

# Terms of Reference for the working group on transparency in commodity trading

# TOR FOR THE WORKING GROUP ON TRANSPARENCY IN COMMODITY TRADING

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## Introduction

The objective is to help the EITI become as effective a vehicle as possible for advancing the broader aim of improving transparency of commodity trading. To achieve this, a multi-stakeholder working group on transparency on commodity trading has been created. Working group participants are committed towards playing a demonstrable role in strengthening government and company systems, informing public debate, and enhancing trust.

The working group will draw together expertise and guide EITI and host governments implementing the EITI in their efforts to develop and implement disclosure requirements of government owned commodities. The EITI standard requires implementing countries to report material trading of in-kind revenues (EITI Requirement 4.2). The scope and level of detail of reporting is to be further specified by each Multi-stakeholder Group (MSG) in EITI implementing countries.

The working group will develop guidance and offer advice to MSGs in relevant EITI implementing countries helping address practical questions around level of disaggregation, frequency and timeliness of reporting, comprehensiveness, data reliability, format of publications and user-friendliness. It will also consider and directly contribute towards the availability of complementary and contextual information in accordance with EITI Requirements 2.6, 4.5 and 6.2 and will propose guidance for such contextual information, taking into account complementarities between EITI reporting with other sources of data, such as home country regulations or unilateral company disclosures as made by participating companies to the working group.

The EITI welcomes wide participation in the working group. Participation of commodity trading companies, civil society, host and home countries governments and National Oil Companies (NOCs), is essential.

## Background

In many resource-rich countries, governments derive their largest revenue from their share of production of oil, gas, minerals and metals received “in-kind” rather than as cash payments. These “in-

kind” revenues are often managed, by State Owned Enterprises (SOEs), which many times act simultaneously as commercial operators, holders of government equity stakes, regulators and providers of social goods like subsidised products. Information about the management of these “in-kind” revenues is in the public interest. Since the oil shock of the 1970s, many oil producing countries created specialised SOEs, also known as National Oil Companies (NOCs), which now control about 80% of the world oil reserves, according to the IMF. Fifteen of the world 20 largest oil companies are NOCs.

International organisations like the IMF, OECD and World Bank, and civil society organisations like the Natural Resource Governance Institute (NRGI) have highlighted the need for greater transparency in what are often weak governance mechanisms to support greater accountability amongst producing countries and their national oil companies.

Amidst growing calls for greater transparency and accountability in oil trading, the Extractive Industries Transparency Initiative (EITI) has emerged as a practical and cost-effective response. The EITI is a global standard that promotes openness and accountable management of natural resources in the commodity producing countries or “host countries”. A key feature is that the EITI is implemented by producer countries, emphasising collaboration between government, industry and civil society organisations.

The EITI Board adopted [the EITI Standard](#) in Sydney in May 2013, which includes provisions on transparency of the sales of oil, minerals and metals received in-kind by SOEs (See EITI Requirement 4.2 in Box 1). Building on emerging good practice from implementing countries, the Secretariat issued [Guidance Notes N° 18](#) on the participation of SOEs in EITI reporting in May 2014. Following the publication of the first sets of EITI reports under the Standard, the Secretariat published a brief on [the EITI, NOCs and the sale of the government’s oil](#) in March 2015. This brief, provides an overview of EITI reporting by state-owned, NOCs and oil traders. It sets out the importance of transparency and accountability in the “first trade” i.e. the sale of oil by NOCs to oil trading companies (see a list of NOCs in EITI implementing countries in Annex A).

Box 1: EITI Requirement 4.2

**4.2 Sale of the state’s share of production or other revenues collected in-kind.**

Where the sale of the state’s share of production or other revenues collected in-kind is material, the government, including state-owned enterprises, are required to disclose the volumes sold and revenues received. 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, price, market and sale volume. Where practically feasible, the multi-stakeholder group is encouraged to task the Independent Administrator with reconciling the volumes sold and revenues received by including the buying companies in the reporting process.

In collaboration with the Swiss government, the International Secretariat organised [a conference on transparency in commodity trading](#) in the margin of the 30<sup>th</sup> EITI Board meeting on 20 October 2015 in Berne, Switzerland. Stakeholders agreed in this meeting to establish a working group that will consider ways in which to take this issue of transparency in commodity trading forward (see Minutes of the

closed door in Annex B).

The EITI also requires that, where state participation in the extractive industries gives rise to material revenues for the State, the EITI Report must include: (1) An explanation of the prevailing rules and practices regarding the financial relationship between the government and state-owned enterprises (SOEs), (2) Disclosures from SOE(s) on their quasi-fiscal expenditures, and (3) Disclosures from the government and SOE(s) of their level of beneficial 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. These requirements are elaborated in requirement 2.6.

### Communication about the working group

In their public communications, working group members are encouraged to note the informal nature of the working group, emphasising that its recommendations are not binding to EITI implementing countries. The working group cannot be portrayed in anyway as a replacement for the ongoing and complementary processes of a) implementing the existing EITI requirements on the reporting of government sales and b) the debates on respective home country regulations.

This working group is set up by the EITI. Stakeholders supporting the EITI or with expertise on reporting of government sales are welcome to participate. It is an informal working group. Its advice and findings is not binding on the EITI or any countries implementing the EITI. None of the advice stemming from the working group is binding or is in any way committing anyone participating in the working group to act or report in a certain way. It does not commit participating organisations to any findings, guidance or policy.

### Deliverables

This advisory working group is expected to:

- (i) **Generate and share information on existing reporting practices** in order to achieve a better shared understanding of the practicalities of reporting on trading transactions. Various working group members and the EITI Secretariat would share responsibility for contributing materials for discussion. They would include:
  - a. A **brief update of the implementation of EITI requirement**, evaluating the timeliness, comprehensiveness and reliability of the disclosed information in implementing countries.
  - b. Information on current reporting practices by SOEs and governments.
  - c. Information on current reporting practices by trading companies within industry circles, so as to address the issue of efficiency and to reduce potential duplicative processes.
- (ii) Based on the above inputs, **produce a draft guidance note, submitted to the EITI Board for approval and reporting templates for EITI countries wishing or having to report on trades involving the host government. This guidance note is likely to address:**
  - a) options for level of disaggregation;
  - b) frequency and timeliness of reporting;
  - c) recommendations to MSGs on a methodology for defining materiality;

- d) recommendations on MSGs on quality assurance to ensure data reliability, including the implementation of payment reconciliations;
- e) guidance on format of publications and user-friendliness; and
- f) availability of complementary and contextual information to expand the usefulness of the payment data in accordance with EITI Requirements 2.6, 4.5 and 6.2.

The future of the working group, and potential further deliverables, will be decided following the successful completion of this first stage of activities.

### Time schedule

The working group is likely to assist and advise countries implementing requirement 4.2 for the forthcoming EITI reporting cycle. It is expected that members of the working groups will participate in conference calls, in person meetings, provide inputs to various materials to be developed by the working group.

A brief on existing reporting practices	No later than 31 January 2016
Draft guidance note following the adoption of a new Standard in Lima	No later than 1 April 2016.
In addition to the concrete deliverables defined above, the Working Group will also	
Advise MSGs in EITI implementing countries	January – December 2016.
Conduct outreach activities to commodity trading companies and companies	November 2015-March 2017
Submission of a report on the implementation of requirements applicable to SOEs and commodity trading companies	No later than 1 March 2017.

### Compositions of the working group

1	Ms Victoria ATTWOOD SCOTT, Mercuria	10	Ms Faith NWADISHI, PWYP, Nigeria
2	Mr Andrew GOWERS, Trafigura	11	Mr James NICHOLSON, Trafigura
3	Ms Siri FARSTAD, Statoil	12	Mr Jonathan Atkinson, DFID, UK
4	Ms Alexandra GILLIES, NRGi	13	Ms Kaiyin LI, Government of Singapore
5	Mr Lorenz KUMMER, SwissAid	14	Ms Monica RUBIOLLO, Swiss Government
6	Mr Jeremy Hutchinson, Shell	15	Ms Nahed Cherfa, Statoil
7	Mr Jonas Moberg, EITI	16	Ms Odile Roy De Puyfontaine, Vitol
8	Mr Dominic Emery, BP	17	Mr Stéphane Graber, STSA
9	Ms Faten H. Dawaf, SOMO	18	

### List of NOCs in EITI implementing countries

Not all NOCs are collecting or selling in-kind revenues on behalf of their governments. EITI requirement 4.2 is therefore not relevant in all these cases.

	EITI implementing Country	Name of the National Oil Company
1	Albania	Albpetrol
2	Azerbaijan	SOCAR
3	Cameroon	Societe National des Hydrocarbures (SNH)
4	Chad	Societe National des Hydrocarbures du Tchad (SHT)
5	Colombia	Ecopetrol
6	Cote d'Ivoire	Petroci
7	DRC	Cohydro
8	Ghana	GNPC
9	Indonesia	PT Pertamina
10	Iraq	SOMO, Northern Oil Company, Midland Oil Company, South Oil Company, Missan Oil Company.
11	Kazakhstan	KazMunayGaz and KazTransOil, as part of National Fund Samruk-Kazyna
12	Mauritania	SMHPM
13	Mozambique	ENH
14	Myanmar	Myanma Oil and Gas Enterprise (MOGE)
15	Nigeria	NNPC
16	Norway	Statoil
17	Peru	PETROPERU
18	Philippines	PNOC
19	Rep. of Congo	SNPC
20	Senegal	Petrosen
21	Seychelles	PetroSeychelles, Seypec (downstream)
22	Timor Leste	Timor GAP
23	Trinidad and Tobago	Petrotrin
24	Yemen	YPC, YICOM and YGC

## Minutes of the meeting on transparency in commodity trading

Berne, TUESDAY 20 OCTOBER 2015

An introduction was provided for the closed door roundtable, which was considered a private meeting,

noting that the Chatham House rule would not apply. As no formal agenda was circulated ahead of the meeting, it was agreed that participants will briefly reflect on the preceding public meeting, discuss the possibility of a working group and consider next steps.

## **1. Brief reflection on the public meeting**

Participants welcomed the preceding [public meeting on transparency in commodity trading](#), jointly organised by the Swiss government and the EITI International Secretariat. The meeting was well attended and the discussions were substantive, yet calm and constructive, despite the opposing views that were expressed on the need for greater transparency in commodity trading. Others underscored the need to move forward on this agenda, noting the need for detailed, relevant and useable information by citizens in resource rich countries that would otherwise not be available to them. An example from Nigeria was highlighted.

While some trading companies were in favour of making the EITI more relevant to the trading industry, selected trading company participants questioned the purpose and usefulness of data disclosures. Concerns were also raised regarding lack of clarity and the changing nature of current EITI disclosure requirements, and the resultant short-term uncertainty and potential burden of reporting. Companies supporting the EITI emphasised that the EITI, as a forum for dialogue between companies, governments and civil society at the national and international levels, was unique and could be useful to address some of these issues.

Civil society representatives made it clear that they considered EITI requirement 4.2 insufficient. They expressed support for reporting of oil sales by National Oil Companies (NOCs) to be broken down by "sale". Reference was made to the brief published by the Berne Declaration, NRG1 and SwissAid, which outlined their arguments.

Given the increasing implementation of Requirement 4.2 of the EITI Standard, it was noted that this was an opportune time for guidance to be developed for this type of implementation, including the development of good practice for reporting templates that could be applied for reconciliation under Requirement 4.2. It was noted that compliance would be simplified if a unique set of reporting templates were developed for all countries seeking to implement reconciliation under Requirement 4.2, although this was widely agreed to be unrealistic.

The example of Iraq was mentioned illustrating where an implementing country required, by law, reconciliation of the national oil company's trading operations. This provided a clear indication, in a national context, of how such disclosures could be undertaken. Trading companies expressed interest for more examples of reconciliation at the country level noting the specific Iraqi context, which is dissimilar to many other EITI implementing countries.

It was also noted that establishing the revenue flows received by NOCs, and whether sales of in-kind revenues were conducted in the public interest, was necessary to mitigate risks of corruption. The example of NNPC's oil sales highlighted the need for greater disclosure to ensure citizens' ability to keep NOCs accountable. Representatives of companies welcomed the efforts and were willing to participate and contribute ideas on how to ensure comprehensive disclosure while protecting commercially sensitive information.

## **2. Establishing a working group**

The EITI International Secretariat proposed and committed to establish a working group and invited participants to join this group. The EITI would seek input and suggest Terms of Reference (TOR) for this group. The aim would be to provide guidance on different approaches to disclose oil sales, in particular refinement and implementation of Requirement 4.2. Participants discussed whether the focus of the proposed working group would be on Requirement 4.2 or more broadly on the issue of disclosure requirements at national and international level. It was decided to leave scope for this in the TOR.

To be credible, it was agreed that the composition of the working group should be multi-stakeholder.

It was proposed that the working group would feed information and a limited number of documents to a larger group of interested parties, as constituents of those participating on the working group.

The following participants expressed interest in participating in the working group:

- Alan McLean from Shell
- Andrew Gowers from Trafigura
- Alexandra Gillies from NRGi
- Stephan Graber from STSA
- Ivo Germann, SECO, Swiss Government
- Faith Nwadishi, PWYP Nigeria

Others would inform the EITI Secretariat whether they wish to participate in the working group.

The International Secretariat would seek the participation of representatives of several National Oil Companies.

Finally, it was agreed that the proposed TOR for the working group should include proposed guidelines for communications related to the operations of the working group, in a bid both to manage public expectations and to clarify the limited purposes of the working group.

### **3. Action items and next steps**

The International Secretariat to circulate and seek approval for the minutes of the meeting.

Participants to provide input to the TORs for the Working group. The International Secretariat to share draft TORs for the working group.

The International Secretariat to establish a list of contacts for the wider group of interested parties, to whom select documents could be disseminated.

Participants to inform the EITI Secretariat, whether they wish to partake in the working group.

## Participants list

Ms Victoria ATTWOOD SCOTT, Mercuria

Mr Bady BALDÉ, EITI

Mr Thomas BENNINGER, Swiss Gouvernement

Mr Stuart BROOKS, Chevron

Mr Andrew GOWERS, Trafigura

Mr Michael FAHRBACH, Glencore

Ms Siri FARSTAD, Statoil

Mr David FRANSEN, Vitol

Mr Nicholas GARRETT, RCS Global

Mr Ivo GERMANN, Swiss Government

Ms Alexandra GILLIES, NRG

Mr Greg GOULD, US Government

Mr Alex GORDY, EITI

Mr Stéphane Graber, STSA

Mr Lorenz KUMMER, SwissAid

Mr Alan McLEAN, Shell

Mr Jonas Moberg, EITI

Mr Paul MUSSENDEN, U.S. Department of the Interior, US

Faith NWADISHI, PWYP, Nigeria

Mr James NICHOLSON, Trafigura

Ms Monica RUBIOLO, Swiss Government

Mr Urs RYBI, the Bern Declaration

Ms Andrea SCHLAEPFER, Vitol

Mr Colin TINTO, Global Witness