

# Clarifying the assessment of EITI sign-up steps

## For decision

The paper proposes clarifying the assessment of sign-up steps that countries are expected to address before being designated as EITI implementing countries. The proposed framework clarifies the criteria and evidence that the Board will consider in assessing whether the sign-up steps related to Requirements 1.1-1.5 have been respected. The paper has been updated to reflect feedback from members of the Outreach and Candidature Committee.

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**Supporting documentation** (available via [www.eiti.org/internal/specific link](http://www.eiti.org/internal/specific-link))

List the supporting documents and provide a link

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

The EITI Standard ([Application process](#)) mandates the EITI Board to consider applications from countries wishing to be recognised as EITI implementing countries.

### **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**

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## 1 Introduction

This paper proposes clarifying the approach to assessing whether a country applying to be recognised as an EITI country has fully addressed the sign-up steps.

The 2019 EITI Standard states:

*“A country intending to implement the EITI is required to undertake a number of steps before applying to become an EITI country. These steps relate to government commitment (1.1), company engagement (1.2), civil society engagement (1.3), the establishment of a multi-stakeholder group (1.4) and agreement on an EITI work plan (1.5).*

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*When the country has completed the sign-up steps and wishes to be recognised as an EITI implementing country, the government should submit an EITI Application, endorsed by the multi-stakeholder group. The application should describe the activities undertaken to date and provide evidence demonstrating that each of the sign-up steps have been completed. The application should include contact details for government, civil society and private sector stakeholders involved in the EITI.*

*Once submitted, the application will be made publicly available on the EITI website. The EITI Board will review the application and assess whether the sign-up steps have been completed. The International Secretariat will work closely with the senior individual appointed by the government to lead on EITI implementation in order to clarify any outstanding issues. Based on this and any other available information, the EITI Board’s Outreach and Candidature Committee will make a recommendation, within a reasonable time period, to the EITI Board on whether a country’s application should be accepted. The EITI Board will make the final decision.*

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*Countries preparing to join the EITI are encouraged to identify potential barriers to systematic disclosures from the outset, for instance by conducting a systematic disclosure feasibility study or addressing opportunities for systematic disclosures as part of the preparations for becoming an EITI implementing country.”*

The EITI Standard does not specify how the Board assesses whether the sign-up steps related to Requirements 1.1-1.5 have been completed, although the practice to date has been to follow a

process broadly similar to the Validation of those requirements. The full text of Requirements 1.1-1.5 is available in the 2019 EITI Standard.<sup>1</sup>

In practice, the assessment of Requirements 1.1-1.5 at sign-up stage has been lighter than in Validation. Candidature assessments have principally drawn from evidence presented in the candidature application and publicly available sources, while Validation involves more extensive stakeholder consultations. Validation also requires considerable financial resources and time, while the Board “aims to process applications within eight weeks”.

The difference in procedure reflects the expectation that extensive evidence of adherence to the requirements is only available after a period of implementation. Candidature assessments are principally concerned with stakeholder engagement during the preparations for EITI implementation and consider whether there is an enabling environment for industry and civil society engagement. Validation examines a longer period and looks for more substantial evidence of effective stakeholder engagement in the EITI and MSG oversight of implementation. The EITI’s civil society protocol notes the following: “While the provisions relating to civil society participation in the EITI process remain consistent at every stage of EITI implementation, the evidence the EITI Board uses to evaluate the provisions will of necessity vary depending on the circumstances of the country, stage of implementation, and availability of information.”

This paper proposes a framework for assessing candidature applications and seeks to provide clarity to outreach countries on the sign-up requirements.

## 2 Background

Lack of clarity in how the sign-up steps should be assessed has created uncertainty in countries seeking to join the EITI and resulted in prolonged decision-making by the Board. In February 2020, the Board agreed to “review the sign-up steps for becoming an EITI member”.<sup>2</sup> The Board mandated the Secretariat to propose a clarified approach to assessing the completeness of sign-up steps ahead of the Board meeting scheduled for June 2020. The decision was taken following a discussion on the candidature application submitted by Equatorial Guinea.

The Board has also recognised the importance of encouraging countries to undertake systematic disclosures from the outset of EITI implementation. In 2018, the Board agreed to “encourage prospective candidate countries to identify potential barriers to systematic disclosures from the outset”. This recommendation is reflected in the 2019 EITI Standard and was reiterated by the Board in February 2020.<sup>3</sup> Argentina is using its first round of EITI reporting to map existing systematic disclosures, with a view to transitioning towards systematic disclosures over the

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<sup>1</sup> Requirement 1, 2019 EITI Standard: <https://eiti.org/document/eiti-standard-2019#r1>.

<sup>2</sup> Minutes of the 46th EITI Board meeting: [https://eiti.org/files/documents/final\\_minutes\\_46th\\_board\\_meeting\\_oslo.pdf](https://eiti.org/files/documents/final_minutes_46th_board_meeting_oslo.pdf).

<sup>3</sup> [https://eiti.org/files/documents/board\\_paper\\_46-4-b\\_accelerating\\_systematic\\_disclosure\\_1.pdf](https://eiti.org/files/documents/board_paper_46-4-b_accelerating_systematic_disclosure_1.pdf).

medium term (3 years). With support from the International Secretariat, Uganda is exploring options for partially mainstreamed EITI reporting as part of its candidature application, by building on the capacities of the Office of the Auditor General to act as the Independent Administrator. Equatorial Guinea has disclosed extractive contracts in preparation for EITI implementation.

The Outreach and Candidature Committee discussed the first draft of this paper on 27 April, and some Committee members provided feedback also in writing. The discussion demonstrated the constituencies have a different understanding of the sign-up step on civil society engagement and how it should be assessed.

Industry and implementing country representatives noted that the approach outlined in the draft submitted by the International Secretariat on 2 April raises the bar too high for prospective EITI countries regarding the assessment of civil society engagement. The countries with governance challenges were those that the EITI could benefit the most. Evidence from EITI implementing countries demonstrated that EITI could create an important space for civil society to begin and consolidate participation in extractive sector governance and related reforms. Representatives from both constituencies proposed removing the assessment of evidence of breaches of the civil society protocol from the candidature assessment and focussing the assessment on documenting examples of substantive engagement during the sign-up process.

Civil society representatives supported the assessment of evidence of breaches of the civil society protocol but argued that references to “organised” or “systematic” breaches should be removed. They also considered the proposed clarification of “civil society representatives” to be too narrow.

The essence of the diverging views related to whether adherence to the EITI’s civil society protocol should or can be expected from a country at sign-up stage. Some view EITI as a reform process that creates a space for civil society to get access to information and start engaging in extractives governance. This enables public debate to emerge and has the potential to lead to further opening and reforms. Others view civic space as the precondition for EITI implementation and doubt the potential for the EITI to support the creation of this space.

This disagreement is reflected in the Board’s past and ongoing discussions regarding candidature applications. For example, in taking the decision to admit Ethiopia as a candidate country, the Board highlighted the importance of overcoming challenges related to civil society engagement and encouraged the government to address legal obstacles to full civil society engagement in the EITI process.<sup>4</sup> The lack of a shared understanding has led to prolonged decision-making, inconsistency in assessments and limitations to the Secretariat’s ability to provide clear guidance to outreach countries.

In Validations concluded since 2016, the Board has in seven cases assessed progress in

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<sup>4</sup> <https://eiti.org/news/ethiopias-application-for-candidature-approved>.

implementing Requirement 1.3 as below “satisfactory” due to breaches of the civil society protocol (Azerbaijan, Chad, Ethiopia, Myanmar, Niger, Republic of the Congo, Tajikistan). In June 2018, the Board agreed that a country is suspended only if Validation concludes that the country has made “inadequate progress” or below in implementing Requirements 1.1-1.3<sup>5</sup>. This approach recognises that many EITI implementing countries have challenges related to civil society engagement. Implementing country and industry representatives have noted that requiring full adherence with the civil society protocol at the candidature stage would set the bar to a level which not all implementing countries would be able to meet.

The Secretariat has adjusted the proposed approach to reflect feedback from Committee members, seeking to strike a balance between diverging views. The revised proposal recognises the importance of inclusive, broad-based participation by civil society in the EITI sign-up process and expects the government to remove any barriers to it. However, it does not expect the country to demonstrate full compliance with the civil society protocol at the sign-up stage, recognising that improving civic space in extractives governance is a long-term process that EITI implementation can support. It also recognises that advanced expectations related to civic space at the sign-up step are likely to prevent some countries from joining the EITI. This would prevent their civil society from benefitting from disclosures and the space to participate created by the EITI. Therefore, it is proposed that the views of local civil society actors are considered in the assessment.

It is proposed that the assessment of civil society engagement focuses on evidence of full, active and effective engagement of civil society in the EITI sign-up process itself. Indications of possible breaches of the civil society protocol beyond the sign-up process would be documented and reviewed in Validation. The references to “organised” and “systematic” restrictions and the proposed clarification of “civil society representatives” have been removed to reflect civil society feedback on these and industry and implementing country representatives’ views that adherence to the civil society protocol should not be comprehensively assessed at the sign-up stage. The proposed approach would not have implications on the assessment of Requirement 1.3 at Validation, which continues look for patterns of restrictions affecting actors substantively engaged in the EITI, unless the Board agrees otherwise in the Validation review.

It is proposed that if the assessment demonstrates severe breaches of the civil society protocol that have prevented the active and effective participation of civil society or some factions of it in the EITI sign-up process, the candidate country would be expected to address these before being admitted as an EITI implementing country. In these cases, the Board would establish clear actions for the country to undertake.

Committee members were in agreement that countries should not be admitted as implementing countries on a provisional basis. Reference to provisional entry has been removed from the current version.

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<sup>5</sup> <https://eiti.org/document/board-clarified-application-of-requirement-83ci-civil-society-engagement>.

### 3 Proposed framework for assessing sign-up steps

The proposed framework clarifies the criteria and evidence that the Board will consider in assessing whether the sign-up steps related to Requirements 1.1-1.5 have been adequately addressed and whether the applicant country should subsequently be recognised as an EITI implementing country. It is proposed that the International Secretariat's assessment of the application follows this framework and that the application form is updated to reflect it. To clarify that the candidature assessment does not entail a Validation-level assessment of Requirements 1.1-1.5, the assessment will refer to sign-up steps as "respected" rather than "completed", as has been the practice to date. The assessment will be based on the application, publicly available evidence and contact with stakeholders during the sign-up phase. The Board may additionally mandate the Secretariat to undertake a mission to collect further evidence.

#### 3.1 Requirement 1.1 – Government engagement<sup>6</sup>

It is proposed that the assessment of the application confirms whether:

- The government has issued a public statement of its intention to implement the EITI (1.1.a).
- The government has appointed a senior individual to lead on the implementation of the EITI (1.1.b).
- Senior government officials are represented on the MSG (1.1.d).
- The government is fully, actively and effectively engaged in the EITI sign-up process (1.1.c). Evidence could include input to setting EITI objectives, attendance at MSG meetings and other events related to sign-up, provision of funding for the EITI process
- Government has undertaken any disclosures within the scope of the EITI Standard during the sign-up EITI process, mapped opportunities for systematic disclosures, and/or made specific commitments to improve disclosure. Such disclosures are not required but will be considered as evidence of government commitment towards EITI implementation.

#### 3.2 Requirement 1.2 – Industry engagement<sup>7</sup>

It is proposed that the assessment of the application confirms whether:

- Companies are fully, actively and effectively engaged in the EITI sign-up process (1.2.a). Evidence could include input to setting EITI objectives, attendance at MSG meetings and other events related to sign-up, public statements in support of the EITI, cooperation

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<sup>6</sup> For Requirement 1.1, please see: <https://eiti.org/document/eiti-standard-2019#r1-1>.

<sup>7</sup> For Requirement 1.2, please see: <https://eiti.org/document/eiti-standard-2019#r1-2>

within the company constituency on EITI, commitment to overcome obstacles to disclosures.

- There is an enabling environment for company participation in the EITI. If laws, regulations, administrative rules or actual practice affect company participation in the EITI process, the government and companies have committed to measures for overcoming these (for example, tax confidentiality).
- Companies have undertaken any disclosures within the scope of the EITI Standard during the sign-up EITI process, mapped opportunities for systematic disclosures, and/or made specific commitments to improve disclosure. Such disclosures are not required but are encouraged as evidence of industry commitment towards EITI implementation.

### 3.3 Requirement 1.3 – Civil society engagement<sup>8</sup>

It is proposed that the assessment of civil society engagement considers contextual information relating to the enabling environment for civil society participation, evidence indicating full, active and effective engagement in the sign-up process and document any evidence of possible breaches of the civil society protocol in the sign-up period. A candidate country is expected to demonstrate that a broad range of civil society actors have been invited to participate in the sign-up process and that their engagement has been active and effective. The government is expected to have undertaken efforts to remove possible obstacles to the effective and active participation of civil society in the sign-up process. The Board will also consider in its assessment whether local civil society representatives that are independent from the government and companies, support the country's admission.

#### 3.3.1 Contextual information

The assessment should provide an overview of the legal framework related to civic space and its application, including freedom of operation, association and expression. This overview should draw on indicators and relevant assessments conducted by, for example, Freedom House, Civicus and the International Centre for Not-for-Profit Law.

If the legal framework and relevant indicators suggest restrictions to civic space, the assessment should establish whether this has had an effect on civil society's full, active and effective engagement in the EITI sign-up phase. There should be evidence of civil society's full, active and effective engagement in the sign-up process.

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<sup>8</sup> For Requirement 1.3, please see: <https://eiti.org/document/eiti-standard-2019#r1-3> and <https://eiti.org/document/eiti-protocol-participation-of-civil-society>.



### 3.3.2 Evidence indicating full, active and effective engagement of civil society in the sign-up process

It is proposed that the assessment confirms whether:

- Civil society representatives fully contribute and provide input to the EITI process. Evidence could include input to setting EITI objectives, attendance at MSG meetings and other events related to sign-up, public statements in support of the EITI.
- Civil society representatives have capacity to participate in the EITI. Evidence could include analysis and/or statements on EITI-related topics, existence of CSOs working primarily on EITI-related topics, availability of foreign or domestic funding for EITI-related work.
- CSOs communicate and cooperate freely with each other on EITI related matters. Evidence could include civil society meetings on the EITI, forming of inclusive networks and coalitions, cooperation with international CSOs and civil society networks, communication through mailing lists.

The assessment should consider, whether civil society participation in the sign-up process is broad-based and whether, for example, organisations representing communities affected by extractive activities have had the opportunity to participate effectively.

### 3.3.3 Documentation of indications of breaches of the civil society protocol

It is proposed that the assessment documents whether there is:

- *Indication of* retaliation by the government following expression of views on oil, gas and mining activities or policies in the six months preceding the submission of the candidature application. This covers all oil, gas and mining-related topics within the scope of the EITI Standard, including state participation, licensing, beneficial ownership, environmental monitoring related to the extractive sector, distribution of extractive revenues, audit and budgeting processes, etc.

Expression of views refers to statements made either orally or in writing at MSG meetings, in emails, in the media, on social media, in publications, at public events, in parliamentary hearings or in other such public or private fora.

Retaliation may involve but is not limited to legal consequences on charges related to expressing views, legal consequences on other charges, physical violence or intimidation enacted or commissioned by government representatives, loss of employment in a governmental institution, deregistration of a CSO, restrictions to access to funding, restrictions to freedom of movement, etc. A clear link should be established between expressing views on topics within the scope of the EITI Standard and retaliation.

Possible legal provisions against sedition, defamation or related offences have not been applied to restrict fact-based public debate on, for example, the participation of senior government officials or their family members in oil, gas and mining activities, the recipients of licenses, or the use of government revenues from the extractive sector.

- *Indication of* the government in the six months preceding the submission of the candidature application restricting or attempting to restrict the use of publicly available

data related to EITI Requirements for research, advocacy or other related lawful purposes seeking to generate and inform public debate on extractive sector governance.

- *Indication of legal, regulatory or administrative obstacles systematically preventing civil society organisations that are involved in EITI implementation through the MSG or a network of CSOs from registering, accessing foreign or domestic funding for work related to extractive sector governance or holding meetings related to the EITI.*
- *Indication of attempts by the government in the six months preceding the submission of the candidature application to restrict civil society representatives from organising events directly linked to the EITI or interacting with the media or citizens on EITI-related topics.*
- *Indication of attempts by the government in the six months preceding the submission of the candidature application to restrict civil society's collaboration on the EITI either in-country or internationally, including coordinating views, building capacity or with seeking input on key EITI documents.*

The Secretariat will rely on evidence brought to its attention by local stakeholders and the EITI Board, as well as selected publicly available resources. The documentation of indications of possible breaches does not correspond to a Validation or suggest that incidents would be assessed as breaches of the civil society protocol in Validation.

If the candidature assessment demonstrates severe breaches of the civil society protocol that have prevented the active and effective participation of civil society or some factions of it in the EITI sign-up process as defined in the preceding section 3.3.2, the candidate country is expected to address these before being admitted as an EITI implementing country. If the Board decides to reject a country's application on this basis, it will establish clear actions for the country to undertake before submitting a new application.

Any other indication of concerns related to civic space in extractive sector governance will be documented, guide implementation support and be monitored through Implementation Progress Reports. Validation will establish whether the civil society protocol has been breached during EITI implementation. The Board also has the option to call for a review of adherence with Requirement 1.3 at any time, in accordance with Article 8, Section 4 of the 2019 EITI Standard. The provision notes that "where it is manifestly clear that a significant aspect of the EITI Principles and Requirements are not adhered to by an implementing country, the EITI Board will suspend or delist that country".

### 3.4 Requirement 1.4 – MSG oversight<sup>9</sup>

The assessment of the application is expected to confirm that a multi-stakeholder group has been formed and that it comprises the appropriate stakeholders. The assessment should include:

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<sup>9</sup> For Requirement 1.4, please see: <https://eiti.org/document/eiti-standard-2019#r1-4>.

- Information about outreach to stakeholders prior to the establishment of the MSG (1.4.a.i), including whether the invitation to participate in the group was open and transparent.
- Information on the membership of the multi-stakeholder group, and the process by which each stakeholder group nominated their representatives (1.4.a.ii). With regards to representation on the MSG, the assessment should confirm that civil society and companies have appointed their own representatives. Civil society MSG members should be operationally and in policy terms independent of government and companies.

The assessment should confirm whether the MSG has agreed public Terms of Reference that include at a minimum the provisions listed under Requirement 1.4.b.

### 3.5 Requirement 1.5 – Work plan<sup>10</sup>

The assessment of the application should confirm whether the MSG has agreed a publicly available work plan that includes:

- Objectives for implementation that are linked to the EITI principles and reflect national priorities for the extractive industries (1.5.a).
- Measurable and time-bound activities to achieve the agreed objectives (1.5.c).
- Activities aimed at addressing any capacity constraints identified (1.5.c.i).
- Activities related to the scope of EITI implementation (1.5.c.ii). The work plan should reflect the expectation that data is primarily disclosed systematically through routine government and company reporting and identify entities responsible for disclosures.
- Activities aimed at addressing any legal or regulatory obstacles identified (1.5.c.iii).
- Costings and funding sources, including domestic and external sources of funding and technical assistance (1.5.d).
- A timetable for implementation (1.5.g).

### 3.6 Conclusion

Based on the available evidence, the International Secretariat will provide the Outreach and Candidature Committee an initial assessment of whether the sign-up steps have been respected. The Committee will make a recommendation to the Board on whether the application should be accepted. In cases where evidence suggests that the sign-up steps have been respected but the Board is in doubt of continued adherence, the Board has the option to call for a review of adherence with Requirements 1.1-1.5 in accordance with Article 8, Section 4 of the 2019 EITI Standard.

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<sup>10</sup> For Requirement 1.5, please see: <https://eiti.org/document/eiti-standard-2019#r1-5>.