

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

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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

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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.