

Limited engagement policy

Board decision reference: 2017-48/BM-38/BP-38-4-D

The EITI Board adopted a policy on **“limited EITI engagement”** at its Board meeting in Manila in October 2017 (decision reference: 2017-48/BM-38/BP-38-4-D).

The policy set out in section 2 below has two parts. Section 2.1 sets out a mechanism for more strictly limiting EITI implementation to resource rich countries, and is intended for countries considering EITI implementation. Section 2.2 outlines a mechanism that the EITI could offer to existing implementing countries with limited extractive sectors, drawing on the tools available in the EITI Standard.

1 Background

In recent years, countries have either decided to implement the EITI or considered doing so even if the payments from the sector are small, whether in total numbers or in proportion to the national economy. The EITI Outreach Policy does not address whether any countries should be actively discouraged to implement the EITI or whether any applications should even be turned down due to lack of relevance.

There are 52 countries implementing the EITI. Another 5-8 have committed or are otherwise preparing to apply for admission. Not all of these implementing or preparing countries have large extractive sector or even revenues from the extractive sector, but might be interested in applying parts of the EITI Standard to address pertinent issues, for example development of the legal and institutional framework for the sector, or applying transparent procedures to a bidding round. This also applies to some of the existing EITI implementing countries, where the burden of implementation might outweigh the benefit. Solomon Islands is interested in improving its mining policy but currently has no revenue, production or exports from the mining sector. Yet the country is expected to have an MSG, produce annual EITI Reports, and undergo Validation, imposing considerable financial and resource constraints on the country. The same is true of the Seychelles’ petroleum sector.

The existing instruments of the EITI Standard, notably adapted implementation and mainstreaming are not well designed for tackling this challenge. Adapted implementation requires a credible adaptation and does not allow for exemption from implementing any requirements. Mainstreaming requires that the **country has demonstrated that the “financial data is subject to credible, independent audit, applying international standards”** and that **“there is routine disclosure of the EITI data required by the EITI standard in requisite detail”**.

There is therefore a need to consider modifications to current instruments like adapted implementation and mainstreamed disclosures, or alternative mechanisms for countries where the sector is such that it would not be appropriate from a time and resources perspective to implement the EITI Standard in its **entirety**. **From the EITI’s perspective, it is also necessary to consider this in light of current financial and resource constraints at times preventing the Secretariat from providing sufficient implementation support.** Lastly, it is important to put in place eligibility criteria so that the integrity of the EITI Standard is not undermined.

At the Implementation Committee discussion on 8 August 2017, the Committee discussed a number of possible approaches for how the EITI could find better ways of engaging countries that are keen to learn or draw on parts of the EITI, but where full implementation of the EITI Standard might not be appropriate (See IC paper 17-1). **Some form of “limited engagement” could be particularly relevant for countries with limited extractive activities or limited prospects of extracting activities.** The Committee tasked the Secretariat with elaborating options 3.1.a and 3.2.a, which were considered by the Committee at its meeting on 7 September. The Committee agreed that further to some refinements, the policy would be submitted to the EITI Board for approval.

2 Proposal for a limited engagement policy

The following section outlines a proposed limited engagement policy. The first section (3.1) sets out a mechanism for more strictly limiting EITI implementation to resource rich countries, and is intended for countries considering EITI implementation. The second section (3.2) sets out a mechanism that the EITI could offer to existing implementing countries with limited extractive sectors.

2.1 Prospective EITI countries:

Limiting eligibility for EITI implementation to resource rich countries

It is proposed that all non-resource rich countries considering applying for EITI candidature have to demonstrate the relevance of EITI implementation, in accordance with the following policy: *“The EITI is intended for resource-rich countries or countries that can otherwise demonstrate how implementation is relevant to address governance challenges related to the extractive sector. Non-resource rich countries considering EITI implementation should demonstrate EITI relevance by explaining how the EITI principles are relevant to the country’s development of the extractive sector.”* In determining whether a country can be considered resource rich, it is suggested that the EITI applies the IMF definition¹.

This policy does not necessarily mean that non-resource rich countries may not apply for EITI implementation. In some cases, non-resource rich countries may be important for transit of natural resources, e.g. Bulgaria, and as such might be able to demonstrate relevance. In other cases, non-resource rich countries might be important producers of certain commodities and face related governance challenges enabling them to demonstrate relevance. An example of this is the Philippines, which would

¹A country is considered rich in hydrocarbons and/or mineral resources if it meets either of the following criteria: (i) an average share of hydrocarbon and/or mineral fiscal revenues in total fiscal revenue of at least 25 % (ii) an average share of hydrocarbon and/or mineral export proceeds in total export proceeds of at least 25%.

not qualify as resource rich according to the IMF definition, but which is the world's largest nickel producer in terms of global energy consumption and is facing considerable challenges related to mining conflicts as well as redistribution of natural resource wealth. There might also be cases where non-resource rich countries might be of strategic importance to the EITI and where implementation could be demonstrated to be relevant in terms of their ability to positively influence other implementing and outreach countries. An example of this is the UK, where implementation has been important from an outreach perspective as well as because of their leadership on global issues like beneficial ownership transparency

However, the policy would enable the EITI Board to reserve the right to consider the relevance of the EITI to a non-resource rich country, and issue a note of discouragement to pursue candidature preparations if it deems that the country has not sufficiently demonstrated relevance. It is envisaged that this would happen at the early outreach stage, before a country goes through all the formal steps for applying for candidature such as making an official statement, establishing an MSG, elaborating a **workplan, etc. As such, it should form part of the EITI's existing outreach criteria.** In the unlikely event that a country chooses to disregard a note of discouragement issued by the EITI Board and decides to apply for candidature, the EITI would not refuse membership.

2.2 EITI implementing countries: Enabling the use of existing mechanisms such as adapted implementation and scoping studies

It is proposed that the EITI makes use of existing mechanisms in the EITI Standard to provide for alternative means of implementation in countries that are currently implementing the EITI, but that are non-resource rich and where full implementation is not deemed relevant.

With regards to EITI disclosure requirements, non-resource rich countries should be encouraged to undertake scoping studies that map the extent to which the EITI Requirements are applicable. In many countries, the extent to which the requirements are applicable is only clarified at the Validation stage. Countries could usefully undertake such assessments through scoping at the outset of implementation to save resources and design a reporting process that matches the relevance of the EITI requirements. This does not have policy implications, but is rather about messaging and advice from the EITI and other partners supporting and guiding implementing countries.

In countries where very few requirements are relevant and applicable, it might be considered too heavy to **implement all of the EITI's more "process oriented" requirements such as MSG oversight and** documentation of communications, outcomes and impact. In such cases, it is proposed that a country could make use of the adapted implementation provision, provided that the country can identify alternative mechanisms for implementing the requirements it is seeking to adapt. An example of this is the case of Norway, where the government has applied for adapted implementation from the requirement to have a multi-stakeholder group on the grounds that similar platforms already exist and have proven more effective to oversee conversations about natural resource governance than the EITI MSG. However, this requires a more flexible approach to the application of the adapted implementation policy, in particular

with regards to how the EITI Board considers “exceptional circumstances”. It is therefore suggested that if the EITI agrees that if a country can demonstrate to the satisfaction of the EITI Board that a requirement is not relevant, then that would qualify as an exceptional circumstance, and thus legitimate grounds for seeking adapted implementation². As always, all adapted implementation requests would continue to be considered by the EITI Board on a case by case basis. The Board would retain the right to deny any adapted implementation requests where it considers the exceptional circumstances are not adequately justified and/or where the proposed adaptations would not adequately ensure equivalent implementation.

Example of a non-resource rich EITI implementing country- Seychelles

Size of the economy and extractive sector: Seychelles currently has no production in the extractive sector, but petroleum exploration activities are on-going offshore. A commercially viable discovery would have a significant impact on the country that has a population of approximately 90,000, but possible oil production would still be years away. Stakeholders are hopeful regarding the petroleum sector but there are also concerns about its impact on the marine ecology and other sectors such as tourism and fisheries.

EITI implementation: **Seychelles’** first EITI Report covering 2013-14, published in February 2016, shows that sector revenue was less than USD 350,000 in 2014, accounting for 0.1% of state revenue. 39% of these revenues were profit commissions, 32% annual rentals, 23% were annual contributions and 6% were application fees. The MSG set the materiality threshold at zero. In the year that the report was produced, about USD 190,000 was spent on EITI implementation. Seychelles EITI is still seeking to identify sources of funding for their next EITI Report, which is due by the end of the year. The MSG is exploring options for setting a higher materiality threshold to avoid reconciling minor revenue streams related to exploration activities.

Key objectives for EITI implementation are to establish a sustainable revenue management mechanism and to understand the potential effects of oil exploration on the environment, although the limited resources have been concentrated on compliance with EITI reporting requirements.

The International Secretariat provides regular support to the national secretariat, including input on draft work plans, terms of reference for the Independent Administrator, draft EITI Reports, Annual

² Although the EITI Standard does not define “exceptional circumstances”, the Board has typically in the past considered exceptional circumstances to constitute circumstances beyond the government’s and the MSG’s control. However, as can be seen in the case of Norway’s mainstreaming application, it may also be argued that lack of relevance could qualify as an exceptional circumstance.

Progress Reports, and implementation of other requirements of the EITI Standard.

An alternative approach to implementation could entail identifying a simpler reporting process related to the most relevant implementation issues, e.g. exploration activities, combined with unilateral government disclosure of revenues (no reconciliation), and a simplified process for multi-stakeholder oversight.

Example of a non-resource rich EITI country with limited progress against the Standard – Solomon Islands

Size of the economy and extractive sector: The extractive sector in Solomon Islands is small with no producing mines at the moment. Government revenue from the extractive sector was 0,15% of total revenue collected by the government in 2014. Nonetheless, the government has adopted a new Minerals Policy aimed primarily at mitigating the impact of exploration activities in the country.

EITI implementation: Solomon Islands underwent Validation in July 2016. As decided by the Board in March 2017, Solomon Islands made inadequate progress in implementing the EITI and was consequently suspended. Government engagement is still low. The government is not providing funding for the next report and has instead delegated this task to the national secretariat. Solomon Islands has until March 2018 to address the corrective actions from Validation. **Should the outcome of the second Validation be less than 'meaningful progress', the country will be delisted in accordance with Requirement 8.3.c.** The International Secretariat is only providing limited support **for Solomon Islands' EITI implementation, and the prospects of improved implementation and increased government commitment are low.**

As noted above, an alternative to the current situation could be for the EITI to require non-resource rich countries like Solomon Islands to demonstrate the relevance of the EITI in order for implementation, albeit in suspended mode, to continue.