

Norway: Draft Request for Adapted Implementation

1. Introduction

In accordance with requirement 8.1 of the EITI Standard, Norway EITI requests adapted implementation for EITI Requirements 1.1, 1.2, 1.3, 1.4, 1.5, 7.1, 7.2, 7.3 and 7.4. In addition, adapted implementation is requested for the requirement to produce an annual EITI Report (phase 6) of the agreed upon procedure for mainstreamed disclosures (Requirement 4.9.c). The rationale and exceptional circumstances for adapted implementation are set out below together with the proposed adaptations. This request should be read alongside Norway's application for mainstreamed disclosure. The request was endorsed by the multi-stakeholder group on <date>.

2. Background and rationale for adapted implementation

Norway has been an EITI supporting country since 2003 and became the first OECD country to commit to implement the EITI in 2007. The EITI Board accepted Norway as an EITI candidate on 11 February 2009, and the Norway EITI multi-stakeholder group (MSG) was legally constituted through Royal Decree on 22 June 2009. The national EITI process is fully funded by the Government of Norway and is chaired by Lars Erik Aamot, Director General of the Ministry of Petroleum and Energy.

The decision to implement the EITI in Norway was first and foremost an expression of solidarity with other implementing countries, and we believe that the decision to implement the EITI in Norway has had a positive impact on the EITI's development into a global standard. Implementing the EITI in Norway has also served to demonstrate that the Norwegian extractive sector is transparently managed. Norway has published eight EITI reports to date with no material unresolved discrepancies and no substantive delays in reporting. The first EITI Report, covering the fiscal year 2008, was published in 2009 while the last report, covering the fiscal year 2015, was published on December 2016. The MSG has decided not to cover the mining sector in reporting due to its immaterial contribution in relation to the oil and gas sector.

Whilst Norway's implementation of the EITI has had a positive impact internationally, it is widely acknowledged by all members of the MSG that the current format of regular MSG meetings and regular EITI reporting are no longer fit for purpose and have no added value in Norway. As a result, a key objective of Norway's 2015 and 2016 EITI work plans has been to consider how to exit the reporting and reconciliation requirements. As part of this objective, the work plan includes activities aimed at requesting the Board to allow the MSG to proceed with mainstreaming the EITI reporting requirements. More broadly however, the MSG has struggled to reconcile the role expected of the multi-stakeholder group under the EITI Standard with the broader Norwegian context. To an exceptional degree compared to other resource-rich countries around the world, there are already open and democratic channels through which to express different constituency views in Norway. Likewise, there is already a lively debate on all issues related to natural resource governance in Norwegian society. Whereas Requirements 1.1-1.5 (MSG oversight) and 7.1-7.4 (outcomes and impact) can over time help countries foster true multi-stakeholder governance of the sector, their full implementation in Norway would at best imply a cumbersome and unnecessary reproduction of existing platforms and institutions.

Norway consistently ranks high on different indices relevant in an EITI context. The country ranks as the 6th least corrupt on Transparency International's 2016 Corruption Perceptions Index¹; has a perfect rating of 100 on the Freedom House 2016 Freedom in the World ranking and ranks top with a score of almost 100 on the Resource Governance Index²

¹ Transparency International Corruption Perceptions Index (2016), http://www.transparency.org/news/feature/corruption_perceptions_index_2016

² <http://www.resourcegovernance.org/resource-governance-index>

Norway has, probably as the first country in Europe, put into force national requirements on country-by-country-reporting (CCR). The reporting requirements build upon EU-rules (directive 2013/34/EU), which have the main purpose of promoting greater transparency around enterprises engaging in the extractive industry of non-renewable natural resources, thus promoting accountability relevant for authorities in the management of the country's natural resources.

The Norwegian CCR-requirements do, however, go further than the EU-legislation by requiring expanded reporting obligations. In addition, the purpose of the Norwegian CCR-legislation has been further expanded to highlight unwanted tax evasion. New and additional reporting requirements to further promote this purpose, were put into force as late as 1 January 2017, and build upon new reporting requirements in the EU Commission directive proposal (2016) 198 final.

The Norwegian Government is eager to continue the work to further increase transparency in financial information, and will soon start evaluating the Norwegian CCR-legislation. In addition, the Government will follow up a request from the Norwegian Parliament to expand the scope of the CCR-legislation to include all branches and sectors in Norway, not only companies operating in the extractive industry.

As the EITI considers Norway's application for mainstreamed disclosure, the EITI is also here being asked to consider granting Norway adapted implementation from phase six of the agreed-upon procedures for mainstreamed disclosure. Norwegian society is increasingly digitalised, and the Government of Norway has developed online and mobile tools to help citizens access and understand relevant data about the extractive sector. This includes a detailed online portal, www.norskpetroleum.no, which promises to provide "everything you need to know about Norwegian Petroleum". Being required to publish an annual report that would in effect echo the information already available through this portal would, again, imply an unnecessary reproduction of data and would run contrary to the very reason why the EITI encourages mainstreaming.

Norway finds itself in an exceptional situation compared to many other resource-rich countries. There is already a well-functioning portal in place to gather information on the sector in one place, there are robust and reliable auditing practices, mandatory disclosure requirements for companies that are in line with EITI requirements and an eight-year track record demonstrating no material discrepancies between government and company disclosures. Implementation of the Standard should reflect these exceptional circumstances. The EITI has been positive for Norway, but for this to continue it is important that implementation take into account that Norway already embodies the participatory processes that the EITI seeks to foster in implementing countries.

3. Proposal for adapted implementation

Norway EITI requests adapted implementation for the following requirements:

3.1 Requirements 1.1-1.5 on MSG oversight

Requirements 1.1-1.5 of the EITI Standard state: *"The EITI requires effective multi-stakeholder oversight, including a functioning multi-stakeholder group that involves the government, companies, and the full, independent, active and effective participation of civil society. The key requirements related to multi-stakeholder oversight include: (1.1) government engagement; (1.2) industry engagement; (1.3) civil society engagement; (1.4) the establishment and functioning of a multi-stakeholder group; and (1.5) an agreed work plan with clear objectives for EITI implementation, and a timetable that is aligned with the deadlines established by the EITI Board"* (EITI Standard, p.15).

Proposed adaptation: Norway EITI suggests that the EITI's requirement of effective multi-stakeholder oversight be primarily guaranteed through the participatory and consultative mechanisms that already underpin Norwegian extractive sector governance. Instead of a physical multi-stakeholder group, the Ministry of Petroleum and Energy proposes to invite all stakeholders to an annual meeting and give a presentation of recent developments in the Petroleum Sector in line with information on

www.norskpetroleum.no This will enable stakeholders to pose questions, comments and feedback on EITI data provided through www.norskpetroleum.no.

Rationale and exceptional circumstances justifying adapted implementation: The Norwegian model already embodies the multi-stakeholder approach to natural resource management that Requirements 1.1-1.5 seek to foster in implementing countries. Civil society and industry engage actively in an open, democratic and consultative national dialogue. Whereas the EITI's requirements on multi-stakeholder oversight may be necessary in countries where there are no alternative channels for stakeholder participation, Requirements 1.1 through 1.5 represent a step backwards in a Norwegian context where more representative and democratic options are available to citizens.

The primary channel for society to engage with and shape extractive sector governance in Norway is through parliamentary procedure. The oil and gas sector is regularly debated in parliament, and the positions of political parties on different questions concerning the sector are frequently debated in the media. Freedom of expression, media freedom, and the right to access government information are guaranteed under Article 100 of Norway's constitution, while Article 101 guarantees the right of assembly.³ Freedom House ranked Norway as Free in its 2016 Freedom in the World ranking with a perfect rating (100) and noted that Norway has "one of the world's most open media environments" in its 2016 Freedom of the Press ranking.⁴

Norwegian stakeholders are regularly invited to comment on government proposals through open hearings. This includes hearings on legal and regulatory developments, consultations on opening of new areas for exploration, etc. These hearings are an integral part of the government's decision-making process. They guarantee the democratic right of all stakeholders to participate in public policy discussions and ensure that the views of all whose interests are affected by the government's decisions are known to the decision-makers. Consequently, the threshold for inviting views from all sectors of society is very low. The Ministry of Oil and Energy alone has launched 119 public consultations since Norway was accepted as an implementing country in 2009. Hearings and responses are available online.⁵

Industry and civil society engage actively and regularly with the government through their respective organisations. There are an estimated 115,000 non-governmental and non-profit organisations in Norway, and their views are regularly represented in the public debate through op-eds, campaigns and other interactions in public fora. Oil and gas companies are primarily organised through Norwegian Oil and Gas (NOG). NOG's annual conferences open to the public, are an opportunity to discuss issues that affect the sector. Other annual industry conferences include the annual International Petroleum Tax Conference hosted by the Norwegian Petroleum Association, Oslo Energy Forum, ONS (every second year) and the Autumn conference organised by Statoil. Norsk Petroleumsforening organise several conferences and seminars annually all over the country. These conferences and seminars covers a wide variety of subjects from technological issues to policy issues. There are also hybrid organisations such as the Norwegian organisation for petroleum accounting and taxation (*Norsk forening for ojeregnskap og -skatt*, ORS), which includes representatives from oil companies, banks and auditors alongside government bodies such as the Ministry of Finance, the Petroleum Tax Authority and the Norwegian Petroleum Directorate.⁶ Unions and employers' associations also play a particularly important role in the so-called Nordic model of governance and deserve special mention. Norwegian unions and employers associations engage regularly on questions of policy, not least on the extractive sector. This includes lobbying for and against issues concerning taxation levels,⁷ decisions on whether or not to open up new areas for development,⁸ environmental issues and traditional health and safety issues. Unions and employers' associations

³ <https://www.stortinget.no/globalassets/pdf/english/constitutionenglish.pdf>.

⁴ See <https://freedomhouse.org/report/freedom-world/freedom-world-2016> and <https://freedomhouse.org/report/freedom-press/2016/norway>.

⁵ <https://www.regjeringen.no/no/dokument/hoyringar/id1763/> (in Norwegian).

⁶ <http://www.ors.no/>.

⁷ <http://www.aftenbladet.no/aenergi/Statoil-fagforeninger---Flere-oljefelt-ifare-474447b.html>.

⁸ <http://www.dagbladet.no/kultur/vi-kan-ikke-fase-ut-oljegass-industrien-var-over-natta/64169393>.

participate regularly in consultations by government and the Norwegian Parliament. There are several public forums that host regular public debates related to the petroleum sector. *Litteraturhuset* has for example hosted some 50 public debates related to the Norwegian petroleum sector over the past six years. A quick search in *Kulturhuset's programme* for March-April 2017 shows two scheduled debates related to resource management in Norway. NGOs such as Bellona, *Kirkens Nødhjelp*, *Natur og Ungdom*, PWYP Norway, and Transparency International Norway contribute to and arrange forums for debate, as do academic institutions such as the Scandinavian Institute for Maritime Law at the University of Oslo.

These well-established channels for stakeholder participation are an integral part of the Norwegian model and have been so over the last 40 years. Unfortunately this remains the exception among resource-rich countries, and we understand that the EITI's Requirements 1.1-1.5 are meant to foster the development of similar consultative models in implementing countries. In the Norwegian context however, conventional implementation of Requirements 1.1-1.5 risks leading to the opposite results insofar as there are other, more representative and democratic channels for stakeholders to participate in the public debate than through an EITI-specific MSG. In a very real way, Norway has already mainstreamed these requirements. It would therefore be a step backwards to force stakeholders to use the EITI's more basic MSG model, and it is for this reason that we request adapted implementation from the Board. Rather than create a parallel process for stakeholder participation under the EITI, Norway should be allowed to use the existing mechanisms for stakeholder participation and oversight over the sector. If there is, a further need among stakeholders to pose questions, comments and feedbacks on EITI data this could be dealt with at an annual meeting where the Ministry gives a presentation of recent developments in the Petroleum Sector.

3.2 Requirements 7.1-7.4 on outcomes and impact

Requirement 7.1-7.4 of the EITI Standard reads: *Regular disclosure of extractive industry data is of little practical use without public awareness, understanding of what the figures mean, and public debate about how resource revenues can be used effectively. The EITI requirements related to outcomes and impact seek to ensure that stakeholders are engaged in dialogue about natural resource revenue management. EITI Reports lead to the fulfilment of the EITI Principles by contributing to wider public debate. It is also vital that lessons learnt during implementation are acted upon, that discrepancies identified in EITI Reports are explained and, if necessary, addressed, and that EITI implementation is on a stable, sustainable footing.*

Proposed adaptation: Norway EITI proposes that the EITI's requirement that countries raise public awareness and encourage public debate be assured through the channels that already underpin Norway's vibrant national debate on natural resource revenue management.

Rationale and exceptional circumstances justifying adapted implementation: Informed public debate is a pillar of Norwegian natural resource revenue management. Whereas the EITI's requirements on raising public awareness are necessary in countries where there are no alternative sources of reliable information, public debate and access to opportunities to contribute to public policy making, Requirements 7.1 through 7.4 represent a duplication of efforts in a Norwegian context.

As detailed in the mainstreaming feasibility study provided alongside this request, the Ministry of Petroleum and Energy in cooperation with the Norwegian Petroleum Directorate routinely disclose information about the oil and gas sector through the online portal www.norskpetroleum.no. Since 2014, an associated app, Oil Facts, has included a push service providing news from the directorate and from the Ministry of Petroleum and Energy to the public. The app includes an analysis section, where users can filter and sort data as well as generate graphs, and a detailed, layered map that allows users to search for facilities, pipelines, licenses, fields and discoveries, survey information and wells. It is also possible to subscribe to receive regular news and updates to the Petroleum Directorate's Fact Pages, which provide the information on which the app and the online portal are

built.⁹ The content of the directorate's FactPages, and by extension the portal and the app, may be used in accordance with the Norwegian License for Open Government Data (NLOD).¹⁰

The oil and gas sector is Norway's largest measured in terms of value added, government revenues, investments and export value. As such, it is subject to a particularly high level of public scrutiny and debate. The government's policy and rules for management of the revenues from the sector are publicly available¹¹ and are regularly discussed in parliament and in the media. The Government's annual report to the Parliament regarding the National Budget has a separate chapter describing the Petroleum Sector. Further the Oil Tax Authority (Oljeskattekontoret) provides regular reports and analysis on among other things the effects of the oil sector on Norwegian economy,¹² as well as a list of how much taxes oil companies are expected to pay annually.¹³ The net revenue from the petroleum sector is transferred to the Government Pension Fund Global, which is administered by Norges Bank Investment Management (NBIM) on behalf of the Ministry of Finance. The fund is generally recognised as one of the most transparent sovereign wealth funds in the world¹⁴, but is nonetheless subject to constant public scrutiny and debate.

All of Norway's eight EITI Reports have demonstrated immaterial discrepancies, and recommendations from EITI Reports have focused on how to improve the reporting process. Although the MSG has attempted to use the EITI process to encourage public debate on the sector, it quickly became clear that the EITI was unable to compete for relevance with the well-established channels for raising public awareness and encouraging public debate that already existed. The largest newspapers and media outlets – *Aftenposten*, *Dagens Næringsliv*, *Dagbladet*, *E24*, *Finansavisen*, *NRK*, and *VG* - feature daily articles and news about developments in the petroleum sector. Many of them also facilitate public debate through online platforms. As a result, the MSG decided at an early stage of implementation that it was not a reasonable use of time and energy to try to duplicate these platforms.

Norway understands why, as quoted above, "the EITI requirements related to outcomes and impact seek to ensure that stakeholders are engaged in a dialogue about natural resource revenue management". This is important for all resource-rich countries. Norway's circumstances are exceptional however, insofar as this ambition already underpins how natural resources are governed. As with Requirements 1.1-1.5, Norway had already mainstreamed these requirements before the government decided to join the EITI. Rather than recreating a public debate that is already taking place, we request that the Board allows Norway to continue using the existing channels for discussion. Likewise, rather than recreate new information platforms Norway also requests that we be allowed to continue to provide timely information through the existing platforms for dissemination of information, including the online portal, the associated app and the Petroleum Directorate's Fact Pages, among others.

3.3 Phase 6 of the agreed upon procedure for mainstreamed disclosure

Phase 6 of the agreed upon procedure for mainstreamed disclosure requires:

- b) An annual EITI Report should be produced that:
 - a. collates the requisite data from the various (publicly available) sources

⁹ <http://factpages.npd.no/factpages/Default.aspx?culture=en>.

¹⁰ <http://data.norge.no/nlod/en/1.0>.

¹¹ <http://www.norskpetroleum.no/en/economy/governments-revenues/>.

¹² <http://www.skatteetaten.no/no/Bedrift-og-organisasjon/rapportering-og-bransjer/Oljeskatt/Presentasjon-av-Oljeskattekontoret/Tall-og-trender-fra-petroleumssektoren/>.

¹³ <http://www.skatteetaten.no/globalassets/pdf/orsk--oljeskattkontoret/skattelisten-2015-osk.pdf>

¹⁴ See for example <https://www.nbim.no/en/transparency/news-list/2016/the-funds-annual-reporting-wins-gold-award/> and <http://www.swfinstitute.org/statistics-research/linaburg-maduell-transparency-index/> or <http://www.reuters.com/article/investment-swf-transparency-idUSL5N0SN2MK20141028>.

b. summarizes the audit and assurance work that has been undertaken.

c) The annual EITI Report must include an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process disclosed the requisite information. Any gaps or weaknesses must be disclosed, including naming any entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on the comprehensiveness of the report.

d) Where gaps and weaknesses are identified, the Independent Administrator should make recommendations for strengthening the reporting process in the future, including any recommendations regarding audit practices and reforms needed to bring them in line with international standards, and where appropriate, recommendations for other extractive sector reforms related to the implementation of the EITI. Where previous EITI Reports have recommended corrective actions and reforms, the annual EITI Report should comment on the progress in implementing those measures.

e) The annual EITI Report must include an overview of the government's and the multi-stakeholder group's responses to and progress made in addressing the recommendations from reconciliation and Validation in accordance with Requirement 7.1.a. The annual progress report should list each recommendation, 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, the rationale should be explained in the annual progress report

f) If there are substantial delays in implementing the agreed work plan and/or the publication of EITI Reports, the EITI Board will consider suspending or delisting the country in accordance with requirement 1.

Proposed adaptation: Norway EITI proposes that the annual EITI Report required under the procedure for mainstreamed disclosure be replaced by online reporting through the platform www.norskipetroleum.no and the associated *Oil Facts* app. Stakeholders who may be unable to locate data points required under the EITI Standard would be able to address the Ministry of Petroleum and Energy in an annual meeting where the Ministry gives a presentation of recent developments in the Petroleum Sector.

Rationale and exceptional circumstances justifying adapted implementation: According to the EITI's website, "extractive industry transparency should not be confined to an EITI Report, but rather become an integral part of how governments manage their extractive sector. EITI implementing countries are increasingly making the information required by the EITI Standard available through government and corporate reporting systems (databases, websites, annual progress reports, portals etc.) - rather than relying on the EITI Report - to bring about transparency. Mainstreaming is about encouraging and recognising countries that make transparency an integral and routine feature of their governance and management systems."¹⁵ The website highlights the example of the United States, where company payments from operations in federal lands are available to the public through a data portal, rather than through an EITI Report.¹⁶ This request seeks adapted implementation from the Board to bring the EITI's mainstreaming agenda to its logical conclusion in a Norwegian context.

As detailed in the mainstreaming feasibility study that accompanies this request, the Ministry of Petroleum and Energy together with the Norwegian Petroleum Directorate routinely discloses information about the oil and gas sector through the online portal www.norskipetroleum.no. The portal promises to provide "everything you need to know about Norwegian petroleum", and it already serves the function of collating data from different government agencies pertaining to the

¹⁵ <https://eiti.org/mainstreaming>.

¹⁶ <https://eiti.org/news/us-eiti-launches-natural-resource-revenues-portal>.

extractive sector. As the feasibility study shows, the portal can also be modified to help users access data on company payments disclosed under Norway's mandatory country-by-country reporting requirements. The annual publication of EITI Reports currently costs Norway the equivalent of some USD 71,000, while EITI Reports have consistently shown that discrepancies identified through reconciliation are immaterial. No special audit requirements or assurance procedures have been imposed as part of EITI reporting, and existing auditing practices are demonstrably robust and reliable due to the requirements of the Accounting Act.

Norway is in an exceptional situation in that there already exists a well-functioning portal, robust and reliable auditing practices, mandatory disclosure requirements for companies in line with EITI requirements and an eight-year track record demonstrating no material discrepancies between government and company disclosures. Rather than continuing to publish unnecessary reports annually that would duplicate information already available on the Ministry of Petroleum and Energy Petroleum Directorate's online portal, we request that the EITI allows Norway to continue using www.norskipetroleum.no to guide users to the information they would expect to find under the EITI Standard. The provision of an annual meeting would ensure that stakeholders would be able to address the Ministry of Petroleum and Energy to locate any data points required under the Standard as well as to address any gaps or weaknesses that may be identified over time.