

Draft Proposed clarifications and changes to the EITI Requirements

For decision

For discussion

For information

Summary

Further to the Board's decision at its 41st meeting in Dakar, this paper prepared in close consultation with the EITI working group on clarifications to the EITI Requirements sets out proposals for improvements for the Committee's consideration. The suggested changes focus on reflecting precedents established in Board decisions, encouraging systematic disclosures, and further areas where implementation and Validation has demonstrated opportunities for improving the requirements and to encourage disclosures. The proposed revisions are based on demands for clarity on what information is required by the EITI Standard and seek to reflect emerging disclosure practices and innovative approaches in EITI countries.

It is suggested that the Implementation Committee considers each of the proposals and make a recommendation to the Board on which proposals to take forward. Subject to Board endorsement in Kiev, the next step would be to agree the final edited version of the revised Standard via circular.

Supporting documentation (available via <http://eiti.org/internal/implementation-committee>)

N/A.

Has the EITI competence for any proposed actions been considered?

The Articles of Association (Article 10) address the mandate of the EITI Board to, inter alia, "Consider general and specific policy issues affecting the EITI Association" and "adopt more detailed procedures and rules for the management and operation of the EITI Association". The Implementation Committee has been mandated by the EITI Board to "Consider any emerging policy issues related to the EITI Standard".

Financial implications of any actions

To be advised, subject the options to be considered by the Board.

Document history

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Discussed by the Implementation Committee	4 February 2019
Approval by the Implementation Committee	TBC
Submitted to the EITI Board	TBC

PROPOSED CLARIFICATIONS TO THE EITI REQUIREMENTS

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1 Introduction

Further to the Board's decision at the 41st meeting in Dakar this paper was prepared in close consultation with the EITI working group on clarifications to the EITI Requirements sets out proposals for improvements for the Committee's consideration. As was agreed by the Board, the suggested changes focus on reflecting precedents established in Board decisions, encouraging systematic disclosures, and further areas where implementation and Validation has demonstrated opportunities for improving the requirements and to encourage disclosures. The proposed revisions are based on demands for clarity on what information is required by the EITI Standard and seek to reflect emerging disclosure practices and innovative approaches in EITI countries.

It is suggested that the Implementation Committee considers each of the proposals and make a recommendation to the Board on which proposals to take forward. Subject to Board endorsement in Kiev, the next step would be to agree the final edited version of the revised Standard via circular.

2 Background

The EITI Standard has continually evolved to meet the needs of stakeholders and to further the realisation of the EITI Principles. In the lead up to the EITI's Global Conferences, the EITI Board has considered opportunities to strengthen EITI implementation and to improve governance of the EITI Association. This paper focuses on the development of the requirements for implementing countries. The Governance Committee's discussions regarding improvements to governance (including possible amendments to the Articles of Association) should also be taken into account.

Since Lima, the EITI Board has had several discussions regarding the outlook for developing the EITI Standard. In May 2017, the Board discussed Board Paper 37-2 *Is the EITI achieving its mission?*¹ A number of Board Members highlighted the need for the EITI to reflect on whether it is achieving its mission and where it is heading. Other Board members referred to the need to collate and interpret the findings from the first set of Validations and reflect on the meaning of the results for the EITI as an organisation. Some Board members, particularly from implementing countries, noted that the EITI had changed rapidly, and that a period of consolidation was needed. The key outcome from the meeting in Oslo was that the Governance and Oversight Committee, Implementation Committee², and Validation Committee to consider the suggestions related to their Committees, and for the Board to establish working groups on a number of specific topics.

The Implementation Committee and the Board have reviewed a number of papers with recommendations for clarifying language in the EITI Standard since the Global Conference in 2016. At the 41st Board meeting in Dakar (30-31 November), the Board agreed to establish a working group with representatives from all the constituencies to be formed to consider possible edits and changes to be proposed to the Board ahead of the Global Conference.

¹ https://eiti.org/sites/default/files/documents/final_37th_eiti_board_meeting_minutes.pdf

² The 2018 International Secretariat Work plan highlights the role of the Implementation Committee to "continue to consider revisions to existing guidance material on the EITI Standard and further development of the EITI Standard". In particular, it notes the need to "support the EITI Board with further refinements to requirement 4.7" regarding project-level reporting and to "draw out lessons of implementing the EITI Standard, especially in frontier areas like beneficial ownership transparency and commodity trading".

This paper sets out proposals for refinements to the EITI Standard and provides a brief account of the reasoning behind them, with references to previous Board papers and decisions.

3 Proposed clarifications to the EITI Standard

This section of the paper outlines proposed clarifications to the EITI Requirement as discussed by the working group established under the Implementation Committee.³ The working group recommends:

Proposal 1: Gender considerations in EITI

It is proposed that Requirements 1.4 and 6.3 are revised to reflect demands from stakeholders that the EITI Standard reflects opportunities for addressing gender consideration in EITI implementation. Proposed changes to Requirement 7.1 on public debate to reflect gender considerations are also included under Proposal 11 (*Encouraging open data efforts*).

1.4 Multi-stakeholder group.

ii. Ensure that stakeholders are adequately represented. This does not mean that they need to be equally represented numerically. The multi-stakeholder group must comprise appropriate stakeholders, including but not necessarily limited to: the private sector; civil society, including independent civil society groups and other civil society such as the media and unions; and relevant government entities which can also include parliamentarians. Each stakeholder group must have the right to appoint its own representatives, bearing in mind the desirability of pluralistic and diverse representation. The nomination process must be independent and free from any suggestion of coercion. Civil society groups involved in the EITI as members of the multi-stakeholder group must be operationally, and in policy terms, independent of government and/or companies. [Each multi-stakeholder group and constituency should consider gender balance in their representation to progress towards parity between men and women.](#)

6.3 The contribution of the extractive sector to the economy.

Implementing countries must disclose, when available, information about the contribution of the extractive industries to the economy for the fiscal year covered by the EITI Report. It is required that this information includes:

d) Employment in the extractive industries in absolute terms and as a percentage of the total employment. [Implementing countries are encouraged to disaggregate employment information by project, role within the project and by gender.](#)

The working group also discussed how Principle 1 could be revised to emphasise that natural resource wealth should be an important engine for sustainable economic growth that contributes to gender equity. Future Board discussions could consider changes to the EITI Principles to reflect its commitment to gender equality.

Background: Efforts to enhance women's participation in decision-making around the management, development and use of those resources is part of a wider agenda to ensure that extractive resources are

³ Terms of Reference

managed fairly and in the best interest of all citizens. EITI stakeholders and Board members have expressed an interest to continue the discussion on how EITI implementation relates to gender beyond reflecting gender issues in EITI guidance.⁴

Proposal 2: Improving systematic disclosures related to state participation and SOEs

It is proposed that Requirements 2.6, 4.5 and 6.2 related to state-participation and state-owned enterprises are revised to ensure clarity on what disclosures are required. The proposed changes are pending final input from the EITI network for SOEs.

2.6 State participation.

a) Where state participation in the extractive industries gives rise to material revenue payments, implementing countries must disclose:

i) An explanation of the [role of state-owned enterprises \(SOEs\) in the sector](#) and prevailing rules and practices regarding the financial relationship between the government and ~~state-owned enterprises~~ the SOEs, i.e. the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing. [This should include disclosures of transfers, retained earnings, reinvestment and third-party financing related to SOE joint ventures and subsidiaries.](#)

For the purpose of EITI reporting, a SOE is a wholly or majority government- owned company that is engaged in extractive activities on behalf of the government [or collecting material revenues from the extractive industries on behalf of the government](#). Based on this, the multi-stakeholder group is encouraged to discuss and document its definition of SOEs taking into account national laws and government structures.

ii) Disclosures from the government and SOE(s) of their level of ownership in mining, oil and gas companies operating within the country's oil, gas and mining sector, including those held by SOE subsidiaries and joint ventures, and any changes in the level of ownership during the reporting period.

This information should include details regarding the terms attached to their equity stake, including their level of responsibility to cover expenses at various phases of the project cycle, e.g., full-paid equity, free equity, carried interest. Where there have been changes in the level of government and SOE(s) ownership during the EITI reporting period, the government and SOE(s) are expected to disclose the terms of the transaction, including details regarding valuation and revenues. Where the government and SOE(s) have provided loans or loan guarantees to mining, oil and gas companies operating within the country, details on these transactions should be disclosed, [including loan tenor and terms \(i.e. repayment schedule and interest rate\)](#). [Multi-stakeholder groups may wish to consider comparing loans terms with commercial lending terms.](#)

c) [SOEs are expected to publicly disclose their audited financial statements, or the main items \(i.e. balance sheet, profit/loss statement, cash flows\) where financial statements are not available.](#)

d) [Implementing countries are encouraged to describe the rules and practices related to SOEs' operating and capital expenditures, procurement, subcontracting and corporate governance, e.g. composition and appointment of the Board of Directors, Board's mandate, code of conduct.](#)

⁴ IC Paper 34-4 Opportunities for improving licensing transparency

4.5 Transactions related to state-owned enterprises.

The multi-stakeholder group must ensure that the reporting process comprehensively addresses the role of state-owned enterprises (SOEs), including [comprehensive and reliable disclosures of material company payments to SOEs, SOE transfers to government agencies and government transfers to SOEs](#). ~~material payments to SOEs from oil, gas and mining companies, and transfers between SOEs and other government agencies.~~

6.2 Quasi-fiscal expenditures.

Where state participation in the extractive industries gives rise to material revenue payments, implementing countries must include disclosures from SOE(s) on their quasi-fiscal expenditures. Quasi-fiscal expenditures include arrangements whereby SOE(s) undertake public social expenditure such as payments for social services, public infrastructure, fuel subsidies and national debt servicing, etc. outside of the national budgetary process. The multi-stakeholder group is required to develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, and should include SOE subsidiaries and joint ventures. [Implementing countries and multi-stakeholder groups may wish to take the IMF's definition of quasi-fiscal expenditures into account when considering whether expenditures are considered quasi-fiscal.](#)

Background: Validation has revealed opportunities for clarifying the EITI Requirements related to SOEs, which were considered by the Board at its meeting in October 2018.⁵

Proposal 3: Reflecting emerging practices on licensing transparency

It is proposed that Requirement 2.2 is revised to reflect emerging practices and demands from stakeholders for improved disclosures on contract and license allocations.

2.2 Contract and license allocations.

a) Implementing countries are required to disclose the following information related to [all contract and license awards and transfers taking place](#) ~~the award or transfer of licenses pertaining to the companies covered in the EITI Report~~ during the accounting period covered by the EITI Report, including pertaining to companies that are not in the scope of EITI reporting (i.e. where their payments fall below the agreed materiality threshold):

- i. a description of the process for transferring or awarding the license;
- ii. the technical and financial criteria used;
- iii. information about the recipient(s) of the license that has been transferred or awarded, including consortium members where applicable; and
- iv. any [material non-trivial](#) deviations from the applicable legal and regulatory framework governing license transfers and awards.

[In cases where governments can select different methods for awarding a contract or license \(e.g.](#)

⁵ BP 41-4-1

competitive bidding or direct negotiations), the description of the process for awarding or transferring a license could include an explanation of the rules that determine which procedure should be used and why a particular procedure was selected.

~~It is required that the information set out above is disclosed for all license awards and transfers taking place during the accounting year covered by the EITI Report, including license allocations pertaining to companies that are not included in the EITI Report, i.e. where their payments fall below the agreed materiality threshold.~~ Any significant legal or practical barriers preventing ~~such~~ comprehensive disclosure of the information set out above should be documented and explained in the EITI Report, including an account of government plans for seeking to overcome such barriers and the anticipated timescale for achieving them.

- b) Where companies covered in the EITI Report hold licenses that were allocated prior to the accounting period of the EITI Report, implementing countries are encouraged, if feasible, to disclose the information set out in 2.2(a) for these licenses.
- c) Where licenses are awarded through a bidding process during the accounting period covered by the EITI Report, the government is required to disclose the list of applicants and the bid criteria.
- d) Where the requisite information set out in 2.2(a-c) is already publicly available, it is sufficient to include a reference or link in the EITI Report.
- e) The multi-stakeholder group may wish to include additional information on the allocation of licenses in the EITI Report, including commentary on the efficiency and effectiveness of licensing procedures [and a description of procedures and actual practices for renewing or revoking a contract or license and the criteria applied.](#)

Background: A review of disclosures of license allocations in reporting found that there were opportunities to clarify that Requirement 2.2 covers contract and license allocations and strengthen disclosures to better address governance challenges in the licensing stage.⁶

Proposal 4: Reflecting emerging practices on contract transparency

It is proposed that Requirement 2.1 and 2.4 are revised to clarify what type of contracts exist in each implementing country and what constitutes government policy on contract disclosures.

2.1 Legal framework and fiscal regime.

- a) Implementing countries must disclose a description of the legal framework and fiscal regime governing the extractive industries. This information must include a summary description of the fiscal regime, including the level of fiscal devolution, an overview of the relevant laws and regulations, [a description of the different types of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals](#), and information on the roles and responsibilities of the relevant government agencies.
- b) Where the government is undertaking reforms, the multi-stakeholder group is encouraged to ensure that these are documented.

2.4 Contracts.

- b) It is a requirement that the EITI Report documents the government's policy on disclosure of contracts

⁶ IC Paper 34-4 Opportunities for improving licensing transparency

and licenses that govern the exploration and exploitation of oil, gas and minerals. This should include: ~~relevant legal provisions, actual disclosure practices~~

i) A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses, including whether it requires or prohibits disclosure of contracts and licenses. If there is no existing legislation, an explanation of where the government policy is embodied should be included, and the multi-stakeholder group should document its discussion on what constitutes government policy on contract disclosures. ~~and Any reforms that are relevant to the disclosure of contracts and licenses planned or underway should be documented.~~

ii) An overview of which contracts and licenses are publicly available. ~~Where applicable, The EITI Report should provide an overview of the a list of all active contracts and licenses that are publicly available and which are not. For all published contracts and licenses it should, and include a reference or link to the location where the contract or license is these are published. If a contract or license is not published, the Report should state the reason why.~~

iii) Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.

The working group discussed further options for changes to Requirement 2.4.a in Annex A to reflect the emerging practices in implementing countries on contract disclosures. The Implementation Committee and the EITI Board may wish to discuss these with a view of agreeing on one of the options.

Background: Implementation has shown that EITI countries are increasingly publishing extractives contracts. At the same time, Validation has highlighted the way the requirement is currently framed and assessed can be misleading as it is first and foremost a measure of how transparent a government's policy and practice is with regards to contract transparency, and not a measure of how transparent the contracts in the country are.⁷

Proposal 5: Encouraging more granular production and export data

It is proposed that Requirement 3.2 and 3.3 are revised to reflect the emerging practice by implementing countries to disclose more granular data on production and exports.

3.2 Production.

Implementing countries must disclose production data for the fiscal year covered by the EITI Report, including total production volumes and the value of production by commodity, and, when relevant, by state/region. This could ~~be disaggregated by individual company or project and~~ include sources of the production data and information on how the production volumes and values disclosed in the EITI Report have been calculated.

3.3 Exports.

Implementing countries must disclose export data ~~by individual company or project~~ for the fiscal year covered by the EITI Report, including total export volumes and the value of exports by commodity, and, when relevant, by state/region of origin. This could ~~be disaggregated by individual company or project and~~

⁷ Board paper 40-2-A Annex A Contract Transparency Brief 2018 – review of findings from Validations

include sources of the export data and information on how the export volumes and values disclosed in the EITI Report have been calculated.

Background: Validation has shown that at least eight countries have collected and disclosed production data on a by company basis, and some countries are looking into disclosing production data by project.⁸ There are further opportunities to encourage more disaggregate export data where there is demand.

Proposal 6: Moving towards systematic disclosures and improved data assurances

It is proposed that Requirements 4.1 and 4.9 are revised to reflect the Board's decision on encouraging systematic disclosure and to address the findings from the *Independent Review of EITI Reports*. It is further proposed that minor edits are made throughout the Standard where there are references to 'EITI Report' to allow for flexibility to address reporting requirements through government and company systems. These proposals will be proposed in the final edited version of the revised Standard to be approved via circular subject to Board agreement to the proposed changes.

EITI Requirement 4.1 - Comprehensive disclosure of taxes and revenues

a) The EITI requires disclosure of all material payments by oil, gas and mining companies to governments ("payments") and all material revenues received by governments from oil, gas and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive and comprehensible manner. The expectation is that implementing countries will disclose the requisite information through routine government and corporate reporting (websites, annual reports etc.), with EITI Reports used to collate this information and address any concerns about gaps and data quality.

ba) ~~In advance of the Reporting process,~~ The multi-stakeholder group is required to agree which payments and revenues are material and therefore must be disclosed, including appropriate materiality definitions and thresholds. Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the disclosures.

A description of each revenue stream, related materiality definitions and thresholds should be disclosed. In establishing materiality definitions and thresholds, the multi-stakeholder group should consider the size of the revenue streams relative to total revenues. The multi-stakeholder group should document the options considered and the rationale for establishing the definitions and thresholds

cb) The following revenue streams should be included:

- i. The host government's production entitlement (such as profit oil)
- ii. National state-owned company production entitlement
- iii. Profits taxes
- iv. Royalties
- v. Dividends
- vi. Bonuses, such as signature, discovery and production bonuses

⁸ Malawi, Mali, Papua New Guinea, Senegal, Seychelles, Tanzania and Togo. Zambia EITI is undertaking efforts to disclose production data at a project level.

vii. License fees, rental fees, entry fees and other considerations for licences and/or concessions

viii. Any other significant payments and material benefit to government

Any revenue streams or benefits should only be excluded where they are not applicable or where the multi-stakeholder group agrees that their omission will not materially affect the comprehensiveness of the EITI Report.

c) Implementing countries must provide a comprehensive reconciliation of government revenues and company payments, including payments to and from state-owned enterprises, in accordance with the agreed scope. All companies making material payments to the government are required to comprehensively disclose these payments in accordance with the agreed scope. An entity should only be exempted from reporting if it can be demonstrated that its payments and revenues are not material. All government entities receiving material revenues are required to comprehensively disclose these revenues in accordance with the agreed scope.

d) [All government entities receiving material revenues are required to comprehensively disclose these revenues in accordance with the agreed scope.](#) Unless there are significant practical barriers, the government is additionally required to provide aggregate information about the amount of total revenues received from each of the benefit streams agreed in the scope of the EITI Report, including revenues that fall below agreed materiality thresholds. Where this data is not available, the Independent Administrator should draw on any relevant data and estimates from other sources in order to provide a comprehensive account of the total government revenues.

e) [All companies making material payments to the government are required to comprehensively disclose these payments in accordance with the agreed scope. An entity should only be exempted from reporting if it can be demonstrated that its payments and revenues are not material.](#)

~~Implementing countries must provide a comprehensive reconciliation of government revenues and company payments, including payments to and from state-owned enterprises, in accordance with the agreed scope.~~

EITI Requirement 4.9 - Data quality and assurance

a) The EITI requires an assessment of whether the payments and revenues are subject to credible, independent audit, applying international auditing standards. [The expectation is that government and company disclosures as per Requirement 4 are subject to credible, independent audit, applying international auditing standards. The expectation is that disclosures as per Requirement 4 will include an explanation of the underlying audit and assurance procedures that the data has been subject to, with public access to the supporting documentation.](#)

c) [The multi-stakeholder group is required to agree a procedure to address data quality and assurance based on a standard procedure endorsed by the EITI Board. The MSG is required to apply the standard procedure without any material deviations. Should the multi-stakeholder group wish to deviate from the standard procedures, approval from the EITI Board must be sought in advance. The request from the MSG should address: \(i\) the rationale for deviating from the Standard procedure; \(ii\) whether there is routine disclosure of the data required by the EITI Standard in requisite detail; \(iii\) whether the financial data is subject to credible, independent audit, applying international standards, and \(iv\) whether there is sufficient](#)

retention of historical data.

~~b) It is a requirement that payments and revenues are reconciled by a credible, Independent Administrator, applying international auditing standards, and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.~~

~~i. The reconciliation of company payments and government revenues must be undertaken by an Independent Administrator applying international professional standards.~~

~~ii. The Independent Administrator must be perceived by the multi-stakeholder group to be credible, trustworthy and technically competent. The multi-stakeholder group should endorse the appointment of the Independent Administrator.~~

~~iii. The multi-stakeholder group and the Independent Administrator are required to agree a Terms of Reference for the EITI Report based on the standard Terms of Reference and the 'agreed upon procedure for EITI Reports' endorsed by the EITI Board. Should the multi-stakeholder group wish to adapt or deviate from these agreed upon procedures, approval from the EITI Board must be sought in advance (Requirement 8.1).~~

~~d) Where the assessment in 4.9(a) concludes that there is (i) routine disclosure of the data required by the EITI Standard in requisite detail, and (ii) that the financial data is subject to credible, independent audit, applying international standards, the multi-stakeholder group may seek Board approval to mainstream EITI implementation in accordance with the 'Agreed upon procedure for mainstreamed disclosures'. Without such prior approval, adherence to 4.9.b is required.~~

Background: The EITI Board agreed to encourage countries to move towards systematic disclosures and to undertake a review of reconciliation.⁹ The review recommends: 1) Refinements to requirement 4.1 on “comprehensive disclosure of taxes and revenues” to reflect the Board’s decision on encouraging systematic disclosure; and 2) Refinements to requirement 4.9 on “data quality and assurance” to reflect the Board’s decision on encouraging systematic disclosure. It is proposed that Requirement 4.9 is simplified, with additional detail to be provided in standardised procedures that could be adopted by multi-stakeholder groups (MSGs) without prior Board approval. The refinements also note the existing scope for MSGs to propose alternative procedures, subject to Board approval.

This approach focuses on clarifying existing Board decisions and procedures, while providing flexibility for the Board to consider emerging opportunities to strengthen EITI reporting. This could include commissioning further research and piloting alternative approaches in implementing countries. The refinements proposed would not alter the existing standardised procedures or modify the central role of MSGs in overseeing EITI implementation.

Proposal 7: Reflecting progress on commodity trading transparency

It is proposed that Requirement 4.2 is revised to reflect the progress made through the targeted efforts on commodity trading and encourage systematic disclosures by implementing countries, state-owned enterprises and buying companies. The proposed changes are pending further comments from the

⁹ BP-39-4-A: <https://eiti.org/document/board-agreed-on-recommendations-on-systematic-disclosures>

commodity trading working group.

4.2 Sale of the state's share of production or other revenues collected in kind.

a) Where the sale of the state's share of production of oil, gas and/or mineral resources or other revenues collected in kind is material, the government, including state-owned enterprises, are required to disclose the volumes received and sold by the state (or third parties appointed by the state to sell on their behalf), the revenues received from the sale, and the revenues transferred to the state from the proceeds of oil, gas and minerals sold. ~~disclose the revenues received~~ This could include payments related to swap agreements and resource-backed loans.

The published data must be disaggregated by individual buying company

["and to levels commensurate with the reporting of other payments and revenue streams (4.7). Reporting could also break down disclosures by the type of product, ~~market, sale volume, price individual contract or individual sale (i.e. cargo or shipment)]" OR ["and to levels commensurate with the reporting of other payments and revenue streams (4.7). and individual sale (i.e. cargo or shipment) and could be further disaggregated by the type of product or price, ~~market, sale volume"~~].~~

The disclosures could for each sale include ownership of the of product sold, the nature of the contract (e.g. spot or term), pricing options and realised prices.

b) Implementing countries including state-owned enterprises are encouraged to disclose a description of the process for selecting the buying companies, the technical and financial criteria used to make the selection, the list of selected buying companies, any material deviations from the applicable legal and regulatory framework governing the selection of buying companies, and the related sales agreements.

c) Companies buying oil, gas and minerals from the state, including state-owned enterprises (or third parties appointed by the state to sell on their behalf), are encouraged to disclose volumes received from the state or state-owned enterprise, payments made for the purchase of oil, gas and solid minerals and value of the product delivered at time of purchase. This could include payments related to swap agreements and resource-backed loans.

The published data could be disaggregated by individual seller, contract, price or sale.

The disclosures could for each sale include information on the nature of the contract (e.g. spot or term), pricing options, realised prices and load port.

d) Where there are concerns related to data reliability and where practically feasible, the multi-stakeholder group should consider further efforts to address any gaps, inconsistencies and irregularities in the information disclosed. ~~is encouraged to task the Independent Administrator with reconciling the volumes sold and revenues received by including the buying companies in the reporting process.~~

Background: A targeted effort on commodity trading transparency was established by the EITI Board in October 2015 to address some of the challenges identified in implementing Requirement 4.2. These early experiences showed that while it is relatively easy to obtain disclosures of the volumes of in-kind payments received by SOEs, it is more challenging to get SOEs to disclose the volumes that are selling on behalf of the state, and how these revenues were managed. The targeted effort has resulted in significantly more

granular disclosures related to oil sales.¹⁰ Some challenges in how to apply the requirement, in particular how the sale of equity oil should be treated as well as how to define a “buying company” have been identified.

Proposal 8: Clarifying the EITI’s approach to project-level reporting (Annex B)

It is proposed that Requirement 4.7 is revised to reflect the Board’ decision on project-level disclosures, guidance developed and emerging practice. The working group considered two options outlined in Annex D and agreed one preferred option.

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 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 EITI reporting is levied at entity level rather than at project level, the company may disclose the payment at the entity level.

Background: The Board reaffirmed in 2017 that project-level reporting is required for all reports covering fiscal years ending on or after 31 December 2018¹¹, and agreed guidance and templates for project-level reporting.¹² To reflect this decision, guidance and emerging practice it is proposed that the requirement is revised to ensure consistency with globally applicable mandatory payment disclosure rules. 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.*

¹³Implementing countries that have been identified so far as collecting payment data on a project level through EITI reporting in the current reporting cycle have adopted definitions that are in line with this approach.¹⁴

¹⁰ BP 41-4-2

¹¹ BP 36-4-B Project level reporting: <https://eiti.org/BP36>

¹² Guidance note 29 on project-level reporting, including reporting templates: <https://eiti.org/GN29>

¹³ Guidance note 29, p.4: <https://eiti.org/GN29>

¹⁴ Colombia, Trinidad and Tobago and Zambia.

Proposal 9: Reflecting emerging practices on local level reporting

It is proposed that Requirement 5.2 is revised to reflect the progress made in countries on issues related to subnational transfers and revenue management and expenditures.

5.2 Subnational transfers.

- a) Where transfers between national and subnational government entities are related to revenues generated by the extractive industries and are mandated by a national constitution, statute or other revenue sharing mechanism, the multi-stakeholder group is required to ensure that material transfers are disclosed. Implementing countries should disclose the revenue sharing formula, if any, as well as any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount that was transferred between the central government and each relevant subnational entity. The multi-stakeholder group is encouraged to reconcile these transfers. Where there are constitutional or significant practical barriers to the participation of subnational government entities, the multi-stakeholder group may seek adapted implementation in accordance with Requirement 8.1.
- b) The multi-stakeholder group is encouraged to ensure that any material discretionary or ad hoc transfers are also disclosed and where possible reconciled, [and to report on how extractive revenues earmarked for specific programmes or investments at the subnational level are managed.](#)

Alternatively, the Implementation Committee could consider recommending revising Requirement 5.3 to make this a required, rather than encouraged requirement.

Proposal 10: Updates to reflect increasing demand for environmental reporting

The EITI Principles emphasise that natural resource wealth should be an engine for sustainable economic growth. Although the EITI Standard does not directly require disclosures of environmental policies, management and practices, at least 28 countries have decided to cover these aspects as part of their EITI reporting. Considering this fact and overall growing demand for information on environmental impact and risks, the EITI work plan for 2019 outlines plans to conduct consultations with relevant stakeholders in order to further investigate the linkages between the EITI's and environmental policies as well as analyse whether and how environmental reporting can complement existing EITI disclosures.

Members of the EITI working group on changes to the EITI Requirements raised different views on the extent to which the EITI should be encouraging or requiring disclosures related to environment or climate change. The proposals put forward have been supported by arguments that over half of EITI countries have already included environmental issues as part of their EITI reporting, that reporting burden risks can be mitigated by further discussion of which disclosures could be required versus encouraged, that the EITI Board decision to move towards mainstreaming is aimed at facilitating linkages with existing reporting, and that the reputational risk of the EITI appearing tone-deaf and outdated by ignoring environmental issues that are relevant to public debates on natural resource governance. Concerns raised by include adding reporting burden for implementing countries and industry, the need to better understand the full scope of any potential changes and avoid duplicating efforts with existing reporting frameworks and forums.

The Implementation Committee may wish to consider the options outlined in Annex C, and whether to share some or all of the options with the EITI Board for discussion or decision.

Proposal 11: Encouraging open data efforts

It is proposed that Requirements 7.1 and 7.2 are revised to further encourage MSGs to clarify the distinction between the two requirements and consider publishing EITI data in open formats. It is further proposed that the requirement to produce summary data files for each fiscal year covered by the EITI in accordance with the template approved by the EITI Board is made explicit.

7.1 Public debate.

The multi-stakeholder group must ensure that ~~the~~ **government and company disclosures and EITI Reports** ~~are~~ is-comprehensible, actively promoted, publicly accessible and contributes to public debate. Key audiences should include government, parliamentarians, civil society, companies and the media.

a) The multi-stakeholder group is required to:

- i. **Ensure EITI reporting and systematically disclosed data are widely accessible and distributed.** ~~Produce paper copies of the EITI Report and ensure that they are widely distributed.~~ Where the report contains extensive data, e.g. voluminous files, the multi-stakeholder group is encouraged **to break this down into thematic reports and** to make this available online.
- ii. Ensure that ~~the~~ **EITI reporting and systematically disclosed data are** is comprehensible, including by ensuring that it is written in a clear, accessible style and in appropriate languages **and consider access challenges and information needs of different genders and subgroups of citizens.**
- iii. Ensure that outreach events, whether organised by government, civil society or companies, are undertaken to spread awareness of and facilitate dialogue about governance of extractive resources, building on EITI disclosures ~~the EITI Report~~ across the country **in a socially inclusive manner.**

d) **The multi-stakeholder group is encouraged to:**

- i. Produce brief summary reports, with clear and balanced analysis of the information, ensuring that the authorship of different elements of EITI reporting is clearly stated.
- ii. Summarise and compare the share of each revenue stream to the total amount of revenue that accrues to each respective level of government.
- iii. Undertake capacity-building efforts, especially with civil society and through civil society organisations, to ~~increase awareness of the process,~~ improve understanding of the information and data from the reports **and online disclosures** and encourage use of the information by citizens, the media, and others.

7.2 Data accessibility **and open data.**

Implementing countries should ensure that EITI disclosures are made publicly accessible. The multi-stakeholder group should:

- a) Agree a clear **open data** policy on the access, release and re-use of EITI data. ~~Implementing countries~~ **Government agencies and companies** are encouraged publish **data EITI** under an open license, and to make users aware that information can be reused without prior consent.
- b) Make ~~the~~ EITI Reports **and systematically disclosed data** available in an open data format (~~xlsx or csv~~)

online and publicise its availability. Open data format means that data can be made accessible in CSV or Excel format and could contain all tables, charts and figures from EITI Reports.

c) Complete summary data files for each fiscal year covered by the EITI in accordance with the template approved by the EITI Board.

d) The multi-stakeholder group is encouraged to make EITI reporting and systematically disclosed data machine readable and inter-operable, and to code or tag EITI Reports and other data files so that the information can be compared with other publicly available data by adopting Board-approved EITI data standards. As per Requirement 5.1(b), the multi-stakeholder group is encouraged to reference national revenue classification systems, and international standards such as the IMF Government Finance Statistics Manual, the global Legal Entity Identifier System, the Harmonised System Codes Commodity Classification and United Nations System of National Accounts.

~~e) Where legally and technically feasible, consider automated online disclosure of extractive revenues and payments by governments and companies on a continuous basis. This may include cases where extractive revenue data is already published regularly by government or where national taxation systems are trending towards online tax assessments and payments. Such continuous government reporting could be viewed as interim reporting, and as an integral feature of the national EITI process which is captured by the reconciled EITI Report issued annually.~~

Background: The EITI Standard requires countries to publish EITI Reports that are “comprehensible, actively promoted, publicly accessible, and contribute to public debate” (EITI Requirement 7.1) and requires multi-stakeholder groups (MSG) to “agree a clear policy on the access, release and re-use of EITI data” (EITI Requirement 7.1.b). Lastly, Requirement 7.1.c states that multi-stakeholder groups are required to “make the EITI Report available in an open data format (xlsx or csv) online and publicise its availability.” The Standard Terms of Reference for Independent Administrators¹⁵ confirm that this entails completing the Board approved EITI summary data template at the end of each reporting cycle (section 5.4).

It is possible to make this requirement more explicit in Requirement 7.2 on data accessibility, and also more clearly distinguish between the requirements related to public debate (7.1) and data accessibility and open data (7.2). Members of the working group discussing the proposed changes to the EITI Requirements also highlighted the opportunity to further emphasise systematic disclosures across the value chain (not only revenue disclosures) as part of the EITI’s open data efforts.

Proposal 12: Strengthening the review of outcomes and impact from EITI implementation

It is proposed that Requirements 7.3 and 7.4 are revised to further encourage MSGs to consider recommendations from EITI reporting, and to introduce flexibility in how implementing countries choose to review the outcomes and impact of implementation.

7.3 Discrepancies and Recommendations from EITI reporting Reports.

With a view to strengthen the impact of EITI implementation on natural resource governance, as per

¹⁵ Standard Terms of Reference for Independent Administrator services, <https://eiti.org/document/standard-terms-of-reference-for-independent-administrator-services>.

Requirement 7.4, the multi-stakeholder group is required to take steps to act upon lessons learnt; to identify, investigate and address the causes of any discrepancies; and to consider the recommendations resulting from EITI reporting. [Based on the findings resulting from EITI disclosures, MSGs can consider agreeing recommendations for strengthening government systems and natural resource governance. Where appropriate, implementing countries are encouraged to follow up on such recommendations.](#)

7.4 Review the outcomes and impact of EITI implementation.

The multi-stakeholder group is required to review the outcomes and impact of EITI implementation on natural resource governance.

a) The multi-stakeholder group is required to [document their annual review of impact and outcomes of EITI implementation in an annual progress report or through other means agreed by the multi-stakeholder group. This should include any actions undertaken to address issues that the MSG has identified as priorities for EITI implementation.](#) ~~publish annual progress reports.~~

The annual [review of impact an outcomes](#) ~~progress reports~~ must include:

- i. A summary of EITI activities undertaken in the previous year [and an account of the outcomes of these activities.](#)
 - ii. An assessment of progress with meeting [and maintaining compliance with](#) each EITI Requirement, and any steps taken to exceed the requirements. This should include any actions undertaken to address issues [that the multi-stakeholder group has identified as priorities for EITI implementation. such as revenue management and expenditure \(5.3\), transportation payments \(4.4\), discretionary social expenditures \(6.1\), ad hoc subnational transfers \(5.2\), beneficial ownership \(2.5\) and contracts \(2.4\).](#)
 - iii. An overview of the multi-stakeholder group's responses to and progress made in addressing the recommendations from reconciliation and Validation in accordance with Requirement 7.3. The multi-stakeholder group is required to list each recommendation and the corresponding activities that have been undertaken to address the recommendations and the level of progress in implementing each recommendation. Where the government or the multi-stakeholder group has decided not to implement a recommendation, it is required that the multi-stakeholder group documents the rationale in the annual progress report.
 - iv. An assessment of progress with achieving the objectives set out in its work plan (Requirement 1.5), including the impact and outcomes of the stated objectives.
 - v. A narrative account of efforts to strengthen the impact of EITI implementation on natural resource governance, including any actions to extend the detail and scope of EITI reporting or to increase engagement with stakeholders.
 - vi. An evaluation of the implementation of [the beneficial ownership disclosure \(Requirement 2.5\) roadmap.](#)
- b) All stakeholders should be able to participate in [the production of the annual progress report and reviewing the impact of EITI implementation.](#) Civil society groups and industry involved in the EITI, particularly, but not only those serving on the multi-stakeholder group, should be able to provide feedback on the EITI process [and have their views reflected in the annual progress report.](#)

8.4 Annual progress report deadlines.

~~Multi-stakeholder groups are required to publish annual progress reports (Requirement 7.4). The report of the previous year's activities must be published by 1 July of the following year. The EITI Board will establish appropriate deadlines for new EITI candidate countries. If the annual progress report is not published within six months of this deadline, i.e. by 31 December of the following year, the country will be suspended until the EITI Board is satisfied that the outstanding progress report has been published.~~

Background: A review of recommendations from EITI reporting found that there were opportunities for recommendations to further increase the focus on strengthening governance systems and availability of extractive sector information, in addition to improving EITI reporting. With regards to assessments of impact and outcomes of EITI implementation, several reviews of annual progress reports undertaken has shown that these reports often fail to capture the impact of EITI in implementing countries and are not a useful format to communicate the EITI to a wider audience.

Proposal 13: Clarifying requirements related to compliance and deadlines for implementing countries

It is proposed that Requirement 8 is revised to clarify contradictions between the wording in the Standard and Board decisions¹⁶. It is suggested to move Requirement 8 into a separate chapter of the EITI Standard called "Compliance and deadlines for implementing countries." The Board can also consider adding an additional overall category of progress for countries that have gone beyond what is required by the Standard in their EITI implementation (e.g. "Progress beyond the EITI Requirements", "Outstanding progress" or "Exceeding the EITI Standard".)

The Board may wish to consider a change in the nomenclature of "meaningful progress", given some stakeholders' concerns over possible confusion about the hierarchy between "meaningful progress" and "satisfactory progress" in several official EITI languages. The Board could consider substituting the term "fair progress" or "reasonable progress" in place of "meaningful progress". Given that a majority of EITI implementing countries have already completed their first Validation however, consideration of transitional arrangements to the new nomenclature would be required with a communication to explain the change. It is also proposed to further clarify the implications of suspension resulting from 'inadequate progress' to show this is temporary, pending progress on corrective actions.

Provision 3 of new chapter: EITI Validation deadlines and consequences.

a) Assessment of progress with EITI implementation

i) Assessment of each EITI Requirement. The Validation process will assess the country's progress in complying with each of the EITI Requirements. Detailed guidance on the types of evidence that are required in order to make an assessment on individual requirements is set out in the Validation Guide available at www.eiti.org. The level of progress and compliance with each individual EITI Requirement shall be indicated by applying one of the following designations:

Outstanding progress. In order for the EITI Board to conclude that a country has made outstanding progress, Validation needs to demonstrate that all aspects of the requirement, including 'expected',

¹⁶ BP-40-4-A

'encouraged' and 'recommended' aspects of the EITI Standard, have been implemented and that the broader objective of the requirement has been fulfilled through systematic disclosures in government and company systems.

Satisfactory progress. In order for the EITI Board to conclude that a country has made satisfactory progress, Validation needs to demonstrate that all aspects of the requirement have been implemented and that the broader objective of the requirement has been fulfilled.

Meaningful progress. In order for the EITI Board to conclude that a country has made meaningful progress, Validation needs to demonstrate that significant aspects of the requirement have been implemented and that the broader objective of the requirement is being fulfilled.

Inadequate progress. In order for the EITI Board to conclude that a country has made inadequate progress, Validation needs to demonstrate that significant aspects of the requirement have not been implemented and that the broader objective of the requirement is far from fulfilled.

No progress. In order for the EITI Board to conclude that a country has made no progress, Validation needs to demonstrate that all or nearly all aspects of the requirement remain outstanding, and that the broader objective of the requirement is not fulfilled.

c) Consequences of non-compliance

i. A country must achieve satisfactory progress on the following four requirements in order to avoid **temporary** suspension: government engagement (1.1), company engagement (1.2), civil society engagement (1.3) and timely EITI reporting (4.8). **A country must achieve meaningful progress or beyond on the any one of the requirements relating to stakeholder engagement (Requirements 1.1, 1.2 and 1.3) to avoid temporary suspension.** Where a country achieves less than meaningful progress on data quality (4.9) and data comprehensiveness (4.1), the MSG will be required to disclose a time-bound action plans for addressing weaknesses in data reliability and comprehensiveness. Progress with implementation of this plan will be taken into account in subsequent Validations.

ii. No progress. The country will be delisted.

iii. Inadequate progress. The country will be **temporarily** suspended and requested to undertake corrective actions until the second Validation. For the suspension to be lifted, the country must in its second Validation demonstrate at least meaningful progress.

If a country achieves meaningful progress in the second Validation, the procedure in provision (iv)(2) below applies. If the country achieves inadequate progress, in the second Validation the procedure in provision (ii) above applies.

iv. Meaningful progress. The country will be considered an EITI candidate and requested to undertake corrective actions until the second Validation.

(1) If the country achieves meaningful progress overall in the second Validation, but with no improvements on individual requirements, the country will be **temporarily** suspended and requested to undertake corrective actions until the third Validation. If the country achieves meaningful progress overall in the third Validation but with no improvements on individual requirements, the country will be delisted. If the country achieves meaningful progress overall in the third Validation, but with considerable

improvements across several individual requirements (i.e. several but not all requirements that were previously unmet have been met), the country will remain suspended. The Board will establish new corrective actions. Failure to meet all requirements in the fourth Validation will result in delisting.

(2) If the country achieves meaningful progress overall in the second Validation, and with considerable improvements across several individual requirements (i.e. several but not all requirements that were previously unmet have been met), the country will be considered an EITI candidate whilst undertaking corrective actions. If the country achieves meaningful progress overall in the third Validation, the country will be temporarily suspended. The Board will establish new corrective actions. Failure to meet all requirements in the fourth Validation will result in temporary suspension or delisting.

(3) If the country achieves inadequate progress in the second or subsequent Validations, the procedure in point (ii) above applies.

Background: At the 40th EITI Board meeting in Berlin, several Board members noted that the Board's clarification of requirement 8.3.c.i regarding civil society engagement resulted in a contradiction between the wording in the EITI Standard and Board practice.¹⁷ It was suggested that the Board consider revising requirement 8.3 to ensure that the Standard is clear. One suggestion was to more clearly differentiate between the requirements for EITI implementing countries and the Board's decision-making procedures (i.e. to separate most of requirement 8 into a separate chapter of the Standard). Remarks have often been made by Board and Implementation Committee members about how to better recognise countries when countries make efforts that go beyond the EITI Requirements to address encouraged aspects of the Standard or achieve work plan objectives outside the scope of the EITI Requirements.¹⁸

¹⁷ <https://eiti.org/document/board-clarified-application-of-requirement-83ci-civil-society-engagement>

¹⁸ Reflecting this concern, Board Paper 37-2-A *Is the EITI achieving its mission* posed the question of whether there needed to be a better understand of when to categorise implementation as going 'beyond' the requirements (p.28).

Annexes

Annex A: Proposed changes to Requirement 2.4 on contract disclosures

Annex B - Proposed changes to Requirement 4.1 and 4.9 on EITI reporting

Annex C - Proposed changes to Requirement 4.2 on commodity trading - January 2019

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

Annex E - Proposed changes related to environment and energy transition

Annex A: Options for changes to Requirement 2.4 on contract disclosures

For decision

For discussion

For information

Summary

The working group on changes to the EITI Requirements has discussed a set of options for changes to Requirement 2.4 on contract disclosures for the Committee's further deliberation. It is suggested that the Implementation Committee considers the options and makes a recommendation to the Board on which proposals discuss in Kyiv.

Options for changes to Requirement 2.4 on contract disclosures

1	Background.....	2
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	Option 1: Requiring contracts to be made public with deadline for implementation	3
	Option 2: Requiring contracts signed after a deadline to be made public	3
	Option 3: Moving towards an expectation that contracts should be made public.....	3
	Option 4: No change to Requirement 2.4.a ahead of the Global Conference	3

1 Background

Contract transparency is increasingly becoming a global norm. Implementation has shown that EITI countries are increasingly publishing extractives contracts, and there are now about 30 implementing countries having published some or all active contracts.¹ A number of global institutions have developed policies and standards recommending contracts to be disclosed², and a survey recently undertaken by Oxfam shows that industry is becoming increasingly supportive of publishing contracts in jurisdictions where this is required.³

At the same time, Validation has highlighted the way the requirement is currently framed and assessed can be misleading as it is first and foremost a measure of how transparent a government's policy and practice is with regards to contract transparency, and not a measure of how transparent the contracts in the country are.⁴ To reflect emerging practice it is proposed that the working group on clarifications to the EITI Requirements considers:

- i. Exploring a way of rephrasing the requirement to avoid disproportionately rewarding countries that are open about their non-disclosure policies.
- ii. Clarifying what constitutes a policy on contract disclosure and that deviations from the stated policy should be explained.

¹ Spreadsheet with overview of "Contract Disclosure Practice and Policy" maintained by NREGI accessible [here](#), last updated October 2018.

² These include the [IMF Guide on Resource Revenue Transparency](#) (2007) p.17, [IFC Policy on Environmental and Social Sustainability](#) (2012) sections 50-52, [European Bank for Reconstruction and Development, Energy Sector Strategy](#) (2013) pp.60-61, [UN Principles for Responsible Contracts](#) (2011) p.32, [MIGA Policy on Environmental and Social Sustainability](#) (2013, binding requirement) sections 48-50, [International Bar Association, Model Mine Development Agreement](#) (2011) p.130, and [B-team Responsible Tax Principles](#) (2018) p.7.

³ Oxfam "Contract Disclosure Survey" (2018), accessible [here](#).

⁴ Board paper 40-2-A Annex A Contract Transparency Brief 2018 – review of findings from Validations

The working group on changes to the EITI Requirements discussed a set of options for the Committee's further deliberation. It is suggested that the Implementation Committee considers the options and makes a recommendation to the Board on which proposals discuss in Kyiv

2 Proposed options for changing Requirement 2.4.a

EITI Requirement 2.4 Contracts.

a) Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.

Option 1: Requiring contracts to be made public with deadline for implementation

To recognise that governments and companies need time to prepare for implementation and address contracts with confidentiality provisions, Requirement 2.4 could be revised to require contracts to be made public, with a deadline for meeting the requirement.

“Implementing countries are **required** to publicly disclose **by 31 December 2019** any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals. **Where a contract or license cannot be disclosed due to a confidentiality provision, implementing countries must address the provision and disclose the contract or license by 31 December 2020.**”

Option 2: Requiring contracts signed after a deadline to be made public

Under this option, Requirement 2.4 could be revised to require contracts signed after a certain date to be made public. The requirements would not apply retroactively. It would remain encouraged for countries to publish existing contracts.

“Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals. **Implementing countries are required to disclose any contracts or licenses that are granted, entered into or amended after 31 December 2019.**”

Option 3: Moving towards an expectation that contracts should be made public

Under this option, Requirement 2.4 could be revised to move from a recommendation to an expectation that contracts should be made publicly accessible, while also recognising the challenges countries may face in making some contracts public. The use of the term ‘expected’ in the EITI Standard indicates that the multi-stakeholder group should consider the issue, and document their discussions, rationale for disclosure/non-disclosure and any barriers to disclosure. Validation will consider and document the discussions by the multi-stakeholder group:

“Implementing countries are ~~encouraged~~ **expected** to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.”

Option 4: No change to Requirement 2.4.a ahead of the Global Conference

Under this option, no change would be made to the current wording of Requirement 2.4.a. The Implementation Committee could consider the options outlined and agree to let the incoming Board discuss any potential changes after the Global Conference.

Annex B: Proposed changes to Requirements 4.1 and 4.9 on EITI reporting

For decision

For discussion

For information

Summary

This paper outlines the proposed refinements to Requirement 4.1 on “comprehensive disclosure of taxes and revenues” and Requirement 4.9 on “data quality and assurance” to reflect the Board’s decision on encouraging systematic disclosure. It also outlines the proposal to simplify Requirement 4.9, with additional detail to be provided in standardised procedures. The refinements also note the existing scope for multi-stakeholder groups (MSGs) to propose alternative procedures, subject to Board approval.

The refinements proposed would not alter the existing standardised procedures or modify the central role of MSGs in overseeing EITI implementation. The focus is on clarifying existing requirements, while providing flexibility for the Board to consider opportunities to strengthen EITI reporting in light of the findings from the Independent Review of EITI Reports. This could include commissioning further research and piloting alternative approaches in implementing countries.

Proposed changes to Requirements 4.1 and 4.9 on EITI reporting

1	Background.....	2
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3	Proposal for changing Requirement 4.9 - Data quality and assurance.....	7

1 Background

A key feature of EITI implementation is EITI reporting. The EITI requires a comprehensive reconciliation of company payments and government revenues from the extractive industries. The EITI Requirements related to revenue collection include: comprehensive disclosure of taxes and revenues (Requirement 4.1); the sale of the state's share of production or other revenues collected in kind (Requirement 4.1); infrastructure provisions and barter arrangements (Requirement 4.3); transportation revenues (Requirement 4.4); SOE transactions (Requirement 4.5) and subnational payments (Requirement 4.6).

Implementing countries are required to produce their first EITI Report within 18 months of being admitted as an EITI candidate. Thereafter, implementing countries are expected to produce EITI Reports on an annual basis. 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 2018 must be based on data no later than calendar/financial year 2016.

It is a requirement that payments and revenues are reconciled by a credible Independent Administrator, applying international auditing standards, and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified (Requirement 4.9). The reconciliation of company payments and government revenues must be undertaken by an Independent Administrator applying international professional standards. The MSG and the Independent Administrator are required to agree a Terms of Reference for the EITI Report based on the standard Terms of Reference and the 'agreed upon procedure for EITI Reports' endorsed by the EITI Board. The agreed upon procedure for EITI Reports is outlined in the standard Terms of Reference for Independent Administrators¹.

At the EITI Board meeting in February 2018, the EITI Board agreed a set of recommendations regarding encouraging systematic disclosure². The 2016 EITI Standard enables implementing countries to disclose the information required by the EITI Standard through routine government and corporate reporting, and consultation systems such as websites, annual reports etc. The EITI Board agreed that "systematic disclosure should be firmly established as the default expectation, with EITI Reports used to address any gaps and concerns about data quality. Implementing countries could still continue to publish annual EITI Reports collating and analysing the information from primary sources in order to make this information

¹ <https://eiti.org/document/standard-terms-of-reference-for-independent-administrator-services>

² <https://eiti.org/document/encouraging-systematic-disclosure>

Annex B: Proposed changes to Requirements 4.1 and 4.9 on EITI reporting more accessible and comprehensible, especially for stakeholders that do not have access to online information”.

The paper noted that there were divergent views on the value of reconciliation as part of EITI implementation:

Reconciliation is often complex, involving dozens of revenue streams, low materiality thresholds and a large number of reporting entities. The data collection process is often time consuming. The Validations that have been completed to date have shown that most of the discrepancies identified during the reconciliation process arise from reporting errors created by the complexity EITI reporting procedures themselves, not by missing payments or intentional gaps in company or government disclosure. In addition, the overall assessments from IAs are either absent or have so many caveats that they add very little in terms of assuring the quality of the data.

Nevertheless, stakeholders often consider reconciliation as a valuable exercise in verifying that government and company disclosures are complete. However, reconciliation is not the only or best way to safeguard reliable data. In many EITI Reports, the disclosures are not audited, and are only assured in the narrowest sense through attestations from senior representatives of the entities submitting the data.

One of the most important outcomes of EITI implementation is that it requires disclosures from reporting entities on their routine audit and assurance practices, and whether these are up-to-date, and whether national standards are in line with international best practice. Where these systems are weak, reconciliation is valued because it provides some additional assurances that the disclosures are complete. However, this is not a sustainable solution. The goal should be to strengthen routine audit and assurance procedure so that additional assurances are unnecessary.

The results from the 2016 and 2017 Validations also show that reconciliation has sometimes become an end in itself, without sufficient attention to the underlying audit and assurance procedures that ought to be the primary guarantor of data quality. Where these audit and assurance systems are strong, MSGs are increasingly arguing that reconciliation is unnecessary.

The Board subsequently agreed to an *independent review of EITI Reports*. The objective of the review was to undertake an independent review of EITI Reports prepared in accordance with the standard terms of reference for Independent Administrators. Building on the findings from the 2016 and 2017 Validations, this should include:

- i. An assessment of Independent Administrators’ adherence to the standardised procedure;
- ii. A review of the assurance procedures most commonly adopted by implementing countries, the time required and compliance costs;
- iii. An independent assessment of the extent to which the work undertaken safeguards comprehensive and reliable data.

The review concludes:

*In aggregate, [the] procedures as applied by independent administrators (IAs) are considered by this review to be **broadly adequate to safeguard reporting of comprehensive and reliable data** albeit with caveats as described in this Report.*

*The Standard Terms of Reference (TOR) is valuable in promoting a consistent approach by IAs to their work. However, and as can be expected in a decentralized form of EITI implementation, there does remain **variability in EITI Reports** prepared by IAs including on completeness of disclosures and*

Annex B: Proposed changes to Requirements 4.1 and 4.9 on EITI reporting *uncertainty on how data assurance conclusions were reached. The impact of this on validation is significant but the wider concern is public trust and the work done under the auspices of the EITI. **Insufficient oversight** of IA work by multi-stakeholder groups may also be a contributing factor.*

*Importantly, many EITI Reports showed extensive work done on reconciliation or resolving discrepancies of relatively minor amounts or resulting mainly from clerical reporting or timing errors. This is amplified by effort and cost of work on relatively small revenue flows or companies. **Both issues raise questions on cost-benefit and utility of such recurrent IA effort given the sums involved.***

This review and stakeholder feedback also identifies other broader implications. Foremost is the widespread misperceptions on what the EITI reconciliations means. Many stakeholders believe that independent administrators (IAs) and audit firms provided a stamp of assurance that the EITI data presented was reliable. While understandable, this view is erroneous and reflects an expectation gap in what stakeholders wish a EITI Report to deliver - and what EITI-reconciled data actually is. In particular, IAs themselves explicitly caveat that reconciliation and EITI Reports are not audits. Additionally, audited financial statements of reporting entities that underlie EITI Reports are not easily available to stakeholders.

***Overall therefore, while IAs do deliver important contributions** including in collating EITI data in one place in easy-to-understand formats; describing the data assurance steps employed in their work (with the caveats noted) and providing recommendations for improvement, the **long-term financial sustainability of reconciliations** repeated year after year can be questioned. Further, aside from cost-benefit concerns, the risk of excessive focus on clerical and reporting discrepancies is that EITI is dragged towards and **reduced to being an accounting exercise**, as opposed to being the vehicle for raising substantive facts about how extractives are managed and benefit citizens*

*The core issue this raises is **whether EITI has reached an inflection point** where the value of sector and institutional transparency available in EITI Reports outweigh the value of detailed reconciliations. Could greater rigor by IAs in their work in applying the Standard TOR help address the concerns raised? But, as this review finds, there are inherent limitations in what a reconciliation exercise within cost-constraints on the amount of time that can be spent by IAs on EITI Reports. Alternatively, can EITI implementation pathways be revisited to allow countries more room to innovate and free-up resources to devote more effort on sector disclosures and analysis thereof?*

A strong business case exists for such rethinking and refinement of EITI policy. Foremost is the advances in e-government and electronic tax administration systems where the underlying record of revenues and payments are one and the same – making the original concept of “matching” or reconciliation of separate data submissions by companies and governments of respective payments and revenues moot. Further, with the EITI Board-approved direction of travel towards mainstreamed systemic disclosures, concrete policy steps (beyond encouraging words) will better help EITI countries to take concrete actions towards that goal. Finally, promoting timely disclosure of EITI through innovative approaches is an important consideration too.

The review goes on to suggest alternative approaches to EITI reporting, noting that these would need further elaboration, review and testing.

In reviewing these challenges and opportunities, a key concern from stakeholders has been that these new approaches should not undermine implementing country ownership to set their own national EITI objectives. In addition, stakeholders argue that the EITI should retain and reinforce the role of MSGs in overseeing EITI implementation.

The International Secretariat welcomes the findings from the *independent review of EITI Reports*. However,

further work is needed before considering wide-ranging changes. The proposals below therefore focus on **clarifying existing Board decisions and procedures**, while providing flexibility for the Board to consider opportunities to strengthen EITI Reporting. **The proposed refinements would not alter the existing standardised procedures or modify the central role of MSGs in overseeing EITI implementation.**

2 Proposal for changing Requirement 4.1 - Comprehensive disclosure of taxes and revenues

EITI Requirement 4.1 - Comprehensive disclosure of taxes and revenues

a) In advance of the reporting process, the multi-stakeholder group is required to agree which payments and revenues are material and therefore must be disclosed, including appropriate materiality definitions and thresholds. Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the EITI Report. A description of each revenue stream, related materiality definitions and thresholds should be disclosed. In establishing materiality definitions and thresholds, the multi-stakeholder group should consider the size of the revenue streams relative to total revenues. The multi-stakeholder group should document the options considered and the rationale for establishing the definitions and thresholds

b) The following revenue streams should be included:

- i. The host government's production entitlement (such as profit oil)
- ii. National state-owned company production entitlement
- iii. Profits taxes
- iv. Royalties
- v. Dividends
- vi. Bonuses, such as signature, discovery and production bonuses
- vii. License fees, rental fees, entry fees and other considerations for licences and/or concessions
- viii. Any other significant payments and material benefit to government

Any revenue streams or benefits should only be excluded where they are not applicable or where the multi-stakeholder group agrees that their omission will not materially affect the comprehensiveness of the EITI Report.

c) Implementing countries must provide a comprehensive reconciliation of government revenues and company payments, including payments to and from state-owned enterprises, in accordance with the agreed scope. All companies making material payments to the government are required to comprehensively disclose these payments in accordance with the agreed scope. An entity should only be exempted from reporting if it can be demonstrated that its payments and revenues are not material. All government entities receiving material revenues are required to comprehensively disclose these revenues in accordance with the agreed scope.

d) Unless there are significant practical barriers, the government is additionally required to provide aggregate information about the amount of total revenues received from each of the benefit streams agreed in the scope of the EITI Report, including revenues that fall below agreed materiality thresholds. Where this data is not available, the Independent Administrator should draw on any relevant data and estimates from other sources in order to provide a comprehensive account of the total government

revenues.

The International Secretariat recommends that Requirement 4.1 on “comprehensive disclosure of taxes and revenues” is amended to reflect the Board’s decision on encouraging systematic disclosure. In line with the Board decision, systematic disclosure would be firmly established as the default expectation, with EITI Reports used to address any gaps and concerns about data quality:

- a) **The EITI requires disclosure of all material payments by oil, gas and mining companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner. The expectation is that implementing countries will disclose the requisite information through routine government and corporate reporting (websites, annual reports etc.), with EITI Reports used to collate this information and address any concerns about gaps and data quality.**
- b) **~~In advance of the Reporting process,~~ The multi-stakeholder group is required to agree in advance which payments and revenues are material and therefore must be disclosed, including appropriate materiality definitions and thresholds. Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the disclosures EITI Report.**

A description of each revenue stream, related materiality definitions and thresholds should be disclosed. In establishing materiality definitions and thresholds, the multi-stakeholder group should consider the size of the revenue streams relative to total revenues. The multi-stakeholder group should document the options considered and the rationale for establishing the definitions and thresholds.

The following revenue streams should be included:

- i. The host government’s production entitlement (such as profit oil)
- ii. National state-owned company production entitlement
- iii. Profits taxes
- iv. Royalties
- v. Dividends
- vi. Bonuses, such as signature, discovery and production bonuses
- vii. License fees, rental fees, entry fees and other considerations for licenses and/or concessions
- viii. Any other significant payments and material benefit to government

Any revenue streams or benefits should only be excluded where they are not applicable or where the multi-stakeholder group agrees that their omission will not materially affect the comprehensiveness of the EITI Report.

- c) **All government entities receiving material revenues are required to comprehensively disclose these revenues in accordance with the agreed scope.** Unless there are significant practical barriers, the government is additionally required to provide aggregate information about the amount of total revenues received from each of the benefit streams agreed in the scope of the EITI Report, including revenues that fall below agreed materiality thresholds. Where this data is not available, the Independent Administrator should draw on any relevant data and estimates from other sources in order to provide a comprehensive account of the total government revenues.
- d) **All companies making material payments to the government are required to comprehensively disclose these payments in accordance with the agreed scope. An entity should only be**

~~exempted from reporting if it can be demonstrated that its payments and revenues are not material.~~

~~Implementing countries must provide a comprehensive reconciliation of government revenues and company payments, including payments to and from state-owned enterprises, in accordance with the agreed scope.~~

Section (a) above draws on the language first agreed in the 2005 EITI Criteria³, which called for: “Regular publication of all material oil, gas and mining payments by companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner”. This is reflected in the Board’s decision on *encouraging systematic disclosure*.

There are some additional edits to provisions (b), (c) and (d) with a view to ensuring that the MSG agrees a clear definition of materiality. There are no substantive changes to these requirements. The reference to reconciliation is removed, as it is addressed in requirement 4.9.

3 Proposal for changing Requirement 4.9 - Data quality and assurance

EITI Requirement 4.9 - Data quality and assurance

- a) The EITI requires an assessment of whether the payments and revenues are subject to credible, independent audit, applying international auditing standards.
- b) It is a requirement that payments and revenues are reconciled by a credible, Independent Administrator, applying international auditing standards, and with publication of the administrator’s opinion regarding that reconciliation including discrepancies, should any be identified.
- i. The reconciliation of company payments and government revenues must be undertaken by an Independent Administrator applying international professional standards.
- ii. The Independent Administrator must be perceived by the multi-stakeholder group to be credible, trustworthy and technically competent. The multi-stakeholder group should endorse the appointment of the Independent Administrator.
- iii. The multi-stakeholder group and the Independent Administrator are required to agree a Terms of Reference for the EITI Report based on the standard Terms of Reference and the ‘agreed upon procedure for EITI Reports’ endorsed by the EITI Board. Should the multi-stakeholder group wish to adapt or deviate from these agreed upon procedures, approval from the EITI Board must be sought in advance (Requirement 8.1).
- c) Where the assessment in 4.9(a) concludes that there is (i) routine disclosure of the data required by the EITI Standard in requisite detail, and (ii) that the financial data is subject to credible, independent audit, applying international standards, the multi-stakeholder group may seek Board approval to mainstream EITI implementation in accordance with the ‘Agreed upon procedure for mainstreamed disclosures’. Without such prior approval, adherence to 4.9.b is required.

The International Secretariat recommends that Requirement 4.9 is simplified as follows:

³ See https://eiti.org/sites/default/files/documents/eiti_iag_report_english.pdf

Annex B: Proposed changes to Requirements 4.1 and 4.9 on EITI reporting

- a. The EITI requires an assessment of whether the payments and revenues are subject to credible, independent audit, applying international auditing standards. **The expectation is that government and company disclosures as per Requirement 4 are subject to credible, independent audit, applying international auditing standards. The expectation is that disclosures as per Requirement 4 will include an explanation of the underlying audit and assurance procedures that the data has been subject to, with public access to the supporting documentation.**
- b. The multi-stakeholder group is required to agree a procedure to address data quality and assurance based on a standard procedure endorsed by the EITI Board. The MSG is required to apply the standard procedure without any material deviations. Should the multi-stakeholder group wish to adapt or deviate from the standard procedures, approval from the EITI Board must be sought in advance. The request from the MSG should address: (i) the rationale for deviating from the Standard procedure; (ii) whether there is routine disclosure of the data required by the EITI Standard in requisite detail; (iii) whether the financial data is subject to credible, independent audit, applying international standards, and (iv) whether there is sufficient retention of historical data.

Section (a) draws on the Board's decision on *encouraging systematic disclosure*. It puts the emphasis on reporting entities to disclose information about their routine audit and assurance work and adherence to international standards.

Section (b) requires MSGs to follow a Board approved procedure to address data quality. Currently, there is only one Board approved procedure (whereby "payments and revenues are reconciled by a credible, Independent Administrator, applying international auditing standards, and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified"). The Board-approved ToRs provide additional detail on requirements regarding how this work is undertaken.

This formulation would allow the Board to consider approving additional standardised procedures that could be adopted by MSGs without prior Board approval. In the interim, the current approach to EITI reporting as per the Standard terms of Reference would apply.

The final sentence notes that MSGs may make alternative proposals subject to prior Board approval. It is suggested that this generic approach replaces Requirement 4.9.c and the 'agreed upon procedure for mainstreamed disclosures', which has only been adopted by one country (Norway). Requirement 4.9.c has been misinterpreted to mean that mainstreaming as an "all or nothing" proposition. Norway's (Board approved) application would not be affected.

In addition, it is recommended that requirement 7.2 is amended specifying that **"Implementing countries are required to complete summary data files for each fiscal year covered by EITI implementation in accordance with the template approved by the EITI Board"**. This is an existing requirement, current specified in the standard ToRs for IAs. It warrants a clearer reference in requirement 7 which addresses open data.

Annex C: Proposed changes to Requirement 4.2 on commodity trading

For decision

For discussion

For information

Summary

This paper seeks to briefly summarise the overall objective of EITI's work on commodity trading transparency and provide concrete recommendations for improvements to the EITI Requirement, drawing on the lessons learned from disclosure practices over the past three years.

Some of the proposed changes are pending further input from the commodity trading working group and are being shared with the Implementation Committee for information.

Proposed changes to Requirement 4.2 on commodity trading

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1 Background

Ensuring transparency in how the state’s share of oil, gas and minerals production is monetised goes to the core of the EITI’s mandate. EITI’s first principle is that “the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction”.¹ Half of the revenues collected by EITI countries are received in-kind, amounting to over USD 1 trillion of revenues disclosed as part of EITI reporting. There are at least 17 EITI countries that collect a share of their revenues in kind, and for many of these countries these are the main transactions that are significant for understanding the government share of revenues from the sector.² It is therefore natural that the EITI’s core concern is transparency in how a country’s extractive sector revenues are used to benefit its population through the government budget. Once the state receives its share of oil, gas or minerals production, trading is how these commodities are converted into funds that reach the government treasury.

Amidst growing calls for greater transparency and accountability in oil trading, the EITI has emerged as a practical, flexible and cost-effective response. A key feature of the EITI is that it is owned and implemented by producer countries, emphasising collaboration between government, industry and civil society organisations. This collaboration has also taken place at the global level through a working group with leading governments, state-owned enterprises, commodity traders and civil society.³ The working group has developed reporting guidance and tools that have been implemented by governments, state-owned enterprises (SOEs) and commodity traders alike. At the national level, EITI multi-stakeholder groups have used the guidance to improve reporting and inform discussions related to the return on the sale of their natural resources.⁴ The work so far includes more granular and detailed disclosures in at least eight EITI implementing countries,⁵ allowing stakeholders to understand and explore the way in which these sales are conducted.⁶

It is widely accepted that much more work is needed to improve transparency and accountability in global commodity trading. While disclosure requirements in the home jurisdictions of trading companies may

¹ EITI Principle 1: <https://eiti.org/document/eiti-principles>

² Most of these countries collect oil in kind, while some collect gas and very few collect minerals in kind.

³ See Board Paper 34-4-B Annex B: TOR for the working group on transparency in commodity trading

⁴ See Board Paper 41-4-B Annex A: Country by country overview of progress

⁵ Albania, Cameroon, Chad, Cote d’Ivoire, Ghana, Indonesia, Mauritania and Nigeria.

⁶ EITI Commodity trading transparency stocktake: <https://eiti.org/document/commodity-trading-transparency-stocktake>

contribute, the EITI's work on the first trades by SOEs in producer countries is essential. The targeted effort on commodity trading transparency⁷ has identified emerging disclosure practices and contributed with various lessons learned⁸ that the EITI Board is now seeking to reflect in an updated version of the EITI Standard.⁹

2 Proposed changes to Requirement 4.2

Based on the emerging practices and lessons learned from the targeted efforts on commodity trading transparency, the EITI International is seeking comments on the following proposed language:

4.2 Sale of the state's share of production or other revenues collected in kind.

a) Where the sale of the state's share of production of oil, gas and/or mineral resources or other revenues collected in kind is material, the government, including state-owned enterprises, are required to disclose the volumes received and sold by the state (or third parties appointed by the state to sell on their behalf), the revenues received from the sale, and the revenues transferred to the state from the proceeds of oil, gas and minerals sold. ~~disclose the revenues received~~ This could include payments related to swap agreements and resource-backed loans.

The published data must be disaggregated by individual buying company

["and to levels commensurate with the reporting of other payments and revenue streams (4.7). Reporting could also break down disclosures by the type of product, ~~market, sale volume, price~~ individual contract or individual sale (i.e. cargo or shipment)]" OR ["and to levels commensurate with the reporting of other payments and revenue streams (4.7). and individual sale (i.e. cargo or shipment) and could be further disaggregated by the type of product or price, ~~market, sale volume~~"].

The disclosures could for each sale include ownership of the of product sold, the nature of the contract (e.g. spot or term), pricing options and realised prices.

b) Implementing countries including state-owned enterprises are encouraged to disclose a description of the process for selecting the buying companies, the technical and financial criteria used to make the selection, the list of selected buying companies, any material deviations from the applicable legal and regulatory framework governing the selection of buying companies, and the related sales agreements.

c) Companies buying oil, gas and minerals from the state, including state-owned enterprises (or third parties appointed by the state to sell on their behalf), are encouraged to disclose volumes received from the state or state-owned enterprise, payments made for the purchase of oil, gas and solid minerals and value of the product delivered at time of purchase. This could include payments related to swap agreements and resource-backed loans.

The published data could be disaggregated by individual seller, contract, price or sale.

The disclosures could for each sale include information on the nature of the contract (e.g. spot or term), pricing options, realised prices and load port.

d) Where there are concerns related to data reliability and where practically feasible, the multi-stakeholder group should consider further efforts to address any gaps, inconsistencies and irregularities in the

⁷ Terms of Reference for a targeted effort on transparency in commodity trading: <https://eiti.org/document/tor-for-targeted-effort-on-transparency-in-commodity-trading>

⁸ See Board Paper 41-4-B Annex B: Commodity trading issues: Outcome of consultation

⁹ BD 41-4-B, BD 41-4-C.

~~information disclosed. is encouraged to task the Independent Administrator with reconciling the volumes sold and revenues received by including the buying companies in the reporting process.~~

3 Issues to be clarified through further work and guidance

The following points were raised during the consultation as areas the EITI and the working group should clarify in the updated version of the guidance note and further work in 2019:

- Equity oil:** For Validation purposes, the “state’s share of production or other revenues collected in kind” refers to the sale of the state’s share of production and in-kind revenues collected by government, including state-owned enterprises, when acting as fiscal agents. The guidance note should be updated to reflect the varying roles SOE have in marketing the state’s share of oil, gas and minerals. MSGs could also be encouraged to document whether SOEs collect equity oil and comment on the extent to which information on equity oil sales is publicly available. In cases where data on equity oil sales are not publicly available, the MSG could be encouraged to consider making recommendations on how such information could be disclosed, including addressing any legal or practical barriers preventing such comprehensive disclosure. The Validation Guide would be updated to ensure that Validation documents the MSG’s discussion on these issues.
- State-owned refineries:** According to EITI Requirement 4.2, state-owned domestic refineries that buy state owned oil, gas and minerals are considered buyers. Government agencies or SOEs selling the state’s share of oil to state-owned domestic refineries should disclose the volumes sold and revenues received, in accordance with Requirement 4.2. The disclosures could further distinguish between the values of the oil, gas or minerals delivered and the equivalent payments to the state.
- Sales to other government entities:** Implementing countries and SOEs could be encouraged to disclose information beyond volumes sold and values received from the “first trade” in cases where the oil, gas or minerals are sold to other government entities. In cases where oil, gas or minerals are used to control price or ensuring domestic supply, the policy and actual practice could be explained.
- Further guidance on gas and minerals sales:** Working group members have highlighted the need to ensure that guidance is provided on how to apply the requirement to gas sales, in response to demand from target effort countries like Ghana to look further into the gas sector. How to disclose information on mineral sales, in particular from the point of view of buyers, has also been raised. The working group should tailor the guidance and reporting template to address gas sales and bring in stakeholders from the minerals trading industry to help guide EITI’s work in this area.

4 Rationale behind the proposed changes

The EITI Secretariat has compiled the following list of proposed recommendations for the working group’s consideration for how to clarify Requirement 4.2 and reflect the lessons learned from the targeted efforts over the past three years. These recommendations should reflect the different country contexts and the broad spectrum of roles SOEs play in managing the state’s share of production depending on the SOE, the level of state ownership and the legal and fiscal regimes.

It is important to note that most of the recommendations relate to *encouraging* disclosures beyond the minimum requirements. The progress made by implementing countries in disclosing information encouraged by the EITI Standard will be examined during EITI Validation, without consequences for the

overall assessment of progress (unless it is to demonstrate that a country has gone ‘beyond’ the minimum requirement).

1. Third parties acting on behalf of the state

The outcomes of the consultations with the working group on issues identified in the targeted efforts indicate that there was general support for considering intermediary marketing agencies as sellers for EITI reporting purposes. In light of this, it is recommended that:

*EITI Requirement 4.2 is revised to clarify that implementing countries and SOEs should disclose volumes received and sold by the state or **a third party on behalf of the state**.*

2. Granularity and pricing

The commodity trading transparency stocktake found that sales data is becoming significantly more granular, with a number of countries disclosing sales data either disaggregated by month or by date of sale / cargo.¹⁰ These disclosures would include further information on average sales prices, realised per cargo price, and pricing options/formulas and contract type. To reflect this emerging practice, it is recommended that:

EITI Requirement 4.2 is revised to encourage sales data to also be broken down by individual contract or individual sale, and also include information on type of product sold, nature of the contract types, pricing options and realised prices.

3. Buyer selection process

The commodity trading transparency stocktake found that an increasing number of countries were disclosing information about the buyer selection process.¹¹ To reflect this emerging practice, it is recommended that:

EITI Requirement 4.2 is revised to encourage disclosures on the process for selecting buyers, as encouraged in the EITI Guidance note developed by the working group.

4. Encouraging disclosures by buyers and less emphasis on reconciliation

The Board’s strategy on [encouraging systematic disclosure](#) recognises that the EITI’s focus on *reconciling discrepancies* is sometimes burdensome and ineffective. The Board’s strategy seeks to reorient the EITI’s work toward encouraging systematic disclosures by the government agencies, SOEs and traders. These disclosures should be “subject to credible, independent audit, applying international auditing standards”, and the disclosures “should include an explanation of the underlying audit and assurance procedures that the data has been subject to, with public access to the supporting documentation”.

As with many other issues, it is important that multi-stakeholder groups provide a platform for an open discussion about this work, and that it may be important for multi-stakeholder groups document their agreed approach. To reflect the trend towards systematic disclosures and lessons learned from reconciliation so far, it is recommended that:

EITI Requirement 4.2 is revised to encourage disclosures by buyers and emphasise the underlying audit and assurance procedures rather than encouraging reconciliation.

¹⁰ Albania, Iraq and Mozambique disaggregated sales data by month, while Cameroon, Chad, Ghana and Mauritania disaggregated sales data by date of sale.

¹¹ Albania, Chad, Indonesia, Iraq and Mauritania.

Annex: Comments received and responses by the International Secretariat

Comment	Response from Secretariat	Suggested change
<p>Scope of the requirement: “a) Where the sale of the state’s share of production of oil, gas and/or mineral resources or other revenues collected in kind is material, the government, including state-owned enterprises, are required to disclose the volumes received and sold by the state (or third parties appointed by the state to sell on their behalf), the revenues received from the sale, and the revenues transferred to the state from the proceeds of oil, gas and minerals sold. disclose the revenues received.”</p>		
It should be made clearer what is covered within the scope of “the state’s share of production”	In line with wider scope of the EITI Standard, the state’s share of production covers oil, gas and/or mineral resources. Additional language has been suggested to make this explicit.	“the state’s share of production of oil, gas and/or mineral resources”
The proposal does not sufficiently recognise the different roles SOEs play (including as commercial entities acting for their own account)	In the past, the EITI Board has differentiated between cases where the state/SOE receives proceeds from in-kind payments as an equity holder or receives payments in-kind (e.g., in-kind payments of production share, in-kind payments of royalty, or in-kind payments of taxes). In Validations, Requirement 4.2 has been applied to the latter. This will be made clear in the updated version of guidance note 26.	The paper proposes that the application of requirement 4.2 to the sale of the state’s share of production and in-kind revenues collected by government, including state-owned enterprises, when acting as <i>fiscal agents</i> is clarified in the guidance note and Validation Guide.
It is not always clear whether intermediary marketing agents should be defined as sellers or buyers.	The findings from the consultation on applying Requirement 4.2 was that there appeared to be consensus to define marketing agents as sellers on behalf of the state. An updated version of the guidance note could not that MSGs can consider disclosing information on marketing fees. We have received a suggestion for specific revisions to make this clearer.	“sold by the state (or third parties appointed by the state to sell on their behalf)”
The language on scope of disclosures outlined for buying companies should be consistent with what is required by implementing countries. It	Additional language has been suggested to make proposed additions to Requirement 4.2.c consistent with proposed additions to 4.2.a, and to make it explicit that cash and in-kind payments related to swap agreements and resource-backed loans fall within the scope of Requirement 4.2.	“This could include payments related to swap agreements and resource-backed loans.”

Annex C: Proposed changes to Requirement 4.2 on commodity trading

Comment	Response from Secretariat	Suggested change
should also be made explicit that swap agreements and resource-backed loans are covered by Requirement 4.2.		
Level of disaggregation: The published data must be disaggregated by individual buying company and individual sale (i.e. cargo or shipment), and to levels commensurate with the reporting of other payments and revenue streams (4.7). Reporting could also break down disclosures by the type of product, price, market and sale volume.		
Disaggregation “commensurate with reporting of other revenue streams (4.7)” and reporting by project would for sales data entail reporting by sale or contract.	Different views have been raised on the feasibility of requiring cargo by cargo disclosures. Some industry members noted that they were prepared to report on a cargo-by-cargo basis if asked by implementing countries but were not ready to disclose such information unilaterally. Civil society members highlighted the need for the data to be disaggregated by cargo for it to be possible to analyse. One SOE stated their support for cargo-by-cargo disclosures.	It is suggested to include two options in brackets for further discussion by the working group in the lead up to the EITI Board meeting on 27-28 February: [“and to levels commensurate with the reporting of other payments and revenue streams (4.7). Reporting could also break down disclosures by the type of product, market, sale volume, price individual contract or individual sale (i.e. cargo or shipment).” OR “and to levels commensurate with the reporting of other payments and revenue streams (4.7). and individual sale (i.e. cargo or shipment) and could be further disaggregated by the type of product or price, market, sale volume.”]
Level of detail: The disclosures could for each sale include ownership of the product sold, the nature of the contract (e.g. spot or term), pricing options and realised prices.		
It should be made clearer that this provision refers to the detail of information to be disclosed as opposed to level of disaggregation.	The suggestion has been reflected in the proposed language.	“The disclosures could for each sale include”
“Type of product” is too vague to allow for a common understanding	The suggestion has been reflected in the proposed language. The section on ‘type of oil’ in Guidance note 26 oil reporting of oil sales should be updated to explain this more clearly,	“ownership of the product sold”

Annex C: Proposed changes to Requirement 4.2 on commodity trading

Comment	Response from Secretariat	Suggested change
of what this encompasses.	drawing from the findings of the consultation on the application of Requirement 4.2. We have updated the language to make type of ownership more explicit in line with the Guidance note.	
Encouraged disclosures on buyer selection process: b) Implementing countries including state-owned enterprises are encouraged to disclose a description of the process for selecting the buying companies, the technical and financial criteria used to make the selection, the list of selected buying companies, any material deviations from the applicable legal and regulatory framework governing the selection of buying companies, and the related sales agreements.		
It was suggested to clarify what is considered “non-trivial” deviations.	This comment has also been raised with regards to similar wording in Requirement 2.2 on allocation of licenses and contracts. “The applicable legal and regulatory framework governing the selection of buying companies” refers to the applicable framework in the implementing country.	“any material deviations from the applicable legal and regulatory framework governing the selection of buying companies”
Encouraged disclosures by buyers: c) Companies buying oil, gas and minerals from the state, including state-owned enterprises (or third parties appointed by the state to sell on their behalf), are encouraged to disclose volumes received from the state or state-owned enterprise, payments made for the purchase of oil, gas and solid minerals and value of the product delivered at time of purchase. This could include payments related to swap agreements and resource-backed loans. The published data could be disaggregated by individual seller, contract, price or sale. The disclosures could for each sale include information on the nature of the contract (e.g. spot or term), pricing options, realised prices and load port.		
Disclosures by buyers in line with Requirement 4.2 should be required, rather than encouraged.	Some working group members expressed a desire to rephrase the provision to be “required” in the December meeting. However, members from industry highlighted how requiring such disclosures would require extensive consultations beyond the suggested timeframe for the revisions to Requirement 4.2. This would need to include clarifying how the term “required” would be applied in practice for buying companies. This issue could be considered in the future by the working group and EITI Board once more buyers have started disclosing information in line	It is proposed that working group members endorse language proposed to encourage disclosures by buyers. The working group might wish to consider studying this issue of required vs encouraged applicable to commodity traders further.

Annex C: Proposed changes to Requirement 4.2 on commodity trading

Comment	Response from Secretariat	Suggested change
	with the encouraged provision of the requirement.	
It was indicated that what information should be included as part of “swap agreements and resource-backed loans” was unclear.	Guidance note 26 oil reporting of oil sales (pp. 23-24) provides a suggested framework for disclosing information on swap agreements and resource-backed loans. It should also be noted that this provision is only encouraged.	It is proposed that working group members endorse language proposed to encourage disclosures by buyers.
It was suggested to ensure consistency between the level of detail of information encouraged to be disclosed by implementing countries as well as buying companies.	The suggestion has been reflected in the proposed language.	“The disclosures could for each sale include information the nature of the contract (e.g. spot or term), pricing options, realised prices and load port.”
Data reliability: d) Where there are concerns related to data reliability and where practically feasible, the multi-stakeholder group should consider further efforts to address any gaps, inconsistencies and irregularities in the information disclosed . is encouraged to task the Independent Administrator with reconciling the volumes sold and revenues received by including the buying companies in the reporting process.		
It is unclear what “further work” by multi-stakeholder groups entails.	Guidance for multi-stakeholder groups on how to assess and assure data reliability is provided in Guidance note 24 on data quality and assurance . This has typically related to reconciliation and data assurances to be provided by reporting entities. The final language related to reconciliation may be subject to discussion at the EITI Board and Implementation Committee level about reconciliation and data reliability.	“further efforts”

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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	Option 1 (<i>preferred</i>): Revise Requirement 4.7 to ensure consistency with globally applicable mandatory payment disclosure rules.....	3
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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 2018¹, and agreed guidance and templates for project-level reporting.² 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 discussions³ and a review undertaken by the EITI Secretariat reviewing project-level reporting practices in EITI,⁴ 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.

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

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

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

⁴ 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 reporting⁵, 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*.⁶ 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.⁷

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

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

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

⁷ 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 practice¹ and relevant national systems. ~~the United States Securities and Exchange Commission rules and the forthcoming European Union requirements.~~”

¹ 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.

Annex E: Proposed changes related to environment and energy transition

For decision

For discussion

For information

Summary

The working group on changes to the EITI Requirements has discussed a set of proposed changes related to environment and energy transition for the Committee's further deliberation. It is suggested that the Implementation Committee considers the proposals and makes a recommendation to the Board on which proposals discuss in Kyiv.

Proposed changes related to environment and energy transition

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1 Background

The EITI Principles¹ emphasise that natural resource wealth should be an engine for sustainable economic growth. Although the EITI Standard does not directly require disclosures of environmental policies, management and practises, at least 28 countries have decided to cover these aspects as part of their EITI reporting². Considering this fact and overall growing demand for information on environmental impact and risks, the EITI work plan for 2019³ outlines plans to conduct consultations with relevant stakeholders in order to further investigate the linkages between the EITI's and environmental policies as well as analyse whether and how environmental reporting can complement existing EITI disclosures. In light of the current discussion on revisions to the EITI Requirements, this paper outlines some proposals for how the EITI can address the ongoing discussion on sustainable management of resources and demands for transparency environmental reporting. The proposals are likely to require further consultations with the EITI constituencies.

Members of the EITI working group on changes to the EITI Requirements have raised different views on the extent to which the EITI should be encouraging or requiring disclosures related to environment or climate change. The proposals put forward have been supported by arguments on the need to respond to increasing calls by international civil society groups for the EITI to do more work on environmental aspects. Concerns raised by include adding reporting burden for implementing countries and industry, the need to better understand the full scope of any potential changes and avoid duplicating efforts with existing reporting frameworks and forums. The working group may wish to consider discussing the proposals made or share these with the Implementation Committee for further consideration.

¹ EITI International Secretariat (2016). The EITI Principles. Available [here](#).

² EITI International Secretariat (2017). Coverage of environmental information in EITI reporting. Available [here](#).

³ EITI International Secretariat (2018). International Secretariat 2019 work plan. Available [here](#).

2 Suggested changes to EITI Requirements related to environment

Proposal 1: Revising Requirement 6.1 on social expenditures to include social and environmental expenditures

The EITI Standard requires disclosure of all “significant payments and material benefit to government” (Requirement 4.1)⁴. The review of coverage of environmental reporting shows that 22 implementing countries have disclosed environmental payments made by extractives companies to the government or to dedicated funds, 15 of which reconcile the payments. These types of payments have included mining rehabilitation fees, fees for waste, water use and pollution and CO₂ and NO_x emissions, gas flaring, payment for environmental licenses and general contributions into environmental protection agencies. These flows are typically treated in the same way as any other revenue stream, with disclosures by companies and government agencies and reconciliation by the Independent Administrator. The size of these revenues tends to be small in comparison to total revenues. Flows are collected both from mining and oil and gas sectors although it appears to be more common in mining.

To reflect this emerging practice in EITI countries, Requirement 6.1 could be revised to read:

“6.1 Social and environmental expenditures by extractive companies.

a) Where material social **and environmental** expenditures by companies are mandated by law, ~~or the contract or license granted~~ with the government that governs the extractive investment **or environmental impact instrument**, implementing countries must disclose and, where possible, reconcile these transactions. **These expenses and payments include social and environmental expenses such as payments for social services, public infrastructure, payments to communities for compensation and remediation, etc. outside of the national budgetary process.** Where such benefits are provided in kind, it is required that implementing countries disclose the nature and the deemed value of the in-kind transaction. Where the beneficiary of the mandated social expenditure is a third party, i.e. not a government agency, it is required that the name and function of the beneficiary be disclosed. Where reconciliation is not feasible, countries should provide unilateral company and/or government disclosures of these transactions.

b) Where the multi-stakeholder group agrees that discretionary social **and environmental** expenditures **and payments**, and **its** transfers are material, the multi-stakeholder group is encouraged to develop a reporting process with a view to achieving transparency commensurate with the disclosure of other payments and revenue streams to government entities. Where reconciliation of key transactions is not possible, e.g., where company payments are in kind or to a non-governmental third party, the multi-stakeholder group may wish to agree an approach for voluntary unilateral company and/or government disclosures.”

This requirement may be expanded to also cover any material payments and expenditures such as fines and payments related to remediation, compensation, etc. Further work would need to be undertaken to understand the potential scope and materiality of such expenditures by oil, gas and mining companies in implementing countries.

An option could be to *encourage* such disclosures by reporting companies and/or to pilot such disclosures.

⁴ Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the EITI Report.

Proposal 2: Including a provision encouraging implementing countries to disclose contextual information related to environmental monitoring under Requirement 6

Requirement 6 on “Social and economic spending” covers disclosures of information related to social expenditures and the impact of the extractive sector on the economy. The requirement is aimed at helping stakeholders assess whether the extractive sector is leading to the desirable social and economic impacts and outcomes.

The review of coverage of environment in EITI provided examples from Kyrgyz Republic, Colombia, Ukraine and Liberia which have included information about environmental regulations and instruments in the contextual information provided in their EITI Reports. These examples have demonstrated that ensuring that EITI Reports reference existing regulations and other relevant standards in the national context can help increase comprehensiveness of EITI Reports without creating additional disclosure burdens. MSGs wishing to go further could also provide information on environmental impact assessments, water and energy use, administrative and sanctioning monitoring processes, environmental liabilities and rehabilitation, and overview and detail of agreements between extractive companies and affected communities.

To respond to increasing demands for information related to environmental monitoring, it is proposed that a provision encouraging disclosures related to legal and administrative procedures for environmental monitoring and rehabilitation, and actual practice could be added under Requirement 6:

“6.X Monitoring of socio-environmental impact.

Implementing countries are encouraged to disclose the following information related to monitoring of the environmental impact of the extractive industries:

- a) An overview of relevant legal provisions, administrative rules as well as actual practice related to environmental monitoring and protection applying to extractive investments in the country. This could include information on environmental impact assessments, certification schemes, licences and rights granted to oil, gas and mining companies, as well as information on the roles and responsibilities of relevant government agencies in implementing the rules and regulations. It could further include information on any reforms that are planned or underway.
- b) Information on regular environmental monitoring procedures, administrative and sanctioning processes of governments, as well as environmental liabilities, environmental rehabilitation and remediation programs.
- c) Use of water or energy and related payments to the government, in absolute terms and disaggregated by company and project.
- d) Information about the populations and communities affected by material extractives projects, the agreements between the extractive companies and these communities, as well as the economic commitments arising from these agreements.

Proposal 3: Including a provision encouraging links to existing disclosures on climate risks and energy transition

Requirement 3 of the EITI Standard currently covers exploration, production and export data seeking to enable stakeholders to understand the potential of the sector. Given the ongoing global discussion about climate risks and the need to transition to renewable and more sustainable energy sources, stakeholders in many EITI countries are raising questions about potential shifts in exploration and production. In addition, initiatives such as the Task Force on Climate-related Financial Disclosures have been created to bring more transparency about climate risks of different projects, which offers the opportunity to cross-reference such existing disclosures as part of an EITI report's contextual information

a. Encouraging countries to refer to existing disclosures related to climate risks and energy transition

Several frameworks have been already developed in order to provide an overview of existing climate risks and energy transition trends. United Nations Framework Convention on Climate Change (UNFCCC), the G20 or similar fora. In addition, a number of countries are already including energy transition aspect in their annual reporting process.

Recognising the increasing demand for this information, a provision could be added to Requirement 3 to encourage implementing countries and companies to provide a link to relevant contextual and financial information related to climate risk estimations and global energy transition:

“Implementing countries are encouraged to provide links to existing information on climate risks related to the extractive industries. This may include climate risk assessments in line with international commitments and details on fiscal incentives and subsidies provided to the extractive industry.

Companies are encouraged to disclose or provide links to any international commitments, climate risk assessments or other relevant information on risks associated with global energy transitions where available.

The multi-stakeholder group is encouraged to consider additional disclosures related to climate change and energy transition that can inform public debate about the governance of the extractive industries.”

Some challenges with this proposal include that the metrics within the UNFCCC framework are still unclear. Further consultation will be required on the scope of existing disclosures and added value of improving accessibility to such reports.

b. Encouraging countries to provide information about changes, policies and trends in exploration, production and export of the main commodities

The energy transition process is expected to have an impact on exploration and production activities, related to some of main minerals (for example, cobalt) used for production renewable sources of energy.

Disclosure of this information could help to increase understanding the potential of the sector. Therefore, a provision could be added to Requirement 3 could encourage implementing countries and companies to disclose information on the trends in exploration, production and export of the main commodities:

Implementing countries are encouraged to provide information on changes and trends in exploration, production and export of the key commodities. Where significant increases in production of certain commodities needed for energy transitions are observed, implementing countries are encouraged to comment on this in their disclosures.

Such information is already implicitly encouraged under Requirement 5.3.c, which refers to “timely information from the government that will further public understanding and debate around issues of revenue sustainability and resource dependence”, including the assumptions underpinning forthcoming years in the budget cycle and relating to projected future production. This provision would however make this encouragement more explicit.

Proposal 4: No changes to the EITI Requirements and scaling up of guidance and support for environmental reporting

The review of environmental reporting in EITI highlighted that an increasing number of implementing countries (now more than half) have some form of reporting on environmental issues in response to local concerns. There are several good-practice examples from countries such as Colombia, Ethiopia, Germany and the Philippines of dedicated chapters or studies focusing on environmental aspects.

An option could be for the Board to agree to scale up its guidance and support for implementing countries and MSGs that take an interest in environmental issues, highlighting areas along the value chain already being covered by the EITI Requirements that relate to environmental management:

- **Legal and fiscal frameworks (Requirements 2.1, 2.2, 2.3 and 2.4):** The review found that at least 23 countries covered aspects related to environment as part of the contextual information on legislation and licensing requirements in the EITI Report. This included details on reference to relevant legislation, environmental policy, requirements related to environment protection as part of the license allocation process, references to environmental impact assessments obligations, and commentary on actual practices against the legal framework.
- **Environmental payments and expenditures (Requirements 4.1, 5.1 and 6.1):** Disclosures of any material payments by extractives companies to the government, including revenue streams related to environmental policy and management, is already covered by Requirement 4.1. The review also found that some countries have included information on the management of environmental and rehabilitation funds, such as the use of proceeds from fees and penalties paid according to environmental regulations as part of information on revenue distribution (Requirement 5.1). Some MSGs may also decide to highlight environmental-related contributions within wider social contributions (Requirement 6.1).
- **Revenue management and expenditures (Requirement 5.3).** This requirement encourages disclosures of timely information that will further public understanding and debate around issues of revenue sustainability and resource dependence. Climate change risks are likely to be included in the assumptions underpinning projected production, commodity prices and revenue forecasts arising from the extractive industries.

Such guidance could also draw on good practices from EITI reporting related to disclosures of fossil fuel subsidies and decommissioning of extractives operations.

It is not proposed that implementing countries would be expected to cover all of these issues, or that the EITI would require implementing countries to report on environmental aspects. However, this may help respond to demands that interest in environmental reporting related to the extractive sector is growing,

Annex E: Proposed changes related to environment and energy transition
further guidance for MSGs that take an interest in environmental issues.

The incoming EITI Board could consider any further actions related to environment in 2019 and 2020 and lessons learned from more targeted support of environmental reporting.