

IMPLEMENTATION COMMITTEE

**EITI International Secretariat** 11 January 2017

IC paper 10-2-A

Reporting deadline extension request: Indonesia

*For decision*

**Summary:**

Indonesia has sought an extension of the deadline (31 December 2016) for publishing their EITI Report. The Secretariat has assessed the extension request in accordance with the EITI Standard (Requirement 8.5). The Secretariat’s assessment is that Indonesia is not eligible for an extension. The Secretariat recommends that the Implementation Committee recommends to the EITI Board that Indonesia is suspended. As per previous practice, the Secretariat recommends that the suspension is not enforced if the EITI Report is published prior to the Board taking a decision.

extension request: INDONESIA

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# 1. Recommendation

The International Secretariat recommends that the Implementation Committee makes the following recommendation to the Board:

*Indonesia is ineligible for an extension and is suspended effective [date of Board decision]. In accordance with the EITI Standard, the suspension will be lifted if the EITI Board is satisfied that the outstanding EITI Report is published within six months of the deadline (i.e. by 30 June 2017). If the outstanding EITI report is not published by 30 June 2017, the suspension will remain in force until the EITI Board is satisfied that the country has met requirement 2 (i.e., published an EITI Report covering data no older than the second to last complete accounting period – e.g. the 2015 EITI Report is published by the end of 2017). If the suspension is in effect for more than one year the EITI Board will delist Indonesia. As per previous practice, the Implementation Committee recommends that the suspension is not enforced if the EITI Report is published by the deadline for no-objection.*

# 2. Summary

The EITI Standard requires that EITI Reports are published annually, and no later than two years from the end of the financial period. (EITI Standard, requirement 4.8). An overview of EITI reports that have been published is available online at: <https://eiti.org/data>.

The EITI Standard stipulates that countries that do not meet the deadline for timely reporting may be suspended (requirement 8.2). However, countries may seek an extension (requirement 8.5). Indonesia has sought an extension of its reporting deadline of 31 December 2016 due to delays with the Grant Agreement from the World Bank which would be used to fund the production of the 2014 EITI Report, as well as administrative delays in the procurement process for the Independent Administrator (see extension request attached). The Secretariat has assessed the extension request in accordance with Requirement 8.5 which sets out criteria for assessing extension requests. The key tests in assessing extensions are whether the multi-stakeholder group has made *continuous progress* towards meeting the deadline, and whether the delays are due to *exceptional circumstances*. In previous cases, the Board has typically looked at how the government and MSG have worked to overcome barriers to meeting deadlines and considered achievements in implementation to date. The Board has also looked at whether the delay is caused by unforeseen challenges beyond the control of the MSG.

Based on these criteria, the International Secretariat’s assessment is that Indonesia is not eligible for an extension.

# 3. Background

## 3.1 The EITI requirements

The *EITI Standard* requires that EITI Reports are published annually, and no later than two years from the end of the financial period (EITI Standard, Requirement 4.8.b):

*Implementing countries must disclose data no older than the second to last complete accounting period, e.g. an EITI Report published in calendar/financial year 2016 must be based on data no later than calendar/financial year 2014. Multi-stakeholder groups are encouraged to explore opportunities to disclose data as soon as practically possible, for example through continuous online disclosures or, where available, by publishing additional, more recent contextual EITI data than the accounting period covered by the EITI revenue data. In the event that EITI reporting is significantly delayed, the multi-stakeholder group should take steps to ensure that EITI Reports are issued for the intervening reporting periods so that every year is subject to reporting.*

Requirement 8.2 addresses the implications of failing to meeting these deadlines:

*The EITI requires timely publication of EITI Reports (Requirement 4.8). If the EITI Report is not published by the required deadline, the country will be suspended. The suspension will be lifted if the EITI Board is satisfied that the outstanding EITI Report is published within six months of the deadline. If the outstanding reports are not published within six months of the deadline, the suspension will remain in force until the EITI Board is satisfied that the country has published an EITI Report that covers data no older than the second to last complete accounting period (Requirement 4.8). If the suspension is in effect for more than one year the EITI Board will delist the country.*

Requirement 8.5 of the *EITI Standard* addresses eligibility for an extension of the deadline:

*The EITI Board will apply the following tests in assessing any extension requests:*

*1. The request must be made in advance of the deadline and be endorsed by the multi-stakeholder group.*

*2. The multi-stakeholder group must demonstrate that it has been making continuous progress towards meeting the deadline and has been delayed due to exceptional circumstances. In assessing continuous progress the EITI Board will consider:*

*(i) The EITI process, in particular the functioning of the multi-stakeholder group and clear, strong commitment from government.*

*(ii) The status and quality of EITI reporting, including meaningful progress in meeting the requirements for timely reporting as per Requirement 4.8 and efforts to address recommendations for improving EITI reporting.*

*3. The exceptional circumstance(s) must be explained in the request from the multi-stakeholder group.*

*4. No extensions will be granted which would increase the maximum candidature period.*

In considering extension requests, the Board has previously decided that if an extension is granted but the outstanding reports are not published by the extended deadline, the country will be suspended until Requirement 4.8 is met.

# 4. Secretariat’s assessment of the extension request

## 4.1 Background

Indonesia was admitted as an EITI candidate on 19 October 2010 and published its first EITI report in May 2013, covering financial year 2009. In June 2014, Indonesia published the 2010/2011 oil and gas report, and the 2010/2011 mining report following an extension granted by the EITI Board. Indonesia achieved compliance with the EITI Rules on 15 October 2014. However, it was suspended on 26 February 2015 due to its failure to timely publish its 2012 EITI Report. The suspension was lifted on 17 December 2015 after Indonesia published it latest EITI Report in November 2015 covering financial years 2012 and 2013.

Indonesia’s EITI implementation has continuously been affected by administrative and bureaucratic processes that have in the past led to delays in the publication of their EITI Reports. Indonesia has yet to produce an EITI report within the two-year timeframe established by the EITI Bard. There is progress, however, in Indonesia’s work on beneficial ownership as EITI stakeholders are actively involved in the wider efforts to develop a national action plan to tackle beneficial ownership disclosure in Indonesia. The MSG has also agreed to participate in EITI’s targeted effort for more transparency in commodity trading, and is planning to produce a separate commodity trading report in 2017.

## 4.2 Extension request

On 19 December 2016, Indonesia submitted a request for an extension to the reporting deadline of 31 December 2016. The extension request is available from <http://eiti.org/internal/implementation-committee>.

## 4.3 Secretariat’s assessment

The International Secretariat has assessed the extension request based on the tests outlined in requirement 8.5.

1. **Endorsement by the MSG**

The extension request was endorsed by the MSG at its meeting on 5 December 2016.

1. **Assessment of “continuous progress towards meeting the deadline”**
2. **Assessment of “the EITI process, in particular the functioning of the multi-stakeholder group and clear, strong commitment from government”.**

The MSG met eight times in 2016. All constituencies are usually represented in these meetings, with the same people regularly attending for civil society and companies. Government is usually represented by the following agencies: Ministry of Energy and Mineral Resources, Ministry of Finance, Ministry of Home Affairs, Coordinating Ministry of Economic Affairs, the Audit and Development Agency, SKK Migas and sub-national government representatives. The preparation of the EITI Report was discussed in five MSG meetings.

Government commitment in Indonesia has been inconsistent. Government representatives in the MSG are not actively and consistently linking the EITI process to wider reforms despite clear opportunities to do so. Decision-making has been slow due to lack of high-level sponsorship. Government representatives who participate in MSG meetings often need to secure the approval of their superiors before they can act. MSG governance could be improved if MSG members would be more involved in steering the process and provide directives to the national secretariat. There have been discussions to revisit the structure and composition of the MSG for the last two years, but there has been no progress on this so far. The MSG intends to commission an impact assessment and institutional review in 2017 to improve implementation.

1. **Assessment of “the status and quality of EITI reporting, including meaningful progress in meeting the requirements for timely reporting as per Requirement 2 and efforts to address recommendations for improving EITI reporting”.**

The extension request alleges that the delay in the publication of the report is attributed to the delay with the Grant Agreement from the World Bank. According to the extension request, the government requested a new WB grant on 30 June 2015, and the grant was only disbursed one year later, on 13 June 2016. The extension request does not explain why it took so long to finalize the grant.

Preparations for the 2014 EITI Report commenced March 2016 with a discussion of the Terms of Reference (ToR) for the Independent Administrator. On 19 April 2016, the MSG approved the scoping study for the 2014 report as well as the ToR. On 29 April 2016 EITI Indonesia requested for a no-objection letter (NOL) from the World Bank on the said TOR. The NOL was only obtained a month later, on 28 May 2016. The procurement of the Independent Administrator commenced on 20 June 2016 with a request for NOL for the advertisement of hiring of the Independent Administrator. The following developments thereafter ensued:

* + 28 June 2016: World Bank’s approval of the advertisement for the hiring of the Independent Administrator.
  + 29 June 2016: Posting of advertisement for the submission of Expressions of Interest for prospective consultants.
  + 8 August 2016: Indonesia’s submission to the World Bank of a request for NOL on the consultant’s shortlist and request for Technical and Financial Proposal from the prospective consultants.
  + 22 August 2016: The MSG instructed the national secretariat to send the reporting templates to companies to ensure early receipt of data.
  + 8 November 2016: Word Bank’s issuance of NOL on the consultant’s short list.
  + 16 November 2016: EITI Indonesia’s request for NOL on the draft Contract of Work for the Independent Administrator.
  + 29 November 2016: World Bank’s issuance of NOL on the draft Contract of Work.
  + 5 December 2016 the MSG approved Ernst and Young’s engagement as Independent Administrator and agreed to request for an extension of the deadline to publish their 2014 EITI Report. The Contract of Work was signed on the same day.

The MSG states in its extension request that prior to the execution of the Contract of Work, the MSG took steps to mitigate the delays by sending the reporting templates to companies in advance. The MSG further states that to avoid similar delays in the future, the government of Indonesia has decided to provide funding for the production of succeeding EITI Reports entirely from the state budget. The preparations for the next report will commence in January 2017 when the MSG aims to start developing a scoping study.

As noted above, Indonesia has produced three EITI Reports to date and on all occasions, the publication of their report has been characterized by delays. Indonesia’s first EITI Report, covering 2009 data, was only published in April 2013. In December 2013, the MSG requested an extension of the deadline to publish the 2010 and 2011 EITI Reports citing administrative delays in disbursements from the World Bank MDTF. In 2014 Indonesia again sought for an extension of their reporting deadline which the Board denied and which led to the country’s suspension. In all instances, the ground alleged in the extension requests is the same, that is, delay in processing the World Bank Grant.

In terms of the quality of the reports, the 2012-2013 EITI Report contains a number of innovative aspects such as a brief discussion on the informal activities in the mining industry, and a focus on revenue sharing in three subnational units, namely, East Kalimantan, East Java and Riau. According to the national secretariat, the 2014 EITI Report will include information on artisanal mining as well as updates on reforms in the oil and gas law. The MSG also agreed to lower the threshold for materiality of companies for the next report from 25 Billion Rupiah to 20 Billion Rupiah. This increases the scope of the report from 108 to 120 companies.

The 2012-2013 EITI Report documents progress from the recommendations of the previous report. Three major recommendations were listed which were all acted upon. The Annual Progress Report of Indonesia for 2015 discusses how these recommendations have been acted upon. While there is progress in terms of addressing gaps in reporting formats, the MSG has yet to show that substantive recommendations relating to policies or national reforms have been implemented.

1. **“Exceptional circumstances”**

The MSG has outlined the following factors as causing the delay:

1. Delay in the signing of the Grant Agreement from the World Bank. The extension request notes that the commitment by the World Bank was made in October 2015, but the grant was signed only on 4 May 2016 and disbursed in mid-June 2016. It is not clear why this took so long. The World Bank has explained that the draft Grant Agreement was shared with the government in March, but its subsequent finalization and effectiveness were delayed due to several causes, including (1) internal review and processing of the grant agreement by the government, (2) administrative processes to make grant funds available through the government budget, including setting up a designated bank account, and (3) protracted consultations between Menko and the BPKP (government’s internal auditors) on the preferred method for extending the contracts of individual consultants within the National Secretariat.
2. Lengthy procurement process in engaging the Independent Administrator due to the necessity to obtain a series of No Objection Letters (NOL) from the World Bank. Consequently, the Contract of Work was only signed on 5 December 2016. It is not clear from the request why it took one month to obtain the NOL from the World Bank on the TOR for the EITI Report, nor why it took three months before the World Bank issued the NOL for the draft technical evaluation report. The World Bank has explained that the procurement of the IA firm was delayed because of the need for significant substantive revisions to documentation subject to prior review by the World Bank, including the IA TORs, Request for Proposals, etc., many of which were incomplete. The World Bank also had substantive concerns on the government’s procurement committee’s EOI evaluation and shortlisting process.

The International Secretariat does not consider these delays in procurement to constitute ‘exceptional circumstances’. Implementation in Indonesia has on several occasions been delayed for the same reasons, and administrative delays of this nature are not beyond the control of the government. Considering that this is not the first time that MSG is confronted with the same concern, the MSG should have taken this experience into account in planning for the 2014 EITI Report.

In addition, slow and lengthy procurement processes are not peculiar to Indonesia and is a common occurrence in other EITI countries. Allowing an extension on this ground would set an unfortunate precedent.

Regarding the delay in the signing of the Grant Agreement, this has been a recurring concern in Indonesia which the MSG should also have also foreseen and addressed. It is encouraging that the government has now decided to fully fund its succeeding EITI Reports. This indicates that there are remedies that the MSG could avail of to avert delays of this nature.

1. **Maximum candidature period**

The extension would not affect Indonesia’s maximum candidature period.

## 4.4 Conclusion

The Secretariat’s conclusion is that Indonesia is ineligible for an extension. While the MSG appears to have made continuous progress in meeting the deadline and undertaken some actions to mitigate delays, there does not appear to have been any exceptional circumstances beyond the MSG’s control to justify an extension of the deadline.