identified in the workplan; and (2) the outcomes and impact of the objectives and associated activities. Where the objectives involve additional disclosure and reconciliation, i.e. reporting on payments and revenues from forestry, the validator would be directed to consider the timeliness, comprehensiveness, reliability and dissemination of the information. In cases where objectives are directly related to the EITI requirements, this would of course also be reviewed as part of the validator's assessment of requirements 1-6. In accordance with section 3 above, specific guidance on assessing the requirement, including criteria for meeting and exceeding the requirement, would be provided in the standard terms of reference for validators.

³ Based on the contributions of the working group on Theory of Change, ref. <http://eiti.org/about/strategy-review>.

The auditing work conducted in Nigeria provides a useful example. The audit work provides a reconciliation of company declarations on taxes paid with government disclosures on taxes received. It also serves to confirm the reliability of these figures (significantly exceeding requirement 4). In this respect, much of the work done here will be picked up in the assessment of requirements 1-6. However the audits carried out by NEITI also address a deeper question: *whether the companies paid the right amount of tax in line with the contractual obligations*. This is significant addition to the typical EITI process. The rationale for this work, the way in which it is conducted, and the progress, outcomes and impacts all warrant attention from the validator, noting stakeholder views in all aspects. The validator would be tasked with assessing this work thoroughly, documenting lessons learned of value for other countries, and recommendations to help further strengthen the process as part of requirements one (the workplan) and seven (the annual activity report).

Annex B: draft standard template for Validation Reports

Instructions

The validator is required to present the findings in accordance with the template table of contents below. In sections 3-6, the validator must provide a comprehensive and detailed assessment of the country's compliance with each requirement. This should include for each of the requirements:

1. A narrative assessment of progress in meeting the requirement, based on evidence provided.
2. A narrative account of stakeholder views, based on consultation with stakeholders
3. A narrative conclusion/judgement, based on an analysis of the above.
4. A completed assessment table summarising the findings.
5. Conclusions and recommendations.

Table of contents

1. Executive Summary
 - Conclusion
 - Recommendations
2. Introduction
 - Overview of EITI implementation
 - Key features of the extractive industry
 - Explanation of the validation process (timeline, ToR, etc.)
3. Assessment of MSG functioning and oversight, including
 - Overview
 - Background: government commitment, sign-up
 - Government oversight and engagement in the EITI process (#1.1-1.2)
 - Civil society engagement (#1.3)
 - Industry engagement (#1.3)
 - MSG functioning (#1.3)
 - MSG work plan (#1.4)
 - <Assessment table for requirement 1>
 - Conclusion and Recommendations
4. Assessment of the EITI Report, including
 - Overview
 - History of EITI Reporting
 - Timeliness of EITI Reporting (#2)
 - Contextual information in the EITI Report(s) (#3)
 - Comprehensiveness of EITI Reporting (#4)
 - Reliability of EITI Reporting (#5)
 - <Assessment table(s) for requirement 2, 3, 4 and 5>
 - Conclusion and Recommendations
5. Assessment of communication and dissemination activities, including
 - Overview
 - Communication and dissemination activities (#6)
 - Effectiveness of communication and dissemination activities (#6)
 - <Assessment table(s) for requirement 6>
 - Conclusion and Recommendations
6. Assessment of the effectiveness and impact of the EITI , including
 - Overview
 - Progress in addressing remedial actions and recommendations (#7.1)

Annual activity report (#7.2)
Progress on agreed objectives (#7.2)
Evidence of impact (#7.2)
< Assessment table for requirement 7>

7. Conclusions and Recommendations
< Summary assessment table>

Draft assessment tables (for illustration)

Requirement 3: The EITI requires that EITI Reports include contextual information that provides an overview of the sector.

Grading	Indicators	Validator's conclusion
Requirement met and exceeded EITI implementation exceeds the minimum requirement.	<ul style="list-style-type: none"> The EITI Report contains additional contextual information. This could include: <ul style="list-style-type: none"> References to national revenue classification and international standards (#3.6.a); Information about revenue management and expenditures (#3.7); Disclosure of beneficial ownership of licenses (#3.8.c); [Information about licensing rounds (#3.8.d)]; [Disclosure of contracts (#3.9)] [Disclosure of the terms of any transactions related to changes in the level of government and/or SOE ownership in oil, gas and mining companies (#3.5.c).] The multi-stakeholder group has taken additional steps to ensure that the contextual information provided in the EITI report is useful, comprehensive and reliable. This could include the following evidence: <ul style="list-style-type: none"> The information is linked to revenue data in the EITI report; The completeness of the information has been independently verified; The accuracy of the information has been independently verified. 	<p>Validator's Assessment (tick one)</p> <p><input type="checkbox"/> Requirements exceeded</p> <p><input type="checkbox"/> Requirements met</p> <p><input type="checkbox"/> Meaningful progress</p> <p><input type="checkbox"/> Limited progress</p> <p>Comments <The validator should refer to the evidence presented in the narrative section of the validation report and make a final judgement on the grade></p>
Requirement met EITI implementation meets the required standard. (Note: Threshold for compliance.)	<ul style="list-style-type: none"> In accordance with requirement 3, the EITI Report(s) includes: <ul style="list-style-type: none"> A description of the legal framework and fiscal regime (#3.1); Information about the contribution of the extractive industries to the economy (#3.2); Disclosure of production data (#3.3); A list of key companies in the extractive sector, existing large projects and future large projects (#3.4); A description of revenue distribution (#3.5); Information about license holders [and licensing rounds] (#3.8); [Disclosure of contracts (#3.9).] The information is complete. The information is timely/up-to-date. 	
Requirement unmet with meaningful progress Some progress in EITI implementation, but further action required for the requirement to be considered met.	<ul style="list-style-type: none"> The EITI Report contains some but not all contextual information required. The information provided is incomplete. 	
Requirement unmet with limited progress Limited progress in EITI implementation, and further action required for the requirement to be considered met.	<ul style="list-style-type: none"> The EITI Report contains no or limited contextual information. The information is significantly out of date. 	

Board Paper 22-9-F

Financing Validation

Draft for discussion

The Board agreed in Lusaka that procurement and contracting for validation should be overseen by the EITI Board and the Secretariat.

This paper provides an indication of the expected costs of financing validation and outlines the various options for financing

Table of Contents

1. Summary	1
2. Background	2
3. Indication of costs.....	2
4. Options for EITI International Management to finance validation.....	3

1 Summary

The EITI Board has agreed in principle that the EITI International Management¹ should finance and procure EITI validation, instead of the current arrangement where validation is paid for and procured by implementing countries, often with bilateral donor support. This paper provides an indication of the expected costs of financing validation and outlines the various options for financing.

The working group on Validation has stated a preference for Validation being financed through the WB MDTF (option 1). The Management Committee of the MDTF has been consulted and has not stated any objection though there could be some minor restrictions. **The Board is invited to state a preferred option or combination of options for further development.**

¹ EITI International Management refers to the International Secretariat, Board and Conference.

2 Background

The Board agreed in Lusaka that procurement and contracting for validation should be overseen by the EITI Board and the Secretariat. The Secretariat would administer the tender process for each validation, and draw on a small pool of accredited validators. The contract would be between the validator and the Secretariat. It was agreed that all compliant countries should be validated every three years.

At present, implementing countries are required to finance the majority of the validation costs (Policy note #4). The MDTF currently funds the majority of EITI Reports. It was suggested that this be revised so that implementing countries are required to finance part of the EITI reporting costs. This would help ensure that EITI reporting becomes more mainstreamed into government systems, while the global quality assurance is mainstreamed into the international process.

It should be noted that in light of the other changes to the EITI standard and the validation model that are currently being considered by the Board, the Secretariat's expectation is that validations are likely to be a similar cost to those at present.

There are three reasons why validations in the future might be cheaper. First, a small pool of accredited validators would guarantee repeated validation work and could reduce their tender costs². Second, the risk of delayed or non-payment has led to a "country risk" premium in some cases (and validators have expressed a strong preference for procurement managed by the international Secretariat). Third, validators would to a larger extent be able to draw on a number of other efforts to assess implementation performance, such as the annual reviews of the quality of EITI reports, and self-assessments submitted by the MSG. The Board also asked the Secretariat to elaborate the idea of an Expert Panel to assess the impact of the EITI in countries on a regular basis. The reports of the Expert Panel might also inform the work of the validators.

On the other hand, tendering by countries has tended to put a high weight on financial considerations driving down the price (potentially at the cost of technical quality). A tender by the International Secretariat is likely to put a higher weight on issues of technical quality of the bid than on financial considerations.

The Board asked the Secretariat to give an indication of the costs involved and propose financing options. This paper seeks to provide that.

3 Indication of costs

There are 37 implementing countries with 3-4 new countries signing up each year and 1-2 being suspended or delisted. It is proposed that validations will be required every three years for compliant countries. Candidate countries must undertake a first validation within 2.5 years. With the International Secretariat taking on the procurement and contracting of these validations on a 'ready-or-not' basis, there are expected to be fewer extensions to these deadlines. It is therefore reasonable to assume a generous average of 15 validations per annum. The actual number would initially be lower.

Up to now validations have cost between \$40,000 and \$150,000 each, averaging at around \$75,000. While it is difficult to accurately assess the future validation costs, it is the Secretariat's assessment in light of the arguments above that the new arrangements would lead to a similar unit cost of around \$75,000.

While the cost per validation is likely to drop somewhat, the increased frequency of validations from once every five years to once every three years, will inevitably lead to a higher total annual cost, estimated at around US\$1 million per annum between 2014-2016. This should not be seen as an additional cost to the overall EITI expenditure, as this is financing that was previously provided by implementing countries. The implementing countries would be expected to fund more of the on-going reconciliation and other implementation costs

² The Board also asked the Secretariat to explore possibilities for encouraging use of local consultants as partners for the international validators.

themselves, offsetting and diverting other funding demands for donor finance. Furthermore, although implementing countries are currently required to finance the majority of validation costs, bilateral donor support to validation is already significant.

There might also be minor implications for the workload of the International Secretariat, though these are likely to be financially negligible. The Secretariat will look into impact on elements like liability insurance, etc.

4 Options for EITI International Management to finance validation

4.1 Through an annual technical service contract funded by the WB/MDTF

In this option, the WB/MDTF would sign an annual technical service contract with the Secretariat. This option would require the funding for validation to come from the 15 donor countries of the MDTF³. It is expected that this would be largely offset from reconciliation and other costs as outlined above.

Under the World Bank's rules, this type of contract is essentially a pass-through mechanism, as **the Secretariat would not charge an administrative fee to the MDTF**. This could be allocated to a separate EITI budget line for validation. This would allow the EITI to have sole and full responsibility for the procurement process, rather than mixing procurement processes. It would also keep clear lines of fiduciary responsibility with the MDTF reviewing EITI's audited accounts and narrative annual report. The Management Committee has been invited to consider the establishment of such a contract and has provided no objection, the process appears to be quite bureaucratically light with an overall amount being agreed each year, and disbursements made on receipt of supporting documentation (i.e. a validation report or a batch of validation reports). However, it is important to note that the contract would only be applicable to non-OECD countries and those eligible for WB/MDTF funding. Other arrangements would need to be found for Norway's second validation, and eventual validation of Australia and USA. Furthermore, at the moment the MDTF cannot accept funds from companies. Finally, it needs to be borne in mind that the MDTF has a limited life —presently until June 30, 2016—unless the donors agree to extend it.

This option could be implementing either alone or in combination with some EITI Secretariat funding (option 2).

4.2 Through an increase in the EITI budget

This option would see a 20% increase in budget for the International Secretariat. This would, of course, require an increase of funding of 20%. In this option, this required funding could be spread evenly across all contributors (including companies) or just from supporting countries (instead of their contributing to validation through the MDTF).

As with option 1, it could be expected that countries fund more of their own reporting and other implementation to ensure country ownership and to offset some donor costs.

This option requires further exploration with supporting countries and companies.

4.3 Through an annual membership fee for implementing countries

This option would see each implementing countries being required to pay an annual membership fee to be considered an EITI implementing county. This maintains the principle of implementing countries paying for their validations without facing the conflicts of interest that have sometimes arisen out of direct procurement.

However, in Lusaka the Board saw a number of challenges related to this option. Firstly, it will be a significant administrative burden on the Secretariat to collect the fees. This would then raise a lot of technical issues about

³ Australia, Belgium, Canada, Denmark, the EU, Finland, France, Germany, Japan, the Netherlands, Norway, Spain, Switzerland, the UK, and the USA.

what to do about countries that do not pay or pay late. Secondly, it would be difficult to agree a 'fair' level of payment. Should validation costs vary across countries or should it be a flat fee? How much international bridging or financing of the membership should be allowed? Finally, a membership fee might deter countries from committing to EITI or retaining their implementation.

The Secretariat recommends that this option is not pursued further.

Board Paper 22-9-G

Review of EITI reporting and validation deadlines

Background Paper

Draft for discussion

This paper explores the lessons learned and options available to the Board in relation to EITI reporting and validation deadlines. In Lusaka the Board tasked “the International EITI Secretariat to set out options for the Board on the implications of a second failed validation, lack of report timeliness, and failure to publish annual activity reports.” An earlier version of this paper was submitted to the Validation Committee, focussing on the immediate implications for countries that had missed deadlines in 2012. This paper focuses on addressing these issues in the longer term as part of the strategy review process. The Secretariat recommends that:

- (1) The Board agrees a generic rule for extensions requests, applicable to all deadlines established by the Board;
- (2) The Board revises or removes the concept of a maximum candidacy period, and instead allow countries that have demonstrated meaningful progress toward compliance to retain their Candidate status (as per earlier editions of the EITI Rules);
- (3) The Board temporarily suspends Compliant countries that do not meet the agreed requirements for timely reporting;
- (4) The Board temporarily suspends Compliant countries that do not meet the agreed requirements for annual activity reports;
- (5) The Board develops a more flexible policy in instances where there are valid concerns about whether a Compliant country has maintained compliance with the EITI requirements, including commissioning a Secretariat Review (rather than calling for a new Validation), and allow

for downgrading to Candidate status where appropriate.

REVIEW OF EITI REPORTING AND VALIDATION DEADLINES

Table of Contents

1. Recommendations	3
2. Background	3
3. Extension requests.....	4
4. Countries that are not compliant following a second validation	5
5. Countries that are not publishing timely EITI reports	6
6. Countries that failed to publish annual activity reports	7
7. Monitoring compliance with the EITI requirements in Compliant countries	8

1. Recommendations

The Secretariat recommends that:

- (1) The Board agrees a generic rule for extensions requests, applicable to all deadlines established by the Board;
- (2) The Board revises or removes the concept of a maximum candidacy period, and instead allow countries that have demonstrated meaningful progress toward compliance to retain their Candidate status (as per earlier editions of the EITI Rules);
- (3) The Board temporarily suspends Compliant countries that do not meet the agreed requirements for timely reporting;
- (4) That the Board temporarily suspends Compliant countries that do not meet the agreed requirements for annual activity reports;
- (5) The Board develops a more flexible policy in instances where there are valid concerns about whether a Compliant country has maintained compliance with the EITI requirements, including commissioning a Secretariat Review (rather than calling for a new Validation), and allow for downgrading to Candidate status where appropriate.

2. Background

In Lusaka the Board tasked “the International EITI Secretariat to set out options for the Board on the implications of a second failed validation, lack of report timeliness, and failure to publish annual activity reports.” An earlier version of this paper was submitted to the Validation Committee, focussing on the immediate implications for countries that had missed deadlines in 2012. This paper focuses on addressing

these issues in the longer term as part of the strategy review process.

Deadlines have proven to be effective in incentivizing countries to publish timely EITI Reports and to complete validation. In Lusaka, some Board members argued that it would be counterproductive to suspend or delist a country for a minor infraction or short delay. The EITI Rules should be applied consistently, and with regard to the EITI's overarching objectives.

The following sections addresses a range of issues that should be considered in revising the EITI standard, and the Secretariat's recommendation to the Board.

3. Extension requests

The EITI Rules allow countries to apply for extensions if they are (1) unable to meet the deadline for publishing their first EITI Report; and (2) unable to meet the deadline for the first Validation.

Policy note #3 states:

Candidate countries are required to publish their first EITI Report within one year and six months of becoming a Candidate and to submit a final (MSG endorsed) Validation Report to the Board within two years and six months of becoming a Candidate. Failure to meet either of these deadlines will result in delisting.

A country may apply for an extension if it is unable to meet either of the deadlines specified above. The request must be made in advance of the deadline and be endorsed by the MSG. The Board will only grant an extension if the MSG can demonstrate that it has been making continuous progress towards meeting the deadline and has been delayed due to exceptional circumstances. The exceptional circumstance(s) must be explained in the request from the MSG.

If an extension(s) is granted, in all cases a country may hold Candidate status for no more than 3 years and 6 months from the date it is admitted as a Candidate by the Board (hereafter the "maximum candidacy period"). The time period of any and all extensions that are granted will count towards the maximum candidacy period.

A Candidate country which does not achieve Compliant status within the maximum candidacy period will be delisted. The time it takes the Board to review a final Validation Report is not counted as part of the maximum candidacy period.

No extensions will be granted which would increase the maximum candidacy period (EITI Rules, p.61).

The EITI Rules also note the possibility for MSGs to deviate from the requirements for regular and timely reporting (requirement 5(e):

Should the MSG wish to deviate from this norm, this should be clearly indicated in the EITI work plan and the reasons for this communicated to the EITI Board (EITI Rules, p.18).

However, the EITI Rules do not specify any criteria for assessing extension requests from countries that make an application to extend the reporting deadline other than the deadline pertaining to the first EITI Report¹. Nor do they allow for extensions of other deadlines, such as publication of annual activity reports

¹ Policy Note #3 establishes a test for assessing extension requests from candidate countries in relation to their first EITI Report (required after 18 months). Policy note #3 states: "Candidate countries are required to publish their first EITI Report within one year and six months of becoming a Candidate and to submit a final (MSG endorsed) Validation Report to the Board within two years and six months of becoming a Candidate. Failure to meet either of these deadlines will result in delisting. A country may apply for an extension if it is unable to meet either of the deadlines specified above. The request must be made in advance of the deadline and

(requirement 21c).

The Secretariat recommends that the Board agrees a generic rule for extension requests, applicable to all deadlines established by the Board. Drawing on the provisions set out in policy note 3, it is suggested that the Board applies the following test in assessing any extension requests:

- (1) The request must be made in advance of the deadline and be endorsed by the MSG.
- (2) The Board will only grant an extension if the MSG can demonstrate that it has been making meaningful progress towards meeting the deadline and has been delayed due to exceptional circumstances. In assessing “meaningful progress” the Board will have regard to
 - (i) the EITI process – in particular the functioning of the multi-stakeholder group and clear, strong commitment from government; and
 - (ii) the status of EITI reporting. The Board will take into account progress in meeting the requirements for regular and timely reporting.

The exceptional circumstance(s) must be explained in the request from the MSG.

4. Countries that are not compliant following a second validation

If a country does not achieve compliance following its first Validation, it is given an additional period to complete remedial actions and then undertake a second Validation (or a Secretariat Review). If the second Validation (or Secretariat Review) verifies that the Candidate country has met all of the requirements, the Board will designate that country as EITI Compliant. “In all other cases, including the failure to submit the second Validation Report by the deadline, the country will be delisted” (EITI Rules, page 62).

In some cases delisting is reasonable outcome, especially where the EITI process has been characterised by long delays in EITI reporting, and limited efforts to utilise the EITI data. However the EITI Rules also note that “in all decisions relating to the application of these rules, the Board will place a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI” (EITI Rules, p61).

It is likely that some countries will fail a second Validation (or Secretariat Review) in situations where the EITI is making a significant contribution in challenging circumstances and meaningful progress is being made. It could be argued that in order to ensure comparable treatment, there is a need to look at progress towards achieving compliance. This is especially the case where requirements are found to be unmet due to technical weaknesses in the reporting process that have been transparently disclosed. In cases where there the EITI is making a demonstrable contribution to improve natural resource governance, it could also be argued that a decision to delist could be potentially damaging to the integrity of the EITI and its Principles.

The Secretariat has identified several options available to the Board:

- A. Retain the current provisions in the EITI Rules and delist all countries that are not Compliant following a second Validation (or Secretariat Review);
- B. Modify the EITI Rules to revise or remove the concept of a maximum candidacy period, and instead allow countries that have demonstrated meaningful progress toward compliance to retain their

be endorsed by the MSG. The Board will only grant an extension if the MSG can demonstrate that it has been making continuous progress towards meeting the deadline and has been delayed due to exceptional circumstances. The exceptional circumstance(s) must be explained in the request from the MSG”.

Candidate status (as per earlier editions of the EITI Rules);

- C. Apply the EITI Rules, but with a twelvemonth window before the decision comes into force allowing countries to complete another EITI Report and to undertake a Secretariat Review within the twelve month period. Countries would retain their status as a Candidate country during this period;
- D. Temporarily suspend (rather than delist) all countries that are not Compliant following a second Validation, allowing them an additional period to undertake corrective actions.
- E. Temporarily suspend (rather than delist) all countries that have demonstrated meaningful progress toward achieving compliance, but that are not compliant following a second Validation, allowing them an additional period to undertake corrective actions.

The Secretariat recommends option B:

The Board revises or removes the concept of a maximum candidacy period, and instead allow countries that have demonstrated meaningful progress toward compliance to retain their Candidate status (as per earlier editions of the EITI Rules).

5. Countries that are not publishing timely EITI reports

In order to be useful, EITI Reports need to be published on a regular and timely basis. The benefits of the EITI are undermined when the schedule for the publication of EITI reports is unclear, and when the EITI data is several years out of date. Accordingly, the 2011 edition of the EITI Rules established deadlines for regular and timely reporting (see requirement 5(e). Requirement 5(e) states:

... implementing countries are required to produce EITI Reports annually. EITI Reports should cover data no older than the second to last complete accounting period (e.g., an EITI Report published in calendar/financial year 2010 should be based on data no later than calendar/ financial year 2008). Should the MSG wish to deviate from this norm, this should be clearly indicated in the EITI work plan and the reasons for this communicated to the EITI Board. (Emphasis added)

The deadlines for timely reporting are determined by adding two years to the last day of the reporting period. For example:

Countries with calendar financial years Countries with non-calendar financial years

Reporting period	Reporting deadline
1 Jan 2010 - 31 Dec 2010	31 December 2012
1 Jan 2011 - 31 Dec 2011	31 December 2013
1 Jan 2012 - 31 Dec 2012	31 December 2014

Reporting period	Reporting deadline
1 Jul 2010 - 30 Jun 2011	30 Jun 2013
1 Jul 2011 - 30 Jun 2012	30 Jun 2014
1 Jul 2012 - 30 Jun 2013	30 Jun 2015

The transitional arrangements associated with the 2011 edition of the EITI Rules set out when these deadlines come into force. Compliant countries are required to meet this requirement by 31 December 2012. Candidate countries are required to meet this requirement by the end of their maximum candidacy period.

There are a number of options available to the Board in cases where a country fails to meet the reporting deadline and/or in cases where countries are not found to be eligible for an extension:

Option 1 - Delist countries that fail to meet the deadline.

Countries would need to reapply to become a Candidate. The Secretariat considers delisting a strong measure that would likely jeopardise EITI implementation and may undermine broader reform efforts. It would be a particularly harsh measure where the reporting deadline has been missed by only a few weeks.

Option 2 - Temporarily suspend countries that fail to meet the deadline.

This option would appear consistent with the EITI Rules as set out in requirement 5(e) and policy note 5. In agreeing to suspend a country, the Board would need to establish the corrective actions required and the timing and procedure for lifting the suspension or delisting. The Secretariat recommends option 2, and that:

- The suspension would be lifted if the International Secretariat confirms that the outstanding EITI Report is published within 3 months of the deadline. This would differentiate countries with minor delays from those that missed the deadline by a substantial period. It would also provide an incentive for these countries to issue the outstanding reports as quickly as possible.
- If the outstanding reports are not published within 3 months of the deadline, the suspension would remain in force until the International Secretariat confirms that the country has published an EITI Report in accordance with requirement 5(e). The Secretariat considers that after three months, it is appropriate to require that a country meets the requirement for regular and timely reporting in order to have the suspension lifted.

6. Countries that failed to publish annual activity reports

Requirement 21 (c) states:

Compliant countries are required to publish annually a public report on the previous year's activities, detailing progress in implementing the EITI and any recommendations from the validator. The report must be endorsed by the multi-stakeholder group, and should elaborate on efforts to strengthen EITI implementation, including any actions to extend the detail and scope of EITI reporting or to increase engagement with stakeholders. If a Compliant country fails to comply with this requirement, the Board may request a new Validation.

It should be noted that in accordance with proposal 23 in Building on achievements, it is proposed that in the future all implementing countries should be required to submit annual activity reports.

The transition procedures for the 2011 edition of the EITI Rules stated that:

All Compliant countries are required to publish an annual report as per requirement 21(c) as soon as possible and no later than 1 July 2012. The report should include an update on efforts to ensure compliance with the 2011 edition of the EITI Rules.

The Secretariat considers it excessive to request that these countries undergo a new Validation (which would likely find them to be compliant in every other aspect). Accordingly, the Secretariat recommends that:

- *Implementing countries are required to publish an annual activity report on the previous year's activities by 1 July of the following year (i.e. previous calendar year + six months)².*
- *If the annual activity report is not published within six months of this deadline (i.e. by 31 December the*

² The EITI Board will establish appropriate deadlines for any new Candidate countries.

following year), the country will be temporarily suspended until the International Secretariat confirms that the outstanding activity report is published.

7. Monitoring compliance with the EITI requirements in Compliant countries

Policy note #3 states:

Compliant countries are required to undertake Validation every five years. Stakeholders may call for a new Validation at any earlier time if they think the process needs reviewing. This request could be mediated (if necessary) through a stakeholder's constituency representative(s) on the Board. The Board will review the situation and exercise its discretion as to whether to require the EITI Compliant country to undergo a new Validation at the earlier time, placing a priority on the need to uphold the integrity of the EITI brand. Where a country has become EITI Compliant, but valid concerns are raised about whether its implementation of the EITI has subsequently fallen below the compliance standard, the Board reserves the right to require the country to undergo a new Validation to avoid delisting from the EITI (EITI Rules, page 61-62)

This procedure has never been tested, as there have been no instances where stakeholders have called for a new Validation. As more countries become EITI Compliant, and EITI Reports are subject to more detailed independent scrutiny, a review mechanism is likely to be required. Calling for a Validation would be an expensive and time consuming process, particularly where the specific non-compliance issues will already have been identified. Furthermore, the implications of a failed Validation are not clear.

The Secretariat recommends that the Board develops a more flexible policy, including the possibility of commissioning a Secretariat Review (rather than calling for a new Validation), and allow for downgrading to Candidate status where appropriate.