13th January 2020

Response to the EITI consultation on the future of Validation

OpenOwnership drives greater corporate transparency across the world by making it easy to publish and access high-quality, linked data about who owns companies.

OpenOwnership is pleased to contribute to the EITI consultation on the future of Validation. This response is focused on how reforms to Validation could improve compliance, impact and engagement around the beneficial ownership requirements of the EITI Standard effective from January 1 2020.

OpenOwnership recommends that the International Secretariat takes a long-term view of beneficial ownership implementation, and puts in place measures to track progress towards full compliance with the EITI beneficial ownership requirement. This will incentivise continued progress by implementing countries, and decrease the risk of pressure to water down the requirements.
1. Measuring compliance and impact

1.1. Should Validation continue to focus on assessing compliance with all EITI Requirements, applying the same expectations consistently across countries? If not, what should be the focus of Validation?
Consistent assessment is useful for beneficial ownership disclosures and the EITI Standard provides a baseline for disclosure that all countries can meet.

1.2. Should implementation priorities determined by the MSG be reflected in Validation? If yes, how?

No response.

1.3. Currently, Validation seeks to describe the impact of EITI implementation, but it is not reflected in the assessment of progress in implementing the EITI Standard outcome. How should Validation assess impact? Should this assessment affect the outcome of Validation?

An assessment of impact would be desirable in the long-term. In the longer term, EITI may want to consider broader assessments of effectiveness and/or outcomes, as used in the FATF Methodology. This would take into account the multiplicative effect of disclosures under the EITI Standard and embed the purpose of transparency into the validation process.

There is no standard way of assessing the impact of beneficial ownership disclosures and impact is likely to be context-dependent. Given the nascent state of the field and wide range of potential benefits, any approach to assessing the impact of EITI beneficial ownership disclosures should
be flexible and sensitive enough to measure diverse and indirect benefits occurring over multi-year timescales.

1.4 How could Validation encourage countries that are performing well against the EITI Standard to continue making progress beyond EITI Requirements?

For countries that are performing well on beneficial ownership requirements, the EITI Standard requirement on beneficial ownership could be broken down into its constituent parts and the presence of specific data points (name, nationality, PEP status etc) used to measure compliance and assist in assessing progress. The methodology questions outlined in EITI's paper on validating beneficial ownership requirements move towards this approach but could be more granular.

OpenOwnership is proposing a **Data and Policy Standard** that would benchmark high-quality beneficial ownership disclosure. Measurement against an extractives-specific version of this standard would assess each jurisdiction for compliance with the EITI Standard and provide scope to improve the quality and impact of data thereafter.

For example, for a single data point in the EITI Standard (in this case the disclosure of a beneficial owner's name) the Data and Policy Standard would:

- Check if the relevant field was contained in a jurisdiction’s disclosures.
- Contain additional data quality checks for that field with associated technical and business process issues (e.g. addressing language issues around foreign names);
- Contain checks for the presence of related disclosures (including data points not required by the EITI Standard) that would increase the effectiveness and impact of the data. Names are disclosed to identify individuals; other fields from the EITI Standard, like nationality, make this easier. Stable, unique identifiers for natural persons - not an EITI requirement - would be even more effective.
1.5 Should the EITI Validation process take into account the outcomes of country assessments conducted by other organisations, such as Financial Action Task Force? If yes, how?

Yes.

**FATF mutual evaluations** will be useful for assessing the underlying availability of beneficial ownership information. The assessments of Immediate Outcome 5 and Recommendation 24 will act as a contextual guide to the capacity and legal frameworks for the collection of beneficial ownership information.

However, mutual evaluation reports should be used with caution as a direct input to EITI validation results:

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FATF evaluations are not concerned with transparency and publication but with the existence and availability of beneficial ownership information to competent authorities. When validation makes use of FATF mutual evaluations, the focus should be on assessing: (i) the use of, and access to, existing sources of beneficial information, in particular whether beneficial ownership information is publicly available; (ii) progress on the collection of beneficial ownership information where it does not exist, or the systematisation/centralisation of information where beneficial ownership information is not accessible.

FATF mutual evaluations are undertaken on a 7-8 year cycle. In a fast-moving field like beneficial ownership, evaluations may be out-of-date at the time of an EITI validation. The long cycle may also provide an advantage to a jurisdiction evaluated towards the end of the cycle as the assessment methodology becomes more familiar.

OpenOwnership’s assessments against an extractives-specific version of its Data and Policy Standard, described in the response to Question 1.4, would provide an additional input into EITI validations.

2. Resourcing and roles

2.1 How would you improve the cost effectiveness of Validation, in terms of both financial cost and time?

No response.
2.2 Should self-assessment by implementing countries play a greater role in Validation? If yes, how should the consistency of assessments be ensured?

In general no: it is important to preserve the independence of assessments and to draw on specialist knowledge in fast-moving fields when conducting assessments. However, it may be useful to draw on self assessment self-assessment for harder to measure aspects like the impact of beneficial ownership disclosure.

2.3 Which entity should have the primary role in undertaking Validation, including conducting stakeholder consultations and preparing assessments (e.g. one Independent Validator across all countries, consultants specialised in certain regions or topics, the International Secretariat, the MSG or EITI stakeholders from other countries?)

The EITI International Secretariat is likely to be the best-placed entity to assess implementation of the EITI Standard, due to its concentration of cross-cutting knowledge. However, it may be useful to draw on specialist or regional consultants for training or direct implementation of parts of the validation process.

2.4 The International Secretariat provides implementation support to countries and leads Validation. What are the benefits and challenges of this dual role? What should be the role of the International Secretariat in Validation?

The International Secretariat’s dual role is a difficult balancing act.

The benefits are:

- The implementation support role creates an institutional repository for best practice and technical knowledge and an awareness of local context.
• The lead role in Validation means that the International Secretariat can offer a clear path from implementation to conformance with the Standard.

The challenges are:
• The institutional incentives to see progress in Validations is difficult to separate from the International Secretariat’s knowledge of the practical challenges of implementation.

There is a particular challenge with the beneficial ownership requirements of the EITI Standard, where progress may be slow or piecemeal because implementation is a new technical and legal area and implementation therefore has many dependencies that may be outside implementers’ control. OpenOwnership therefore recommends that the International Secretariat takes a long-term view of beneficial ownership implementation, tracking progress towards full compliance without diluting the beneficial ownership requirements of the Standard itself.

3. Structure, timing and consequences of Validation

3.1 Currently, countries are revalidated in 3 years, if they meet all EITI Requirements. If all requirements are not met, a subsequent Validation takes place in 3 to 18 months. Should Validation take place more or less frequently than currently? In what kind of situations particularly?

The current validation schedule is sensible for the beneficial ownership requirements of the Standard. Where beneficial ownership requirements have not been met, the timing of a subsequent validation should be estimated from a lightweight beneficial ownership roadmap.
3.2 The EITI Standard stipulates that lack of progress in Validation leads to temporary suspension (see image above). Should countries be allowed more or less time to make progress and meet the EITI Standard? If yes, in which cases?

There may be cases where a country has made substantive progress on beneficial ownership disclosure without publishing data. In these cases, it may make sense to recognise this.

The EITI’s assessment methodology for the beneficial ownership requirements of the Standard is nuanced if a country has made some progress with publication but contains fewer measurable outcomes of the foundational work that make beneficial ownership transparency possible. Given that implementation of beneficial ownership transparency can have many legal and technical dependencies, it may be useful to recognise underlying reforms that make disclosure possible. OpenOwnership’s policy and systems reviewers (which can be adapted for the extractives sector) could be a useful supplement to the Validation process if used by implementers to track their progress.

3.3 Currently Validation assesses progress in meeting all EITI Requirements in one country at a time. A different approach could be to assess the implementation of a set of requirements in several countries at once, for example related to state participation or licensing. Should Validation continue to look at one country at a time or rather focus on assessing progress on a certain topic across several countries at the same time?

Thematic and/or regional reviews of compliance with the EITI beneficial ownership requirement may be preferable, as this would allow a more effective deployment of specialist knowledge and allow practical assessment of interoperability of extractives-centred BO data.
3.4 Currently Validation results in an overall assessment of progress that reflects the assessment of individual requirements (‘no progress’ to ‘outstanding progress’). Are the levels of progress and the basis for determining them appropriate? If not, how would you improve them?

The assessments of individual requirements are a useful and appropriate gauge of progress. As stated in the answer to question 1.3 I, EITI may want to consider broader assessments of effectiveness and/or outcomes, as used in the FATF Methodology.

4. Assessing stakeholder engagement

4.1 How would you improve the efficiency and effectiveness of validating stakeholder engagement in the EITI?

No response.

4.2 Currently stakeholder engagement and disclosures are assessed in the same Validation process. Should these two assessments be separated?

No response.

4.3 The Validation of the civil society protocol assesses whether actors substantively engaged in the EITI can freely express themselves, operate, associate and participate in decision-making in relation to the EITI process. Should the Validation of the civil society protocol cover issues, activities and actors related to natural resource governance beyond the EITI process?

No response.
4.4 Currently the outcome of validating stakeholder engagement follows the same levels of progress as the assessment of disclosures (‘no progress’ to ‘outstanding progress’). Does this adequately encourage and capture progress? If not, how would you improve the progress markers on stakeholder engagement?

No response.

5. Please add any other comments or reflections on the current Validation model and areas for improvement not covered above.

No response.