

# Annex D: Proposed changes to Requirement 4.7 on project-level reporting

For decision

For discussion

For information

## Summary

This paper outlines two options for aligning EITI Requirement 4.7 on level of disaggregation with the Board's decision to reaffirm that project-level disclosures are required under the EITI Standard. It is suggested that the Implementation Committee considers the options and makes a recommendation to the Board on which proposals discuss in Kyiv.

# Proposed changes to Requirement 4.7 on project-level reporting

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## 1 Background

The Board reaffirmed in 2017 that project-level reporting is required for all reports covering fiscal years ending on or after 31 December 2018<sup>1</sup>, and agreed guidance and templates for project-level reporting.<sup>2</sup> To reflect this decision, guidance and emerging practice it is proposed that the requirement is revised to:

- i. Clarify that the mandate to define ‘project’ and identify revenues streams to be reported on a project level rests with implementing governments according to their local systems and the types of legal agreements governing the sector. In agreeing such a definition and identifying revenue streams, implementing countries would need to ensure that the project level definition and reporting is consistent with other mandatory disclosure rules.
- ii. Clarify that where a payment covered by the scope of the EITI report is levied at entity level rather than at project level, the company may disclose the payment at the entity level.

At its first meeting, several members of the working group on clarifications to the EITI Requirements raised the need for EITI reporting practices on project-level reporting to be consistent with other existing mandatory disclosure frameworks, such as the EU directives on accounting and transparency, as well as ensuring flexibility for implementing countries to adapt the requirements to their laws and specific circumstances in implementing countries. Based on previous Board discussions<sup>3</sup> and a review undertaken by the EITI Secretariat reviewing project-level reporting practices in EITI,<sup>4</sup> the working group has presented two options for how to revise Requirement 4.7 for the working group’s consideration.

## 2 Current phrasing in the EITI Standard

### **EITI Requirement 4.7 Level of disaggregation.**

The multi-stakeholder group is required to agree the level of disaggregation for the publication of data. It is required that EITI data is presented by individual company, government entity and revenue stream. Reporting at project level is required, provided that it is consistent with the United States Securities and Exchange Commission rules and the forthcoming European Union requirements.

<sup>1</sup> BP 36-4-B Project level reporting: <https://eiti.org/BP36>

<sup>2</sup> Guidance note 29 on project-level reporting, including reporting templates: <https://eiti.org/GN29>

<sup>3</sup> 2017-14/BM-36/BP-36-4-B: <https://eiti.org/BD/2017-14>

<sup>4</sup> Project-level reporting practices in the EITI (May 2017): <https://eiti.org/document/projectlevel-reporting-practices-in-eiti>

### **Option 1 (preferred): Revise Requirement 4.7 to ensure consistency with globally applicable mandatory payment disclosure rules**

As per the Board decision on project-level reporting<sup>5</sup>, reporting by project would be required and implementing countries would need to adopt the project level definition and reporting of the EU Accounting Directive. It is important to note that the definition of project found in the EU Accounting Directive was designed to apply to a company reporting in all countries of operation and therefore allows some flexibility. The guidance note on project-level reporting advises that for the purposes of EITI reporting MSGs should follow the guiding principle that *project level payments should be reported in relation to the legal agreement which forms the basis for payment liabilities with the government*.<sup>6</sup> It is also worth noting that the implementing countries that have been identified so far as collecting payment data on a project level through EITI reporting in the current reporting cycle have followed adopted definitions that are in line with this approach.<sup>7</sup>

Thus, it is proposed that Requirement 4.7 is revised to read:

~~The multi-stakeholder group is required to agree the level of disaggregation for the publication of data.~~ "It is required that EITI data is disaggregated presented by individual project, company, government entity and revenue stream. Reporting at project level is required, provided that it is consistent with the United States Securities and Exchange Commission rules and the forthcoming European Union requirements."

For the purpose of EITI reporting, a project is defined as operational activities that are governed by a single contract, license, lease, concession, or similar legal agreement, and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, the multi-stakeholder group must clearly identify and document which instances are considered a single project.

Substantially interconnected agreements are a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements with substantially similar terms that are signed with a government, giving rise to payment liabilities. Such agreements can be governed by a single contract, joint venture, production sharing agreement, or other overarching legal agreement.

Where a payment covered by the scope of the EITI Report is levied at entity level rather than at project level, the company may disclose the payment at the entity level.

### **Option 2: Revise Requirement 4.7 to align with emerging best practice**

Reporting by project would be required, but the mandate to define project would rest with the implementing governments according to their local systems and the types of legal agreements governing

<sup>5</sup> BP 36-4-B Project level reporting: <https://eiti.org/BP36>

<sup>6</sup> Guidance note 29, p.4: <https://eiti.org/GN29>

<sup>7</sup> Colombia, Trinidad and Tobago and Zambia.

Annex D: Proposed changes to Requirement 4.7 on project-level reporting the sector. This would be in line with the Canadian approach through ESTMA, and preliminary results of the review of the Accounting Directive currently underway at the European Commission. It will also ensure that EITI continues to be context specific while in line with emerging best practice. In agreeing such a definition, implementing countries would ensure alignment of project level definitions and reporting with other mandatory disclosure rules. Thus, Requirement 4.7 could be revised to read:

“The multi-stakeholder group is required to agree the level of disaggregation for the reporting and publication of data. It is required that EITI data is presented disaggregated by individual project, company, government entity and revenue stream. Reporting at project level is required, provided that it is and the multi-stakeholder group must agree a definition consistent with emerging best practice<sup>1</sup> and relevant national systems. ~~the United States Securities and Exchange Commission rules and the forthcoming European Union requirements.~~”

<sup>1</sup> The EITI will maintain a list of applicable international norms with project definitions and update its guidance accordingly. International norms currently in force with project definitions: Article 41(4) of the EU Accounting Directive, and Section 2.3.2 of the Technical Reporting Specifications for the Canadian Extractive Sector Transparency Measures Act.