Model Terms of Reference for flexible EITI reporting 2022

Approved by the [MSG] on [date]

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# Background

This document is a model Terms of Reference (TOR) for EITI reporting, aimed at encouraging implementing countries to ensure that reports published by 31 December 2022 are timely and forward-looking.[[1]](#footnote-2) The TORs set out the work to be undertaken by the MSG and the national secretariat. **The MSG should agree the terms of reference for the EITI reporting process, drawing on the objectives and agreed scope of the EITI as set out in the MSG’s workplan.** Depending on the capacity of the MSG and national secretariat, the MSG may wish to procure a consultant to support the MSG in collating and analysing information from primary sources, addressing any gaps in publicly accessible information and addressing any stakeholder concerns about data quality.

The more flexible approach to EITI reporting is intended to ensure that disclosures are more timely and can help inform ongoing discussions on the governance of the extractive industries, including the impact of or recovery from the Covid-19 pandemic, the implications of the energy transition or other significant developments impacting the industry. It allows countries to deviate from the standard procedure for EITI reporting including reconciliation (Requirement 4.9.b) for reports published by 31 December 2022, by disclosing information relevant to inform ongoing discussions on the impact of these events. The EITI’s 2021 Validation model supports MSGs playing a leading role in EITI disclosures by requiring them to prepare a data collection template on Transparency, covering Requirements 2-6 of the EITI Standard, that builds on existing systematic disclosures.[[2]](#footnote-3) The data collection template on Transparency provides a tool for the MSG’s oversight of disclosures beyond Validation.

The TOR includes sections [bracketed and highlighted in blue] that should be completed by the MSG in order to adapt the TOR to the specific circumstances in the country.

# Objectives and expectations of reporting

The MSG could consider agreeing reporting objectives that reflect national priorities for the extractive industries and are in line with their work plans, to ensure that it can help facilitate efforts to undertake sound policy decisions and informed public debate (Phase 1). Some of these reporting objectives could relate to providing timely and relevant information that can help inform ongoing discussions on measures to address the impact of or recovery from the Covid-19 pandemic or the implications of the energy transition. Drawing on and complementing systematically disclosed information, the reporting could aim at informing ongoing public debate related to revenue and tax collection, corruption risks, projected revenues and the broader sector outlook in the country.

The MSG should agree and specify how the reporting will be prepared and who will be responsible for the different phases set out below. The division of responsibilities and task will vary from country to country, depending on the capacities and resources available.

The MSG is expected to:

* Agree objectives and scope of reporting
* Oversee and contribute to compiling, reviewing and analysing information collected
* Provide an assessment of the quality and reliability of the disclosures
* [Any other responsibilities or activities should be added here.]

The national secretariat may be expected to:

* Support the MSG in compiling, reviewing and analysing information collected from government and company reporting entities. The secretariat may use the Validation data collection template on Transparency as a tool for systematically mapping systematic disclosures.
* [In cases where national secretariat will be preparing reporting, the expected tasks should be listed here. The International Secretariat will be available to provide technical assistance to national secretariats and MSGs.
* Any other responsibilities or activities should be added here]

If the MSG has decided to procure consultancy services, the consultant may be expected to:

* Support the MSG/national secretariat in compiling, reviewing and analysing information collected from government and company reporting entities, using the Validation data collection template on Transparency as a tool for systematically mapping systematic disclosures.
* Prepare a draft and final report for the MSGs input and approval.
* Support the MSG/national secretariat in preparing thematic or summary reports, to help facilitate and inform ongoing policy debates.
* [Any other responsibilities or deliverables should be added here.]

All reporting activities should be undertaken in a way that safeguards public health.

# Scope of reporting, tasks and expected deliverables

**Phase 1: Setting objectives for reporting**

Objective: Establish the overall objectives for the reporting process, based on work plan objectives and national priorities. The MSG should consider how the reporting can help inform ongoing discussions on measures to address the impact of or recovery from the Covid-19 pandemic or the implications of the energy transition.[[3]](#footnote-4)

Relevant information on sector developments and industry outlook in light of Covid-19 and the energy transition could include:

* [Informing the public about the impact of Covid-19 or the energy transition on the legal and fiscal terms governing the extractive industries.
* Providing timely and reliable information about actual and projected revenues from the extractive industries in light of the energy transition.
* Identifying and mitigating possible corruption risks across the extractives value chain.
* Monitoring revenue transfers, payments and benefits to local communities.
* Strengthening timely and regular government and company disclosures in accordance with the EITI Standard.
* Providing an assessment of the comprehensiveness and reliability of the disclosures and recommendations regarding audit practices and reforms needed to bring them in line with international standards.
* Supporting the MSG in agreeing recommendations for strengthening government systems and natural resource governance.
* Progress in addressing recommendations from previous EITI reporting or corrective actions from Validation.
* Any other objectives as agreed by the MSG.]

**Phase 2: Identifying scope**

Objective: Identify the scope of reporting (overview of applicable financial and non-financial disclosures in accordance with EITI Requirements 2-6) and fiscal year(s) to be covered by the disclosures.

1. **Identify the information to be disclosed to meet EITI Requirements 2-6.** In particular, MSGs should seek to address previous gaps identified in EITI Reports and Validation.
2. **Agree the fiscal year(s) to be covered by the disclosures**. Revenue, production and other data should cover fiscal year 2020 and to the extent possible 2021. Some countries may be able to provide information for 2022.
3. **Agree what constitutes a material revenue stream and which entities make and receive material payments**. In establishing materiality definitions and thresholds, the MSG could consider the size of the revenue streams and the payments by companies relative to the governments total revenues. Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the EITI Report. MSGs may wish to use materiality thresholds used in previous reporting periods, or adjust these to focus on the most important revenue streams and reporting entities. The MSG may wish to consult guidance on defining materiality or seek advice from the International Secretariat.[[4]](#footnote-5)
4. **Agree the scope of additional data collection, assurances and analysis to be undertaken,** to provide relevant information on sector developments and industry outlook in light of Covid-19 and the energy transition (in accordance with the second column in Table 1).

***Table 1 – Information to be disclosed or provided in the EITI Report***

|  |  |
| --- | --- |
| **Information to be disclosed or provided in the EITI Report[[5]](#footnote-6)** | **Additional data collection, quality assurances and analysis to be undertaken, in accordance with objectives agreed by the MSG** |
| Legal framework and fiscal regime in accordance with EITI Requirement 2.1. | The MSG could consider also covering:* Legal or regulatory changes in response to Covid-19 or the energy transition
* Adjustments to the fiscal regime, incentives or relief requested by or given to companies (e.g. force majeure, modified consultation)
* Energy transition or critical minerals policies developed by the government or Nationally Determined Contribution (NDC) commitments related to the extractive industries
 |
| Information about procedures and practice of allocating licenses in accordance with EITI Requirement 2.2.[[6]](#footnote-7),  | The MSG could consider also covering:* Any new licence/contract awarded or transferred in 2020 and 2021. Some countries may be able to provide information for early 2022
* Delays or postponements of license or contracts awards or extensions of existing licenses
* Analysis on trends in license awards for fossil fuel or critical minerals projects in light of the energy transition.
 |
| Information about license holders in accordance with EITI Requirement 2.3.[[7]](#footnote-8) | The MSG could consider also covering:* Suspended licenses or operations in view of the Covid-19 pandemic or the energy transition.
 |
| Any information requested by the MSG on contracts in accordance with EITI Requirement 2.4 [[8]](#footnote-9) | The MSG could consider also covering:* Changes in licensing and contract negotiations or amendments to contracts, revisions on work schedules if they are annexed to the contract.
 |
| Any information requested by the MSG on beneficial ownership in accordance with EITI Requirement 2.5 [[9]](#footnote-10) | * …
 |
| Information regarding state participation in the extractive industries, payments to and from state owned enterprises and any quasi-fiscal expenditures in accordance with EITI Requirement 2.6, 4.5 and 6.2.[[10]](#footnote-11) | The MSG could consider also covering:* Changes in state participation and policies for state-owned enterprises in light of the Covid-19 crisis or energy transition.
* Ad-hoc SOE payments and transfers related to the Covid-19 crisis.
* Any changes in loans and loan guarantees from the state and SOEs due to the impact of the Covid-19 crisis or the energy transition.
* Amendments to the rules and practices related to SOEs’ operating and capital expenditures, procurement, subcontracting and corporate governance in light of the Covid-19 crisis or the energy transition.
* Analysis on the value of fossil fuel subsidies channelled through SOEs.
* Additional SOE quasi-fiscal expenditures agreed in response to the impact of the Covid-19 crisis.
 |
| An overview of the extractive industries, including any significant exploration activities in accordance with EITI Requirement 3.1. | The MSG could consider also covering:* A narrative overview of sector developments and industry outlook in light of Covid-19 and the energy transition.
* Effects of Covid-19 and the energy transition on exploration or development plans.
* Overview of estimated and proved reserves.
 |
| Production and export data in accordance with EITI Requirement 3.2 and 3.3. | The MSG could consider also covering:* Potential effects of Covid-19 or the energy transition projected and actual production and export, disaggregated by commodity, company and project
* Production volumes and values disaggregated by company and project for 202018 and to the extent possible 2021. Some countries may be able to provide information for early 2022.
 |
| Comprehensive unilateral disclosures of taxes and revenues from the extractive industries, disaggregated by project, in accordance with Requirement 4.1 and 4.7.  | The MSG could consider also covering:* Potential effects of Covid-19 or the energy transition on projected and actual revenues and taxes from the extractive industries for 2020 and to the extent possible 202119. Some countries may be able to provide information for early 2022.
* Analysis of potentially foregone revenues where fiscal relief has been provided or is being considered to the industry.

The MSG could consider using Parts 3, 4 and 5 in the Validation data collection template on Transparency (which are the same as in the summary data template) to compile and disclose revenue data disaggregated by project.  |
| Information about the sale of the state’s share of production or other revenues collected in-kind, in accordance with Requirement 4.2. | The MSG could consider also covering:* Effects of Covid-19 and the declining commodity prices on expected revenues from the sale of the state’s share of production and other revenues collected in-kind. This could include analysis of the potentially foregone revenues from commodity sales as a result of the declining prices.
* Any changes in the management of proceeds of the sales of the state’s in-kind revenues due to the Covid-19 crisis, particularly when affecting remittances to the Treasury
 |
| Information about infrastructure provisions and barter arrangements, in accordance with Requirement 4.3. | The MSG could consider also covering:* New or renegotiated infrastructure agreements related to Covid-19 relief operations
* New or renegotiated resource-backed loans
 |
| Information about transportation revenues in accordance with Requirement 4.4. | The MSG could consider also covering:* Changes to extractive commodities transportation arrangements in light of the Covid-19 crisis and energy transition.
* Outlook for transportation arrangements, revenues and any relevant extractive industries supply chain disruptions in light of Covid-19 related movement restrictions or the energy transition.
 |
| Information about direct sub-national payments in accordance with Requirement 4.6. | The MSG could consider also covering:* Projected subnational direct payments and possible implications for local government budgets in light of the Covid-19 crisis and the possible impacts of the energy transition.
 |
| Information about the distribution of revenues from the extractive industries in accordance with EITI Requirement 5.1. | The MSG could consider also covering:* Budget re-alignments for extractive industry revenues earmarked for Covid-19 relief.
* Additional information on the debt sustainability of the government and public sector (including SOEs) in light of the Covid-19 crisis and possible impacts of the energy transition.
 |
| Information about sub-national transfers in accordance with Requirement 5.2. | The MSG could consider also covering:* Projected subnational transfers.
* Possible implications of the energy transition for local government budgets and local communities
* The management of subnational transfers by local governments and any changes in response to the Covid-19 crisis.
 |
| Any further information further information requested by the MSG on revenue management and expenditures in accordance with EITI Requirement 5.3. | The MSG could consider also covering:* National price and demand assumptions for oil, gas and minerals compared to forecasts by international organisations and companies .
* Revisions to revenue and budget projections (including breakeven commodity price assumptions).
* Potential effects of different energy transition scenarios on revenues from the extractive industry
* Potential implications of the energy transition for national spending, debt and use of sovereign wealth funds.
 |
| Information about social expenditure and environmental payments in accordance with Requirement 6.1. | The MSG could consider also covering:* Reforms in legal and contractual social expenditure requirements in light of the Covid-19 pandemic.
* Changes to companies’ social expenditure plans and possible impacts on local governments and local communities.
 |
| Information about the contribution of the extractive industries to the economy in accordance with EITI Requirement 6.3. | The MSG could consider also covering:* Impact of Covid-19 and the energy transition on exports and employment.
* Impact of the energy transition on the extractive sector and general economic outlook.
 |
| Any further information requested by the MSG on environmental impact of extractive activities in accordance with EITI Requirement 6.4. | The MSG could consider also covering:* Shifts in regulatory rules or enforcement related to environmental protection, climate mitigation, Free, Prior and Informed Consent and other consultations.
* Data on GHG emissions related to the extractive industries, at a company and project level if available.
 |
| [Add any other information that the MSG has agreed to include in the EITI Report] |  |

**Phase 3: Compile and collect data**

Objective: The purpose of the second phase of work is to first review what information required by the EITI and agreed by the MSG to be included in the scope of reporting (Table 1) is already publicly disclosed for the year under reporting, and to collect any additional information required to cover the gaps directly from government and company reporting entities. The Validation data collection template on Transparency allows MSGs to map sources of systematic disclosures of EITI data by government and companies, plan and oversee additional EITI reporting, including preparation of the summary data template, as well as prepare for Validation.

1. **Review and compile data accessible from public sources.** In accordance with the division of labour agreed by the MSG, [MSG, national secretariat or consultant] should review the existing information disclosed by government entities and companies.
2. **Collect additional data from reporting entities**. Based on the review of accessible information, the [MSG, national secretariat or consultant] should collect additional information from the reporting entities to address the gaps identified. This could entail:
	* Providing an overview of government agencies and/or companies that will be asked to provide information listed in Table 1**.** This should include government entities, including any SOEs and subnational government entities that receive payments which should be disclosed and in accordance with Requirements 4.1, 4.5 and 4.6.,companies, including SOEs, make material payments to the state and will be required to report, the EITI Validation data collection template on Transparency, which is consistent with the summary data template (Parts 3, 4 and 5), is a useful tool to list reporting entities and government revenues from them.[[11]](#footnote-12)
	* Designing reporting templates to collect any additional information that has not already been publicly disclosed for the year under reporting. Reporting templates can be designed to collect financial and non-financial information, to collect data from either government entities, SOEs and/or companies. The [MSG, national secretariat or consultant] can draft the templates for the MSG’s approval. The International Secretariat is available to provide support on designing reporting templates.
	* Agree the procedures for collecting this information including, where needed, waivers to address confidentiality constraints and/or provisions relating to safeguarding confidential information prior to the publication of the EITI Report. The International Secretariat is available to provide support on designing these procedures.
	* Distribute the reporting templates and collect the completed forms and associated supporting documentation directly from the participating reporting entities, as well as any other information that the MSG has agreed to collect in Table 1.
	* Contact the reporting entities directly to clarify any information gaps or discrepancies.

**Phase 4: Analysis and draft report.** The purpose of this phase is to first analyse the information collected in accordance with the objectives set for reporting in Phase 1 and as set out by the MSG in Table 1 and review the comprehensiveness and reliability of the data, and then to draft a report for the MSGs input.

1. **Analyse the data collected.** In accordance with the objectives set by the MSG for the reporting and as set out in Table 1, the [MSG, national secretariat or consultant] should analyse the information to ensure that the reporting will meet the agreed objectives. [Further specification of the kind of analysis to be undertaken that is not reflected in Table 1 can be included here.]
2. **Review the comprehensiveness and reliability of the financial data**. The [MSG, national secretariat or consultant] should review the comprehensiveness and reliability of the financial data covered in the reporting process as agreed by the MSG in Phase 2, and identify any gaps or weaknesses in reporting. The MSG should examine the audit and assurance procedures in government entities and companies participating in the EITI reporting process. This could include reviewing the statutory audit and assurance requirements for companies and government including the relevant laws, regulations and any reforms planned or underway, as well as any non-trivial deviations in practice in the period under review. It could further include assessing whether reporting entities had their financial statements audited in the financial year covered, the results of such audits, and whether the audited financial statements are publicly available as well as guidance on where they can be accessed. MSGs may refer to EITI guidance for further advice.[[12]](#footnote-13) MSGs may wish to consider developing a checklist for ensuring their detailed assessments of the strengths and weaknesses in the comprehensiveness and reliability of financial EITI data disclosed through the flexible approach, with support from the International Secretariat.

Where necessary, the MSG should discuss what additional work is needed to address concerns about the comprehensiveness and reliability of the disclosed data, in consultation with government, companies and the entities undertaking their statutory audits.

1. **Drafting the report**. The [MSG, national secretariat or consultant] should prepare a draft report that comprehensively compiles the information disclosed by the reporting entities, identifying any discrepancies, and provides other information or analysis requested by the MSG (in accordance with Phases 1 and 2). The draft EITI Report should include an explanation of the process for collecting, compiling and analysing the information, indicate the coverage of the report, and include the assessment of comprehensiveness and reliability of information. Any gaps or weaknesses identified should be disclosed in the report, including naming any entities that failed to submit information required by the EITI Standard (Requirements 2-6), and an assessment of whether this is likely to have had material impact on the comprehensiveness of the report. The information in the report should be clearly sourced. Where information is already being systematically disclosed, the report should clearly state where the information is publicly accessible.

Where previous EITI Reports or Validations have recommended corrective actions and reforms, the report could comment on the progress in implementing those measures. The MSG could agree recommendations for strengthening regular, timely and comprehensive disclosures by government entities and companies in the future, including any recommendations regarding audit practices and reforms needed to bring them in line with international standards, and where appropriate, recommendations for other extractive sector reforms related to improving natural resource governance.

**Phase 5: Final report**

Objective: The purpose of this phase is to ensure that any comments by the MSG on the preliminary disclosures or draft report have been reflected in the final disclosures. The MSG could also consider how to best disseminate the data and share it with relevant stakeholders in light of health and safety challenged posed by the Covid-19 pandemic. The final report should include the MSGs assessment of comprehensiveness and reliability of the disclosed data, and identify any gaps or weaknesses in reporting.

The [national secretariat or consultant] is expected to:

1. **Submit the EITI Report upon approval to the MSG**. The MSG will endorse the report prior to its publication and will oversee its publication. Authorship of the report should be clearly indicated. Where the Covid-19 pandemic poses challenges on the ability of MSGs to convene, national secretariats and MSG should take reasonable steps to seek MSG comments and approval.[[13]](#footnote-14)
2. **Prepare and submit summary data** from the disclosures electronically to the International Secretariat according to the standardised reporting format.[[14]](#footnote-15)

# Time schedule for reporting

The MSG and national secretariat should set out a time schedule for reporting which takes potential risks posed by the Covid-19 pandemic and restrictions on movements and public gatherings into account. Safeguarding of public health and safety measures is essential and should come first.

The reporting exercise is expected to commence on [date], culminating in the finalisation of the EITI disclosures by [date – 31 December 2021 latest]. The proposed schedule is set out below:

|  |  |
| --- | --- |
| Signing of contract | [date] |
| Phase 1: Setting objectives | [date] - [date] |
| Phase 2: Identifying scope  | [date] - [date] |
| Phase 3: Data compilation and collection  | [date] - [date] |
| Phase 4: Analysis and draft report | [date] - [date] |
| Phase 5: Final report | [date] - [date] |

[Add any additional information regarding other activities, outputs or deliverables agreed by the MSG]

1. The Terms of Reference are prepared in accordance with EITI Board Decision 2020-31/BC-290 to allow more flexibility in recognition of the challenges posed by the Covid-19 pandemic for reports published by 31 December 2022, <https://eiti.org/board-decision/2020-31> [↑](#footnote-ref-2)
2. The Validation data collection templates, including on Transparency (Requirements 2-6 of the EITI Standard, are available on the EITI website: <https://eiti.org/document/2021-validation-model-templates>

 [↑](#footnote-ref-3)
3. The EITI Policy Brief on *Preparing for the energy transition* provides an overview of key questions MSGs can consider in setting objectives for reporting related to the energy transition, [accessible here](https://eiti.org/document/preparing-for-energy-transition-key-questions-for-countries-dependent-on-oil-gas-mining). [↑](#footnote-ref-4)
4. Guidance Note 13: Defining materiality, reporting thresholds and reporting entities, <https://eiti.org/GN13> [↑](#footnote-ref-5)
5. In preparing this information, the MSG may wish to use the EITI Summary data template, which contains a disclosure checklist for publicly accessible non-revenue information in line with the EITI Standard (Part 2), as list of reporting entities (Part 3) and a table to help summarise revenue data by government, company and project (Part 4 and 5). [↑](#footnote-ref-6)
6. Guidance Note 4: Licence Allocations, <https://eiti.org/guide/license-allocations> [↑](#footnote-ref-7)
7. Guidance Note 3: Licence Registers, <https://eiti.org/guide/license-registers> [↑](#footnote-ref-8)
8. Guidance Note 7: Contract Transparency, <https://eiti.org/guide/contracts> [↑](#footnote-ref-9)
9. Template beneficial ownership declaration, <https://eiti.org/document/tools-to-include-beneficial-ownership-information-in-eiti-reporting> [↑](#footnote-ref-10)
10. Guidance Note 18: SOE participation in EITI Reporting, <https://eiti.org/GN18> [↑](#footnote-ref-11)
11. The latest version of the summary data template can be found at: <https://eiti.org/document/eiti-summary-data-template> [↑](#footnote-ref-12)
12. EITI Guidance note 24 on data quality and assurance, accessible [here](https://eiti.org/document/guidance-note-on-data-quality-assurance). [↑](#footnote-ref-13)
13. EITI Board Decision 2020-31/BC-290, <https://eiti.org/board-decision/2020-31> [↑](#footnote-ref-14)
14. The latest version of the summary data template can be found at: <https://eiti.org/document/eiti-summary-data-template> [↑](#footnote-ref-15)