

Annex A – Draft ‘agreed upon procedure’ for mainstreamed disclosures

1 Summary

The Secretariat proposes a draft “agreed upon procedure for mainstreamed disclosures” for consideration by the Implementation Committee.

The objective of the procedure is to recognize implementing countries that make transparency an integral and routine feature of their management systems. It is important to emphasize that **the procedure does not alter the EITI’s disclosure requirements**. Implementation in accordance with this procedure would require the same information, in the same amount of detail, as is the case today. The procedure would not in any way alter the provisions regarding MSG oversight.

The proposed procedure has seven phases:

1. **Commitment** from government and agreement by the MSG to explore this approach to implementation of the EITI Standard;
2. **Feasibility** – a rigorous assessment of the viability of mainstreamed disclosure by an independent and technically competent body in accordance with a Board agreed template terms of reference;
3. **Workplan** – MSG agreement on a schedule for disclosure and assurance, including any capacity building and technical assistance;
4. **Application** – An MSG-approved application to the EITI Board seeking approval of the proposed workplan;
5. **Approval** – Board approval of the suggested approach.
6. **Implementation and Reporting** – in accordance with the workplan, including annual EITI Reports that collate the requisite data and provide links to further information.
7. **Review** – annual reviews by the MSG of the process as per requirement 7.

The process includes several safeguards to ensure that the adoption of this procedure is based on rigorous analysis and a coherent plan for disclosures, with oversight by both the MSG and the EITI Board. If the procedure is adopted, the Secretariat suggests that the Board also develops a revised ToR for validators that accommodates this approach.

The Secretariat welcomes feedback and comments on this proposal.

2 Background

Extractive industry transparency should not be confined to EITI reports and expensive reconciliation exercises, but become an integral part of how governments manage their sector. Rather than simply relying on the EITI reporting mechanism to bring about transparency, governments implementing the EITI could to a greater extent make the information required by the EITI Standard available through government and corporate reporting systems such as databases, websites, annual reports, portals etc. The EITI Standard is relatively quiet on mainstreaming¹. It encourages MSGs to “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

¹ The EITI Principles call for: “We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business” (Principle 9); and “We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use” (Principle 10).

government or where national taxation systems are trending towards online tax assessments and payments". Some EITI Requirements such as e.g. Requirement 3.9 on license registers or Requirement 3.11 on beneficial ownership already encourage mainstreaming by noting that "where the information is already publicly available, it is sufficient to include a reference or link in the EITI Report." However, the majority of the EITI requirements state that "the EITI Report must disclose...", making it mandatory for the EITI Report to include data that may already be publicly disclosed by the government or companies elsewhere.

In Abuja, the Implementation Committee discussed the need for some kind of pre-approval system to ensure that countries had adequately explored the feasibility of mainstreaming, including reliability and comprehensiveness of the data. The Committee also noted that the validation mechanism or EITI reporting could be used to verify that all the data was disclosed as required by the EITI Standard.

Changes aimed at enabling mainstreaming might be best accompanied by an 'agreed upon procedure' for mainstreaming in order to ensure that aspects such as accessibility, reliability, comprehensiveness etc. of the data has been adequately considered for example through feasibility work. The 'agreed upon procedure' could be added to the current requirement 5 which sets out the procedural requirements related to production of EITI reports, including requirements for comprehensiveness and reliability. It could also be based on existing EITI requirements. For example, Requirement 6 already says "*EITI Reports*" have to be comprehensible and publicly accessible. This could be tweaked to say that "*information referenced in EITI Reports*" has to be comprehensible and publicly accessible.

The Secretariat has proposed to replace the formulation "The *EITI Reports* must disclose/are encouraged to disclose..." with "*Implementing countries* must disclose/are encouraged to disclose" (emphasis added). With respect to revenue disclosure, the Secretariat proposes that requirements 4 and 5 are redrafted to reflect the approach set out in the former EITI Criteria, i.e., requiring:

1. "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";
2. an assessment of whether these payments and revenues are subject to "credible, independent audit, applying international auditing standards"; and
3. that where such audits do not exist, "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". This approach would apply to all companies including state-owned enterprises.

The Secretariat suggests that the Board agrees to remove the detailed provisions in requirement 5 regarding the assurances to be provided by reporting entities, and instead sets out these requirements through the (Board approved) agreed upon procedure for EITI Reports. The current requirements would thus be retained, but allow for two possible procedures for EITI disclosures: (1) the "conventional" agreed upon procedure for EITI Reports, which is already in use; and (2) the agreed upon procedure for mainstreamed disclosures. A draft agreed upon procedure for mainstreamed disclosures is set out below. The secretariat welcomes feedback on the proposal. Further refinements to the "agreed upon procedure" are anticipated based on the findings from the mainstreaming pilots.

3 Draft agreed upon procedure for mainstreamed disclosures

Preamble

TBC

Phase 1 – Commitment

- a) Eligibility for this procedure requires a clear commitment from government and agreement by the MSG to mainstream implementation of the EITI Standard.

Phase 2 – Feasibility study

- a) The procedure requires a rigorous feasibility study conducted by a consultant or organization perceived by the multi-stakeholder group to be credible, trustworthy and technically competent.
- b) It is a requirement that the feasibility study follows the template terms of reference agreed by the EITI Board (currently being piloted). The feasibility study should address two essential issues:

1. Is there routine disclosure of the EITI data required by the EITI Standard in requisite detail?

This should include:

- A review of what information required by the EITI Standard is already made publicly available by government agencies and in what format such as on on-line cadastres and registers, government webpages on legal, fiscal and administrative arrangements for the sector, etc. It should also include a review of the data that is made publicly available by companies in their reports and on their websites.
- An assessment of whether the information is up to date, comprehensive (includes all information required by the EITI Standard), and reliable. If there are several public sources for the data, consistency should be assessed. Where there are gaps that can be quickly addressed, remedial actions and timeline should be provided. The assessment should also address the retention and availability of historical data.

2: Is the financial data subject to credible, independent audit, applying international standards?

This should include:

- A review of the audit and assurance procedures and practices in companies and government entities participating in the EITI reporting process, including the relevant laws and regulations, any reforms that are planned or underway, and whether these procedures are in line with international standards². And weaknesses in audit assurance practices should be clearly identified.
- The feasibility study should set out options for ensuring that the EITI data is comprehensive and reliable. Where financial data is audited in accordance with international standards, the procedure does not require a comprehensive reconciliation of government revenues and company payments, although comprehensive disclosures from government and companies is required in accordance with requirements 4 and 5. Where financial data is not audited in accordance with international standards, the feasibility study should set out options for ensuring that the EITI data is comprehensive and reliable. This could include full

² For companies: the International Standards on Auditing (ISA) issued by the International Auditing and Assurance Standards Board (IAASB). For public entities: the International Standards of Supreme Audit Institutions (ISSAI) issued by the International Organization of Supreme Audit Institutions (INTOSAI).

reconciliation, spot-checks reconciling certain transactions or a certain percentage of total disclosures, etc..

- c) The procedure requires that the feasibility study is agreed by the MSG and made publically available.

Phase 3 – Schedule of disclosures and assurances

- a) The procedure requires that, based on the findings of the feasibility study, the MSG agrees a detailed schedule of disclosures and assurances by the participating entities. The schedule should clearly outline how the information required by the EITI Standard will be disclosed and assured, including a credible process for ensuring that the EITI data is comprehensive and reliable. The schedule should also address the steps need to ensure the retention and availability of historical data. Where routine disclosures are not yet taking place or not yet appropriately assured, the schedule should outline the expected timeframe for disclosure.
- b) The schedule must:
 - i. Assess and outline plans to address any potential capacity constraints in government agencies, companies and civil society that may be an obstacle to effective mainstreamed disclosures.
 - ii. Address the scope of EITI reporting, including plans for addressing technical aspects of reporting, such as comprehensiveness and data reliability (Requirements 4 and 5).
 - iii. Identify and outline plans to address any potential legal or regulatory obstacles to mainstreamed implementation, including, if applicable, any plans to incorporate the EITI Requirements within national legislation or regulation.
 - iv. Outline plans for implementing the recommendations from validation and EITI reporting.
- c) The procedure requires that the production of an annual EITI Report that collates data from the various (publically available) sources. It is a requirement that this work is undertaken by a consultant or organization perceived by the multi-stakeholder group to be credible, trustworthy and technically competent. The schedule for the annual reporting should be clearly specified.

Phase 4 - Application

- a) It is a requirement that the MSG seeks EITI Board approval of the schedule.

Phase 5 – Approval

- a) The EITI Board will consider the application and schedule. Approval of the application may be subject to clarifications of the schedule. Where the Board has concerns that comprehensive and reliable mainstreamed disclosures is not feasible, the Board may reject the application.

Phase 6 – Implementation and Reporting

- a) Subject to Board approval, the schedule should be implemented.
- b) An annual EITI Report should be produced that:
 - a. collates the requisite data from the various (publicly available) sources;
 - 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 MSG **is required** to make recommendations for strengthening the reporting process in the future, including any recommendations regarding audit practices **and, where appropriate, legal, regulatory and administrative extractive sector reforms**. 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 activity 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 activity report**
- f) If there are substantial delays in implementing the agreed workplan and/or the publication of EITI Reports, the EITI Board will consider suspending or delisting the country in accordance with requirement 1.

Phase 7 – Review

- a) Subject to Board approval, the MSG should oversee the implementation of the workplan.
- b) The MSG should conduct regular reviews of the process in accordance with requirement 7. The **government and the** multi-stakeholder group **are** 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**.