IMPLEMENTATION COMMITTEE

**EITI International Secretariat** 11 January 2017

IC paper 10-2-B

Reporting deadline extension request: Timor-Leste

*For decision*

**Summary:**

Timor-Leste 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 Timor-Leste is not eligible for an extension. The Secretariat recommends that the Implementation Committee recommends to the EITI Board that Timor-Leste 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.

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# 1. Recommendation

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

*Timor-Leste 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 Timor-Leste. 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). Timor-Leste has sought an extension of its reporting deadline of 31 December 2016 due to extensive discussions within the MSG on issues pertaining to the performance of the previous Independent Administrator (IA) and the confidentiality agreement in the ToR for the IA. These discussions have delayed the production of the 2014 EITI Report. The letter requesting for extension also states that given that the TOR for the IA would cover both 2014 and 2015 data, stakeholders needed to undertake consultations considering that their Interim Petroleum Code allows for release of financial data only two years after it was lodged with the Designated Authority. Thus, releasing disaggregated data for 2015 prior to 2017 would requires consent of all stakeholders.

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 Timor-Leste 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

Timor-Leste was admitted as an EITI candidate on 22 February 2008 and published its first EITI report in December 2009, covering financial year 2008. The 2009 EITI Report was published in December 2010. The 2010 and 2011 EITI Reports published in December 2012 were controversial in that they contained financial data disaggregated by PSA. There was no consensus within the MSG that the reports should be published with this detail of disaggregation. The government’s decision to publish the reports caused a breakdown in the relationship between MSG members.

While all stakeholders were back at the table in early 2014, subsequent discussions around disaggregation and confidentiality agreements with the Independent Administrator have caused delays with reporting. The initial assessment report states: “…the confidentiality agreement between companies and the Independent Administrator requires the Independent Administrators to obtain approval from each company prior to sharing the inception, draft, and final EITI Report to other MSWG members. As the companies often seek consent from headquarters, each approval may take several months, slowing down the EITI reporting process. Although the 2012 reporting process was delayed due to lengthy discussions of templates which led to the Independent Administrator only being recruited in September 2014, the confidentiality provisions contributed to that the 2012 EITI Report was published a month after the deadline of 31 December 2014.Although the 2013 EITI Report was published by the deadline of 31 December 2015, it is noticeable from the minutes of the MSWG meetings in December 2015 that the delays in the reporting process were again mainly due to the lengthy industry review of the content of the report” (p.18).

Timor-Leste achieved compliance with the EITI Rules in July 2010. On 1 July 2016, Timor-Leste underwent Validation in accordance with the EITI Standard. On 9 January 2017, the Board agreed that Timor-Leste has achieved meaningful progress in implementing the EITI Standard. One of the corrective actions requested by the Board is that the MSWG should in the future ensure that the procedure for safeguarding confidential information do not disadvantage any stakeholders or create obstacles and delays to EITI Reporting.

## 4.2 Extension request

On 21 November 2016, Timor-Leste 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**

It is not clear from the letter requesting for extension when the MSWG approved the extension request. The national secretariat has not responded to the international secretariat’s request for clarification on the date of approval by the MSWG.

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 Timor-Leste MSWG meets regularly, with the interval between meetings usually not exceeding three months. In 2016, the MSG met nine times. Government commitment remains consistent, with Minister of Petroleum and Natural Resources Alfredo Pires leading the process as the EITI national champion. Other government representatives, particularly from the National Authority of Petroleum and Minerals and the Ministry of Finance are actively involved in implementation and have sought ways to enable publication of disaggregated production, export and revenue data. Transparency is high on the government’s agenda, with EITI playing a significant role especially in terms of routinely disclosing extractives data. EITI implementation in Timor-Leste is fully funded by government. At the recent Validation, the EITI Board concluded that Timor-Leste has achieved “Satisfactory Progress” in meeting the requirement on government engagement.

There are concerns around the involvement and capacity of the CSOs to actively take part in policy and technical discussions which Timor-Leste intends to address as an outcome of the Validation. Companies are committed to EITI although there are recurring issues regarding the confidentiality agreement and the reluctance to disclose disaggregated data, which other stakeholders perceive as hampering progress with EITI Reports. At the recent Validation, the EITI Board concluded that Timor-Leste has achieved “Meaningful Progress” in meeting the requirement on company and CSO engagement.

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”.**

Minutes of MSWG meetings show that the MSWG begun discussing the Terms of Reference of the IA for the 2014-2015 EITI Report as early as January 2016[[1]](#footnote-1). The draft ToR was first circulated for consideration at the MSWG’s meeting on 4 March 2016[[2]](#footnote-2). In the succeeding meetings, the MSWG continued to discuss the draft ToR with meeting minutes showing that the discussions focused on the confidentiality agreement between industry and the IA, as well as the level of disaggregation of financial data and production and export figures. In June 2016, the MSWG decided to request the EITI Board for adapted implementation pertaining to disclosure of production, export and revenue data[[3]](#footnote-3) and to defer the approval of the ToR until the request had been considered by the EITI Board. While the ToR was approved in principle by the MSWG on 23 June 2016, the companies withheld their approval pending the decision of the Board on the request for adapted implementation.[[4]](#footnote-4) On 1 August 2016, the EITI Board concluded that Timor-Leste was not eligible for adapted implementation. The Request for Proposal was published on the Timor-Leste EITI website on 17 July 2016[[5]](#footnote-5) but it was only three months later, on 31 October 2016, that an Intent to Award in favour of Ernst and Young was published.[[6]](#footnote-6)

The extension request does not state the revised timetable for publishing the 2014 EITI Report except for a general statement that it will be launched in 2017. The 2014 and 2015 EITI Reports are being produced simultaneously.

Timor-Leste has previously asked for an extension in 2014, citing the same reasons for delay, namely the extensive discussions within the MSWG regarding the confidentiality agreement and the need to iron out differences between MSWG members. The Board concluded then that these grounds did not constitute exceptional circumstances. There is no evidence that the MSWG has taken steps to mitigate or address the issues causing delays to EITI Reporting.

In terms of quality of reporting, Timor-Leste’s EITI Reports have consistently included useful information on the country’s extractive sector. The 2013 EITI Report which was assessed for Validation purposes generally comply with the EITI Standard, except for disaggregation (4.7), data quality (4.9) and mandatory social expenditures (6.1a).

1. “**Exceptional circumstances”**

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

1. Extensive discussions within the MSWG on issues pertaining to the performance of the previous Independent Administrator (IA) and the confidentiality agreement in the ToR for the IA which delayed further discussions on the 2014 EITI Report.
2. The need to undergo consultations regarding the possibility to disclose 2015 data considering that the Interim Petroleum Code allows disclosure of data only after two years.

The International Secretariat does not consider the cited grounds to constitute ‘exceptional circumstances’ within the purview of the EITI Standard. Exceptional circumstances typically refer to factors that are beyond the control of the MSWG. Delays pertaining to the MWSG’s internal processes are within its capacity to address, even more so when it is not the first time that the MSWG is confronted with the same concern. Thus, the MSWG should have taken this experience into account in planning for the 2014-2015 EITI Report.

Regarding the provisions in the Interim Petroleum Code, it appears that the MSWG can agree on ways to disclose data for 2015 prior to 2017 with the consent of companies and government agencies. While it is recognized that this requires consultations, it is worth mentioning that this issue was also raised by stakeholders in connection with the MSWG’s request for adapted implementation and when Timor-Leste underwent Validation. Therefore, it is not a novel issue that the MSG could not have foreseen or addressed while preparing for the 2014 and 2015 EITI Report. Furthermore, the provisions in the Interim Petroleum Code would only affect publication of 2015 data, not 2014 data which is what Timor-Leste was required to publish by 31 December 2016.

1. Maximum candidature period

The extension would not affect Timor-Leste’s maximum candidature period.

## 4.4 Conclusion

The Secretariat’s conclusion is that Timor-Leste is ineligible for an extension. While the MSWG can be considered to have made progress in meeting the deadline, the Independent Administrator was only recruited in October 2016, less than three months before the deadline. Furthermore, there does not appear to have been any exceptional circumstances beyond the MSWG’s control to justify an extension of the deadline.

1. <http://www.eiti.tl/secretariat/msg/msgminutes/2016/finish/43-2016/229-minutes-on-15-january-2016> [↑](#footnote-ref-1)
2. <http://www.eiti.tl/secretariat/msg/msgminutes/2016/finish/43-2016/231-minutes-on-4-march-2016> [↑](#footnote-ref-2)
3. <http://www.eiti.tl/secretariat/msg/msgminutes/2016/finish/43-2016/234-minutes-on-8-april-2016> [↑](#footnote-ref-3)
4. <http://www.eiti.tl/secretariat/msg/msgminutes/2016/finish/43-2016/237-minutes-on-23-june-2016> [↑](#footnote-ref-4)
5. <http://www.eiti.tl/secretariat/tender/aggregate-body/viewdownload/16-aggregate-body/238-request-for-proposals-seeks-independent-administrator-to-prepare-and-reconcile-7th-and-8th-tl-eiti-reports> [↑](#footnote-ref-5)
6. <http://www.eiti.tl/secretariat/tender/viewdownload/5-tender/241-intent-of-award> [↑](#footnote-ref-6)