

Draft Proposed clarifications and changes to the EITI Requirements

For decision

For discussion

For information

Summary

Further to the Board's decision at its 41st meeting in Dakar, this paper prepared in close consultation with the EITI working group on clarifications to the EITI Requirements sets out proposals for improvements for the Committee's consideration. The suggested changes focus on reflecting precedents established in Board decisions, encouraging systematic disclosures, and further areas where implementation and Validation has demonstrated opportunities for improving the requirements and to encourage disclosures. The proposed revisions are based on demands for clarity on what information is required by the EITI Standard and seek to reflect emerging disclosure practices and innovative approaches in EITI countries.

It is suggested that the Implementation Committee considers each of the proposals and make a recommendation to the Board on which proposals to take forward. Subject to Board endorsement in Kiev, the next step would be to agree the final edited version of the revised Standard via circular.

Supporting documentation (available via <http://eiti.org/internal/implementation-committee>)

N/A.

Has the EITI competence for any proposed actions been considered?

The Articles of Association (Article 10) address the mandate of the EITI Board to, inter alia, "Consider general and specific policy issues affecting the EITI Association" and "adopt more detailed procedures and rules for the management and operation of the EITI Association". The Implementation Committee has been mandated by the EITI Board to "Consider any emerging policy issues related to the EITI Standard".

Financial implications of any actions

To be advised, subject the options to be considered by the Board.

Document history

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Discussed by the Implementation Committee	4 February 2019
Approval by the Implementation Committee	TBC
Submitted to the EITI Board	TBC

PROPOSED CLARIFICATIONS TO THE EITI REQUIREMENTS

Table of Contents

1	Introduction	3
2	Background.....	3
3	Proposed clarifications to the EITI Standard	4
	Proposal 1: Gender considerations in EITI	4
	Proposal 2: Improving systematic disclosures related to state participation and SOEs.....	5
	Proposal 3: Reflecting emerging practices on licensing transparency	6
	Proposal 4: Reflecting emerging practices on contract transparency.....	7
	Proposal 5: Encouraging more granular production and export data	8
	Proposal 6: Moving towards systematic disclosures and improved data assurances.....	9
	Proposal 7: Reflecting progress on commodity trading transparency	11
	Proposal 8: Clarifying the EITI's approach to project-level reporting (Annex B)	13
	Proposal 9: Reflecting emerging practices on local level reporting.....	14
	Proposal 10: Updates to reflect increasing demand for environmental reporting.....	14
	Proposal 11: Strengthening the review of outcomes and impact from EITI implementation	15
	Proposal 12: Clarifying requirements related to compliance and deadlines for implementing countries	

1 Introduction

Further to the Board's decision at the 41st meeting in Dakar this paper was prepared in close consultation with the EITI working group on clarifications to the EITI Requirements sets out proposals for improvements for the Committee's consideration. As was agreed by the Board, the suggested changes focus on reflecting precedents established in Board decisions, encouraging systematic disclosures, and further areas where implementation and Validation has demonstrated opportunities for improving the requirements and to encourage disclosures. The proposed revisions are based on demands for clarity on what information is required by the EITI Standard and seek to reflect emerging disclosure practices and innovative approaches in EITI countries.

It is suggested that the Implementation Committee considers each of the proposals and make a recommendation to the Board on which proposals to take forward. Subject to Board endorsement in Kiev, the next step would be to agree the final edited version of the revised Standard via circular.

2 Background

The EITI Standard has continually evolved to meet the needs of stakeholders and to further the realisation of the EITI Principles. In the lead up to the EITI's Global Conferences, the EITI Board has considered opportunities to strengthen EITI implementation and to improve governance of the EITI Association. This paper focuses on the development of the requirements for implementing countries. The Governance Committee's discussions regarding improvements to governance (including possible amendments to the Articles of Association) should also be taken into account.

Since Lima, the EITI Board has had several discussions regarding the outlook for developing the EITI Standard. In May 2017, the Board discussed Board Paper 37-2 *Is the EITI achieving its mission?*¹ A number of Board Members highlighted the need for the EITI to reflect on whether it is achieving its mission and where it is heading. Other Board members referred to the need to collate and interpret the findings from the first set of Validations and reflect on the meaning of the results for the EITI as an organisation. Some Board members, particularly from implementing countries, noted that the EITI had changed rapidly, and that a period of consolidation was needed. The key outcome from the meeting in Oslo was that the Governance and Oversight Committee, Implementation Committee², and Validation Committee to consider the suggestions related to their Committees, and for the Board to establish working groups on a number of specific topics.

The Implementation Committee and the Board have reviewed a number of papers with recommendations for clarifying language in the EITI Standard since the Global Conference in 2016. At the 41st Board meeting in Dakar (30-31 November), the Board agreed to establish a working group with representatives from all the constituencies to be formed to consider possible edits and changes to be proposed to the Board ahead of the Global Conference.

¹ https://eiti.org/sites/default/files/documents/final_37th_eiti_board_meeting_minutes.pdf

² The 2018 International Secretariat Work plan highlights the role of the Implementation Committee to "continue to consider revisions to existing guidance material on the EITI Standard and further development of the EITI Standard". In particular, it notes the need to "support the EITI Board with further refinements to requirement 4.7" regarding project-level reporting and to "draw out lessons of implementing the EITI Standard, especially in frontier areas like beneficial ownership transparency and commodity trading".

This paper sets out proposals for refinements to the EITI Standard and provides a brief account of the reasoning behind them, with references to previous Board papers and decisions.

3 Proposed clarifications to the EITI Standard

This section of the paper outlines proposed clarifications to the EITI Requirement as discussed by the working group established under the Implementation Committee.³ The working group recommends:

Proposal 1: Gender considerations in EITI

It is proposed that Requirements 1.4 and 6.3 are revised to reflect demands from stakeholders that the EITI Standard reflects opportunities for addressing gender consideration in EITI implementation. Proposed changes to Requirement 7.1 on public debate to reflect gender considerations are also included under Proposal 11 (*Encouraging open data efforts*).

1.4 Multi-stakeholder group.

ii. Ensure that stakeholders are adequately represented. This does not mean that they need to be equally represented numerically. The multi-stakeholder group must comprise appropriate stakeholders, including but not necessarily limited to: the private sector; civil society, including independent civil society groups and other civil society such as the media and unions; and relevant government entities which can also include parliamentarians. Each stakeholder group must have the right to appoint its own representatives, bearing in mind the desirability of pluralistic and diverse representation. The nomination process must be independent and free from any suggestion of coercion. Civil society groups involved in the EITI as members of the multi-stakeholder group must be operationally, and in policy terms, independent of government and/or companies. [Each multi-stakeholder group and constituency should consider gender balance in their representation to progress towards parity between men and women.](#)

6.3 The contribution of the extractive sector to the economy.

Implementing countries must disclose, when available, information about the contribution of the extractive industries to the economy for the fiscal year covered by the EITI Report. It is required that this information includes:

d) Employment in the extractive industries in absolute terms and as a percentage of the total employment. [Implementing countries are encouraged to disaggregate employment information by project, role within the project and by gender.](#)

The working group also discussed how Principle 1 could be revised to emphasise that natural resource wealth should be an important engine for sustainable economic growth that contributes to gender equity. Future Board discussions could consider changes to the EITI Principles to reflect its commitment to gender equality.

Background: Efforts to enhance women's participation in decision-making around the management, development and use of those resources is part of a wider agenda to ensure that extractive resources are

³ Terms of Reference

managed fairly and in the best interest of all citizens. EITI stakeholders and Board members have expressed an interest to continue the discussion on how EITI implementation relates to gender beyond reflecting gender issues in EITI guidance.⁴

Proposal 2: Improving systematic disclosures related to state participation and SOEs

It is proposed that Requirements 2.6, 4.5 and 6.2 related to state-participation and state-owned enterprises are revised to ensure clarity on what disclosures are required. The proposed changes are pending final input from the EITI network for SOEs.

2.6 State participation.

a) Where state participation in the extractive industries gives rise to material revenue payments, implementing countries must disclose:

i) An explanation of the [role of state-owned enterprises \(SOEs\) in the sector](#) and prevailing rules and practices regarding the financial relationship between the government and ~~state-owned enterprises~~ the SOEs, i.e. the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing. [This should include disclosures of transfers, retained earnings, reinvestment and third-party financing related to SOE joint ventures and subsidiaries.](#)

For the purpose of EITI reporting, a SOE is a wholly or majority government- owned company that is engaged in extractive activities on behalf of the government [or collecting material revenues from the extractive industries on behalf of the government](#). Based on this, the multi-stakeholder group is encouraged to discuss and document its definition of SOEs taking into account national laws and government structures.

ii) Disclosures from the government and SOE(s) of their level of ownership in mining, oil and gas companies operating within the country's oil, gas and mining sector, including those held by SOE subsidiaries and joint ventures, and any changes in the level of ownership during the reporting period.

This information should include details regarding the terms attached to their equity stake, including their level of responsibility to cover expenses at various phases of the project cycle, e.g., full-paid equity, free equity, carried interest. Where there have been changes in the level of government and SOE(s) ownership during the EITI reporting period, the government and SOE(s) are expected to disclose the terms of the transaction, including details regarding valuation and revenues. Where the government and SOE(s) have provided loans or loan guarantees to mining, oil and gas companies operating within the country, details on these transactions should be disclosed, [including loan tenor and terms \(i.e. repayment schedule and interest rate\)](#). [Multi-stakeholder groups may wish to consider comparing loans terms with commercial lending terms.](#)

c) [SOEs are expected to publicly disclose their audited financial statements, or the main items \(i.e. balance sheet, profit/loss statement, cash flows\) where financial statements are not available.](#)

d) [Implementing countries are encouraged to describe the rules and practices related to SOEs' operating and capital expenditures, procurement, subcontracting and corporate governance, e.g. composition and appointment of the Board of Directors, Board's mandate, code of conduct.](#)

⁴ IC Paper 34-4 Opportunities for improving licensing transparency

4.5 Transactions related to state-owned enterprises.

The multi-stakeholder group must ensure that the reporting process comprehensively addresses the role of state-owned enterprises (SOEs), including [comprehensive and reliable disclosures of material company payments to SOEs, SOE transfers to government agencies and government transfers to SOEs](#). ~~material payments to SOEs from oil, gas and mining companies, and transfers between SOEs and other government agencies.~~

6.2 Quasi-fiscal expenditures.

Where state participation in the extractive industries gives rise to material revenue payments, implementing countries must include disclosures from SOE(s) on their quasi-fiscal expenditures. Quasi-fiscal expenditures include arrangements whereby SOE(s) undertake public social expenditure such as payments for social services, public infrastructure, fuel subsidies and national debt servicing, etc. outside of the national budgetary process. 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, and should include SOE subsidiaries and joint ventures. [Implementing countries and multi-stakeholder groups may wish to take the IMF's definition of quasi-fiscal expenditures into account when considering whether expenditures are considered quasi-fiscal.](#)

Background: Validation has revealed opportunities for clarifying the EITI Requirements related to SOEs, which were considered by the Board at its meeting in October 2018.⁵

Proposal 3: Reflecting emerging practices on licensing transparency

It is proposed that Requirement 2.2 is revised to reflect emerging practices and demands from stakeholders for improved disclosures on contract and license allocations.

2.2 Contract and license allocations.

a) Implementing countries are required to disclose the following information related to [all contract and license awards and transfers taking place](#) ~~the award or transfer of licenses pertaining to the companies covered in the EITI Report~~ during the accounting period covered by the EITI Report, including pertaining to companies that are not in the scope of EITI reporting (i.e. where their payments fall below the agreed materiality threshold):

- i. a description of the process for transferring or awarding the license;
- ii. the technical and financial criteria used;
- iii. information about the recipient(s) of the license that has been transferred or awarded, including consortium members where applicable; and
- iv. any [material non-trivial](#) ~~material~~ deviations from the applicable legal and regulatory framework governing license transfers and awards.

[In cases where governments can select different methods for awarding a contract or license \(e.g.](#)

⁵ BP 41-4-1

competitive bidding or direct negotiations), the description of the process for awarding or transferring a license could include an explanation of the rules that determine which procedure should be used and why a particular procedure was selected.

~~It is required that the information set out above is disclosed for all license awards and transfers taking place during the accounting year covered by the EITI Report, including license allocations pertaining to companies that are not included in the EITI Report, i.e. where their payments fall below the agreed materiality threshold.~~ Any significant legal or practical barriers preventing ~~such~~ comprehensive disclosure of the information set out above should be documented and explained in the EITI Report, including an account of government plans for seeking to overcome such barriers and the anticipated timescale for achieving them.

- b) Where companies covered in the EITI Report hold licenses that were allocated prior to the accounting period of the EITI Report, implementing countries are encouraged, if feasible, to disclose the information set out in 2.2(a) for these licenses.
- c) Where licenses are awarded through a bidding process during the accounting period covered by the EITI Report, the government is required to disclose the list of applicants and the bid criteria.
- d) Where the requisite information set out in 2.2(a-c) is already publicly available, it is sufficient to include a reference or link in the EITI Report.
- e) The multi-stakeholder group may wish to include additional information on the allocation of licenses in the EITI Report, including commentary on the efficiency and effectiveness of licensing procedures [and a description of procedures and actual practices for renewing or revoking a contract or license and the criteria applied.](#)

Background: A review of disclosures of license allocations in reporting found that there were opportunities to clarify that Requirement 2.2 covers contract and license allocations and strengthen disclosures to better address governance challenges in the licensing stage.⁶

Proposal 4: Reflecting emerging practices on contract transparency

It is proposed that Requirement 2.1 and 2.4 are revised to clarify what type of contracts exist in each implementing country and what constitutes government policy on contract disclosures.

2.1 Legal framework and fiscal regime.

- a) Implementing countries must disclose a description of the legal framework and fiscal regime governing the extractive industries. This information must include a summary description of the fiscal regime, including the level of fiscal devolution, an overview of the relevant laws and regulations, [a description of the different types of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals](#), and information on the roles and responsibilities of the relevant government agencies.
- b) Where the government is undertaking reforms, the multi-stakeholder group is encouraged to ensure that these are documented.

2.4 Contracts.

- b) It is a requirement that the EITI Report documents the government's policy on disclosure of contracts

⁶ IC Paper 34-4 Opportunities for improving licensing transparency

and licenses that govern the exploration and exploitation of oil, gas and minerals. This should include: ~~relevant legal provisions, actual disclosure practices~~

i) A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses, including whether it requires or prohibits disclosure of contracts and licenses. If there is no existing legislation, an explanation of where the government policy is embodied should be included, and the multi-stakeholder group should document its discussion on what constitutes government policy on contract disclosures. ~~and Any reforms that are relevant to the disclosure of contracts and licenses planned or underway should be documented.~~

ii) An overview of which contracts and licenses are publicly available. ~~Where applicable, The EITI Report should provide an overview of the a list of all active contracts and licenses that are indicating which are publicly available and which are not. For all published contracts and licenses it should, and include a reference or link to the location where the contract or license is these are published. If a contract or license is not published, the Report should state the reason why.~~

iii) Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.

The working group discussed further options for changes to Requirement 2.4.a in Annex A to reflect the emerging practices in implementing countries on contract disclosures. The Implementation Committee and the EITI Board may wish to discuss these with a view of agreeing on one of the options.

Background: Implementation has shown that EITI countries are increasingly publishing extractives contracts. At the same time, Validation has highlighted the way the requirement is currently framed and assessed can be misleading as it is first and foremost a measure of how transparent a government's policy and practice is with regards to contract transparency, and not a measure of how transparent the contracts in the country are.⁷

Proposal 5: Encouraging more granular production and export data

It is proposed that Requirement 3.2 and 3.3 are revised to reflect the emerging practice by implementing countries to disclose more granular data on production and exports.

3.2 Production.

Implementing countries must disclose production data for the fiscal year covered by the EITI Report, including total production volumes and the value of production by commodity, and, when relevant, by state/region. This could ~~be disaggregated by individual company or project and~~ include sources of the production data and information on how the production volumes and values disclosed in the EITI Report have been calculated.

3.3 Exports.

Implementing countries must disclose export data ~~by individual company or project~~ for the fiscal year covered by the EITI Report, including total export volumes and the value of exports by commodity, and, when relevant, by state/region of origin. This could ~~be disaggregated by individual company or project and~~

⁷ Board paper 40-2-A Annex A Contract Transparency Brief 2018 – review of findings from Validations

include sources of the export data and information on how the export volumes and values disclosed in the EITI Report have been calculated.

Background: Validation has shown that at least eight countries have collected and disclosed production data on a by company basis, and some countries are looking into disclosing production data by project.⁸ There are further opportunities to encourage more disaggregate export data where there is demand.

Proposal 6: Moving towards systematic disclosures and improved data assurances

It is proposed that Requirements 4.1 and 4.9 are revised to reflect the Board's decision on encouraging systematic disclosure and to address the findings from the *Independent Review of EITI Reports*. It is further proposed that minor edits are made throughout the Standard where there are references to 'EITI Report' to allow for flexibility to address reporting requirements through government and company systems. These proposals will be proposed in the final edited version of the revised Standard to be approved via circular subject to Board agreement to the proposed changes.

EITI Requirement 4.1 - Comprehensive disclosure of taxes and revenues

a) The EITI requires disclosure of all material payments by oil, gas and mining companies to governments ("payments") and all material revenues received by governments from oil, gas and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive and comprehensible manner. The expectation is that implementing countries will disclose the requisite information through routine government and corporate reporting (websites, annual reports etc.), with EITI Reports used to collate this information and address any concerns about gaps and data quality.

ba) ~~In advance of the Reporting process,~~ The multi-stakeholder group is required to agree which payments and revenues are material and therefore must be disclosed, including appropriate materiality definitions and thresholds. Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the disclosures.

A description of each revenue stream, related materiality definitions and thresholds should be disclosed. In establishing materiality definitions and thresholds, the multi-stakeholder group should consider the size of the revenue streams relative to total revenues. The multi-stakeholder group should document the options considered and the rationale for establishing the definitions and thresholds

cb) The following revenue streams should be included:

- i. The host government's production entitlement (such as profit oil)
- ii. National state-owned company production entitlement
- iii. Profits taxes
- iv. Royalties
- v. Dividends
- vi. Bonuses, such as signature, discovery and production bonuses

⁸ Malawi, Mali, Papua New Guinea, Senegal, Seychelles, Tanzania and Togo. Zambia EITI is undertaking efforts to disclose production data at a project level.

vii. License fees, rental fees, entry fees and other considerations for licences and/or concessions

viii. Any other significant payments and material benefit to government

Any revenue streams or benefits should only be excluded where they are not applicable or where the multi-stakeholder group agrees that their omission will not materially affect the comprehensiveness of the EITI Report.

c) Implementing countries 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. All companies making material payments to the government are required to comprehensively disclose these payments in accordance with the agreed scope. An entity should only be exempted from reporting if it can be demonstrated that its payments and revenues are not material. All government entities receiving material revenues are required to comprehensively disclose these revenues in accordance with the agreed scope.

d) [All government entities receiving material revenues are required to comprehensively disclose these revenues in accordance with the agreed scope.](#) Unless there are significant practical barriers, the government is additionally required to provide aggregate information about the amount of total revenues received from each of the benefit streams agreed in the scope of the EITI Report, including revenues that fall below agreed materiality thresholds. Where this data is not available, the Independent Administrator should draw on any relevant data and estimates from other sources in order to provide a comprehensive account of the total government revenues.

e) [All companies making material payments to the government are required to comprehensively disclose these payments in accordance with the agreed scope. An entity should only be exempted from reporting if it can be demonstrated that its payments and revenues are not material.](#)

~~Implementing countries 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.~~

EITI Requirement 4.9 - Data quality and assurance

a) The EITI requires an assessment of whether the payments and revenues are subject to credible, independent audit, applying international auditing standards. [The expectation is that government and company disclosures as per Requirement 4 are subject to credible, independent audit, applying international auditing standards. The expectation is that disclosures as per Requirement 4 will include an explanation of the underlying audit and assurance procedures that the data has been subject to, with public access to the supporting documentation.](#)

c) [The multi-stakeholder group is required to agree a procedure to address data quality and assurance based on a standard procedure endorsed by the EITI Board. The MSG is required to apply the standard procedure without any material deviations. Should the multi-stakeholder group wish to deviate from the standard procedures, approval from the EITI Board must be sought in advance. The request from the MSG should address: \(i\) the rationale for deviating from the Standard procedure; \(ii\) whether there is routine disclosure of the data required by the EITI Standard in requisite detail; \(iii\) whether the financial data is subject to credible, independent audit, applying international standards, and \(iv\) whether there is sufficient](#)

retention of historical data.

~~b) It is a requirement that payments and revenues are reconciled by a credible, Independent Administrator, applying international auditing standards, and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.~~

~~i. The reconciliation of company payments and government revenues must be undertaken by an Independent Administrator applying international professional standards.~~

~~ii. The Independent Administrator must be perceived by the multi-stakeholder group to be credible, trustworthy and technically competent. The multi-stakeholder group should endorse the appointment of the Independent Administrator.~~

~~iii. The multi-stakeholder group and the Independent Administrator are required to agree a Terms of Reference for the EITI Report based on the standard Terms of Reference and the 'agreed upon procedure for EITI Reports' endorsed by the EITI Board. Should the multi-stakeholder group wish to adapt or deviate from these agreed upon procedures, approval from the EITI Board must be sought in advance (Requirement 8.1).~~

~~d) Where the assessment in 4.9(a) concludes that there is (i) routine disclosure of the data required by the EITI Standard in requisite detail, and (ii) that the financial data is subject to credible, independent audit, applying international standards, the multi-stakeholder group may seek Board approval to mainstream EITI implementation in accordance with the 'Agreed upon procedure for mainstreamed disclosures'. Without such prior approval, adherence to 4.9.b is required.~~

Background: The EITI Board agreed to encourage countries to move towards systematic disclosures and to undertake a review of reconciliation.⁹ The review recommends: 1) Refinements to requirement 4.1 on “comprehensive disclosure of taxes and revenues” to reflect the Board’s decision on encouraging systematic disclosure; and 2) Refinements to requirement 4.9 on “data quality and assurance” to reflect the Board’s decision on encouraging systematic disclosure. It is proposed that Requirement 4.9 is simplified, with additional detail to be provided in standardised procedures that could be adopted by multi-stakeholder groups (MSGs) without prior Board approval. The refinements also note the existing scope for MSGs to propose alternative procedures, subject to Board approval.

This approach focuses on clarifying existing Board decisions and procedures, while providing flexibility for the Board to consider emerging opportunities to strengthen EITI reporting. This could include commissioning further research and piloting alternative approaches in implementing countries. The refinements proposed would not alter the existing standardised procedures or modify the central role of MSGs in overseeing EITI implementation.

Proposal 7: Reflecting progress on commodity trading transparency

It is proposed that Requirement 4.2 is revised to reflect the progress made through the targeted efforts on commodity trading and encourage systematic disclosures by implementing countries, state-owned enterprises and buying companies. The proposed changes are pending further comments from the

⁹ BP-39-4-A: <https://eiti.org/document/board-agreed-on-recommendations-on-systematic-disclosures>

commodity trading working group.

4.2 Sale of the state's share of production or other revenues collected in kind.

a) Where the sale of the state's share of production of oil, gas and/or mineral resources or other revenues collected in kind is material, the government, including state-owned enterprises, are required to disclose the volumes received and sold by the state (or third parties appointed by the state to sell on their behalf), the revenues received from the sale, and the revenues transferred to the state from the proceeds of oil, gas and minerals sold. ~~disclose the revenues received~~ This could include payments related to swap agreements and resource-backed loans.

The published data must be disaggregated by individual buying company

["and to levels commensurate with the reporting of other payments and revenue streams (4.7). Reporting could also break down disclosures by the type of product, ~~market, sale volume, price individual contract or individual sale (i.e. cargo or shipment)]" OR ["and to levels commensurate with the reporting of other payments and revenue streams (4.7). and individual sale (i.e. cargo or shipment) and could be further disaggregated by the type of product or price, ~~market, sale volume"~~].~~

The disclosures could for each sale include ownership of the of product sold, the nature of the contract (e.g. spot or term), pricing options and realised prices.

b) Implementing countries including state-owned enterprises are encouraged to disclose a description of the process for selecting the buying companies, the technical and financial criteria used to make the selection, the list of selected buying companies, any material deviations from the applicable legal and regulatory framework governing the selection of buying companies, and the related sales agreements.

c) Companies buying oil, gas and minerals from the state, including state-owned enterprises (or third parties appointed by the state to sell on their behalf), are encouraged to disclose volumes received from the state or state-owned enterprise, payments made for the purchase of oil, gas and solid minerals and value of the product delivered at time of purchase. This could include payments related to swap agreements and resource-backed loans.

The published data could be disaggregated by individual seller, contract, price or sale.

The disclosures could for each sale include information on the nature of the contract (e.g. spot or term), pricing options, realised prices and load port.

d) Where there are concerns related to data reliability and where practically feasible, the multi-stakeholder group should consider further efforts to address any gaps, inconsistencies and irregularities in the information disclosed. ~~is encouraged to task the Independent Administrator with reconciling the volumes sold and revenues received by including the buying companies in the reporting process.~~

Background: A targeted effort on commodity trading transparency was established by the EITI Board in October 2015 to address some of the challenges identified in implementing Requirement 4.2. These early experiences showed that while it is relatively easy to obtain disclosures of the volumes of in-kind payments received by SOEs, it is more challenging to get SOEs to disclose the volumes that are selling on behalf of the state, and how these revenues were managed. The targeted effort has resulted in significantly more

granular disclosures related to oil sales.¹⁰ Some challenges in how to apply the requirement, in particular how the sale of equity oil should be treated as well as how to define a “buying company” have been identified.

Proposal 8: Clarifying the EITI’s approach to project-level reporting (Annex B)

It is proposed that Requirement 4.7 is revised to reflect the Board’ decision on project-level disclosures, guidance developed and emerging practice. The working group considered two options outlined in Annex D and agreed one preferred option.

4.7 Level of disaggregation.

~~The multi-stakeholder group is required to agree the level of disaggregation for the publication of data. It is required that EITI data is disaggregated presented by individual project, company, government entity and revenue stream. Reporting at project level is required, provided that it is consistent with the United States Securities and Exchange Commission rules and the forthcoming European Union requirements.~~

For the purpose of EITI reporting, a project is defined as operational activities that are governed by a single contract, license, lease, concession, or similar legal agreement, and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, the multi-stakeholder group must clearly identify and document which instances are considered a single project.

Substantially interconnected agreements are a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements with substantially similar terms that are signed with a government, giving rise to payment liabilities. Such agreements can be governed by a single contract, joint venture, production sharing agreement, or other overarching legal agreement.

Where a payment covered by the scope of EITI reporting is levied at entity level rather than at project level, the company may disclose the payment at the entity level.

Background: The Board reaffirmed in 2017 that project-level reporting is required for all reports covering fiscal years ending on or after 31 December 2018¹¹, and agreed guidance and templates for project-level reporting.¹² To reflect this decision, guidance and emerging practice it is proposed that the requirement is revised to ensure consistency with globally applicable mandatory payment disclosure rules. Reporting by project would be required and implementing countries would need to adopt the project level definition and reporting of the EU Accounting Directive. It is important to note that the definition of project found in the EU Accounting Directive was designed to apply to a company reporting in all countries of operation and therefore allows some flexibility. The guidance note on project-level reporting advises that for the purposes of EITI reporting MSGs should follow the guiding principle that *project level payments should be reported in relation to the legal agreement which forms the basis for payment liabilities with the government.*

¹³Implementing countries that have been identified so far as collecting payment data on a project level through EITI reporting in the current reporting cycle have adopted definitions that are in line with this approach.¹⁴

¹⁰ BP 41-4-2

¹¹ BP 36-4-B Project level reporting: <https://eiti.org/BP36>

¹² Guidance note 29 on project-level reporting, including reporting templates: <https://eiti.org/GN29>

¹³ Guidance note 29, p.4: <https://eiti.org/GN29>

¹⁴ Colombia, Trinidad and Tobago and Zambia.

Proposal 9: Reflecting emerging practices on local level reporting

It is proposed that Requirement 5.2 is revised to reflect the progress made in countries on issues related to subnational transfers and revenue management and expenditures.

5.2 Subnational transfers.

- a) Where transfers between national and subnational government entities are related to revenues generated by the extractive industries and are mandated by a national constitution, statute or other revenue sharing mechanism, the multi-stakeholder group is required to ensure that material transfers are disclosed. Implementing countries 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 actual amount that was transferred between the central government and each relevant subnational entity. The multi-stakeholder group is encouraged to reconcile these transfers. Where there are constitutional or significant practical barriers to the participation of subnational government entities, the multi-stakeholder group may seek adapted implementation in accordance with Requirement 8.1.
- b) The multi-stakeholder group is encouraged to ensure that any material discretionary or ad hoc transfers are also disclosed and where possible reconciled, [and to report on how extractive revenues earmarked for specific programmes or investments at the subnational level are managed.](#)

Alternatively, the Implementation Committee could consider recommending revising Requirement 5.3 to make this a required, rather than encouraged requirement.

Proposal 10: Updates to reflect increasing demand for environmental reporting

The EITI Principles emphasise that natural resource wealth should be an engine for sustainable economic growth. Although the EITI Standard does not directly require disclosures of environmental policies, management and practices, at least 28 countries have decided to cover these aspects as part of their EITI reporting. Considering this fact and overall growing demand for information on environmental impact and risks, the EITI work plan for 2019 outlines plans to conduct consultations with relevant stakeholders in order to further investigate the linkages between the EITI's and environmental policies as well as analyse whether and how environmental reporting can complement existing EITI disclosures.

Members of the EITI working group on changes to the EITI Requirements raised different views on the extent to which the EITI should be encouraging or requiring disclosures related to environment or climate change. The proposals put forward have been supported by arguments that over half of EITI countries have already included environmental issues as part of their EITI reporting, that reporting burden risks can be mitigated by further discussion of which disclosures could be required versus encouraged, that the EITI Board decision to move towards mainstreaming is aimed at facilitating linkages with existing reporting, and that the reputational risk of the EITI appearing tone-deaf and outdated by ignoring environmental issues that are relevant to public debates on natural resource governance. Concerns raised by include adding reporting burden for implementing countries and industry, the need to better understand the full scope of any potential changes and avoid duplicating efforts with existing reporting frameworks and forums.

The Implementation Committee may wish to consider the options outlined in Annex C, and whether to share some or all of the options with the EITI Board for discussion or decision.

Proposal 11: Encouraging open data efforts

It is proposed that Requirements 7.1 and 7.2 are revised to further encourage MSGs to clarify the distinction between the two requirements and consider publishing EITI data in open formats. It is further proposed that the requirement to produce summary data files for each fiscal year covered by the EITI in accordance with the template approved by the EITI Board is made explicit.

7.1 Public debate.

The multi-stakeholder group must ensure that ~~the~~ **government and company disclosures and EITI Reports** ~~are~~ is-comprehensible, actively promoted, publicly accessible and contributes to public debate. Key audiences should include government, parliamentarians, civil society, companies and the media.

a) The multi-stakeholder group is required to:

i. **Ensure EITI reporting and systematically disclosed data are widely accessible and distributed.**

~~Produce paper copies of the EITI Report and ensure that they are widely distributed.~~ Where the report contains extensive data, e.g. voluminous files, the multi-stakeholder group is encouraged to **break this down into thematic reports and** to make this available online.

ii. Ensure that ~~the~~ EITI reporting **and systematically disclosed data are** is comprehensible, including by ensuring that it is written in a clear, accessible style and in appropriate languages **and consider access challenges and information needs of different genders and subgroups of citizens.**

iii. Ensure that outreach events, whether organised by government, civil society or companies, are undertaken to spread awareness of and facilitate dialogue about governance of extractive resources, building on EITI disclosures ~~the EITI Report~~ across the country **in a socially inclusive manner.**

d) **The multi-stakeholder group is encouraged to:**

i. Produce brief summary reports, with clear and balanced analysis of the information, ensuring that the authorship of different elements of EITI reporting is clearly stated.

ii. Summarise and compare the share of each revenue stream to the total amount of revenue that accrues to each respective level of government.

iii. 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 online disclosures** and encourage use of the information by citizens, the media, and others.

7.2 Data accessibility **and open data.**

Implementing countries should ensure that EITI disclosures are made publicly accessible. The multi-stakeholder group should:

a) Agree a clear **open data** policy on the access, release and re-use of EITI data. ~~Implementing countries~~ **Government agencies and companies** are encouraged publish **data EITI** under an open license, and to make users aware that information can be reused without prior consent.

b) Make ~~the~~ EITI Reports **and systematically disclosed data** available in an open data format (~~xlsx or csv~~)

online and publicise its availability. **Open data format means that data can be made accessible in CSV or Excel format and could contain all tables, charts and figures from EITI Reports.**

c) **Complete summary data files for each fiscal year covered by the EITI in accordance with the template approved by the EITI Board.**

d) The multi-stakeholder group is encouraged to make EITI reporting **and systematically disclosed data machine readable and inter-operable, and to code or tag EITI Reports and other data files so that the information can be compared with other publicly available data by adopting Board-approved EITI data standards.** As per Requirement 5.1(b), the multi-stakeholder group is encouraged to reference national revenue classification systems, and international standards such as the IMF Government Finance Statistics Manual, **the global Legal Entity Identifier System, the Harmonised System Codes Commodity Classification and United Nations System of National Accounts.**

~~e) Where legally and technically feasible, consider automated online disclosure of extractive revenues and payments by governments and companies on a continuous basis. This may include cases where extractive revenue data is already published regularly by government or where national taxation systems are trending towards online 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.~~

Background: The EITI Standard requires countries to publish EITI Reports that are “comprehensible, actively promoted, publicly accessible, and contribute to public debate” (EITI Requirement 7.1) and requires multi-stakeholder groups (MSG) to “agree a clear policy on the access, release and re-use of EITI data” (EITI Requirement 7.1.b). Lastly, Requirement 7.1.c states that multi-stakeholder groups are required to “make the EITI Report available in an open data format (xlsx or csv) online and publicise its availability.” The Standard Terms of Reference for Independent Administrators¹⁵ confirm that this entails completing the Board approved EITI summary data template at the end of each reporting cycle (section 5.4).

It is possible to make this requirement more explicit in Requirement 7.2 on data accessibility, and also more clearly distinguish between the requirements related to public debate (7.1) and data accessibility and open data (7.2). Members of the working group discussing the proposed changes to the EITI Requirements also highlighted the opportunity to further emphasise systematic disclosures across the value chain (not only revenue disclosures) as part of the EITI’s open data efforts.

Proposal 12: Strengthening the review of outcomes and impact from EITI implementation

It is proposed that Requirements 7.3 and 7.4 are revised to further encourage MSGs to consider recommendations from EITI reporting, and to introduce flexibility in how implementing countries choose to review the outcomes and impact of implementation.

7.3 Discrepancies and Recommendations from EITI reporting Reports.

With a view to strengthen the impact of EITI implementation on natural resource governance, as per

¹⁵ Standard Terms of Reference for Independent Administrator services, <https://eiti.org/document/standard-terms-of-reference-for-independent-administrator-services>.

Requirement 7.4, the multi-stakeholder group is required to take steps to act upon lessons learnt; to identify, investigate and address the causes of any discrepancies; and to consider the recommendations resulting from EITI reporting. [Based on the findings resulting from EITI disclosures, MSGs can consider agreeing recommendations for strengthening government systems and natural resource governance. Where appropriate, implementing countries are encouraged to follow up on such recommendations.](#)

7.4 Review the outcomes and impact of EITI implementation.

The multi-stakeholder group is required to review the outcomes and impact of EITI implementation on natural resource governance.

a) The multi-stakeholder group is required to [document their annual review of impact and outcomes of EITI implementation in an annual progress report or through other means agreed by the multi-stakeholder group. This should include any actions undertaken to address issues that the MSG has identified as priorities for EITI implementation.](#) ~~publish annual progress reports.~~

The annual [review of impact an outcomes](#) ~~progress reports~~ must include:

- i. A summary of EITI activities undertaken in the previous year [and an account of the outcomes of these activities.](#)
 - ii. An assessment of progress with meeting [and maintaining compliance with](#) each EITI Requirement, and any steps taken to exceed the requirements. This should include any actions undertaken to address issues [that the multi-stakeholder group has identified as priorities for EITI implementation. such as revenue management and expenditure \(5.3\), transportation payments \(4.4\), discretionary social expenditures \(6.1\), ad hoc subnational transfers \(5.2\), beneficial ownership \(2.5\) and contracts \(2.4\).](#)
 - iii. An overview of the multi-stakeholder group's responses to and progress made in addressing the recommendations from reconciliation and Validation in accordance with Requirement 7.3. The multi-stakeholder group is required to list each recommendation and the corresponding activities that have been undertaken to address the recommendations and the level of progress in implementing each recommendation. Where the government or the multi-stakeholder group has decided not to implement a recommendation, it is required that the multi-stakeholder group documents the rationale in the annual progress report.
 - iv. An assessment of progress with achieving the objectives set out in its work plan (Requirement 1.5), including the impact and outcomes of the stated objectives.
 - v. A narrative account of efforts to strengthen the impact of EITI implementation on natural resource governance, including any actions to extend the detail and scope of EITI reporting or to increase engagement with stakeholders.
 - vi. An evaluation of the implementation of [the beneficial ownership disclosure \(Requirement 2.5\) roadmap.](#)
- b) All stakeholders should be able to participate in [the production of the annual progress report and reviewing the impact of EITI implementation.](#) Civil society groups and industry involved in the EITI, particularly, but not only those serving on the multi-stakeholder group, should be able to provide feedback on the EITI process [and have their views reflected in the annual progress report.](#)

8.4 Annual progress report deadlines.

~~Multi-stakeholder groups are required to publish annual progress reports (Requirement 7.4). 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 EITI candidate countries. If the annual progress report is not published within six months of this deadline, i.e. by 31 December of the following year, the country will be suspended until the EITI Board is satisfied that the outstanding progress report has been published.~~

Background: A review of recommendations from EITI reporting found that there were opportunities for recommendations to further increase the focus on strengthening governance systems and availability of extractive sector information, in addition to improving EITI reporting. With regards to assessments of impact and outcomes of EITI implementation, several reviews of annual progress reports undertaken has shown that these reports often fail to capture the impact of EITI in implementing countries and are not a useful format to communicate the EITI to a wider audience.

Proposal 13: Clarifying requirements related to compliance and deadlines for implementing countries

It is proposed that Requirement 8 is revised to clarify contradictions between the wording in the Standard and Board decisions¹⁶. It is suggested to move Requirement 8 into a separate chapter of the EITI Standard called "Compliance and deadlines for implementing countries." The Board can also consider adding an additional overall category of progress for countries that have gone beyond what is required by the Standard in their EITI implementation (e.g. "Progress beyond the EITI Requirements", "Outstanding progress" or "Exceeding the EITI Standard".)

The Board may wish to consider a change in the nomenclature of "meaningful progress", given some stakeholders' concerns over possible confusion about the hierarchy between "meaningful progress" and "satisfactory progress" in several official EITI languages. The Board could consider substituting the term "fair progress" or "reasonable progress" in place of "meaningful progress". Given that a majority of EITI implementing countries have already completed their first Validation however, consideration of transitional arrangements to the new nomenclature would be required with a communication to explain the change. It is also proposed to further clarify the implications of suspension resulting from 'inadequate progress' to show this is temporary, pending progress on corrective actions.

Provision 3 of new chapter: EITI Validation deadlines and consequences.

a) Assessment of progress with EITI implementation

i) Assessment of each EITI Requirement. The Validation process will assess the country's progress in complying with each of the EITI Requirements. Detailed guidance on the types of evidence that are required in order to make an assessment on individual requirements is set out in the Validation Guide available at www.eiti.org. The level of progress and compliance with each individual EITI Requirement shall be indicated by applying one of the following designations:

Outstanding progress. In order for the EITI Board to conclude that a country has made outstanding progress, Validation needs to demonstrate that all aspects of the requirement, including 'expected',

¹⁶ BP-40-4-A

'encouraged' and 'recommended' aspects of the EITI Standard, have been implemented and that the broader objective of the requirement has been fulfilled through systematic disclosures in government and company systems.

Satisfactory progress. In order for the EITI Board to conclude that a country has made satisfactory progress, Validation needs to demonstrate that all aspects of the requirement have been implemented and that the broader objective of the requirement has been fulfilled.

Meaningful progress. In order for the EITI Board to conclude that a country has made meaningful progress, Validation needs to demonstrate that significant aspects of the requirement have been implemented and that the broader objective of the requirement is being fulfilled.

Inadequate progress. In order for the EITI Board to conclude that a country has made inadequate progress, Validation needs to demonstrate that significant aspects of the requirement have not been implemented and that the broader objective of the requirement is far from fulfilled.

No progress. In order for the EITI Board to conclude that a country has made no progress, Validation needs to demonstrate that all or nearly all aspects of the requirement remain outstanding, and that the broader objective of the requirement is not fulfilled.

c) Consequences of non-compliance

i. A country must achieve satisfactory progress on the following four requirements in order to avoid **temporary** suspension: government engagement (1.1), company engagement (1.2), civil society engagement (1.3) and timely EITI reporting (4.8). **A country must achieve meaningful progress or beyond on the any one of the requirements relating to stakeholder engagement (Requirements 1.1, 1.2 and 1.3) to avoid temporary suspension.** Where a country achieves less than meaningful progress on data quality (4.9) and data comprehensiveness (4.1), the MSG will be required to disclose a time-bound action plans for addressing weaknesses in data reliability and comprehensiveness. Progress with implementation of this plan will be taken into account in subsequent Validations.

ii. No progress. The country will be delisted.

iii. Inadequate progress. The country will be **temporarily** suspended and requested to undertake corrective actions until the second Validation. For the suspension to be lifted, the country must in its second Validation demonstrate at least meaningful progress.

If a country achieves meaningful progress in the second Validation, the procedure in provision (iv)(2) below applies. If the country achieves inadequate progress, in the second Validation the procedure in provision (ii) above applies.

iv. Meaningful progress. The country will be considered an EITI candidate and requested to undertake corrective actions until the second Validation.

(1) If the country achieves meaningful progress overall in the second Validation, but with no improvements on individual requirements, the country will be **temporarily** suspended and requested to undertake corrective actions until the third Validation. If the country achieves meaningful progress overall in the third Validation but with no improvements on individual requirements, the country will be delisted. If the country achieves meaningful progress overall in the third Validation, but with considerable

improvements across several individual requirements (i.e. several but not all requirements that were previously unmet have been met), the country will remain suspended. The Board will establish new corrective actions. Failure to meet all requirements in the fourth Validation will result in delisting.

(2) If the country achieves meaningful progress overall in the second Validation, and with considerable improvements across several individual requirements (i.e. several but not all requirements that were previously unmet have been met), the country will be considered an EITI candidate whilst undertaking corrective actions. If the country achieves meaningful progress overall in the third Validation, the country will be temporarily suspended. The Board will establish new corrective actions. Failure to meet all requirements in the fourth Validation will result in temporary suspension or delisting.

(3) If the country achieves inadequate progress in the second or subsequent Validations, the procedure in point (ii) above applies.

Background: At the 40th EITI Board meeting in Berlin, several Board members noted that the Board's clarification of requirement 8.3.c.i regarding civil society engagement resulted in a contradiction between the wording in the EITI Standard and Board practice.¹⁷ It was suggested that the Board consider revising requirement 8.3 to ensure that the Standard is clear. One suggestion was to more clearly differentiate between the requirements for EITI implementing countries and the Board's decision-making procedures (i.e. to separate most of requirement 8 into a separate chapter of the Standard). Remarks have often been made by Board and Implementation Committee members about how to better recognise countries when countries make efforts that go beyond the EITI Requirements to address encouraged aspects of the Standard or achieve work plan objectives outside the scope of the EITI Requirements.¹⁸

¹⁷ <https://eiti.org/document/board-clarified-application-of-requirement-83ci-civil-society-engagement>

¹⁸ Reflecting this concern, Board Paper 37-2-A *Is the EITI achieving its mission* posed the question of whether there needed to be a better understand of when to categorise implementation as going 'beyond' the requirements (p.28).

Annexes

Annex A: Proposed changes to Requirement 2.4 on contract disclosures

Annex B - Proposed changes to Requirement 4.1 and 4.9 on EITI reporting

Annex C - Proposed changes to Requirement 4.2 on commodity trading - January 2019

Annex D - Proposed changes to Requirement 4.7 on project-level reporting

Annex E - Proposed changes related to environment and energy transition