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

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1. Summary

A consultation with implementing countries on contract transparency took place from 9 November – 11 January 2013. 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.

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.

Table 1 – Summary of consultation on contract transparency

<table>
<thead>
<tr>
<th>Country</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
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<tr>
<td>Azerbaijan</td>
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<tr>
<td>Burkina Faso</td>
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<td>Prefers to publish the contracts in official gazette rather than on a website.</td>
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<td>Central African</td>
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<td>Republic</td>
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<td>Chad</td>
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<td>Congo</td>
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<td>Guinea</td>
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<td>Indonesia</td>
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<td>Option 3 in an interim period of 3 years.</td>
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<td>Kazakhstan</td>
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<td>Timor Leste</td>
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<td>Togo</td>
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<td>Yemen</td>
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</tbody>
</table>

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

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
**Consultation on contract transparency**

**Burkina Faso:**

MINISTERE DE L'ECONOMIE ET DES FINANCES  
SECRETARIAT GENERAL  
SECRETARIAT PERMANENT DE L'INITIATIVE POUR LA TRANSPARENCE DES INDUSTRIES EXTRACTIVES (SP-ITIE)

Ouagadougou, le 07 JAN 2013

N° 2012 ------- MEF/SG/SP-ITIE

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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.

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Tibila KABORE  
Chevalier de l'Oeuvre 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 réglera. 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:

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

Monseur,

Suite à votre courrier daté du 22 Novembre 2012 et relatif à la divulgation des contrats, et conformément à la politique de transparence que mène son Excellence, Monsieur IBRASS DEBY ITIEY, Président de la République, Chef du Fétas, la Ministère de l’Énergie et du Pétrole n’a aucune objection pour que l’option 1 de ladite consultation soit appliquée dans l’avenir.

En vous souhaitant bonne réception, je vous prie, d’agréer Monsieur le Chef du secrétariat, l’expression de ma considération.

[Signature]

BRAMH ALKHALIL HILEGU

Congo:
Consultation on contract transparency

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

CABINET

REPUBLIQUE DU CONGO
Unité * Travail * Progrès

N° 066 / MEFPPPI-CAB
10 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 les dits 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 ONDOMGO

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.

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Гүнэ хүндэтгэн мэдэхсэн
ОУИТБС-ын Ажлын албаны зохицуулагч Ш. Цолмон

With best wishes and regards,

Sh. Tsolmon, Mongolia EITI Secretariat Coordinator
Consultation on contract transparency

Norway:

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

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:
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