IMPLEMENTATION COMMITTEE

**EITI International Secretariat** 11 January 2017

IC paper 10-2-C

Reporting deadline extension request: Ukraine

*For decision*

**Summary:**

Ukraine has sought an extension of the deadline (31 December 2016) for publishing their second EITI Report. The Secretariat has assessed the extension request in accordance with the EITI Standard (Requirement 8.5). The Secretariat’s assessment is that Ukraine is eligible for an extension. The Secretariat recommends that the Implementation Committee recommends to the EITI Board that Ukraine’s reporting deadline is extended by three months to 31 March 2017. If the outstanding EITI Report is not published by 31 March 2017, Ukraine will be suspended. The suspension will not be lifted until requirement 2 is met (i.e. a 2015 EITI Report by 31 December 2017). If the suspension is in effect for more than one year, the EITI Board will delist Ukraine.

extension request: Ukraine

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# 1. Recommendation

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

*Ukraine is eligible for an extension and the reporting deadline is extended to 31 March 2017. If the outstanding EITI Report is not published by 31 March 2017, Ukraine will be suspended. The suspension will not be lifted until requirement 2 is met (i.e. a 2015 EITI Report by 31 December 2017). If the suspension is in effect for more than one year, the EITI Board will delist Ukraine.*

# 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). Ukraine has sought an extension of its reporting deadline for the 2014 EITI Report that was due to be published by 31 December 2016. The request cites delays in data collection from coal and metal ore industries that are mostly situated in the Luhansk and Donetsk regions which is affected by military conflict. The EITI Board recently granted Ukraine’s request for adapted implementation. As detailed in the adapted implementation request, throughout 2016, the MSG has sought to cover as much information as possible from these regions.

In addition, at the request of the Minster of Energy Ihor Nasalyk, the MSG decided that the next EITI Report should cover 2014 and 2015, in order to make the data more relevant and useful for citizens, the government and Ukraine’s reform agenda. The 2014-15 EITI Report aims to cover 80% of the coal industry payments and 99% of total revenues from extractive industries. In addition, the MSG has widened the scope of the EITI report by increasing a number of reporting companies to over 100 and adding two immaterial sectors – manganese and titanium – that are considered important given their investment potential.

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 Ukraine is 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

## Ukraine was admitted as an EITI candidate in October 2013. Its first EITI Report was published in December 2015 covering the fiscal year 2013. As per the MSG’s workplan, the first report only covered revenues from oil, gas and transportation. The next (2014-2015) EITI report should cover the coal industry, where 70% of production takes place in a conflict zone. The military conflict in Donetsk and Lugansk regions started in April 2014 after annexation of the Crimean Peninsula, leading to self-proclamation of people’s republics on these territories. The Government of Ukraine has declared both Donetsk and Lugansk regions as a zone of anti-terrorist operation. In addition to the coal industry, the MSG decided to widen the scope of EITI reporting and added manganese ore and titanium. Besides disclosure of revenues, the situation has implications for disclosure of data on production and exports, licenses, civil society participation and public debate on the EITI. Reliable information regarding the extractive industries in the Donetsk and Lugansk regions and offshore of the Crimea Peninsula is not accessible.

## Following the MSG’s decision, the UAEITI Secretariat hired an Independent Administrator to investigate the scope of the 2014-2015 EITI Report. The scoping study identified significant obstacles in gathering information from both regions. Taking into consideration the conflict situation and results of the scoping study, the MSG applied for adapted implementation. The EITI Board accepted the request for adapted implementation with respect to coverage of extractive industries in the Donetsk and Luhansk regions and Crimea and made recommendation to the multi-stakeholder group to undertake efforts to ensure the disclosure of any revenues received by the Government of Ukraine or any contextual information available from the conflict regions according to the EITI Standard.

## 4.2 Extension request

On 8 December 2016, Ukraine submitted a request for an extension to the reporting deadline for the 2014 Report 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 15 November 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 four times in 2016 to review the lesson learned from the first EITI Report and to oversee the production of the 2014 and 2015 Reports. All three constituencies are actively and effectively engaged in the implementation process and well represented during MSG meetings, including civil society members from extractive regions and conflict zone. The industry constituency has recently renewed its support by adding representatives from the largest coal and iron ore companies – DTEK and ArcelorMittal.

In between meetings, MSG members have been actively involved in the implementation process, including: developing and endorsing the ToRs for the Independent Administrator, reviewing and approving the scoping study, inception report and first draft 2014-15 EITI Report, developing a beneficial ownership roadmap, discussing an annual progress report, open data policy paper and a revised workplan. The MSG held an extensive discussion on the timely publishing of the EITI report, coverage of two fiscal years in one report, and the challenges with data collection. The Ministry of Energy and Coal Industry and members of Parliament undertook actions to facilitate procedures for data gathering and ensure the EITI reporting is tightly tied to the government’s agenda on transparency and anti-corruption.

MSG members also organised and participated in a wide range of events such as round tables, workshops, and media briefings aimed at raising awareness and generating public debate on extractive industries based on the EITI reporting. Over 50 events were carried out in Lviv, Ivano-Frankivsk, Poltava, Kharkiv, Sumy, Chernihiv, Luhansk and Donetsk regions and gathered representatives of local communities, local and central governments, civil society organizations, extractive companies. More details are available [here](http://eiti.org.ua/category/novyny/podiji/).

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 attributes the delay in the publication of the report to the challenges associated with conducting a scoping study in July-August 2016 in order to address recommendations from the first EITI report and agree a viable approach for covering the mining sector (and coal and iron ore production in particular). Coverage of the coal industry was particularly challenging. The scoping study identified significant obstacles in gathering information from Donetsk and Lugansk regions and Crimea. The Report was also delayed by a significant widening of the reporting scope and efforts to cover both 2014 and 2015 data.

The preparation for the second EITI report commenced in March 2016 when the MSG agreed for the Independent Administrator in accordance with the standard ToRs approved by the EITI Board.

Finalisation of a grant agreement with the World Bank was delayed by political instability in February-April 2016 that resulted in the resignation of Prime Minister Arseniy Yatsenyuk and appointment of the new Cabinet of Ministers. A new Minister of Energy and Coal Industry Ihor Nasalyk took over the Ministry on 14 April 2016. The procurement of the grant was restored from May 2016.

On 24 May 2016, the MSG endorsed the appointment of Ernst&Young as Independent Administrator, following a public tender in accordance with the World Bank’s procurement procedures. The Independent Administrator conducted a series of trainings for extractive companies on EITI reporting. Training was organized for different reporting entities: oil and gas companies, coal producing companies, metal ore producing companies, state owned enterprises, government representatives. In July-August 2016 the Independent Administrator carried out a scoping study to identify the material payments to be included to the Report.

Based on the findings of the scoping study, the MSG decided to add two immaterial sectors – manganese and titanium given their potential for future investment. On 9 September, the Independent Administrator delivered the scoping study, the inception report and a report on the trainings. On November 15, the MSG reviewed and approved the Draft EITI Report. The Draft EITI Report includes a comprehensive contextual section that provides a wide range of information on licenses, volumes of extraction of minerals, extraction areas, main natural resource fields, companies operating in the sectors, legislative and regulatory base, fiscal regime, capital investments, companies’ social contributions, share of the extractive sector in the economy, etc.

Following its commitment and Board’s recommendation from October 2016, the government and the MSG continued its efforts to obtain the coal data from extractive companies operating in the Donetsk and Luhansk regions. Long negotiations with key stakeholders, active involvement of the MSG members and international organizations has enabled the MSG to obtain data on companies representing 80% of state revenues from the coal mining.

The Secretariat’s assessment is that there has been continuous progress towards meeting the deadline. While the procurement of the Independent Administrator could have commenced earlier, the MSG did need a reasonable period of time to ensure that the lessons from the first report were reflected in the revised ToRs. Throughout 2016, there has been sustained MSG engagement, and considerable efforts to ensure that the 2014 and 2015 Report is as comprehensive as possible.

1. “Exceptional circumstances”

The MSG has outlined the following factors:

**The scoping study was more challenging than expected.** The scoping study was commissioned to address recommendations from the first EITI report and to extend the coverage of the reporting process to the mining sector. The scoping study identified significant obstacles in gathering information from the Regions of Donetsk, Lugansk and Crimea. Nevertheless, the MSG decided to continue its efforts to collect data from companies operating in these regions. These data collection efforts were also more demanding and time consuming than expected.

The application also notes **the continuing economic and military crisis in Ukraine**. Notwithstanding these challenges, the government continues to fulfill its commitment to implement the EITI and has made significant progress.

In the Secretariat’s assessment, Ukraine faces exceptional circumstances and unforeseen challenges beyond the control of the MSG.

1. Maximum candidature period

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

## 4.4 Conclusion

The Secretariat’s conclusion is that Ukraine is eligible for an extension. The military crisis has clearly impacted the scoping and data collection work. These are exceptional circumstances beyond the MSG’s control. Despite these internal and external challenges, the government continues to fulfill its commitment to implement the EITI and has worked consistently to increasing its impact for both benefits of citizens, the government and industry. The commitment to publish 2014 and 2015 data in the upcoming report demonstrates this commitment.