

# Update on suggested refinements to the EITI Standard

## For discussion

This paper provides an overview of suggested refinements to the EITI Standard related to energy transition, gender and anti-corruption for discussion. The proposed refinements are separated into two categories: refinements where there was broad consensus in the Working Group and refinements where there was no consensus in the Working Group.

The Implementation Committee continues to consider proposals from the Working Group, noting the areas where consensus has been reached on proposed refinements, but with particular focus on areas where there was no consensus. The Board may wish to have a broader discussion on the cross-cutting themes of energy transition, gender and anti-corruption at the Board meeting.

Subject to the outcomes of the Board discussion in Oslo, the Implementation Committee will elaborate refinements for adoption in principle by the Board at its March 2023 meeting in Buenos Aires. In-person and online public consultations with implementing countries on the suggested proposals would also take place over the period October 2022 to March 2023.

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**Supporting documentation (available [here](#))**

**Has the EITI competence for any proposed actions been considered?**

The EITI Standard ([Requirement 8.5](#)) mandates the EITI Board to assess any extension requests.

**Financial implications of any actions**

There are no financial implications of this request for the EITI International Management, other than the administrative processing. There are no costs expected outside the budget in the agreed workplan.

**Document history**

Submitted to the Implementation Committee	8 September 2022
Discussed by the Implementation Committee	13 September 2022
Submitted to the Implementation Committee	15 September 2022
Discussed by the Implementation Committee	20 September 2022
Submitted to the EITI Board	28 September 2022

## 1. Introduction

This paper sets out proposals for refinements to the EITI Standard, provides a brief account of the reasoning behind them, and suggests edits to the current language in the EITI Standard. This paper focuses on refinements linked to three cross-cutting themes, namely energy transition, gender and anti-corruption.

The Working Group considered wording on 23 EITI requirements. There was broad consensus on refinements to at least 15 of these refinements with full unanimity on the proposed refinements on gender.

It is suggested that the Board discusses the proposals in this paper particularly around areas of little consensus on cross-cutting issues linked to the energy transition and anti-corruption. Subject to the outcomes of the Board discussions at the 54<sup>th</sup> Board meeting in October 2022, the Working Group and Implementation Committee would be tasked to elaborate agreed refinements in a revised Standard for adoption by the Board at the 55<sup>th</sup> Board meeting in March 2023.

Consultation with implementing countries and other stakeholders are planned over the period October 2022 to March 2023.

## 2. Background

The 2023 EITI Global Conference represents an opportunity to refine the EITI Standard. At its 52<sup>nd</sup> meeting in February 2022, the Board mandated the Secretariat to develop the scope of refinements to the EITI Standard. It was agreed at that meeting that consultations should be undertaken with relevant constituencies and stakeholders. A consultation was launched in April 2022. It was shared with constituency coordinators, published on the EITI website, and publicised in the EITI newsletter. A Board Working Group on the refinements was established following the 53<sup>rd</sup> Board meeting in June 2022.

At the 53<sup>rd</sup> Board meeting, the Board agreed to include in the scope of refinements the following areas:

- Adjustments to existing EITI provisions to support disclosures and public debate related to the impact of the energy transition on implementing countries, including changing demand for fossil fuels and critical minerals;
- Reflecting anti-corruption explicitly in the objectives and text of relevant EITI Requirements;
- Adjustments to existing EITI provisions promoting gender equality;
- Including the objective of each EITI Requirement in the EITI Standard;
- Clarifying the distinction between encouraged, expected and required provisions.

The Board also mandated the Working Group to further consider whether refinements should include the following areas:

- Disclosures related to (1) reserves, as well as scope 1, 2 and 3 emissions from fossil fuel production in implementing countries and (2) progress in meeting Nationally Determined Contributions as per the Paris Agreement, considering

existing reporting standards and practices and potential for the EITI to add value to existing reporting standards;

- Refinements to relevant EITI provisions that strengthen anti-corruption efforts;
- Adjustments to relevant requirements to include information about the policies and practices related to combatting illicit financial flows including tax avoidance and monitoring the costs of extractive companies; These requirements could be reviewed with a view of streamlining reporting to reduce the reporting burden while achieving the main objectives;
- Strengthening Requirement 3.2 on production and Requirement 3.3 on exports to improve disaggregation, data quality and data usability;
- Adjustments to Requirement 4.8 to improve data timeliness.

The Board also mandated the Secretariat to produce for the Board's consideration an alternative procedure for data quality assurance that builds on the experiences from flexible reporting and the pilot on alternative approaches to reporting.

Additionally, the Terms of Reference of the Working Group indicate that the group would consider findings from the Validation Review and the Independent Evaluation of the EITI.

### 3. Principles for refining the EITI Standard

The Working Group on Refinements to the EITI Standard has met on 6 occasions since the 53<sup>rd</sup> Board meeting in June 2022.

The Working Group agreed the following principles in the process for refining the EITI Standard:

- 1. Coherence:** The Working Group aims for an EITI Standard that provides clarity on the purpose of EITI reporting, alongside a coherent methodology for improving extractive industry governance. It will aim for alignment with existing international standards, whilst avoiding duplication.
- 2. Relevance:** The Working Group aims for an EITI Standard that facilitates relevant, timely data for analysis and anti-corruption efforts. The aim is for more targeted and flexible EITI reporting that adds more value given national priorities and latest developments in the sector.
- 3. Cost-effectiveness:** The Working Group aims for an EITI Standard that takes stock of systematic disclosures by companies and governments. Ambitious objectives must co-exist with resource constraints and reporting burdens for companies and governments.
- 4. Ownership by implementing countries:** The Working Group aims for a refinement process that is consultative and an EITI Standard that is fully owned by the stakeholders that will implement it.

Other areas of preliminary agreement by the Working Group on Refinements to the EITI Standard are as follows:

- As per the EITI Validation Guide, (i) include the objective of each requirement in the EITI Standard (ii) group EITI requirements into three categories namely Effectiveness and sustainability, MSG oversight and Transparency and; (iii) group provisions on a particular thematic area such as state-owned enterprises.
- Consider a modular approach to EITI implementation for example in cases where EITI data is systematically disclosed.

## 4. Proposed refinements to the EITI Standard

### 4.1 Areas of broad agreement by the Working Group

The Working Group considered refinements to the 18 requirements listed below and there was broad consensus to proceed, with suggested tweaks to the current language. The Working Group will consider all proposed refinements on where there was broad agreement on energy transition, gender and anti-corruption, alongside all other proposed refinements in a wholistic manner following the October Board meeting. This is in a bid to ensure that the principles of coherence, relevance, cost-effectiveness and ownership by implementing countries are respected. These will be further refined and presented in a full set of proposed refinements for Board decision in March 2023.

The working group deferred the discussion of Requirements 2.4 (Contracts) and 2.5 (Beneficial ownership) considering that separate papers will be presented for discussion of these requirements.

The Working Group on Refinements to the EITI Standard considered refinements to the provisions listed in the table below. Further details are included in Annex 1.

Proposal	EITI Requirement	Requirement Title	Cross-cutting themes	Summary details
1	1.4	Multi-stakeholder group	AC	MSG objective to strengthen governance of extractives and consider anti-corruption risks
2	1.5	Work plan	AC	Include the fight against corruption in the scope of implementation
3	2.1	Legal framework and fiscal regime	ET, AC	Overview of anti-corruption laws and material deviations from the laws; summary of national energy transition commitments and carbon pricing mechanisms / taxes
4	2.2	Contract and license allocation	ET	Document rationale for fast-tracking license awards
5	2.6	State participation	ET, G, AC	Evaluation of deviations from rules and practices on financial relationship, gender disaggregated information by SOEs and understanding of SOE

				investment decisions with public finance
6	4.5	Transactions related to SOEs	AC	Identification of discrepancies between actual and prescribed transfers to governments
7	4.2	Sale of state's share or production	AC	Requirement (not encouragement) to disclose list of buying companies
8	4.3	Infrastructure provisions and barter arrangements	AC	Definition of resource-backed loans from the IMF
9	4.6	Sub-national payments	AC	Information disclosed to contribute to debate and reforms on anti-corruption
10	5.1	Distribution of extractive sector revenues	AC	MSG to identify deviations on distribution of revenues and direct to relevant authorities
11	5.2	Sub-national revenues	AC	MSG to evaluate reasons for material discrepancies
12	6.1	Social and environmental expenditures	G	Gender disaggregated information on beneficiaries of social and environmental expenditures
13	6.2	Quasi-fiscal expenditures	AC	Included anti-corruption in the objective
14	6.3	Contribution of the extractive sector to the economy	G	Clarification that employment figures should cover public and private sector
15	6.4	Environmental impact of the extractive activities	G	Encourage publication of social and gender impact assessments
16	7.1	Public debate	AC	Use EITI data to contribute to understanding of corruption risks
17	7.3	Recommendations from EITI implementation	AC	Evaluate whether information gaps enable corruption
18	7.4	Review of the outcomes and impact of implementation	AC	Assess contribution to the fight against corruption

## 4.2 Areas of little consensus in the Working Group

To avoid duplication of work between the Working Group on Refinements to the EITI Standard and the Implementation Committee, it was agreed that the Working Group would clearly highlight areas where there was no consensus at the Working Group level. In such instances, it was recommended that the discussions would continue at the Implementation Committee and Board level.

With respect to the discussion on energy transition and anti-corruption, there was no consensus between members of the Working Group on the following 8 proposed refinements:

Proposal	EITI Requirement	Requirement Title	Cross-cutting themes	Summary details
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			ET – energy transition G – gender AC – anti-corruption	
19	1.2	Company engagement	AC	Due diligence processes and publication of an anti-corruption policy
20	2.1	Legal framework and fiscal regime	ET	Disclosure of subsidies and state support
21	2.2	License allocation	AC	MSG’s role in evaluating material deviations
22	2.3	License registers	AC	Access for geological information
23	3.1	Exploration	ET	Disclosure of reserves
24	4.1	Comprehensive disclosure of taxes and revenues	ET, AC	Costs of production and assessment of deviations from the fiscal regime
25	5.3	Revenue management and expenditures	ET, AC	Reporting of energy transition scenarios and whether this should be a requirement
26	6.1	Social and environmental expenditures	AC	Disclosure of social and environmental expenditure contracts

Further details on the areas of little consensus are provided below in proposals 19 - 26.

#### 4.2.1. Proposal 19: Requirement 1.2 Company engagement (AC)

It is proposed that Requirement 1.2 includes in its broader objective that companies engaged in the EITI at the national level are required to ensure that their conduct aligns with principles of good governance as outlined in the EITI expectations for supporting companies. Requirement 1.2 (a) could be amended to align with this objective by reflecting expectations related to anti-corruption drawing from the EITI expectations for supporting companies.

##### A. Proposed new language (blue and red):

**Objective:** The objective of this requirement is to ensure that extractive companies are fully, actively, and effectively engaged in the EITI, both in terms of disclosures and participation in the work of the multi-stakeholder group, and that the government ensures an enabling environment for this. The requirement aims to ensure that companies engaged in EITI are aligning their practices with principles of good governance as outlined in the EITI expectations for supporting companies.

- c. The government must ensure that there are no obstacles to company participation in the EITI process.
- d. Consistent with EITI Expectations for supporting companies, companies in the MSG are expected to engage in rigorous due diligence processes and publish an anti-corruption policy setting out how the company manages corruption risk, including how the company collects and takes risk-based steps to use beneficial ownership data regarding joint venture partners, contractors and suppliers in its processes.

##### B. Rationale:

The alignment of expectations for supporting companies with expectations for companies in the



MSG is necessary in ensuring a comprehensive approach for improving the governance of extractive companies. Recent corruption scandals involving companies in countries further highlight the need to strengthen accountability mechanisms and address reputational risks for EITI processes at the national level.

#### 4.2.2. Proposal 20: Requirement 2.1 Legal framework and fiscal regime (ET)

It is proposed that the provisions in the EITI Standard related to the legal and regulatory framework are revised to enable disclosure of national energy transition commitments, carbon pricing mechanisms or carbon taxes where applicable and summary descriptions of subsidies or state support for the extract industries.

##### A. Proposed new language (blue and red):

**Objective:** The objective of this [requirement](#) is to ensure public understanding of all aspects of the regulatory framework for the extractive industries, including the legal framework, fiscal regime, roles of government entities and reforms.

- a. Where the government is undertaking reforms, the multi-stakeholder group is encouraged to ensure that these are documented.
- b. [Implementing countries are \[required/encouraged\] to disclose a summary description of public subsidies and other forms of state support provided to the extractive industries, as well as a summary description of any related ongoing or anticipated reforms.](#)

##### B. Rationale:

Disclosing descriptions of public subsidies and state support, alongside the existing requirement to disclose information on the fiscal regime, can shed light on the ways in which government policy is influencing the sector's economic dynamics.

#### 4.2.3. Proposal 21: Requirement 2.2 License allocation (AC)

It is proposed that Requirement 2.2 includes in its broader objective that the information disclosed under this requirement inform public debate or reforms on corruption risks in licensing and contracting for extractive companies. Requirement 2. (a) (c) and (d) could be amended to align with these objectives by providing types of information that the MSG could consider disclosing.

##### A. Proposed new language (blue and red):

**Objective:** The objective of this requirement is to provide a public overview of awards and transfers of oil, gas and mining licenses, the statutory procedures for license awards and transfers and whether these procedures are followed in practice. ~~This can allow~~ [The requirement further aims to enable](#) stakeholders to identify and address possible weaknesses in the license allocation process [including those that make these processes vulnerable to corruption.](#)

- a) Implementing countries are required to disclose the following information related to all contract and license awards and transfers taking place during the accounting period covered by the most recent EITI disclosures, including for companies whose payments fall below the agreed materiality threshold:
  - i. A description of the process for transferring or awarding the contract or

- license, including application fees, level of decentralization of approval, identification of all agencies involved in the entire approval process with their respective roles, composition of the tender panel, and the process of disseminating information for bidding rounds;
- ii. The technical and financial criteria used including due diligence mechanisms or integrity checks used in practice to assess whether the application meets the criteria.
  - iii. Information about the recipient(s) of the contract or license that has been transferred or awarded. including consortium members where applicable.
  - iv. Any material deviations from the applicable legal and regulatory framework governing contract and license transfers and awards. MSGs are expected to evaluate what constitutes material deviations which could include violations of rules on conflict of interest in awarding licenses and contracts, deviations from technical and financial criteria, non-adherence to periods required by law for approval of applications, and other deviations that could signify corruption in the award of licenses and contracts.

In cases where governments can select different methods for awarding a contract or license (e.g. competitive bidding or direct negotiations), the description of the process for awarding or transferring a license ~~should~~ **could** include an explanation of the rules that determine which procedure should be used and why a particular procedure was selected. **In case of direct negotiation, implementing countries are required to explain the factors considered for the award and the selection of the recipient.**

In cases where governments use expedited or “fast-tracked” awards processes, countries are required to document the rationale for selecting such methods, clearly identify which awards processes these methods were applied to, and document the procedures and criteria used, the institutions involved, and the outcomes of the awards processes. <sup>1</sup>

Where there are gaps in the publicly available information, these should be clearly identified. Any significant legal or practical barriers preventing comprehensive disclosure of the information set out above should be documented and explained, including an account of government plans to overcome such barriers and the anticipated timescale for achieving them.

- b) Where companies hold contracts and licenses that were allocated prior to the period covered by EITI implementation, implementing countries are encouraged to disclose the information set out in 2.2(a).
- c) Where contracts and licenses are awarded through a bidding process, the government is required to disclose the list of applicants **including their beneficial owners in accordance with Requirement 2.5**, and the bid criteria.
- d) The multi-stakeholder group may wish to include additional information on the allocation of contracts and licenses as part of the EITI disclosures. This could include

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<sup>1</sup> This paragraph is also included in the working group paper on energy transition

commentary on the efficiency and effectiveness of contracting and licensing procedures [including vulnerabilities to corruption](#), and a description of procedures, actual practices including use of and identities of agents and intermediaries where applicable and grounds for renewing, suspending or revoking a contract or license.

#### B. Rationale:

It is widely recognised and documented that the award of licenses is one of the areas most prone to corruption in the extractive sector. While the current requirements of the EITI Standard shed some light on these vulnerabilities, there are still missed opportunities/areas where the Standard could provide a complete picture to enable analysis of corruption risks. The proposed refinements require additional information by expanding the scope of the requirement to address types of corruption risks<sup>2</sup> that the current requirements are unable to shed light on such as processes where there could be potential abuse of authority or conflict of interest, asymmetry of information for bid applicants, or deviations from regulations. The revisions also seek to clarify and strengthen the links between Requirements 2.2 and 2.5 (beneficial ownership) which is a question often raised by national stakeholders. Countries like Indonesia, Mongolia and Papua New Guinea are already disclosing some of these required information on level of decentralisation of approval and description of roles of all agencies involved in the approval process.

#### 4.2.4. Proposal 22: Requirement 2.3 Register of licenses (AC)

It is proposed that Requirement 2.3 includes in its broader objective that the information disclosed under this requirement contribute to public debate or reforms on strengthening government systems to detect and mitigate corruption risks. Requirement 2.3 (b) could be amended to align with this objective by referring to types of information that the MSG could consider disclosing.

##### A. Proposed new language (blue and red):

**Objective:** The objective of this requirement is to ensure the public accessibility of comprehensive information on property rights related to extractive deposits and projects. [The requirement further aims to ensure that the information disclosed contributes to public debate or reforms on strengthening government systems to detect and mitigate corruption risks.](#)

- b) Implementing countries are required to maintain a publicly available register or cadastre system(s) with the following timely and comprehensive information regarding each of the licenses pertaining to companies within the agreed scope of EITI implementation:
  - i. License holder(s). [Implementing countries are encouraged to link publicly available registers on license holders to other platforms that disclose the legal and beneficial owners of companies that hold licenses and contracts.](#)

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<sup>2</sup> The recommendations under Requirements 2.2 and 2.3 were based on corruption risks discussed in the MACRA tool of Transparency International's Accountable Mining Program. <https://transparency.org.au/global-mining-3/macra-tool/>

- ii. Where collated, coordinates of the license area. Where coordinates are not collated, the government is required to ensure that the size and location of the license area are disclosed in the license register and that the coordinates are publicly available from the relevant government agency without unreasonable fees and restrictions. **Where there are no barriers, the government is encouraged to disclose information on where to access geological data for specific license areas.** The disclosures should include guidance on how to access the coordinates and the cost, if any, of accessing the data. The government should also document plans and timelines for making this information freely and electronically available through the license register.

#### B. Rationale:

Weaknesses in government systems could enable corruption. The proposed revisions seek to help in using the EITI as diagnostic tool for improvement of license registers so that these registers could be used to detect corruption risks. The proposal to disclose geological data is motivated by the need for this information to be transparent to avoid corrupt speculation especially with the anticipated increase in the demand for critical minerals.

#### **4.2.5. Proposal 23: Requirement 3.1 Exploration (ET)**

It is proposed that the provisions in the EITI Standard related to exploration are revised to include disclosure of reserves.

##### A. Proposed new language (blue and red):

**Objective:** The objective of this [requirement](#) is to ensure public access to an overview of the extractive sector in the country and its potential, including recent, ongoing and planned significant exploration activities.

Implementing countries should disclose an overview of the extractive industries, including any significant exploration activities. **As part of this, implementing countries are [required/encouraged] to disclose information on oil, gas or mineral reserves.**

##### B. Rationale:

The energy transition is driving changes in supply and demand patterns for oil, gas and mineral resources, with potential implications for the commercial viability of individual projects and the overall competitiveness of a country's extractive sector. Disclosure of production costs, break-even prices and shut-in prices can help stakeholders to better understand the commercial implications of different scenarios. This can help to shed light on the economic opportunities and challenges that the energy transition presents for a country.

#### **4.2.6. Proposal 24: Requirement 4.1 Comprehensive disclosure of taxes and revenues (ET, AC)**

It is proposed that the provisions in the EITI Standard related to [comprehensive disclosure and revenues](#) are revised to enable disclosures on the costs of production.

##### A. Proposed new language (blue and red):

**Objective:** The objective of this [requirement](#) is to ensure comprehensive disclosures of company payments and government revenues from oil, gas and mining as the basis for detailed public understanding of the contribution of the extractive industries to

government revenues. The requirement further aims to ensure that public access to revenue data is contributing to public debate and reforms to mitigate corruption risks in revenue collection.

e) Companies 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.

f) Companies are [required/encouraged] to disclose the cost of production at their projects and information on break-even/shut-in prices. Multi-stakeholder groups are [required/encouraged] to disclose a comparison of how the cost of production compares between different projects, including in relation to comparable projects in other countries.

g) Countries are expected to use revenue data from EITI reporting processes to assess whether there are deviations from fiscal frameworks that could suggest missing or delayed payments or over/underpayments or whether there are fiscal terms resulting from corruption which could include highly advantageous incentives, subsidies, or tax exemptions.

#### B. Rationale:

The energy transition is driving changes in supply and demand patterns for oil, gas and mineral resources, with potential implications for the commercial viability of individual projects and the overall competitiveness of a country's extractive sector. Disclosure of production costs, break-even prices and shut-in prices can help stakeholders to better understand the commercial implications of different scenarios. This can help to shed light on the economic opportunities and challenges that the energy transition presents for a country.

With respect to anti-corruption, the proposed revision seeks to address concerns often raised by stakeholders regarding the limited use of EITI data on revenues which is viewed by some stakeholders as a missed opportunity. EITI reporting processes have the potential to detect some types of risks in revenue collection such as under reporting of payments, weak oversight on compliance with fiscal obligations, and diversion of revenues. The proposed revision aims to motivate MSGs to surface these types of risks.

#### 4.2.7. Proposal 25: Requirement 5.3 Revenue management and expenditures (ET, AC)

It is proposed that the provisions in the EITI Standard related to revenue management and expenditures be expanded to include considerations related to revenue sustainability.

##### A. Proposed new language (blue and red):

**Objective:** The objective of this [requirement](#) is to strengthen public oversight of the management of extractive revenues, the use of extractives revenues to fund specific public expenditures and the assumptions underlying the budget process, [including considerations related to revenue sustainability](#). The requirement further aims to ensure

that the information disclosed is contributing to public debates or reforms related to corruption mitigation in the management of extractive sector revenues.

The multi-stakeholder group is ~~encouraged~~ **required** to disclose further information on revenue management and expenditures, including:

- a) A description of any extractive revenues earmarked for specific programmes or geographic regions. This should include a description of the methods for ensuring accountability and efficiency in their use.
- b) A description of the country's budget and audit processes and links to the publicly available information on budgeting, expenditures and audit reports.
- c) Timely information from the government that will further public understanding and debate around issues of revenue sustainability and resource dependence. This may include the assumptions underpinning forthcoming years in the budget cycle and relating to projected production, commodity prices and revenue forecasts arising from the extractive industries and the proportion of future fiscal revenues expected to come from the extractive sector. **Multi-stakeholder groups are [required/encouraged] to consider how revenues might be impacted by different energy transition scenarios, how national price and demand assumptions compare to international equivalents, and what the implications might be for national and/or subnational spending and/or debt. Multi-stakeholder groups are also [required/encouraged] to consider how public subsidies and other forms of state support impact the viability and competitiveness of oil, gas and mining projects.**

#### B. Rationale:

The energy transition is driving changes in supply and demand patterns for oil, gas and mineral resources. This could drive fluctuations in extractive sector revenues in EITI countries. Requiring or encouraging multi-stakeholder groups to consider how different scenarios could impact revenues – and what this could mean for public spending and/or debt – could help shed light on the economic opportunities and challenges that the energy transition presents. This could inform evidence-based planning to ensure public finances are protected from potential shocks.

Corruption risks in revenue management could occur through various schemes such as fraud, diversion of resource revenues for private interest, embezzlement in the management of natural resource revenue funds, political capture, bribery, favouritism and clientelism in investment

decisions.<sup>3</sup> Recent scandals<sup>4</sup> illustrate how opacity of these funds could enable grand corruption. As this is an encouraged disclosure under the EITI Standard, MSGs tend to de-prioritise this in their reporting despite its relevance in countries that have sovereign wealth funds or have earmarked extractive sector revenues for specific purposes.

#### 4.2.8. Proposal 26 Requirement 6.1 Social and environmental expenditures by extractive companies (AC).

It is proposed that the broader objective of Requirement 6.1 include ensuring that public access to data on social and environmental expenditures is contributing to public debate or reforms on corruption risks related to this issue. Requirement 6.1 (a) and (b) could be amended to align with this objective by linking the requirement to Requirement 2.4 on contract disclosure, and Requirement 6.1 (c) could be amended to clarify the procedure that MSGs could consider in addressing data quality and assurance of information on these expenditures.

##### A. Proposed new language (blue and red):

**Objective:** The objective of this requirement is to enable public understanding of extractive companies' social and environmental contributions and provide a basis for assessing extractive companies' compliance with their legal and contractual obligations to undertake social and environmental expenditures. **The requirement further aims to ensure that public access to data on social and environmental expenditures is contributing to stakeholder discussions on corruption risks related to this issue.**

- a) Where material social expenditures by companies are mandated by law or the contract with the government that governs the extractive investment, implementing countries must disclose these transactions **and the factors considered for agreeing the types of expenditures**. Where such benefits are provided in kind, it is required that implementing countries disclose the nature and the deemed value of the in-kind transaction. Where the beneficiary of the mandated social expenditure is a third party, i.e., not a government agency, it is required that the name and function of the beneficiary be disclosed **with an explanation of the factors considered for selecting the beneficiaries**. Where reconciliation is not feasible, countries should provide unilateral company and/or government disclosures of these transactions. **Where social expenditures are mandated by contracts, implementing countries are expected to disclose these contracts to provide basis for the assessment of the comprehensiveness and accuracy of the disclosure on social**

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<sup>3</sup> OECD (2016) <https://www.oecd.org/dev/Corruption-in-the-extractive-value-chain.pdf>

<sup>4</sup> A recent example is the 1MDB scandal [https://www.researchgate.net/publication/346258168\\_1MDB\\_corruption\\_scandal\\_in\\_Malaysia\\_a\\_study\\_of\\_failings\\_in\\_control\\_and\\_accountability](https://www.researchgate.net/publication/346258168_1MDB_corruption_scandal_in_Malaysia_a_study_of_failings_in_control_and_accountability)

expenditures.

- b) Where material payments by companies to the government related to the environment are mandated by law, regulation or contract that governs the extractive investment, such payments must be disclosed. Where environmental expenditures are mandated by contracts, implementing countries are expected to disclose these contracts to provide basis for the assessment of the comprehensiveness and accuracy of the disclosure on environmental expenditures.
- c) The multi-stakeholder group is required to agree a procedure to address data quality and assurance of information on social and environmental expenditures, in accordance with Requirement 4.9. This procedure could include an evaluation of whether the legal or contractual obligations on social and environmental expenditures are followed in practice.
- d) Where the multi-stakeholder group agrees that discretionary social expenditures and mandatory and discretionary environmental payments to third parties, expenditures and transfers are material, the multi-stakeholder group is encouraged to develop a reporting process with a view to achieving transparency commensurate with the disclosure of other payments and revenues. The multi-stakeholder group is encouraged to agree a procedure to address data quality and assurance of the information set out above, in accordance with Requirement 4.9.

#### B. Rationale:

Agreements on social and environmental expenditures could be used as a means to line the pockets of local officials instead of contributing to community development. The revisions aim to motivate the use of EITI data to detect corruption risks in the agreement and allocation of social and environmental expenditures and to evaluate whether the intended recipients benefited from these expenditures or whether there is conflict of interest in determining the beneficiaries of these expenditures. The revisions also seek to address a recurring issue from Validation assessments where the comprehensiveness of disclosure of social and environmental expenditures could not be ascertained because the contracts mandating them are not accessible. The opacity of these contracts could facilitate corruption.

## **Annex 1: Areas of broad agreement by the Working Group**

### **Proposal 1: Requirement 1.4 Multi-stakeholder group (AC)**

It is proposed the broader objective of Requirement 1.4 be revised to state that the MSG considers good governance of the extractive sector as central to the performance of its role as MSG. This is in accordance with the EITI Principle on encouraging high standards of transparency and accountability in public life, government operations and business. Requirement 1.4 (b) could be amended to align with this objective by requiring the MSG to adopt robust mechanisms to consider issues related to anti-corruption in the sector.

#### A. Proposed new language (in blue)

- c. b) The multi-stakeholder group is required to agree clear public Terms of Reference (ToRs) for its work. The ToRs should, at a minimum, include provisions on:

*The role, responsibilities and rights of the multi-stakeholder group:*



- i. Members of the multi-stakeholder group should have the capacity to carry out its duties.  
[...]
- v. The MSG is required to [adopt mechanisms] to consider issues or risks related to anti-corruption in the sector including engaging with anti-corruption actors to complement related reforms undertaken by these actors.

B. Rationale:

EITI stakeholders and partners have observed that national EITI processes are often silent with respect to corruption risks and scandals in the sector. This is considered by some stakeholders to be a missed opportunity. The usual explanation provided by MSGs is their lack of mandate to engage on these issues. The proposed refinements are envisioned to address the perceived lack of mandate and the need for MSG to adopt mechanisms in response to corruption scandals. These amendments are premised on the observation of some stakeholders that the EITI's silence on corruption scandals poses reputational risks for the EITI and has a bearing on the assessment of EITI's impact.

**Proposal 2: Requirement 1.5 Work plan (AC)**

It is proposed that **the** broader objective of Requirement 1.5 be revised to state that MSGs are expected to reflect objectives and activities in their work plans that aim to address corruption in their country's extractive sector. Requirement 1.5 (a) and (c) could be amended to align with this objective by including anti-corruption efforts as an example of innovative approaches to extending the scope of EITI implementation.

A. Proposed new language (in blue and red)

**Objective:** The objective of this requirement is to ensure that the annual planning for EITI implementation supports implementation of national priorities for the extractive industries while laying out realistic activities that are the outcome of consultations with the broader government, industry and civil society constituencies. The annual EITI work plan should be a key accountability document for the MSG vis-à-vis broader constituencies and the public. **The requirement further aims to ensure that MSGs consider extractive sector governance issues, including corruption risks where applicable, in their national objectives and work plan activities.**

*The multi-stakeholder group is required to maintain a current work plan which is fully costed and aligned with the reporting and Validation deadlines established by the EITI Board. The work plan must:*

- a) *Set EITI implementation objectives that are linked to the EITI Principles and reflect national priorities for the extractive industries, including issues related to corruption risks where applicable. The multi-stakeholder group should address the steps needed to mainstream EITI implementation in company and government systems. Multi-stakeholder groups are encouraged to explore innovative approaches to extending EITI implementation to inform public debate about natural resource governance and **require** ~~encourage~~ high standards of transparency and accountability in public life,*

- government operations and in business.*
- b) *Reflect the results of consultations with key stakeholders and be endorsed by the multi-stakeholder group.*
  - c) *Include measurable and time bound activities to achieve the agreed objectives. The scope of EITI implementation should be tailored to contribute to the desired objectives that have been identified during the consultation process. The work plan must:*
    - i. *Assess and outline plans to address any potential capacity constraints in government agencies, companies and civil society that may be an obstacle to effective EITI implementation.*
    - ii. *Address the scope of EITI implementation, including **prevention and mitigation of corruption risks in the extractive sector value chain which could include downstream and midstream sectors, and related activities which could include sub-contracting and procurement where applicable, and where the MSG considers these topics of significant relevance**, plans for strengthening systematic disclosures and addressing technical aspects of reporting, such as comprehensiveness and data reliability (4.1 and 4.9).*

#### B. Rationale:

Some implementing countries have expressed the need for the MSG to articulate their objectives and to define the EITI's role in anti-corruption at the country level. The proposed refinements on Requirement 1.5 aim to address concerns about the EITI not creating any impact on corruption mitigation despite its goal of holding companies and government to account. The revisions also provide an opportunity for the MSG to determine and leverage opportunities to strengthen their work on anti-corruption, recognising the strengths and weaknesses of its processes. The revisions also enable the MSG to align their objectives and activities with their countries' broader anti-corruption framework and give the MSG the option to expand the scope of their EITI implementation to include midstream and downstream operations as well as subcontracting. The latter option reflects the practice already done by a few countries reporting on downstream or midstream sectors such as Chad, Indonesia, Trinidad and Tobago, among others. The revisions seek to reinforce the EITI's Anti-Corruption Guidance Note approved by the Board in December 2021.

#### **Proposal 3: Requirement 2.1 Legal framework and fiscal regime (AC, ET)**

It is proposed that the provisions in the EITI Standard related to the legal and regulatory framework are revised to reflect **the energy transition** and the **fight against corruption**. With respect to energy transition, the intention is to enable disclosure of national energy transition commitments, carbon pricing mechanisms or carbon taxes where applicable and summary descriptions of subsidies or state support for the extract industries. With respect to anti-corruption, it is proposed that the requirement's objective be revised to include ensuring public understanding of laws and regulations related to corruption mitigation in the extractive sector.

#### A. Proposed new language (blue and red):

**Objective:** The objective of this **requirement** is to ensure public understanding of all aspects of the regulatory framework for the extractive industries, including the legal framework, fiscal regime, roles of government entities and reforms **as well as laws and regulations related to corruption mitigation in the extractive sector**.

- d. 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, **as well as laws related to anti-corruption in the extractive sector including rules that regulate conflict of interest for politically exposed persons**, 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. **Countries are also encouraged to examine the effectiveness of these laws in improving extractive sector governance and identify material deviations from these laws, if any.**
- e. Where the government is undertaking reforms, the multi-stakeholder group is encouraged to ensure that these are documented.
- f. **Implementing countries are [required/encouraged] to disclose a summary description of national energy transition commitments (including Nationally Determined Contributions), policies and plans that are relevant to the extractive industries.**
- g. **Implementing countries are [required/encouraged] to disclose a summary description of carbon pricing mechanisms or carbon taxes applicable to the extractive industries, where applicable. Companies and SOEs are [required/encouraged] to disclose the carbon price assumptions they are using, where applicable.**

#### B. Rationale:

The **energy transition** has profound implications for the extractive industries. By shedding light on national energy transition commitments, policies and plans, EITI reporting can allow stakeholders to better understand how the government hopes to shape the future trajectory of the sector within the context of far-reaching global changes. This information can inform policy discussions on the opportunities and challenges that the energy transition presents. The proposed refinements on **anti-corruption** aim to increase the public's understanding of what constitutes corruption in the extractive sector and whether rules/laws are effective in practice. The revisions would also enable MSGs to align their implementation with national legal frameworks on corruption mitigation and ongoing reforms. The proposed refinements seek to maximise the benefits of these disclosures.

#### **Proposal 4: Requirement 2.2 Contract and license allocations (ET)**

It is proposed that the provisions in the EITI Standard related to contract and license allocations are revised to cover instances where governments use expedited or “fast-tracked” awards or transfer processes.

##### A. Proposed new language (blue and red):

**Objective:** The objective of this **requirement** is to provide a public overview of awards and transfers of oil, gas and mining licenses, the statutory procedures for license awards and transfers and whether these procedures are followed in practice. This can allow stakeholders to identify and address possible weaknesses in the license allocation process.

- a) Implementing countries are required to disclose the following information related to all contract and license awards and transfers taking place during the

accounting period covered by the most recent EITI disclosures, including for companies whose 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 deviations from the applicable legal and regulatory framework governing license transfers and awards.

In cases where governments use expedited or “fast-tracked” awards or transfer processes, countries are [required/encouraged] document the rationale for selecting such methods, clearly identify which awards or transfer processes these methods were applied to, and document the procedures and criteria used, the institutions involved, and the outcomes of the awards or transfer processes.

In cases where governments can select different methods for awarding a contract or license (e.g., 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.

#### B. Rationale:

In the context of the energy transition, some governments may expedite certain awards processes by applying “fast-tracked” procedures. For example, some countries may choose to do so to boost domestic supplies of minerals used in low-carbon technologies. Expedited awards processes can create risks when they are used selectively to favour certain applicants or when they result in environmental, social and governance safeguards being bypassed. By explicitly requesting that countries document when they have used expedited processes and asking them to describe the rationale for doing so and details on the procedures used, EITI reporting can help to ensure such decisions are in the public interest.

#### Proposal 5: Requirement 2.6 State participation (AC, G, ET)

It is proposed that the provisions in the EITI Standard related to the legal and regulatory framework are revised to reflect **the energy transition, gender** and the **fight against corruption**. With respect to the **energy transition**, it is proposed that the provisions in the EITI Standard related to state participation are revised to include disclosures on public finance on SOEs as well as how the energy transition is informing their decision-making. With respect to **gender**, it is proposed that the provisions in the EITI Standard related to state participation are revised to provide disaggregated employment data by SOEs. With respect to **anti-corruption**, it is proposed that the broader objective of Requirement 2.6 be revised to state that the information disclosed under this requirement should inform discussions of national stakeholders on corruption risks in the governance of SOEs and state participation in the extractive sector. Requirement 2.6 (a) (b) and (c) could be amended to align with this objective, specifically by making the encouraged aspects of these provisions mandatory and adding encouragements to disclose policies and practices related to anti-corruption and whistle-blower protection systems.

#### A. Proposed new language (blue and red):

**Objective:** The objective of this [requirement](#) is to ensure an effective mechanism for transparency and accountability for well-governed SOEs and state participation more broadly

through a public understanding of ~~whether~~ **how** SOEs' management is undertaken in accordance with the relevant regulatory framework. This information provides the basis for continuous improvements in the SOE's contribution to the national economy, whether financially, economically or socially, **and strengthens understanding of how SOE investment decisions and governance processes are aligned with long-term public interests. The requirement further aims to ensure that the information disclosed inform discussions of national stakeholders on corruption risks and reforms in the governance of SOEs and state participation in the extractive sector.**

- a) Where state participation in the extractive industries gives rise to material revenue payments, implementing countries must disclose:
- o 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 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. *The MSG is expected to evaluate whether there are deviations from these rules in practice and assess whether such rules are vulnerable to corruption*

For the purpose of EITI implementation, a state-owned enterprise (SOE) is a wholly or majority government-owned company that is engaged in extractive activities 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.

- o 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 for covering expenses at various phases of the project cycle, e.g., full-paid equity, free equity or 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.

- b) SOEs are ~~expected~~ **required** to publicly disclose their audited financial statements, or the main financial items (i.e., balance sheet, profit/loss statement, cash flows) where financial statements are not available.

c) Implementing countries are ~~encouraged~~ **required** 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 and code of conduct. **Implementing countries are encouraged to describe the rules and practices related to their corporate whistleblower protection systems and anti-corruption policies including asset disclosure and conflict of interest policies, due diligence requirements, and audit requirements. MSGs are encouraged to evaluate whether there are material deviations from these rules.**

d) Implementing countries are **[encouraged/required]** to provide gender disaggregated employment data by SOEs and when available, occupational level, for example breakdown of the Board of Directors of SOEs'.

e) Implementing countries are **[required/encouraged]** to disclose the total sum of current and anticipated levels of public finance invested through SOEs in the form of assets and liabilities in the extractive industries.

f) Implementing countries are **encouraged** to disclose information on how energy transition and climate risk considerations are informing SOE decision-making, including around new investment decisions and future revenue calculations.

g) SOEs are **expected** to disclose the identity of their agents or intermediaries, suppliers, or contractors for material transactions where applicable.

#### B. Rationale:

The **energy transition** is driving changes in supply and demand patterns for oil, gas and mineral resources, with potential implications for the sector's economics. Disclosures documenting the extent to which energy transition and climate risk considerations are informing SOE decision-making can further support efforts to ensure SOEs operate in line with long-term public interest. With respect to **gender**, this is standard best practice for companies and SOEs in line with the revised EITI Company Expectations. Examples of SOEs in EITI implementing countries providing this information include Ecopetrol which discloses this information in their annual sustainability report and Nigeria National Petroleum Corporation provides this information on their website.

With respect to the **fight against corruption**, corruption risks related to SOE operations and transactions are widely recognised and documented. An [OECD study](#) finds that SOEs in the oil and gas, mining sectors were among the sectors more likely to have experienced corruption or other irregular practices. The additional data on agents is proposed in recognition of scandals involving SOEs where agents/intermediaries played a significant role in perpetrating corrupt practices. The Secretariat understands that the inclusion of this information might be perceived as going beyond the scope of refinements. At the same time, there is a need to recognise the prevalence of risks posed by use of intermediaries. The guidance of the working group on these additional requirements is welcome.

#### **Proposal 6: Requirement 4.5 Transactions related to SOEs (AC)**

It is proposed that Requirement 4.5 includes in its broader objective that public access to data on SOE payments and transfers is contributing to public debate or reforms on corruption risks related to this issue. Requirement 4.5 could be amended to align with this objective by requiring the MSG to disclose discrepancies between actual transfers and prescribed transfers according

to existing rules.

A. Proposed new language (blue and red):

**Objective:** The objective of this requirement is to ensure the traceability of payments and transfers involving SOEs and strengthen public understanding of whether revenues accruable to the state are effectively transferred to the state and of the level of state financial support for SOEs. *The requirement further aims to ensure that public access to data on SOE payments and transfers is contributing to public debate or reforms on corruption risks related to this issue.*

*The multi-stakeholder group must ensure that the reporting process comprehensively addresses the role of SOEs, including comprehensive and reliable disclosures of material company payments to SOEs, SOE transfers to government agencies and government transfers to SOEs. The multi-stakeholder group is required to disclose the rules for SOE transfers in accordance with Requirement 2.6 and is encouraged to identify discrepancies, if any, between the amount actually transferred and the prescribed amount of transfers according to existing rules.*

B. Rationale:

Similar to the rationale for Requirement 2.6, there is limited appreciation among national stakeholders for how EITI data could be used to detect corruption risks related to SOE transfers. The proposed revision seeks to detect whether the rules governing the transfers of revenues to and from SOEs are followed, recognising that deviation from rules could flag potential risks such as diversion of SOE revenues for private gain.

### Proposal 7: Requirement 4.2 Sale of state's share of production or other revenues collected in kind (AC)

It is proposed that the broader objective of Requirement 4.2 includes ensuring that public access to revenue data is contributing to public debate or reforms related to corruption risks in commodity trading. Requirement 4.2 (a) (b) (c) and (d) could be amended to align with this objective by adding requirements on disclosure of agents/intermediaries, linking Requirement 4.2 to requirements on contracts (#2.4) and beneficial ownership (#2.5) and making some encouraged aspects of Requirement 4.2 mandatory.

A. Proposed new language (blue and red):

**Objective:** The objective of this requirement is to ensure transparency in the sale of in-kind revenues of minerals, oil and gas to allow the public to assess whether the sales values correspond to market values and ensure the traceability of the proceeds from the sale of those commodities to the national Treasury. *The requirement further aims to ensure that public access to data on sales of in-kind revenues is contributing to public debate and reforms related to corruption risks in commodity trading.*

- 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. Where applicable, this should include payments (in cash or in kind) 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). Multi-stakeholder groups, in consultation with buying companies, are expected to consider whether disclosures should be broken down by individual sale, type of product and price.

The disclosures could include ownership of the product sold and the nature of the contract (e.g. spot or term).

- 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, ~~and the list of selected buying companies including their beneficial owners~~, any material deviations from the applicable legal and regulatory framework governing the selection of buying companies. ~~Countries are required to disclose the list of selected buying companies including their beneficial owners, [identity of intermediaries or agents where applicable], and the related sales agreements.~~

#### B. Rationale:

Recent corruption scandals highlight need to strengthen Requirement 4.2. Validation assessments also show limited use of data on in-kind revenues despite corruption risks. The revisions aim to recognise the need for additional data disclosure to help countries undertake a comprehensive assessment of corruption risks in this area. The revisions also seek to align with and reflect progress on EITI's targeted support for transparency in commodity trading. The revisions also strengthen the links of Requirement 4.2 with Requirement 2.4 (contracts) and 2.5 (beneficial ownership).

#### Proposal 8: Requirement 4.3 Infrastructure provisions and barter arrangements (AC)

It is proposed that the broader objective of Requirement 4.3 includes ensuring that data on infrastructure and barter arrangements are contributing to public debate and reforms related to corruption. The scope of application of Requirement 4.3 could explicitly cover resource-backed loans and that the EITI definition of such loans be aligned with the international standards, namely the IMF's definition of collateralised public debt.

#### A. Proposed new language (blue):

**Objective:** The objective of this requirement is to ensure public understanding of infrastructure provisions and barter-type arrangements, ~~including resource-backed loans~~, which provide a significant share of government benefits from an extractive project, that is commensurate with other cash-based company payments and government revenues from oil, gas and mining, as a basis for comparability to conventional agreements.

The multi-stakeholder group and the Independent Administrator are required to consider whether there are any agreements or sets of agreements involving the provision of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions, ~~or physical delivery of such commodities~~ ~~or collateralized by future streams of income from their natural resource wealth~~. ~~This includes resource-backed loans that meet the IMF's definition of collateralized public debt~~. To be able to do so, the multi-stakeholder group and the



Independent Administrator need to gain a full understanding of: the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state (e.g., [extractive rights](#), [physical commodities pledged](#), [proceeds of the sales of physical commodity sales](#)), the value of the balancing benefit stream (e.g. infrastructure works, [loans](#)), and the materiality of these agreements relative to conventional contracts.

Where the multi-stakeholder group concludes that these agreements are material, the multi-stakeholder group is required to ensure that EITI implementation addresses these agreements and disclosures provide a level of detail and disaggregation commensurate with the other payments and revenue streams. The multi-stakeholder group is required to agree a procedure to address data quality and assurance of the information set out above, in accordance with Requirement 4.9.

B. Rationale:

The proposed revision seeks to address a recommendation from the Working Group on lessons learned from Validations under the new model in 2022 that the EITI definition of barter arrangements should include resource-backed loans as defined by international institutions such as the IMF. Agreements that meet the IMF's definition of resource-backed loans in cases such as Guinea, where a sovereign loan is collateralised by future mining revenues but does not involve the physical delivery of extractive commodities in repayment of the loan, have not been covered by the EITI's definition to date. EITI reporting processes have the potential to improve the transparency of resource-backed loan agreements, to track adherence to repayment modalities and to assess the benefits and risks from such deals for governments and citizens in comparison to conventional agreements. The proposed revision aims to ensure that MSGs cover resource-backed loans that involve either the physical delivery of extractive commodities or a share of the proceeds of the sale of the state's share of extractive commodities. This will provide MSGs with the mandate to shed light on the often opaque terms of resource-backed loans that do not involve the physical delivery of commodities and identify terms that are not beneficial to the state and could indicate risks of corruption.

**Proposal 9: Requirement 4.6 Subnational payments (AC)**

It is proposed that the objective of Requirements 4.6 on subnational payments and transfers includes ensuring that the information disclosed is contributing to debates and reforms on anti-corruption related to subnational revenues.

A. Proposed new language (blue):

The objective of this requirement is to enable stakeholders to gain an understanding of benefits that accrue to local governments through transparency in companies' direct payments to subnational entities and to strengthen public oversight of subnational governments' management of their internally-generated extractive revenues. [The requirement further aims to ensure that the information disclosed is contributing to debates and reforms on anti-corruption related to subnational revenues.](#)

B. Rationale:

The revised objective aims to motivate the MSG to use data on subnational payments to detect corruption risks such as diversion of these payments by local public officials for private gain or deviations from fiscal regimes applicable at the subnational level.

## Proposal 10: Requirement 5.1 Distribution of extractive sector revenues (AC)

It is proposed that the objective of Requirement 5.1 includes ensuring that the information disclosed is contributing to debates and reforms on anti-corruption related to distribution of revenues. Requirement 5.1. (a) could be amended to align with this objective by stating the expectation for MSGs to evaluate deviations from rules on distribution of revenues.

### A. Proposed new language (blue and red):

**Objective:** The objective of this requirement is to ensure the traceability of extractive revenues to the national budget and ensure the same level of transparency and accountability for extractive revenues that are not recorded in the national budget **to facilitate discussions or reforms on potential corruption risks in the distribution of revenues.**

Implementing countries must disclose a description of the distribution of revenues from the extractive industries.

- a) Implementing countries should indicate which extractive industry revenues, whether cash or in-kind, are recorded in the national budget. Where revenues are not recorded in the national budget, the allocation of these revenues must be explained, with links provided to relevant financial reports as applicable, e.g. sovereign wealth and development funds, sub-national governments, state-owned enterprises and other extra-budgetary entities. **The MSG is expected to identify deviations from existing rules on the distribution of revenues, where there are missing, unrecorded, or diverted extractive sector revenues. Where possible, the [MSG] could [investigate] the reasons for these deviations.**

### B. Rationale:

The non-recording of extractive sector revenues in national budgets could signal misappropriation of revenues. The proposed revision aims to maximise the benefit of disclosures under this requirement by enabling the detection of missing or diverted extractive sector revenues. It could help diagnose weaknesses in government systems and enable the MSG to formulate recommendations.

## Proposal 11: Requirement 5.2 Subnational transfers (AC)

It is proposed that the objective of Requirement 5.2 on subnational payments and transfers includes ensuring that the information disclosed is contributing to debates and reforms on anti-corruption related to subnational revenues. Requirement 5.2 could be amended to align with this objective by requiring the MSG to evaluate discrepancies between actual and legally mandated subnational transfers.

### A. Proposed new language (blue and red):

**Objective:** The objective of this requirement is to enable stakeholders at the local level to assess whether the transfer and management of subnational transfers of extractive revenues are in line with statutory entitlements. **The requirement further aims to ensure that the information disclosed is contributing to debates and reforms on anti-corruption related to 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~~ **required** to agree a procedure to address data quality and assurance of information on subnational transfers, in accordance with Requirement 4.9. **As part of ensuring data quality, the MSG is expected to evaluate the reasons for material discrepancies.** 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 Article 1 of the EITI Board's procedures for oversight of EITI implementation in section 4.

B. Rationale:

The revisions aim to strengthen the existing requirement by ensuring data analysis of subnational transfers to detect corruption risks such as diversion of these payments by local public officials for private gain or deviations from rules or formula for subnational transfers.

### Proposal 12: Requirement 6.1 Social and environmental expenditures by extractive companies (G)

It is proposed that the provisions in the EITI Standard related to social and environmental expenditures by extractive companies are revised to provide gender disaggregated data on the beneficiaries.

A. Proposed new language (blue):

Where the multi-stakeholder group agrees that discretionary social and environmental expenditures and transfers are material, the multi-stakeholder group is encouraged to develop a reporting process with a view to achieving transparency commensurate with the disclosure of other payments and revenues **and provide gender disaggregated data on the beneficiaries of these expenditures and transfers, when available.** The multi-stakeholder group is encouraged to agree a procedure to address data quality and assurance of the information set out above, in accordance with Requirement 4.9.

B. Rationale:

Aside from the International Labour Organisation, the EITI remains the top source of gender disaggregated data in the extractive sector. The collection of gender disaggregated data through EITI reporting has not been standardised as countries have implemented their own parameters. These proposed changes would standardise data collection and ensure consistency.

### Proposal 13: Requirement 6.2 Quasi-fiscal expenditures (AC)

It is proposed that the broader objective of this requirement be revised to include ensuring accountability of management of QFEs with specific reference to corruption risks.

A. Proposed new language (blue):

**Objective:** The objective of this requirement is that where state-owned enterprises undertake

extractive-funded expenditures on behalf of the government that are not reflected in the national budget, these are disclosed to ensure accountability in their management and address corruption risks.

B. Rationale:

QFEs could be used for patronage spending.<sup>5</sup> Increases in QFEs around election periods could suggest that these expenditures are being used to solicit the support of local communities that are intended to benefit from QFEs. Despite this risk, there is limited use of this data and appreciation for how it could ensure accountability. The revised objective aims to motivate the use of EITI data on QFEs to detect corruption risks.

**Proposal 14: Requirement 6.3 The contribution of the extractive sector to the economy (G)**

It is proposed that the provisions in the EITI Standard related to the contribution of the extractive sector to the economy be further disaggregated by company and occupational level when available.

A. Proposed new language (blue):

- d) Implementing countries must disclose, when available, information about the contribution of the extractive industries to the economy for the fiscal year covered by EITI implementation. It is required that this information includes:
  - a. ...
  - b. ...
  - c. ...
  - d. Employment in the public and private sectors of extractive industries in absolute terms and as a percentage of the total employment. The information should be disaggregated by gender and, when available, further disaggregated by company and occupational level when available.

B. Rationale:

Where required information is not available from official sources, implementing countries are expected to provide other methodologically-sound estimates for example Germany and Norway provide sound estimates of total government extractive revenues as their tax laws prohibit them from providing disaggregated data.

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<sup>5</sup> How can anti-corruption actors use EITI disclosures?

[https://resourcegovernance.org/sites/default/files/documents/how\\_can\\_anticorruption\\_actors\\_use\\_eiti\\_disclosures.pdf](https://resourcegovernance.org/sites/default/files/documents/how_can_anticorruption_actors_use_eiti_disclosures.pdf)

## Proposal 14: Requirement 6.4 environmental impact of extractive activities (ET, G)

It is proposed that the provisions in the EITI Standard related to the environmental impact of the extractive activities are revised to include the social impact of the extractive activities.

### A. Proposed new language (blue and red):

**Objective:** The objective of this [requirement](#) is to provide a basis for stakeholders to assess the adequacy of the regulatory framework and monitoring efforts to manage the environmental [and social](#) impact of extractive industries, and to assess extractive companies' adherence to environmental [and social](#) obligations.

Implementing countries are [\[required/encouraged\]](#) to disclose information on the management and monitoring of the environmental [and social](#) impact of the extractive industries. This [\[should/could\]](#) include:

- a) An overview of relevant legal provisions and administrative rules [governing environmental and social impact management in the extractive sector](#), as well as information on the roles and responsibilities of relevant government agencies in implementing the rules and regulations. It [\[should/could\]](#) further include information on any reforms that are planned or underway.
- b) [Information on](#) actual practice related to environmental [and social approvals](#) of extractive investments in the country. This could include information on environmental [social and gender](#) impact assessments, certification schemes, licenses and rights granted to oil, gas and mining companies, [as well as agreements related to land acquisition](#).
- c) [Information on the](#) management and monitoring [of the environmental and social impact of extractive activities](#). This could include information on regular environmental [and social](#) monitoring [procedures, related to water, land, emissions, and human rights, among other issues](#). Where data on these issues is already disclosed through other reporting mechanisms (e.g., companies' sustainability reports), the EITI [\[should/could\]](#) [provide references to the relevant data sources](#).
- d) [information on administrative](#) and sanctioning processes of governments, as well as environmental liabilities, environmental rehabilitation and remediation [and closure](#) programmes.

[Where such information has been published in the form of project level environmental and social impact studies with the implementing country's endorsement or in the form of investors' compulsory reporting to internationally recognized institutions, such publication can be deemed to constitute systematic disclosure.](#)

### B. Rationale:

With respect to the **energy transition**, changes in supply and demand patterns for oil, gas and mineral resources could result in extractive sector activity scaling back in some cases and increasing in others. These trends could reshape environmental and social outcomes in the sector, with potential opportunities and risk for local communities and the environment. Strengthening EITI disclosures in this area could help to shed light on the adequacy of efforts to manage environmental and social impacts. With respect to **gender**, where there is a legal requirement for social and gender impact assessments, this refinement will support disclosure of

this information which will assist citizens to understand the implications of extractives activities in their communities.

### Proposal 14: Requirement 6.4 environmental impact of extractive activities (G)

It is proposed that the provisions in the EITI Standard related to the Review the outcomes and impact of EITI implementation requires the multi-stakeholder group to document how it has taken gender considerations into account.

#### A. Proposed new language (blue and red):

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 multi-stakeholder group has identified as priorities for EITI implementation. The annual review of impact and outcomes must include:

i....

ii....

iii....

iv....

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.

In addition, ~~the~~ each constituency of the multi-stakeholder group is encouraged to ~~is required to~~ document how it has taken gender considerations and inclusiveness into account."

#### B. Rationale:

This will ensure accountability within the MSGs in their endeavours to increase diversity and thus promote meaningful participation of all genders.

### Proposal 15: Requirement #7.1 Public debate (AC)

#### A. Proposed new language (blue and red):

**Objective:** The objective of this requirement is to enable evidence-based public debate on extractive industry governance, including corruption risks and revenue loss risks, through active communication of relevant data to key stakeholders in ways that are accessible and reflect stakeholders' needs.

The multi-stakeholder group must ensure that government and company disclosures comprehensible, actively promoted, publicly accessible and contributes to public debate. Key audiences should include government, parliamentarians, civil society, companies, [anti-corruption actors] where applicable, and the media.

- a) The multi-stakeholder group is required to:
- iii. Ensure that **MSG discussions, engagement with stakeholders**, outreach events, whether organised by government, civil society, or companies, are undertaken to spread awareness of and facilitate dialogue about governance of extractive resources, **including corruption issues and risks on revenue losses**, building on EITI disclosures across the country in a socially inclusive manner.
- b) The multi-stakeholder group is encouraged to:
- i. Produce brief summary reports, with clear and balanced analysis of the information, ensuring that the data sources and authorship are clearly stated.
  - ii. **Use EITI implementation to disclose data beyond EITI requirements that would contribute to the understanding of corruption risks in the sector or cross-reference extractives data with other relevant data to enhance public debate on extractive sector governance.**
  - iii. Summarise and compare the share of each revenue stream to the total amount of revenue that accrues to each respective level of government.
  - iv. Undertake capacity-building efforts, especially with civil society and through civil society organisations, to 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.

#### B. Rationale:

The revisions seek to address concerns regarding the limited use of EITI data and processes in contributing to public debates on corruption in the extractive sector. The revisions are expected to highlight the need to assess during Validation the extent to which MSGs are using the EITI process to shed light on corruption issues at the country level.

#### **Proposal 16: Requirement 7.3 Recommendations from EITI implementation (AC)**

##### A. Proposed new language (blue and red):

**Objective:** The objective of this requirement is to ensure that EITI implementation is a continuous learning process that contributes to policymaking **and addressing of governance issues**, based on the MSG regularly considering findings and recommendations from the EITI process and acting on those recommendations it deems are priorities.

With a view to strengthening the impact of EITI implementation on natural resource governance, the multi-stakeholder group is required to take steps to act upon lessons learnt; to identify, investigate and address the causes of any information gaps and discrepancies **and evaluate whether such gaps enable corruption or revenue loss risks**; and to consider the recommendations resulting from EITI implementation. The multi-stakeholder group **should** ~~can~~ consider agreeing recommendations for strengthening government systems and natural resource governance **and** ~~Where appropriate, implementing countries are encouraged to~~ follow up on such recommendations.

B. Rationale:

The revisions aim to motivate the MSG and strengthen its role in formulating recommendations related to corruption mitigation. This complements the proposed revisions under Requirement 1.4 on MSG governance. The revisions also amplify the MSG's role under current requirements to identify information gaps and discrepancies and motivate the MSG to go beyond simply identifying gaps but further assess how these gaps could detect potential corruption.

The working group broadly supported this proposal with further suggestions to tighten the language in the interest of clarity. The working group also asked for further clarification of the terms "revenue loss risks" which could be clarified in the guidance note. It was also suggested that in addition to evaluating gaps in information, the MSG should take the further step of acting on identified gaps if possible, or refer the matter to the relevant agency.

**Proposal 17: Requirement 7.4 Review the outcomes and impact of implementation**

A. Proposed new language (blue and red):

**Objective:** The objective of this requirement is to ensure regular public monitoring and evaluation of implementation, including evaluation of whether the EITI is delivering on its objectives, with a view to ensuring the EITI's own public accountability and preserving the integrity of the EITI process in the country when confronted with reputational risks.

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 multi-stakeholder group has identified as priorities for EITI implementation. The annual review of impact and outcomes must include:
- i. A summary of EITI activities undertaken in the previous year and an account of the outcomes of these activities. The MSG is required to evaluate whether their activities for the previous year contributed to improved governance and anti-corruption efforts.
  - ii. An assessment of progress towards meeting 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.
  - 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.

- iv. An assessment of progress towards achieving the objectives set out in its work plan (Requirement 1.5), including the impact and outcomes of the stated objectives. Where applicable, the MSG is required to assess whether the outcomes of some objectives contributed to national debates or reforms in the extractive sector for that year.
  - 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 to address corruption and revenue loss risks where relevant, or to increase engagement with stakeholders. In addition, the multi-stakeholder group is encouraged to document how it has taken gender considerations and inclusiveness into account.
  - vi. Where relevant, a narrative of whether the MSG has considered publicly known corruption cases in the sector that are of national relevance for the year in review, and a documentation of the MSG's discussion, response and recommendations.
- b) All stakeholders should be able to participate in 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 review of impact and outcomes.

#### B. Rationale:

The proposed revisions emphasise the need to complement anti-corruption objectives in the MSG's work plan with requirements on how the MSG should monitor the impact of EITI on corruption reforms. The proposed revisions under #7.4.a aim to address the tendency of annual progress reports to simply list activities without explaining how these activities are relevant to emerging issues in the sector for the year in review. The revisions hope to address issues around siloed approaches to implementation especially where corruption scandals occur. The revision also gives the MSG the mandate to consider an approach or response to corruption scandals occurring in their extractive sector. The latter is key to ensuring the impact of EITI and to address reputational risks posed by these scandals.