

Validation:

Delisting – We are concerned that all instances of automatic delisting have been removed. This means that all delistings will be product of Board negotiation, not rules. Hard to justify to MSGs and opens the way to unequal treatment.

We propose that there be automatic delisting (not “consider delisting) for three cases:

1. Country does not reach Compliance in 4.5 years. Any government which cannot commit to this should not be let into the EITI in the first place.
2. Validator finds no “meaningful progress.” In practice, this means a country has been in the EITI for 2.5 years and still can't produce a report. Not as harsh as it sounds as deserving cases can still get an extension for another two years under 1.6d anyway.
3. Country is suspended and fails to get out of suspension. Need to figure out a way to deal this – lets say a country meets 80 per cent of the remedial conditions to get out of suspension and needs a bit more time. Could go with something like: “A temporary suspension period will be for one year, but the Board may opt to extend it to 1.5 years if the circumstances justify it. Any country which remains in suspension for more than 1.5 years will automatically be delisted.”

Meaningful progress – it is important to define what Meaningful progress is.

Compliance - New rules don't seem to specify that a Compliant country must continue to meet all the rules. This was Requirement 21 in the 2011 rules. Could create ambiguity about what is expected of a Compliant country. Best to avoid any ambiguity and put this language back in.

Extensions - Looks the same as before but the Maximum Candidacy Period is a year longer

Validation Guide 3.2 point Under 4. Draft Report, the first bullet point should say: “A narrative report that addresses the impact of the EITI in the country against the national priorities for the extractive industries that are identified in the work plan.(italics – our proposed language added in).

The fourth bullet point should say: “Conclusions, lessons learned and recommendations for increasing the wider impact of the EITI process.

“The EITI Board ... decides on the status of the implementing country (see chapter two, requirement 1.6-1.7. Proposed language to add: “The Board may make recommendations for increasing the wider impact of the EITI.”

1.6 Reporting and Validation deadlines

a) EITI reporting deadlines

The EITI requires timely publication of EITI Reports (see requirement 2). ~~Failure to meet this requirement may result in suspension or delisting.~~

~~If the EITI Report is not published by the required deadline, the country will be suspended unless the EITI Board has granted an extension under 1.6(d). The suspension will be lifted if the EITI Board is satisfied that the outstanding EITI Report is published within six months of the deadline. If the outstanding reports are not published within six months of the deadline, the suspension will remain in force until the EITI Board is satisfied that the country has published an EITI Report that covers data no older than the second to last complete accounting period (met requirement 2). If the suspension is in effect for more than not lifted within one year the EITI Board will consider delist the countrying.~~

~~In the event that EITI reporting is significantly delayed, the MSG should take steps to ensure that EITI reports are issued for the intervening reporting periods so that that every year is subject to reporting.~~

Comment [DR1]: The following provisions reflect the current rules, as found in Policy Note 3 and Policy Note 5.

Comment [DR2]: In line with Board decision on Yemen and Mauritania.

Formatted: Font: Myriad Pro

Formatted: Font: Myriad Pro, 11 pt

Formatted: Font: Myriad Pro

Formatted: Not Highlight

Formatted: Font: Myriad Pro

Formatted: Not Highlight

Formatted: Font: Myriad Pro

Comment [DR3]: Moved to requirement 2

b) EITI Validation deadlines

EITI Candidates are required to commence Validation within two and a half years of becoming an EITI Candidate. The validation will determine whether the country is: (1) ~~compliant~~ **Compliant**, (2) not ~~compliant~~ **Compliant**, but has made meaningful progress; or (3) not ~~compliant~~ **Compliant**, and has not made meaningful progress (see below). ~~If EITI Compliant status is not achieved, the country may in some circumstances retain its status as an EITI Candidate country for an additional period.~~ A country may hold ~~candidacy~~ **EITI Candidate** status for no more than ~~3 and a half years, after which the country will be suspended or delisted (see relevant sections below).~~ ~~four and five a half years~~ of becoming an EITI Candidate¹.

EITI Compliance: Where Validation verifies that a country has met all of the requirements the EITI Board will designate that country as EITI Compliant. ~~Compliant countries will be required to undertake Validation every three years thereafter. Compliant countries must maintain adherence to the EITI Principles and Requirements in order to retain Compliant status.~~ Where a country has become EITI Compliant, but concerns are raised about whether its implementation of the EITI has subsequently fallen below the required standard, the EITI Board reserves the right to require the country to undergo a new Validation or a Secretariat Review. Stakeholders may petition the EITI Board if they consider that ~~compliant~~ **Compliant** status should be reviewed. This request may be mediated through a stakeholder's constituency representative(s) on the EITI Board. The EITI Board will review the situation and exercise its discretion as to whether to require an earlier Validation or Secretariat Review. Subject to the findings of that assessment, the EITI Board will determine the country's status. The EITI Board reserves the right to designate a country as an EITI Candidate (specifying corrective actions), or to consider suspension or ~~delisting~~.

Meaningful progress: ~~In order for the Board to conclude that a country has made meaningful progress, Validation (or a Secretariat Review) must needs to demonstrate that the country has at least made meaningful progress in meeting all seven implementation requirements. In assessing "meaningful progress" the EITI Board will have regard to:~~

- (1) The EITI process – in particular the functioning of the MSG and clear, strong commitment from government;

Comment [SB4]: 2.5 years + 12 months for remedial actions + 12 months suspended. + 6 months suspension extension (subject to Board approval)

Comment [CG5]: I am uncomfortable with stating that countries have 5 years to become compliant although I understand that we want to make clear that they will still be a client. The reality is that they have 3.5 years to be compliant and then they have missed the time period allowed and will be suspended or delisted – We don't want to encourage countries to take 5 years and we want to make clear that after 3.5 years there will be consequences - . Can we re-word to make this clear? I suggested some language but may still need to include something on candidate status too.

Formatted: Font: (Default) Myriad Pro, Font color: Text 1

Formatted: Font: Myriad Pro

Formatted: Font: Myriad Pro

Comment [CG6]: This is confusing, but we don't think it makes sense to redesignate a compliant country as a candidate and think this should be struck out. If a country has fallen below the level of compliance the country should be suspended until it either completes the corrective actions or is delisted.

Formatted: Font: Myriad Pro

Formatted: Font: (Default) Myriad Pro, Font color: Text 1

¹ The time it takes for the country to undergo Validation is not counted as part of the maximum candidacy period.

(2) The status and quality of EITI reporting, including meaningful progress in meeting the requirements for timely reporting as per requirement 2 and, where applicable, efforts to address recommendations for improving EITI implementation.

Where the first Validation verifies that an EITI Candidate has made meaningful progress toward achieving EITI Compliant status but has not met all of the requirements, the country will retain its EITI Candidate status for an additional period of twelve months equivalent to the maximum candidacy period less the time it has already spent as an EITI Candidate (not including the time taken for the country to undertake Validation). In cases where candidacy is retained, the EITI Board will set out the remedial actions that the country is required to undertake during this period needed to achieve compliance. Compliance will be assessed through a second Validation. Where the remedial actions necessary for achieving compliance can be assessed quickly and objectively, the EITI Board will consider whether to commission a Secretariat Review as an alternative to a second validation. This procedure will also apply in cases where a Compliant country does not meet all the requirements in a subsequent validation.

Comment [SB7]: Refines the existing test of meaningful progress to take into account progress in addressing weaknesses in EITI implementation that have previously been identified.

Comment [CG8]: This is a partly circular rule and be more specific?. What about the old rule that a country must publish at least one EITI report published (for candidate countries). Otherwise a candidate country could go without years in publishing a report.

Comment [SB9]: To date, the majority of countries have undertaken a secretariat review rather than a second validation. This process has been cheaper and faster than validations. Given that this process takes place within 12 months of the first validation, a Secretariat Review can generally build on the existing validation report.

Where a second Validation (or Secretariat Review) verifies that a country has made meaningful progress but has not achieved compliance, the EITI Board will suspend the country. The EITI Board will set out the remedial actions that the country is required to undertake in order to achieve compliance. The suspension will be lifted if a Secretariat Review verifies that the remedial actions have been completed and the EITI Board is satisfied that the outstanding EITI requirements are met. If the suspension is in effect for more than twelve months, the EITI Board will consider whether to delist the country. In accordance with requirement 1.7(a) the Board may consider extending the suspension for an additional six months (i.e., a total maximum candidacy period of 5 years) if the majority of the outstanding remedial actions have been taken and the remaining outstanding remedial actions are minor and can be quickly undertaken. If all remedial actions are not addressed by the end of 6 months, the country will be delisted.

In assessing "meaningful progress" the EITI Board will have regard to:

- (1) The EITI process—in particular the functioning of the MSG and clear, strong commitment from government;

The status and quality of EITI reporting, including progress in meeting the requirements for timely reporting as per requirement 2 and, where applicable, efforts to address recommendations for improving EITI implementation.

(2)

Formatted: Indent: Left: 1,27 cm, Space Before: 0 pt, After: 0 pt, No bullets or numbering

Formatted: Font: (Default) Myriad Pro

No meaningful progress: In order for the Board to conclude that a country has not made meaningful progress, Where Validation (or a Secretariat Review) needs to demonstrate that concludes that there has been no meaningful progress in meeting one or more of the seven implementation requirements. Where the Board concludes that there has been no meaningful progress, the Board will consider whether to delist country will be delisted. the country.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

c) Annual activity reports

MSGs are required to publish annual activity reports (see requirement 7.2). 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 Candidates. If the annual activity report is not published within six months of this deadline (i.e. by 31 December the following year), the country will be suspended until the EITI Board is satisfied that the outstanding activity report is published.

Comment [SB10]: The EITI Rules currently call for a new validation.

d) Extensions

An implementing country may apply for an extension if it is unable to meet any of the deadlines specified in sections (a), (b) and (c) above. The EITI Board will apply the following test in assessing any extension requests:

1. The request must be made in advance of the deadline and be endorsed by the MSG;
2. The EITI Board will only grant an extension if the MSG can demonstrate that it has been making meaningful progress towards meeting the deadline and has been delayed due to exceptional circumstances. In assessing “meaningful progress” the EITI Board will have regard to:
 - (i) the EITI process – in particular the functioning of the MSG and clear, strong commitment from government; and
 - (ii) the status and quality of EITI reporting, including meaningful progress in meeting the requirements for timely reporting as per requirement 2 and efforts to address recommendations for improving EITI reporting.

The exceptional circumstance(s) must be explained in the request from the MSG. No extensions will be granted which would increase the maximum candidacy period.

Comment [SB11]: The Secretariat proposes a generic test for assessing all extension requests relating to EITI implementation. See 22-9-G for more information.

1.7 Suspension and delisting

Suspension due to breaches of the EITI Principles and requirements:

a)

Where it is manifestly clear that a significant aspect of the EITI Principles and requirements are not in a significant aspect adhered to by an implementing country, the EITI Board may suspend or delist or delist that country. In accordance with requirement 1.6 above, this includes cases where a country has not met the requirements for timely EITI reporting, publication of annual activity reports and/or achieving compliance with the EITI requirements by the deadlines established by the EITI Board.

Where the EITI Board is concerned that adherence to the EITI Principles and requirements are compromised, it may task the International Secretariat with gathering information about the situation and submitting a report to the EITI Board.

Suspension of an implementing country is a temporary mechanism. The EITI Board shall set a time limit of 12 twelve months (unless agreed otherwise) for the implementing country to address breaches of the EITI Standard. If an implementing country has been subject to suspension due to breaches of the EITI Principles and requirements, and the matter has not been resolved to the satisfaction of the EITI Board by the agreed deadline, and/or if the suspension is in effect for more than one year, the EITI Board will delist the country. Where suspension follows a second validation that did not result in compliance, the Board may consider extending the suspensions of an additional up to 18 six months (i.e., a total maximum candidacy period of 5 years) if the The EITI Board will only consider extending the suspension for an additional period of six months in cases where majority of remedial actions have been addressed and outstanding remedial actions are minor and can be quickly undertaken. In cases of egregious violations of the EITI Standard, the Board reserves the right to delist a country with immediate effect.

b) Suspension due to political instability or conflict:

The EITI Board may decide to suspend countries in cases where political instability or conflict prevents EITI implementation from being sustained. Countries that are experiencing exceptional political instability or conflict may also apply for voluntarily apply to be suspended, sion for up to one year. The government should lodge an application for voluntary suspension with the

Comment [CG12]: This works for Candidate Countries but not for compliant countries which are not subject to a MCP. We should not allow extensions for candidate countries – if they don't meet the deadline, they are suspended and they have a year to get back on track, otherwise they are delisted.

Formatted: Font: Myriad Pro

Formatted: Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0,63 cm + Indent at: 1,27 cm

Formatted: Font: Not Bold

Formatted: Font: (Default) Myriad Pro

Formatted: Space Before: 0 pt, After: 0 pt

Comment [CG13]: Why take that out?

Formatted: Font: Myriad Pro

Formatted: Font: Myriad Pro

Comment [CG14]: Why do we need “unless agreed otherwise”?

Comment [CG15]: I am confused by this section and how it relates to the other sections. I understand from the previous section that it would up to 12 months and then the board would decide to grant an additional 6 months if most of the actions had been taken.

Formatted: Font: Myriad Pro

International Secretariat, which will submit the application to the EITI Board for decision. The government's application should note the views of the MSG.

Where countries are suspended due to political instability or conflict, the period that the country is suspended will not be counted as part of the maximum candidacy period. The EITI Board will monitor and review the situation on a regular basis. Once the suspension is lifted, the EITI Board will consider setting new reporting and Validation deadlines as appropriate.

Formatted: Font: Myriad Pro

Suspension of an implementing country is a temporary mechanism. The EITI Board shall set a time limit for the implementing country to address breaches of the EITI Standard.

Formatted: Font: Bold

Formatted: Normal

Lifting the suspension:

Formatted: Font: Bold

c)

The government may apply to have the suspension lifted at any time. The application should document the steps agreed by stakeholders to re-start the EITI implementation and Validation process, and the work plan to achieve compliance.

Formatted: Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0,63 cm + Indent at: 1,27 cm

Formatted: Font: Myriad Pro, Bold

If the EITI Board is satisfied that the reasons for suspension have been addressed ~~corrective measures have been undertaken in that period~~, the suspension will be lifted. ~~The EITI Board will consider setting new reporting and Validation deadlines as appropriate. The Board will not sanction the commencement of Validation during the suspension period.~~ At all stages in the process, the EITI Board shall ensure its concerns and decisions are clearly communicated to the implementing country.

Formatted: Font: Myriad Pro

Formatted: Font: Myriad Pro

Formatted: List Paragraph, Indent: Left: 0 cm

Suspended countries will be considered an "EITI Candidate country (suspended)" or an "EITI Compliant country (suspended)" for the period of suspension, with their suspended status clearly indicated on the EITI website and elsewhere.

a) 1.8 Delisting

Delisting will occur if:

Formatted: Font: Myriad Pro, Bold

(1) In accordance with requirement 1.7(a), if an implementing country has been subject to suspension, and the matter has not been resolved to the satisfaction of the EITI Board by the agreed deadline, and/or if the suspension is in effect for more than one year, the EITI Board will consider whether to delist the country, and

Formatted: Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 8 + Alignment: Left + Aligned at: 0 cm + Indent at: 0,63 cm

Formatted: Font: Myriad Pro

(i.e. lose its status as an EITI implementing country):

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1,27 cm + Indent at: 1,9 cm

Formatted: Indent: Left: 1,9 cm

(2) Delisting may also occur if Validation verifies that an implementing country has not achieved compliance in accordance with the timelines established by the EITI Board. In accordance with (requirement 1.6)-(b), the EITI Board concludes that a country has not made meaningful progress in implementing the EITI.

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1,27 cm + Indent at: 1,9 cm

Formatted: Font: Myriad Pro

Formatted: Font: Myriad Pro

Formatted: Font: Myriad Pro

Formatted: Indent: Left: 1,9 cm

A delisted country may reapply for admission as an EITI Candidate at any time. The EITI Board will apply the agreed procedures with respect to assessing EITI Candidate applications. It will also assess previous experience in EITI implementation, including previous barriers to effective implementation, and the corrective measures implemented.

Formatted: Font: Myriad Pro, Bold

1.8.9 Appeals

Formatted: Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 8 + Alignment: Left + Aligned at: 0,63 cm

Formatted: Font: Myriad Pro

The implementing country concerned may petition the EITI Board to review its decision regarding suspension, delisting or the country designation as EITI Candidate or EITI Compliant following Validation. The EITI Board will consider such petitions with regard to the facts of the case, the need to preserve the integrity of the EITI and the principle of consistent treatment between countries. The EITI Board's decision is final. The country concerned may, prior to the notice periods under Article 8 of the Articles of Association, appeal a decision of the EITI Board made in accordance with the first paragraph to the next ordinary Members' Meeting.