Assessing progress in meeting Requirement 2.5 on beneficial ownership

For decision

This paper outlines considerations for how to assess progress in meeting Requirement 2.5 on beneficial ownership in Validation. It reflects input by members of the Implementation Committee and experts from partner organisations providing technical assistance on beneficial ownership transparency. The Implementation Committee recommends that the Board agrees the proposals on (1) the assessment framework, (2) the outlined timing of assessment and (3) a broader review of the Validation process.
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Supporting documentation (available via www.eiti.org/internal/specific_link)
  - N/A

Has the EITI competence for any proposed actions been considered?
  - Yes.

Financial implications of any actions
  - To be advised, subject to the proposal considered by the Board.

Document history

<table>
<thead>
<tr>
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<th>11 December 2018</th>
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<tbody>
<tr>
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Summary

This paper outlines a proposal for how to assess progress in meeting the beneficial ownership requirement (2.5) in Validation. The proposal is being made to ensure that implementing countries have adequate guidance in preparation for the approaching 1 January 2020 deadline. It suggests that the Implementation Committee recommends that the Board agree on an approach for the timing and framework to assess the requirement. The paper introduces the frameworks used by other international standards for assessing beneficial ownership transparency.

The Implementation Committee recommends the following to the EITI Board:

1. A framework for validating Requirement 2.5 that consists of a technical assessment of meeting the requirements and an assessment of effectiveness. It is proposed that Validations in the first stage (until 31 December 2021) considers a set of initial criteria that would qualify for an assessment of ‘satisfactory progress’ in meeting the requirement. This gradual approach would recognise the challenges with systematically disclosing beneficial ownership information and the efforts made by countries to develop supportive legal and institutional frameworks.

2. The timing of the assessment of Requirement 2.5, which would follow the agreed Validation schedule with adjustments to ensure all countries undergo the assessment within a reasonable timeframe.

3. The incoming EITI Board undertakes a broader review of the Validation process, considering specific challenges associated to the assessment of requirements on beneficial ownership, project-level disclosures and contract transparency.

Background

The 2016 EITI Standard introduced a gradual approach to beneficial ownership disclosures. It set out that multi-stakeholder groups (MSGs) were required to adopt beneficial ownership roadmaps by 1 January 2017. Disclosure of beneficial owners is expected as of 1 January 2020. Progress on meeting the requirement is currently described in Validation but not assessed. The current Validation guide does not set out in detail how the requirement should be assessed.

In its 40th meeting in Berlin, the Board discussed technical and financial assistance needs for beneficial ownership transparency. The paper documented slow progress in most countries in implementing the beneficial ownership roadmap. Some countries like Ghana, Kazakhstan, Kyrgyz Republic, Mongolia, Senegal, Ukraine and Zambia, however, appear to be progressing in building the institutional and legal framework for beneficial ownership transparency. There are good

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1 Board paper 40-4-B.
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Box 1 – Requirement 2.5 of the 2016 EITI Standard (with changes agreed for the 2019 Standard in red).

2.5 Beneficial ownership

a) It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information.

b) Implementing countries are required to ensure that the EITI Report documents the government’s policy and multi-stakeholder group MSG’s discussion on disclosure of beneficial ownership. This should include details of the relevant legal provisions, actual disclosure practices and any reforms that are planned or underway related to beneficial ownership disclosure.

c) As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI Report. This applies to corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract and should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Any significant gaps or weaknesses in reporting on beneficial ownership information must be disclosed in the EITI Report, including naming any entities that failed to submit all or parts of the beneficial ownership information. Where a country is facing constitutional or significant practical barriers to the implementation of this requirement by 1 January 2020, the country may seek adapted implementation in accordance with Article 1 of the EITI Board’s procedures for oversight of EITI implementation requirement 8.1.

d) Information about the identity of the beneficial owner should include the name of the beneficial owner, their nationality, and their country of residence, as well as identifying any politically exposed persons. It is also recommended that their national identity number, date of birth, residential or service address, and means of contact are disclosed.

e) The multi-stakeholder group should assess any existing mechanisms for assuring the reliability of beneficial ownership information and agree an approach for corporate entities within the scope of 2.5(c) participating companies to assuring the accuracy of the beneficial ownership information they provide. This could include requiring companies to attest the beneficial ownership declaration form through sign off by a member of the senior
f) Definition of beneficial ownership:

i. A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.

ii. The multi-stakeholder group should agree an appropriate definition of the term beneficial owner. The definition should be aligned with (f)(i) above and take international norms and relevant national laws into account, and should include ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons.

iii. Publicly listed companies, including wholly-owned subsidiaries, are required to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed.

iv. In the case of joint ventures, each entity within the venture should disclose its beneficial owner(s), unless it is publicly listed or is a wholly-owned subsidiary of a publicly listed company. Each entity is responsible for the accuracy of the information provided.

g) Implementing countries and multi-stakeholder groups

The EITI Report should also address disclosure of the legal owners and share of ownership of such companies.

Assessing progress on beneficial ownership disclosures

So far Validations have provided an overview on beneficial ownership transparency in the country but have not assessed progress on meeting the requirement.

With regard to Requirement 2.5, the current Validation guide provides the following:

*Validation is expected to document whether the EITI Report documents the government’s policy and MSG’s discussion on disclosure of beneficial ownership in accordance with provision 2.5.b.i.*

*Effective as of 1 January 2017 Validation is expected to document whether the MSG has published a roadmap for beneficial ownership disclosure in accordance with provision 2.5.b.ii, including progress with implementation of the roadmap.*

*Effective as of 1 January 2020, Validation is expected to document whether beneficial ownership has been disclosed in accordance with provisions 2.5.c-f.*

*Validation is also expected to documents [sic] if the implementing country has a publicly available register of the beneficial owners in accordance with provision 2.5.a. Such disclosures are recommended, but not required and should not be considered in assessing compliance with the EITI Standard.*

Existing global frameworks which assess accessibility of beneficial ownership information include the Financial Action Task Force (FATF) mutual evaluations and the OECD Global Forum’s peer reviews of the implementation of the standard of transparency and exchange of information for
tax purposes. The most robust framework is FATF’s review methodology for the assessment of a member country’s technical compliance with FATF Recommendations, which may provide useful insights on how the EITI can assess beneficial ownership disclosure. The assessment framework distinguishes between technical compliance and effectiveness assessments, with the former reviewing whether the necessary frameworks are in place and the latter assessing the extent to which implementation is effective.

The FATF assessment framework allows assessors some flexibility to consider the significance of any deficiencies in a particular country: “When deciding on the rating for each recommendation, assessors should consider the relative importance of the criteria in the context of the country. Assessors should consider how significant any deficiencies are given the country’s risk profile and other structural and contextual information. (...) In some cases a single deficiency may be sufficiently important to justify an [Not Compliant] rating, even if other criteria are met. Conversely a deficiency in relation to a low risk or little used types of financial activity may have only a minor effect on the overall rating for a Recommendation.” Similarly, when assessing effectiveness of implementation, the highest rating of “High level of effectiveness” indicates the immediate outcome is achieved “to a very large extent. Minor improvements needed.” The underlying assumption is that absolute effectiveness is unlikely to be achieved, but that the assessment framework should support countries in making progress by identifying gaps and providing concrete recommendations.

The requirement on beneficial ownership transparency enters into force on 1 January 2020. As that date approaches and considering the limited implementation to date, the EITI Board will need to consider how to support countries in meeting the deadline. The Board will also need to agree how the requirement on beneficial ownership transparency will be assessed. This paper presents recommendations for i) the technical assessment, ii) implications for the overall assessment and iii) assessment schedule. The Implementation Committee recommends the approach outlined to the Board on how to assess progress in meeting Requirement 2.5. The Secretariat has consulted with experts on beneficial ownership transparency on the proposal from the World Bank, Transparency Australia, FATF, OpenOwnership and NRGI, and the paper has been shared with the Validation Committee for comment.

i. Progress in meeting the requirement and implications for overall assessment

The International Secretariat proposes the Board agree on a framework for validating Requirement 2.5 that consists of a technical assessment against the requirement and an assessment of effectiveness. Validation would make a technical assessment against the requirement, i.e., to what extent the implementing country has addressed each aspect of Requirement 2.5. In addition, Validation would consider the effectiveness of disclosures, i.e., to

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3 FATF (2013), Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems.
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what extent disclosures are contributing to the overall objective of Requirement 2.5. The proposed approach recognises that (a) the Validation of the requirement requires a clear, objective framework, and (b) the objective of the requirement is to ensure disclosures that effectively discourage or reveal misconduct and conflicts of interest and strengthen a transparent business environment.

a. Technical assessment against the requirement

The technical assessment would consider each aspect of the requirement. In the initial phase between 1 January 2020 and 31 December 2021, Validation would focus on a narrower subset of questions. This would allow countries to benefit from recommendations that arise from Validation and further improve disclosures before the requirement is reassessed. It would nevertheless set concrete expectations and establish a clear framework for assessment. In this first phase, progress would be assessed as satisfactory if the initial criteria are met. Countries would receive feedback on the gaps between their current level of implementation and full implementation.

As of 1 January 2022, Validation would expect that all aspects of the requirement are met. The table below proposes questions to be considered by the Validator in the first and second phases. While Validations in the first phase would concentrate on a limited set of questions that form the initial criteria to be assessed as ‘satisfactory progress’, further progress would be documented, where applicable.
Table 1. Technical assessment of Requirement 2.5 in phases 1 and 2.

<table>
<thead>
<tr>
<th>Elements of Requirement 2.5</th>
<th>Phase 1: Questions for the Validator to consider until 31 December 2021 (initial criteria to be assessed as ‘satisfactory progress’)</th>
<th>Phase 2: Questions for the Validator to consider as of 1 January 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public register of beneficial owners (recommended) (2.5.a).</td>
<td>Are there laws, regulations or policies in place to back establishing and maintaining a public register of beneficial owners, including those of corporate entity(ies) that apply for, operate or hold a participating interest in an exploration or production oil, gas or mining license or contract?</td>
<td>Does a public register of beneficial owners of the corporate entity(ies) that apply for, operate or hold a participating interest in an exploration or production oil, gas or mining license or contract exist?</td>
</tr>
<tr>
<td></td>
<td>Is the government’s policy and multi-stakeholder group’s discussion on disclosure of beneficial ownership documented, including details of the relevant legal provisions, actual disclosure practices and any reforms that are planned or underway?</td>
<td>Does it include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted?</td>
</tr>
<tr>
<td></td>
<td>Has the implementing country requested beneficial ownership information to be publicly disclosed by corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract? Does the legal framework back the request?</td>
<td>Have all corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract disclosed the information?</td>
</tr>
<tr>
<td></td>
<td>Have any corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or</td>
<td>Does the disclosed information include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted?</td>
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</table>
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mining license or contract disclosed the information?

Does the **requested** information include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted?

<table>
<thead>
<tr>
<th>Disclosing gaps and weaknesses (2.5.c)</th>
<th>Has the MSG assessed gaps or weaknesses in disclosure of beneficial ownership information, including an assessment of the materiality of omissions and the reliability of beneficial information?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Has the government or MSG agreed and documented plans to overcome the identified challenges?</td>
</tr>
<tr>
<td></td>
<td>Has the MSG assessed and documented gaps or weaknesses in disclosure of beneficial ownership information, including an assessment of the materiality of omissions and the reliability of beneficial information?</td>
</tr>
<tr>
<td></td>
<td>Have entities that failed to disclose all or parts of the beneficial ownership information been named?</td>
</tr>
<tr>
<td></td>
<td>Has the government or MSG documented efforts to address these and to strengthen the reporting and disclosure systems?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Required information about the identity of the beneficial owner: Nationality, country of residence, politically exposed persons (2.5.d).</th>
<th>Does the <strong>requested</strong> information include details of the identity of the beneficial owner(s), including nationality, country of residence, and identification of politically exposed persons?</th>
<th>Does the <strong>disclosed</strong> information about the identity of the beneficial owner(s) include the name of the beneficial owner, the nationality, and the country of residence?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommended:</strong> National identity number, date of birth, residential or service address, and means of contact disclosed?</td>
<td></td>
<td>Are political exposed persons identified?</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>Is the national identity number, date of birth, residential or service address, and means of contact disclosed?</em></td>
</tr>
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</table>
Assessing progress in meeting Requirement 2.5 on beneficial ownership contact (2.5.d).

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Question</th>
<th>Additional Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assurances on the accuracy of information (2.5.e)</td>
<td>Has the relevant government entity or the MSG established an approach for participating companies to assure the accuracy of the beneficial ownership information they provide?</td>
<td>Have companies complied with the assurances established by the relevant government entity or the MSG?</td>
</tr>
<tr>
<td>MSG should agree a definition of beneficial owner (2.5.f.ii), including ownership thresholds and reporting obligations for PEPs.</td>
<td>Has the MSG agreed an appropriate definition of the term beneficial owner?</td>
<td>Is the definition aligned with Requirement 2.5.f.i and does it take international norms and relevant national laws into account? Does it include ownership threshold(s) and specify reporting obligations for politically exposed persons? Is the definition included in the EITI Report or does the report include a reference or link to another public source (e.g., a law) that includes the definition?</td>
</tr>
<tr>
<td>For publicly listed companies, name of stock exchange and link to stock exchange filings (2.5.f.iii).</td>
<td>For publicly listed companies, including wholly-owned subsidiaries, has the name of the stock exchange been disclosed and a link included to the stock exchange filings where they are listed, either in the public register on in the EITI Report?</td>
<td>Has the MSG considered how rigorous are requirements in the stock exchanges referred to and what ownership information is available from the stock exchange filings of the companies within the scope of the disclosures?</td>
</tr>
<tr>
<td>Beneficial ownership information of joint venture partners</td>
<td>In the case of joint ventures, is the beneficial owner(s) of each entity within the venture disclosed, unless it is publicly listed or is a wholly-owned subsidiary of a publicly listed company? Has each entity provided assurances, if requested by the MSG or Independent</td>
<td></td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>EITI Report should disclose legal owners and share of ownership (2.5.g.)</th>
<th>Is information about legal owners and share of ownership of such companies publicly available?</th>
<th>Administrator?</th>
</tr>
</thead>
</table>

(2.5.f.iv).
b. Assessment of effectiveness

The assessment of the effectiveness of beneficial ownership disclosures would draw on findings from the technical assessment, FATF mutual evaluations, documentation of work by the MSG and stakeholder consultations to establish an overview of whether implementation is addressing the overall objective of Requirement 2.5. Especially in the first phase, the direction of travel would also be reflected in the assessment.

The nature of Requirement 2.5 differs somewhat from other EITI Requirements. Firstly, obtaining complete beneficial ownership information from every company may in practice not be feasible in all countries. Secondly, the comprehensiveness of information is an imperfect measurement of the effectiveness of disclosures. Ensuring reliable data from high-risk companies, such as companies owned by politically-exposed persons, is central for meeting the objective of the requirement.

The MSG’s assessment of reasons behind gaps and weaknesses in data plays a key role in ensuring effective disclosures and addressing shortcomings. The assessment of effectiveness would help the Validator and the Board to determine whether possible omissions should affect the level of progress in the second phase and to provide the implementing country with meaningful recommendations.

In assessing the materiality of omissions, the Validator could consider whether the MSG has demonstrated that full beneficial ownership information is publicly available for companies which make material payments to the government, hold significant concessions or have been recently awarded licenses. The Validator could also consider any concerns raised by stakeholders about omissions or suspicions that politically exposed persons are involved in a company that has not disclosed information.

Validation would thus seek to identify whether the implementing country has undertaken sufficient measures to ensure that beneficial owners of high-risk companies are disclosed and whether these companies have complied with disclosure requirements. This risk-based approach would help MSGs and the Validator target the most relevant omissions. The assessment would also consider whether the ownership thresholds for disclosing beneficial owners are appropriate and provide recommendations.

The assessment would document strengths and weaknesses in data reliability and the agreed assurances. Experts consulted by the International Secretariat stressed the importance of independent verification of beneficial ownership information. Assurances provided solely by the companies themselves have weaknesses as some may have incentives to hold back information. The assessment would also look at whether data is disclosed in an accessible and usable format.

c. Outcome of Validation

The assessment of Requirement 2.5 is proposed to have a similar effect on the overall level of progress as any other requirement. In practice, an assessment below satisfactory progress in implementing Requirement 2.5 would prevent an overall assessment of satisfactory progress.

However, in the first phase, implementing the initial criteria would lead to progress being
assessed as satisfactory. The table below proposes expectations to achieve the various levels of progress in phases 1 and 2.

Table 2. Levels of progress in phases 1 and 2.

<table>
<thead>
<tr>
<th>Level of progress</th>
<th>Phase 1 (1 Jan 2020 – 31 Dec 2021)</th>
<th>Phase 2 (as of 1 Jan 2022)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding progress</td>
<td>Not applicable.</td>
<td>Implementation exceeds the required aspects of the requirement, and the assessment demonstrates disclosures are effective and systematic.</td>
</tr>
<tr>
<td>Satisfactory progress</td>
<td>Initial criteria are fully met (see table 1), with a demonstrated focus on ensuring effective disclosures.</td>
<td>All aspects of the requirement are fully met. Possible omissions have been considered by the MSG and are not material.</td>
</tr>
<tr>
<td>Meaningful progress</td>
<td>Significant elements of the initial criteria are met, and some efforts have been undertaken to promote effective disclosures.</td>
<td>Significant elements of the requirement are being implemented and the implementing country has made efforts to ensure effective disclosures.</td>
</tr>
<tr>
<td>Inadequate progress</td>
<td>Significant elements of the initial criteria are unmet.</td>
<td>Significant aspects of the requirement are unmet, and effective disclosures are not taking place.</td>
</tr>
<tr>
<td>No progress</td>
<td>No progress in implementing the initial criteria.</td>
<td>No progress in implementing the requirement.</td>
</tr>
</tbody>
</table>

Importantly, Validation would provide strategic direction to the implementing country on improving the comprehensiveness, reliability and effectiveness of beneficial ownership disclosures. Recommendations would draw on both gaps identified in the technical assessment and opportunities arising from the assessment of effectiveness.

ii. Timing of assessing progress

The International Secretariat proposes that the Board agrees that Requirement 2.5 is assessed in Validations commencing as of 1 January 2020. Requirement 2.5.c reads as follows: As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI Report. The Validation guide currently suggests that beneficial ownership information is expected to be publicly available on 1 January 2020. This is also the International Secretariat’s interpretation of the requirement.

However, the requirement can also be understood to mean that information is not strictly required to be available in the public domain on 1 January 2020 but should rather be requested and disclosed for any EITI Reports published as of that date (unless it is already available in a public register). Several Validations taking place in 2020 are likely to be based on reports published prior to the beginning of the year. The interpretation of the deadline will affect the assessment of progress in these cases.

To avoid confusion with regards to the timing of the assessment, the International Secretariat proposes that implementing countries be validated on Requirement 2.5 according to the Validation schedule as of 1 January 2020. As with other requirements, the assessment would...
consider progress made by the date of commencement of the Validation.

The following 12 Validations are currently scheduled to take place in 2020:

- Ghana 27 February 2020 (third Validation)
- Mauritania 27 February 2020 (third Validation)
- Seychelles 1 April 2020 (second Validation)
- Mexico 25 April 2020
- Guyana 25 April 2020
- Papua New Guinea 30 April 2020 (second Validation)
- Guinea 27 August 2020 (second Validation)
- Ethiopia 27 August 2020 (second Validation)
- Malawi 27 August 2020 (second Validation)
- Trinidad and Tobago 27 August 2020 (second Validation)
- Philippines 5 October 2020 (re-Validation)
- Chad 8 November 2020 (second Validation)

Fifteen Validations are currently underway, and decisions on many of these are expected in the 43rd Board meeting in Paris or via Board circular. It is likely many of these countries will undergo second or third Validations in 2020. If a country’s Validation doesn’t result in satisfactory progress, a subsequent Validation takes places within maximum 18 months from the Board’s decision. This means all countries are expected to undergo a Validation between 1 January 2020 and 31 December 2021 (proposed phase 1), except the ones that achieve satisfactory overall progress in 2019. So far these include Germany, Nigeria and Norway.

Following the agreed Validation schedule entails that some countries may be able to attain satisfactory overall progress in meeting the Standard until year 2023 without having been assessed on Requirement 2.5. The International Secretariat proposes the Board agree that countries which achieve overall satisfactory progress in a Validation commenced or concluded in 2019 are re-validated on Requirement 2.5 on 1 January 2021. These narrower assessments could have similar deadlines for corrective actions within a timeframe of 3-18 months in line with Requirement 8.3.d.ii. The result would affect the overall assessment of progress, which could change if progress on Requirement 2.5 is below satisfactory.

Using assessment of progress to measure and support effective implementation

So far, Validation has been a useful tool for identifying gaps and providing recommendations for strengthening implementation. Given the challenges and limited progress in implementing the beneficial ownership roadmaps to date, it is likely the assessments of progress on Requirement 2.5 will be crucial for taking stock of progress and identifying the next steps needed to disclose beneficial owners. The Secretariat will also be developing guidance on legal approaches to beneficial ownership, including definitions and thresholds, based on emerging best practices and specific challenges related to ownership transparency in the oil, gas and mining sector.

Once the assessment framework has been agreed upon, implementing countries and MSGs could be encouraged to self-assess their progress with support and input from the International Secretariat where needed. The Secretariat can also undertake an overall assessment of progress in all implementing countries in early 2020 to help establish a baseline and highlight any findings
that may have implications for the Validations and implementation support to the EITI Board. If considerable ambiguity remains regarding how progress should be assessed as part of Validation, the International Secretariat could undertake more detailed pilot assessments of a set of countries ahead of the 2020 deadline.