

BENEFICIAL OWNERSHIP ROADMAP ANALYSIS

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1 Summary

EITI implementing countries had a deadline of 1 January 2017 to publish roadmaps detailing plans for achieving beneficial ownership transparency by 2020. As of 31 January, 44 countries have published beneficial ownership roadmaps. 21 of these roadmaps envisage establishment of public registers by 2020. Most of the roadmaps address all aspects of requirement 2.5.b.ii, which sets out the directions for roadmap content. Five countries have submitted draft roadmaps or have completed some preliminary beneficial ownership work. Two countries have yet to make substantial progress with this work due to political instability and conflict.

This paper provides an analysis of the roadmaps submitted so far. Section 3 below reviews compliance with the deadline, highlights key features of the roadmaps and assesses the content of the roadmaps against the requirements of the EITI Standard. Country-by-country details are available in annex A¹.

Section 4 of the paper highlights issues for consideration and recommended next steps. This includes recommendations from the Implementation Committee to the Board on consequences for countries that have not met the deadline or have submitted roadmaps that do not meet the expected standard, as well as suggestions for addressing ambiguities in requirement 2.5 on beneficial ownership transparency.

2 Background

The EITI Board has agreed that implementing countries should by 1 January 2017 agree and publish roadmaps for how to ensure beneficial ownership transparency by 2020. Developing robust and viable roadmaps that have broad support appears critical for successful implementation of the EITI's beneficial

¹ Available from <https://eiti.org/internal/implementation-committee>

ownership requirement, and require significant consultation with government agencies, companies, civil society and others.

At the 35th EITI Board meeting in Astana, the EITI Board discussed progress with the beneficial ownership roadmaps. It was agreed that the Board would discuss any instances of non-compliance with the roadmap deadline at its next meeting based on roadmap analysis and suggestions developed by the Implementation Committee. This paper contains an analysis of the roadmaps submitted so far and suggests next steps.

3 Analysis of the beneficial ownership roadmaps

3.1 Submission of roadmaps – status as of 11 January

44 implementing countries have published beneficial ownership roadmaps. These roadmaps are accessible from <https://eiti.org/publication-types-public/beneficial-ownership-roadmaps>. Key features of these roadmaps are highlighted in section 3.2 below.

Five countries – Guatemala, Myanmar, Norway, Seychelles and Timor-Leste - have shared draft roadmaps:

- **Guatemala** is making progress on its roadmap. It was communicated to the International Secretariat that the roadmap would be finalised on 2 February, however as of 22 February the roadmap had not yet been submitted.
- Despite the slowdown in implementation resulting from the transition and the lack of a functioning MSG, **Myanmar** submitted a draft roadmap endorsed by the interim Chair and MSG on 31 December 2016. This was based on a series of beneficial ownership discussions taking place in May and December 2016. Based on recent conversations with the national secretariat, it is expected that the roadmap will be completed by end of March 2017.
- **Norway** has not shared a draft or final roadmap, but notes the following on its website: “The Norwegian Parliament has asked the government propose a new Norwegian public ownership registry to ensure transparency of ownership in Norwegian companies. The Industry and Fisheries Ministry in collaboration with the Ministry of Finance have evaluated several possible solutions, which were subject to public hearing on 22 December 2015. The Anti-Money Laundering Law Commission had originally been given until August 2016 to, among other things, propose how international requirements (including the Financial Action Task Force’s recommendations and EU regulation in this field) on beneficial ownership transparency should be implemented in Norwegian law. On 13 September 2013, the Committee put forward its first report on changes to the Anti-Money Laundering Act, with a second report being presented on 16 December 2016. The Norwegian MSG is following the Government's efforts in this area.”
- **Seychelles** has completed a draft beneficial ownership roadmap. The final version is pending cabinet approval, expected in the coming month.
- **Timor-Leste** has submitted a draft beneficial ownership roadmap. The final version is pending further input and approval by MSG members. The International Secretariat expects the MSG’s final approval of the roadmap shortly.

Two countries – **Central African Republic** and **Yemen** – are suspended due to political conflict and instability and have therefore not submitted a roadmap.

3.2 Key features of the roadmaps that have been published

The International Secretariat has pulled out some of the key features of the roadmaps that might be of interest to the Board and others stakeholders. Further details are available in Annex A². Section 3.3 below reviews compliance with the roadmap content requirements.

- (i) **Objectives of beneficial ownership transparency.** The EITI Standard states that the multi-stakeholder group should set “EITI implementation objectives that are linked to the EITI Principles and reflect national priorities for the extractive industries” (requirement 1.5.a). Although specific objectives for beneficial ownership transparency is not required by the EITI Standard, establishing the relevance of beneficial ownership disclosure to national debates and priorities can contribute to build understanding of how openness about beneficial ownership can be beneficial to the country, build stakeholder support for this work, and ensure that the activities in the MSG’s roadmap are linked to wider government priorities.

23 countries have already identified such objectives in their roadmaps³. Objectives include deterring corruption, tax evasion and money laundering; reducing risks of conflict of interest; preventing illicit financial flows; increasing state revenue; ensuring the integrity of publicly elected officials; etc.

Examples

Objectives of beneficial ownership transparency in Côte d’Ivoire: To complement existing systems of anti-money laundering and risk of conflicts of interest; to fight against tax evasion and transfer pricings; and to better assess the credibility and trustworthiness of companies bidding for the award of Mineral or petroleum rights.

Objectives of beneficial ownership transparency in Indonesia: Prevention and eradication of corruption; Increase state revenue by preventing anti-competitive practices and reducing tax evasion; Combat money laundering activities.

- (ii) **Institutional set-up.** The EITI Standard requires that “corporate entity(ies) that bid for, operate or invest in extractive assets” should disclose the identity(ies) of their beneficial owners. To achieve this, it is recommended that the roadmap includes activities aimed at broad consultations with government agencies and other stakeholders in order to identify the agency(ies) that is responsible or could best suited to oversee, collate and maintain beneficial ownership information, as well as any existing public filing processes that could easily accommodate beneficial ownership disclosures. Although enabling legislation is not necessarily essential, the multi-stakeholder group might wish to consider whether the roadmap should include legal reviews in particular with a view to identify opportunities for embedding requirements for beneficial ownership disclosure in national legal instruments, in particular where relevant legal and regulatory reforms are already planned or

² Available from <https://eiti.org/internal/implementation-committee>

³ Azerbaijan, Burkina Faso, Chad, Côte d’Ivoire, Ethiopia, Ghana, Indonesia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Nigeria, PNG, Peru, Sao Tome and Principe, Sierra Leone, Tajikistan, Togo, Ukraine, US and Zambia.

underway.

The roadmaps from DRC, Ghana, Guinea, Kyrgyz Republic, Madagascar, Mali, Nigeria, Ukraine and the UK already specify the government institution that will be in charge of beneficial ownership transparency. In the DRC and Ukraine, it is the Ministry of Justice that takes care of business registration and will therefore also oversee implementation of the EITI's requirements on beneficial ownership. In Ghana, Nigeria and the UK, this function sits with the Registrar General, Corporate Affairs Commission, and Companies House respectively. In Guinea, Kyrgyz Republic, Madagascar, and Mali, it is envisaged that the government institutions in charge of the mining sector and cadastres will be responsible for enforcing the beneficial ownership requirements. Most roadmaps do not yet identify which government agency should be responsible for collecting and maintaining beneficial ownership data, but rather have this listed as an activity that implementation of the roadmap will set out to achieve. Some roadmaps identify possible hosts.

The vast majority of the roadmaps envisage to undertake work on enabling beneficial ownership transparency through legislation. Many countries, including Albania, Colombia, Côte d'Ivoire, Honduras, Kazakhstan, Mauritania, Mozambique, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Tanzania, and Trinidad and Tobago are planning to undertake legal reviews. A number of other countries already specify in their roadmaps the laws and regulations that will require amendments and a timeframe for doing so. It seems that most countries plan to amend sector legislation, e.g. mining or petroleum laws, while some are planning to introduce beneficial ownership transparency through amendments to company laws or other dedicated legal instruments.

*Example of plans related to institutional set-up and legal framework in **Nigeria**: Nigeria is aiming to make beneficial ownership disclosure mandatory for every company operating in Nigeria. The roadmap notes that there are no provisions requiring companies doing business in the country to disclose their beneficial owners. Nigeria EITI will, in consultation with legislators, consider the need to amend the Corporate and Allied Matters Act (CAMA) and other relevant laws, with a view of establishing a register hosted by the Corporate Affairs Commission (CAC). Nigeria EITI will also be working in parallel to amend the petroleum and mining legislative frameworks to require the Department of Petroleum Resources and the Mining Cadastre Office to record beneficial ownership data on companies operating in the sectors.*

- (iii) **Beneficial ownership definitions.** The EITI Standard defines a beneficial owner in respect of a company as “the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity” (Requirement 2.5.f.i). The EITI Standard further notes that “the multi-stakeholder group should agree an appropriate definition of the term “beneficial owner”. In order to develop an appropriate definition of beneficial owners, it is recommended that the roadmap includes activities such as exploring existing international and national definitions, and agreeing an appropriate definition and ownership thresholds in order to operationalize reporting of beneficial ownership

The roadmaps from nine countries – Burkina Faso, Ghana, Kyrgyz Republic, Liberia, Mozambique, Niger, Senegal, Ukraine and UK – already outline beneficial ownership definitions that have been agreed by the MSG or are currently in use. Other countries do not specify a definition, but rather has this listed as an activity that implementation of the roadmap will set out to achieve.

*Example of beneficial ownership definition in **Kyrgyz Republic**: “A beneficial owner is a natural*

person that controls the subsoil user and the applicant for the right to use the resources through: (i) direct or indirect ownership of 10% or more of shares of the capital and/or (ii) direct or indirect ownership of 10% or more of votes; and/or (iii) direct or indirect ability to appoint/remove members of the management.”

- (iv) **Public beneficial ownership registers.** Requirement 2.5.c states “As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI report” (emphasis added). Requirement 2.5.a also states “It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information”.

Roadmaps from 21 countries specify that the beneficial ownership data will be made available through a public register⁴. Several other roadmaps mention that the beneficial ownership data will be maintained by a register, and that public accessibility will be considered alongside other opportunities for publicly disclosing the information. **Cost of roadmap implementation.** Only about half of the roadmaps include cost estimates. Of the roadmaps that are fully costed, cost estimates range from USD 73k – USD 1.3 m for implementation of roadmap activities. Ghana for example estimate funding needs to be USD 1 m for the reform and establishment of the BO register (not sector specific) and USD 300k for other preparatory work. Most other costed roadmaps are in the range of USD 100-300k.

(v) **Other innovations and implementation plans:**

- In **Papua New Guinea**, beneficial ownership disclosure requirements will also apply to landowner companies involved in extractives.
- In **Sierra Leone**, an informal inter-agency working group consisting of relevant agencies such as the Corporate Affairs Commission, Financial Intelligence Unit and sector-specific regulators has been established, and have made progress on identifying necessary legal amendments and opportunities for reform. These have been outlined in the roadmap.
- **Mongolia** is planning to establish a network of investigative journalists to interrogate the beneficial ownership information resulting from the reporting.
- In **Malawi**, outreach related to beneficial ownership will be focussed on companies, and the roadmap proposes to designate the Chamber of Mines to serve as a forum for company capacity building and possibly developing a company-specific beneficial ownership roadmap to engage the industry.
- Several countries including **Malawi, Nigeria** and **Zambia** will make beneficial ownership

⁴ Afghanistan, Azerbaijan, Cameroon, Chad, Côte d’Ivoire, DRC, Germany, Ghana, Guinea, Indonesia, Kyrgyz Republic, Mali, Mauritania, Mongolia, Nigeria, PNG, Sao Tome and Principe, Togo, Trinidad and Tobago, Ukraine and United Kingdom.

data files coded or tagged so that the information can be compared with other publicly available data.

3.3 Assessment of compliance with requirement 2.5.b.ii

The EITI Standard states that *“By 1 January 2017, the multi-stakeholder group publishes a roadmap for disclosing beneficial ownership information in accordance with clauses (c)-(f) below. The MSG will determine all milestones and deadlines in the roadmap, and the MSG will evaluate implementation of the roadmap as part of the MSG’s annual activity report”* (Requirement 2.5.b.ii). This means that at a minimum, the roadmap needs to contain the following:

1. Plans and activities for how the government will ensure that the “corporate entity(ies) that bid for, operate or invest in extractive assets” disclose the “identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted”. (Requirement 2.5.c).
2. Actions needed to ensure that the “information about the identity of the beneficial owner includes the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons”. (Requirement 2.5.d).
3. The steps that the multi-stakeholder group will take to consider and “agree an approach for participating companies assuring the accuracy of the beneficial ownership information they provide”. (Requirement 2.5.e).
4. Any actions needed to inform the multi-stakeholder group’s discussion and decisions on a beneficial ownership definition, thresholds, joint venture disclosures, and reporting obligations for politically exposed persons. (Requirement 2.5.f).
5. Milestones and deadlines for implementing the roadmap activities, as well as plans for evaluation implementation of the roadmap as part of the annual activity report. (Requirement 2.5.b.ii).

The International Secretariat has assessed the 44 roadmaps against these points. The majority of the roadmaps are considered to be of sufficient quality, meaning that they at a minimum include plans and activities aimed at addressing the above. Nonetheless, there is great variation also among the roadmaps that are considered to be of sufficient quality vis-à-vis the EITI Requirements. For example, the roadmaps from Côte d’Ivoire, Guinea, Kyrgyz Republic, Malawi, Nigeria, Sierra Leone and Tajikistan contain considerably more detail and have been subject to wider consultation than the roadmaps from some of the other countries. In some countries, including Kazakhstan and Seychelles, the roadmaps have required cabinet approval and/or high level cross ministerial sign off.

Ten countries – Germany, Honduras, Iraq, Mauritania, Niger, Norway, Republic of Congo and Solomon Islands - are considered to have submitted roadmaps that do not fully satisfy the EITI requirements. In most cases, there are only minor omissions. The International Secretariat suggests to flag the deficiencies to the countries concerned, and encourage the MSG to address the issues in forthcoming revisions to the roadmaps.

Requirement 2.5 also states that “Where a country is facing constitutional or significant practical barriers to the implementation of this requirement by 1 January 2020, the country may seek adapted implementation in accordance with requirement 8.1”. The International Secretariat is not aware that any roadmaps mention the need for adapted implementation.

4 Issues for consideration and recommended next steps

At the 35th EITI Board meeting in Astana, it was agreed that the Board would discuss any instances of non-compliance with the roadmap deadline at its next meeting based on roadmap analysis and suggestions developed by the Implementation Committee. Board paper 35-4-A also states that “The Board might also need to consider how to apply the requirements for roadmap content, and how to approach cases where roadmaps fall significantly below the expected quality. There will also be a need to consider whether the roadmap requirement should be applied to prospective EITI Candidate countries, and how to support the implementation of the roadmaps technically and financially to ensure full beneficial ownership transparency by 2020”. From 2020 onwards, implementation of the beneficial ownership requirements should be assessed in accordance with the validation system and procedures, and be subject to the provisions and consequences set out in requirement 8.3.

(i) Non-compliance with the roadmap deadline.

The Implementation Committee recommends that the EITI Board decides that the EITI Chair writes to the EITI Champion reminding the country of the requirement to publish a beneficial ownership roadmap and requesting the government to provide a timetable for publishing the outstanding roadmap. The Board could revisit progress and whether any further interventions are needed if there are still outstanding roadmaps by the time the EITI Board meets in May.

As noted above, eight countries have yet to publish final beneficial ownership roadmaps. Most of these countries are expected to publish their roadmaps in the coming months. The EITI Standard does not specify the consequence of not meeting the deadline for publication of the roadmap. However, it is possible to be guided by the procedures and consequences related to publication of other documents such as EITI Reports.

(ii) Non-compliance with roadmap content.

The Implementation Committee suggests that the International Secretariat provides feedback to the countries that submitted deficient roadmaps on how to address the deficiencies and encourage countries to address these issues when they next update the roadmap. Implementing countries are required to document progress with roadmap implementation in their Annual Progress Reports due on 1 July 2017. This could be an opportunity for revising roadmaps where needed.

As noted above, the assessment of the roadmaps against the requirement for roadmap content shows that the majority of the roadmaps submitted so far meet the minimum requirements for roadmap content specified by the EITI Standard. Nine countries have roadmaps with some minor deficiencies. The International Secretariat’s assessment is that the deficiencies are not of a nature that necessitates submissions of new roadmaps now, which is likely to lead to slowing down the implementation of the roadmaps further.

(iii) Application of roadmap requirement to prospective EITI Candidate countries.

The EITI Board agreed at its meeting in Oslo that countries applying for EITI candidature after 1

January 2017 address the roadmap requirement as part of the MSG's work plan⁵. The International Secretariat has already received an application from Armenia that addresses the beneficial ownership requirements as part of the work plan.

The Implementation Committee recommends the following amendments to the EITI Standard:

- **Deletion of provision 2.5.b.ii, which currently reads** "By 1 January 2017, the multi-stakeholder group publishes a roadmap for disclosing beneficial ownership information in accordance with clauses (c)-(f) below. The MSG will determine all milestones and deadlines in the roadmap, and the MSG will evaluate implementation of the roadmap as part of the MSG's annual activity report".
- **Amendment of provision 1.5.c, to read** "The work plan must:
...
v. Outline plans for disclosing beneficial ownership information in accordance with clauses 2.5(c)-(f), including milestones and deadlines.
- **Amendments of provision 7.4.a, to read** "The annual activity report must include:
...
vi. An evaluation of the implementation of the beneficial ownership roadmap

(iv) Scope of the beneficial ownership requirements.

It is proposed that the EITI Board clarifies how the scope of the beneficial ownership requirements will be assessed at Validation, including any potential amendments to requirement 2.5.c to clarify the current ambiguity.

Implementation support and capacity building activities in 2016 has raised some questions with regards to the scope of the beneficial ownership requirements. Requirement 2.5.c states that the requirement for beneficial ownership disclosure "applies to corporate entity(ies) that bid for, operate or invest in extractive assets". Thus, it is important to note that the requirement extends beyond the companies that are included in the scope of the EITI Report. The current language raises the following questions:

- **Corporate entity(ies) that "bid for" extractive assets.** Should this be interpreted to include companies that apply for the rights to explore and/or exploit oil, gas and minerals regardless of the application process (e.g. direct negotiation, auction, tender)? Or should it only apply to companies that apply for such rights through bidding rounds? The International Secretariat's understanding is that most stakeholders in implementing countries seem to interpret this requirement to apply to any legal entity applying for exploration and/or production licenses.
- **Corporate entity(ies) that "operate" extractive assets.** Should this be interpreted to include any company that hold valid rights to explore or produce oil, gas and minerals? Does this encompass artisanal or small scale mining? The International Secretariat's understanding is that most stakeholders in implementing countries interpret this requirement to apply to any legal

⁵ Board Paper 34-4-A

entity that currently holds exploration and/or production licenses.

- **Corporate entity(ies) that “invest in” extractive assets.** Should this be interpreted to include companies that hold a direct stake in an extractive project, such as e.g. non-operating partners of consortiums? Does it also include companies that invest in the companies that hold the extractive license, be it through equity, loans or other means? The International Secretariat’s view is that it should be feasible to obtain beneficial ownership data from any companies that hold a direct stake in an extractive project, even the company is not the license holder. However, the International Secretariat’s understanding is that it could be difficult to obtain beneficial ownership data from companies that invest in companies holding extractive rights as implementing governments are unlikely to have any jurisdiction over investors registered abroad.

(iii) Technical and financial support.

The EITI Board might wish to consider opportunities for providing further support to enable the implementation of the roadmaps.

It is clear that the extensive outreach, training and capacity building activities that took place in 2017 have paid off in terms of ensuring that countries learn from each other and build awareness and knowledge about beneficial ownership transparency. All roadmaps include further activities related to capacity building. There are also high expectations regarding technical and financial support to implementation of the roadmaps, and failure to provide such support is arguably one of the greatest risks to the EITI’s commitment to beneficial ownership transparency by 2020. The International Secretariat is grateful for the considerable support from DFID and EBRD to support beneficial ownership work in selected countries.