

Terms of Reference: Enhancing Commodity Trading Transparency - Moving from Data Disclosure to Impact

The Extractive Industries Transparency Initiative (EITI) implements the global standard to promote the open and accountable management of oil, gas and mineral resources. The EITI Standard requires the disclosure of information along the extractive industry value chain from the point of extraction, to how revenues make their way through the government, and how they benefit the public. By doing so, the EITI seeks to strengthen public and corporate governance of a country's resource endowment, promote understanding of natural resource management, and provide the data to enable accountability in the extractives sector. In each of the 56 implementing countries, the EITI is supported by a coalition of government, companies, and civil society.

Complementary to the work of EITI, the OECD-DAC has an established track record of work on IFFs and development. As part of this work, and since 2018, the DAC has focused its efforts on better understanding those IFFs that constitute a macro-critical risk for developing country governments, and act as a significant constraint on their domestic resource mobilisation potential. With the guidance of an expert group and following agreement among OECD-DAC members, the OECD developed a programme of work on IFFs and oil commodity trading, building also on the foundational work of EITI. Although that body of work is extensive, two particular findings on trade transaction transparency have special resonance for this assignment: (i) the recognition that it is a necessary but insufficient response to the complex challenges of IFF risks in oil commodity trading; and (ii) that it has the potential to crowd out a range of necessary corollary activities, including for example, knowledge-sharing on oil pricing strategies, and the development of oil marketisation and trading capabilities, that could serve to enhance its impact.

Background

In 2013, the EITI Standard required that first trades between national oil companies and commodity traders be disclosed. The bar has since been raised with an expanded requirement in the 2019 EITI Standard. The EITI Standard requires disclosures by governments including SOEs and encourages disclosures by companies buying oil, gas and minerals from government or state-owned enterprises (SOEs). In the past two years there has been a steady increase in the type and disaggregation of data released by companies and governments/SOEs however no analysis has been undertaken on trends or the use of this data to enhance debate among countries and SOEs.

Beyond enhancing the availability of data in commodity trading, it is important for the EITI to identify what kind of information is necessary and relevant for stakeholders to scrutinise commodity-trading firms' behaviour and how that information can be used to identify illicit behaviour, hold corrupt actors to account, and contribute to the integrity of national resource governance regimes. The need for transparency is important for accountability and good governance of the commodity sectors. Transparency can help to prevent corruption, mismanagement, loss of public revenue and illicit financial flows from commodity dependent

developing countries. Improving transparency in commodity markets requires a joint and coordinated effort between commodity-dependent developing countries, developed countries and commodity traders.

Particular findings emerging from the OECD's programme of work on oil commodity trading highlight several features of the oil commodity trading sector that have relevance to the potential impact of data disclosures. These include, for example, better understanding and addressing:

- (i) First, the **underlying features of the oil trade system** that render oil-producing developing countries subordinate in their trading ventures. These might typically include asymmetries of knowledge or information on oil price fundamentals, as well as asymmetries of market access, and would point to the need for enhanced capabilities and support in these areas.
- (ii) Second, the **structure and incentives of oil trade entities**¹. The OECD's work points to three issues of relevance: the exceptional use of offshore financial centres (OFCs) among independent trading companies; the highly fragmented nature of the ownership, equity and accounting arrangements of large independent trading companies; and the trend towards the localisation of financing and trading. All three of these issues raise substantive challenges for transparency and integrity efforts (including beneficial ownership transparency, and wider regulation and monitoring efforts), and underline the importance of risk management capabilities on the part of participating NOCs.

This study would serve as a basis to examine the impact of these structural and agency dynamics for transparency impacts with a view to identify opportunities for complementary actions to enhance the results and impact of data disclosures.

Objectives of the Assignment

To provide policy recommendations:

- On the risks of corruption or IFF as well as the current limits and potential of existing measures towards data disclosure to mitigate the identified risks ; and opportunities to take action (policy, regulatory or operational) to enhance SoE integrity efforts, achieve fair value and appropriate management of proceeds. .

¹ Commodity trading firms consist of a multitude of legal persons across diverse jurisdictions, which typically can raise funds in local capital markets, sell shares or issuing stock options. It is at the subsidiary level of the commodity-trading firms that, for instance, equity trusts and joint venture (JV) arrangements, both of which are high-risk ventures, between selling governments and buying companies are typically located. Joint ventures are a common way for commodity traders to secure supply, yet the U.S. Foreign Corrupt Practices Act consider them high-risk due to their compliance risks, including close collaboration with local entities that may be susceptible to the risks associated with politically exposed persons (PEPs) and maybe subject to different compliance procedures and anticorruption rules.

-
- To EITI on (a) complementary policy initiatives that might enhance the impact of data disclosures, and (b) how to support improved and better use of data disclosures by implementing countries and supporting companies, to mitigate against the risk of corruption or IFF.
 - To national and international stakeholders (such as CSOs, investigative journalists, national regulatory and watchdog agencies and international organisations) on how to access and effectively use disclosed data for accountability purposes;
 - To relevant major stakeholders, such as financial institutions and/or investors on opportunities to enhance collaborative actions that might enhance the impacts of data disclosures. This would involve identifying corollary aspects of IFF risks that are not currently addressed by on-going transparency actions.

Scope of the Assignment

The Consultant will be expected to agree on the scope/parameters of the study in collaboration with the EITI International Secretariat and OECD – DAC in the early stages of the project. As a point of departure, however, the followed tasks are anticipated:

1. Mapping and analysis of the disclosure of commodity trading data by at least 5 trading companies (this should include large, medium sized and small companies) and government/SOEs in both EITI implementing and non-implementing countries, to better identify and understand the common conditions that make data disclosure efforts more successful and impactful in one context than in others. The Consultant is encouraged to review the current regulatory disclosures in the Netherlands, Singapore, Switzerland and the United Kingdom. Related policy may include but is not limited to the EITI Reports, SOE disclosures, Companies disclosures against the EITI Reporting Guidelines for Buying Companies and OECD Guidelines on Corporate Governance of State-Owned Entreprises.
2. Interviews with key stakeholders drawn from companies, government, SOEs and civil society, and technical experts to get their insights and/or validate emerging findings. A minimum of two from each group of stakeholders.
3. To provide evidence on the structure and incentives of commodity traders and SOEs, including the use of agents, offshore financial centres and subsidiaries, and consider the risks and implications of these practices on efforts towards data disclosure and how these practises hamper transparency in the sector. It is anticipated that this information will be garnered from interviews and desk research.
4. To identify opportunities to take actions to complement and better leverage commodity trade disclosures to contribute towards improved governance and accountability outcomes, including through an analysis of potential users of that information.
5. Analysis and development of draft report for validation with EITI Secretariat and key stakeholders
6. Delivery of final report

The consultant is expected to work with EITI International Secretariat staff under supervision of the Policy Director. The timeframe for this work would be June – September 2022.

Deliverables

The assignment is expected to take an estimate of 40 days over 4 months, culminating in the delivery of a final report that includes the following components:

- Mapping and analysis of trends in data disclosure by commodity traders, governments and SOEs, and related risks and disclosure practices
- Building on the mapping undertaken, identify 3-5 transparency scenarios for disclosure data for governance and accountability in the context of EITI and non-EITI member countries. The use cases should describe how data disclosure can facilitate transparency through building greater understanding of the sector among SOEs and civil society in particular.
- Recommendations to key stakeholders, as outlined in the objectives.

The table below outlines deliverables that may be adjusted during the assignment in agreement with the EITI Policy Director in the case of unforeseen events, opportunities and obstacles. Payment will be made based on meeting assignment deliverables.

Deliverable	Tasks	Payment Schedule
Execution of Contract and agreement on study design	Develop outline of the study and list of interviewees	20%
Submission of draft report	Submit draft report	40%
Submission of final report	Facilitate discussion with the Commodity Trading Working Group Finalise report based on feedback and comments	40%

Consultant Qualifications

The consultant should be an individual that the EITI International Secretariat considers to be credible, trustworthy and technically competent.

The consultant must demonstrate:

- Experience and knowledge of the extractive industries, in particular commodity trading. The Consultant will be required to have prior expertise in the field of commodity trading.
- Experience and knowledge of the political dynamics surrounding the use of hubs and their legal status.
- Experience with the use of data and information in anti-corruption or accountability initiatives
- Demonstrated ability to present complex technical issues in accessible language in a policy context .
- Knowledge of the EITI Standard and prior experience working with the OECD is an added advantage.

To ensure quality and independence in the undertaking, the consultant must, in their technical and financial proposals, disclose any potential conflicts of interest.

Administrative Support

The EITI International Secretariat would provide the following support to the Consultant:

- Providing the necessary background information on the EITI and on the OECD – DAC programme of work on IFFs and oil commodity trading, and the progress made to date in enhancing transparency in commodity trading.
- Providing regular oversight and inputs on technical assistance.
- Any other support required to meet the deliverables.

Communications design principles



The report will be a public-facing document, to be published through EITI International Secretariat channels including its website. The report is therefore expected to conform to the communications design principles of the International Secretariat.

The final report draft to be produced by the consultant will be laid out in a plain word template. Once edited by the EITI International Secretariat communications team, typesetting, design and translation will be commissioned and will most likely to be undertaken by an external service provider. The final designed report will be produced on an EITI-branded template. In the first and final draft, the consultant should make suggestions for visual components (e.g. infographics and diagrams) which can be used in design of the final document. The report should be written in a clear and engaging manner and in line with the style guide of the International Secretariat.

Acknowledgements: The final document will acknowledge the Consultant as a contributing author but will be owned by the International Secretariat. The report is funded by SECO and the final document will acknowledge this support.