

Guidance to EITI constituencies

EITI International Secretariat Oslo, May 2018

The members of the EITI Association are organised in constituencies (Article 5.2 of the EITI Articles of Association). There are three constituencies in the EITI: The constituency of countries, which comprises implementing countries and supporting countries, the constituency of companies, which comprises companies in the extractive sector and institutional investors, and the constituency of civil society organisations. Each constituency decides on its rules governing appointments of Members of the EITI Association (Article 5.3).

The EITI Board agreed the following guidance and principles for constituencies on 26 April 2013 (the full text is available here: <https://eiti.org/sites/default/files/documents/draft-constituency-guidelines-2013.pdf>):

“Recognising the important principle that the EITI’s various constituencies have the right to determine their own internal processes, this document offers some guidelines of the internal working of constituency processes.

The constituencies are defined in the EITI Articles of Association, which also determine the size of the constituencies’ membership on the association and the number of seats on the EITI Board. (Much of the inspiration and language in these guidelines has been taken from the Global Fund to Fight AIDS, Tuberculosis and Malaria’s guidelines on constituency processes.)

Some of the EITI constituencies, not least the company constituency, are informally sub-divided. Currently, for example, mining companies organise themselves relatively independently from the oil and gas companies. The following principles should apply to the processes applied by these sub-sets:

- The processes the different constituencies follow should be open and transparent.
- Information on the processes should be made available on the EITI website, including a contact person for any stakeholder wishing to be involved.
- The process should be flexible and open to new members. The constituencies should bear in mind the need to balance the need for continuity against the need for renewal and broadening of the ownership of the EITI.
- Recognising the important role the Board has for the EITI, countries and organisations are encouraged to be represented at senior level.

The constituencies are urged to bear in mind how important it is that the EITI Association and Board are representative of all of the EITI’s stakeholders. It is, for example, expected that countries from different regions, companies, and civil society organisations with strong links to different regions, are represented. The constituency groups are encouraged to ensure that both genders are adequately represented.

On 14 February 2018, the EITI Board agreed recommendations for EITI constituencies to develop their guidelines. The Board's recommendations are annexed to this paper and are available online.¹ To support constituencies in developing their guidelines, the EITI International Secretariat has produced the following checklist. For the purpose of this document, the term "constituency" is understood to mean the three constituencies identified in Article 5.2 of the EITI Articles of Association (countries, companies and civil society) as well as any sub-groups in which the constituencies divide themselves in accordance with the sub-divisions specified under Article 5.2 (e.g., implementing and supporting countries or companies and institutional investors) or through generalised practice (e.g., oil and gas and mining companies, etc.).

1 Membership of the EITI Association

- Has the constituency agreed rules governing the appointment of Members of the EITI Association? (Article 5.3)
- Are the rules governing the appointment of membership in accordance with the limitations spelled out in Article 5.3 of the EITI Articles of Association?
- Is the process open and transparent? Is information on the process available on the EITI website, including a contact person for any stakeholder wishing to be involved, in accordance with the principles agreed by the Board in 2013?
- In accordance with the same principles and recommendation 5 in Board decision 2018-17/BM-39/BP-39-6, is the process inclusive?

Background: Article 5.1 of the EITI Articles of Association states that "A Member of the EITI Association is a personal representative of a country (meaning state), a company, organisation or legal entity that is appointed by a Constituency as set out in Articles 5.2 and 5.3". Article 5.2 states that "The Members are organised in three Constituencies, which are i) the Constituency of Countries, which comprise: a) Implementing countries...b) Supporting countries; ii) The Constituency of Companies, which comprise: a) Companies in the extractive sector... and Institutional Investors...; iii) The Constituency of Civil Society Organisations...". Article 5.3 states that "Each Constituency decides on its rules governing appointments of Members of the EITI Association. The Membership shall be limited to the following: i) From the constituency of countries, up to one representative from each Implementing Country and each Supporting Country (or their unions); ii) From the Constituency of Companies, up to one representative from each company and associations representing them, and a maximum of five representatives from Institutional Investors; iii) From the Constituency of Civil Society Organisations, up to one representative from each CSO".

2 Nomination of Board members

- The EITI Board is elected by the Members' Meeting on nomination from the constituencies (Article 8.1(ii)). Has the constituency agreed rules for the nomination of Board members for election by the EITI Members' Meeting?
- In accordance with the principles agreed by the Board in 2013,
 - o Is the process open, transparent and inclusive?
 - o Does the process seek to ensure that both genders are adequately represented?
 - o Does the process ensure that constituencies are represented on the Board at sufficiently senior level?
- Has the constituency considered provisions on term limits? At its meeting in Oslo in February 2018, the Board recommended that, taking into account the circumstances in each constituency, each

¹ Board decision 2018-17/BM-39/BP-39-6, https://eiti.org/sites/default/files/documents/board_decision_2018_17.pdf.

constituency should have an aspiration to renew 50% of Board members (including alternates) with the intention that Board members should serve a full term (3 years). (Board decision 2018-17/BM-39/BP-39-6, recommendation 16).

- At the same meeting in 2018, the EITI Board recommended that, especially for implementing countries, guidelines should require nominees to obtain a confirmation in writing that the necessary resources will be made available for their participation on the EITI Board. (Board decision 2018-17/BM-39/BP-39-6, recommendation 21)

Background; Article 8.1(ii) states that the EITI Members' Meeting shall... "Elect the Members, and Alternates for each Member, of the EITI Board, **on nomination from the Constituencies**". Article 9.4 states "The Constituencies may nominate, and the EITI Member's Meeting may elect, one alternate Board Member (an "Alternate") for each Board Member that the Constituency has Nominated. An Alternate may deputise for the Board Member. If there is no Alternate, the relevant Constituency shall nominate a new Board Member and Alternate".

3 Replacement of Board members and vacancies

- Do the guidelines establish a process to address the consequences of Board members failing to attend three or more consecutive Board meetings? (Article 9.5 and Board decision 2018-17/BM-39/BP-39-6, recommendation 19).
- Do the guidelines include instructions on how new Board members and alternates will be nominated between EITI Members' Meetings? (Article 9.6 and Board decision 2018-17/BM-39/BP-39-6, recommendation 23).

Background: Article 9.5 states: "If a Board Member is absent from a Board Meeting, that Board Member's Alternate may attend, participate in discussions, vote and generally perform all the functions of that Board Member in the Board Meeting. Should a Board Member fail to attend three consecutive Board meetings, the Board may, after consultation with his or her constituency, require the constituency to replace the Board Member. Article 9.6 states "In the case of a Vacancy on the EITI Board between two EITI Members' Meetings, this vacancy shall be filled by the resigning Board Member's Alternate, with the concerned Constituency nominating a new Alternate to be elected by the Board. Alternatively, the concerned Constituency may nominate a new Board Member to be elected by the Board." Article 9.6 states "In the case of a Vacancy on the EITI Board between two EITI Members' Meetings, this vacancy shall be filled by the resigning Board Member's Alternate, with the concerned Constituency nominating a new Alternate to be elected by the Board. Alternatively, the concerned Constituency may nominate a new Board Member to be elected by the Board."

4 Constituency coordinators and sub-constituency contact points

- Has the constituency established a position of constituency coordinator (recommended)? (Board decision 2018-17/BM-39/BP-39-6, Recommendation 7)
- If so, what are the terms of reference of the coordinator (proposed roles, responsibilities, systems of feedback and role in handling complaints) and selection/election procedures?² (Board decision 2018-17/BM-39/BP-39-6, Recommendation 7)

² Constituency Coordinators can be – but do not need to be – EITI Board members.

- Have sub-constituencies appointed contact-points (recommended)? (Board decision 2018-17/BM-39/BP-39-6, Recommendation 8)
- How are constituency coordinators and sub-constituency contact points communicated to the public?

Background: The EITI Board decided at its meeting in Oslo in February 2018 that “each constituency should establish a position of constituency coordinator”, that “Constituency Coordinators need not be EITI Board members” and that “there should be sub-constituency contact points”.

5 Procedures for ensuring consultations within the constituency

- Do the guidelines explain what procedures are in place to ensure consultation within the constituency on strategic policy issues? Board decision 2018-17/BM-39/BP-39-6, Recommendation 12)

Background: The EITI Board decided at its meeting in Oslo in February 2018 that the EITI’s guidance to its constituencies should “encourage consultations on strategic policy issues”.

6 Complaints

- Do the guidelines set out what procedures are in place for stakeholders to express and address concerns within the constituency? (Board decision 2018-17/BM-39/BP-39-6, Recommendation 25).

Background: The EITI’s guidance to its constituencies of 2013 recommended the following: “If an EITI stakeholder wishes to complain about the processes his/her constituency has followed to agree its representation on the EITI Association or Board, those complaints should firstly be directed towards the members of that constituency. If a satisfactory solution cannot be agreed, a written report should be made to the EITI International Secretariat. Within three weeks of receiving such a report, the Secretariat will investigate the complaint and make a report of its findings to the EITI”