

# Request for adapted implementation: Ukraine

For decision

The Implementation Committee recommends that the EITI Board accepts Ukraine's request for adapted implementation with respect to the coverage of the extractive industries in the Donetsk and Luhansk oblasts of Ukraine and Crimea for the reporting period 2018-2019.

The application was made because the Government of Ukraine is not able to compel companies and local government agencies in these areas to participate in the EITI process. The government and the multi-stakeholder group have committed to ongoing efforts to ensure that EITI reporting is as comprehensive as possible.

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## Table of Contents

1. Recommendation.....	3
2. Background .....	3
3. Relevant rules and precedents .....	4
4. Overview of Ukraine’s request for adapted implementation .....	5
5. Assessment of Ukraine’s request for adapted implementation .....	5
Annex A: Ukraine request for adapted implementation (English) .....	8

### Supporting documentation

Board decision [2018-10/BM-39/BP-39-4-D](#)

Has the EITI competence for any proposed actions been considered?

The EITI Standard ([Article 1](#)) mandates the EITI Board to review requests for adapted implementation.

### Financial implications of any actions

Approval of the proposal is expected to reduce costs related to EITI implementation in Ukraine.

### Document history

Submitted to the Implementation Committee	12 September 2019
Discussed by the Implementation Committee	19 September 2019
Approved by the Implementation Committee	19 September 2019
Submitted to the EITI Board	2 October 2019

## 1. Recommendation

The Implementation Committee makes the following recommendation to the Board:

*The EITI Board accepts the Ukrainian multi-stakeholder group's request for adapted implementation with respect to coverage of extractive industries in the Donetsk and Luhansk regions and in Crimea. The request applies to the 2018 and 2019 EITI reporting.*

*The EITI Standard allows for adapted implementation "where the country faces exceptional circumstances that necessitate deviation from the implementation requirements" (Article 1). In taking this decision, the EITI Board notes the ongoing conflict in the region, and that the government is currently not able to compel companies and local government agencies in these regions to participate in the EITI process.*

*The EITI Board welcomes the commitment from the government and the multi-stakeholder group to continue to engage with companies and government agencies with activities in these regions with a view to ensuring full disclosure of information required by the EITI Standard.*

*Where comprehensive information is not obtained from these entities, the multi-stakeholder group is expected to include links to other publicly available sources of information.*

*It is a requirement that there continues to be full unilateral disclosure of any revenues received by the Government of Ukraine from companies and local government agencies in these regions. The 2018 and 2019 EITI reporting should include an assessment of the comprehensiveness of the information, highlighting any gaps in the information available.*

## 2. Background

The tension between Ukraine and Russia continues as the armed conflict in Donetsk and Luhansk regions, backed by military support from Moscow, shows no sign of ceasing. Annexation of the Crimean Peninsula creates additional tension due to limited access to the Kerch Strait – the main trading marine route for Ukraine. In October 2018, the Ukrainian Parliament voted to extend the term of the Law on the Special Status of Donbas until 31 December 2019.

Although, Ukraine ceased buying gas from Russia in 2015, the country is still reliant on Russia's Gazprom for natural gas transit fees. Ukraine remains Russia's primary transportation route for Europe-bound gas and receives about USD 3 billion (2.5% of GDP) in revenue annually. Ukraine could develop its own hydrocarbon reserves, such as shale gas deposits, and improve exploitation of its oil and natural gas reserves. However, over-regulation, complicated licensing procedures and political instability are preventing favorable environment for up-stream investment.

Petroleum production in Ukraine consists of 89% natural gas, 7.9% oil, and 3.1% of gas condensates. The coal industry contributes significantly to the government's budget, however, about 57% of all mines are located in the Donetsk and Luhansk regions – the regions which are most central in the on-going conflict between Russia and Ukraine.

State-owned enterprises' governance remains an outstanding issue. In line with the EU's Third Energy Package, Ukraine began the process unbundling its state oil and gas giant Naftogaz, with the goal of separating transmission from production and supply.

The Government of Ukraine continues to use the EITI to enhance the country's standing, investment attractiveness and to raise its credit rating. Domestically, EITI reporting has contributed and informed Ukraine's extractive industries management strategy. The EITI Standard was the departure point for the ground-breaking 'Ensuring transparency in extractive industries' Law, passed last year. The law will strengthen the implementation of the EITI Standard by requiring beneficial ownership transparency, project level reporting and a new focus on systematic disclosure of extractives data.

Based on the Resource Governance Index by the Natural Resource Governance Institute (NRGI), Ukraine scores a weak 49 out of 100 points and ranks 44th among 89 countries that were assessed.

### 3. Relevant rules and precedents

Article 1 (EITI Board oversight of EITI implementation) of the EITI Standard outlines the scope for multi-stakeholder groups (MSGs) to request "adapted implementation" of the EITI Standard:

*Should the multi-stakeholder group conclude that it faces exceptional circumstances that necessitate deviation from the implementation requirements, it must seek prior EITI Board approval for adapted implementation. The request must be endorsed by the multi-stakeholder group and reflected in the work plan. The request should explain the rationale for the adapted implementation.*

*The EITI Board will only consider allowing adaptations in exceptional circumstances. In considering such requests, the EITI Board will place a priority on the need for comparable treatment between countries and ensuring that the EITI Principles are upheld, including ensuring that the EITI process is sufficiently inclusive, and that the EITI Report is comprehensive, reliable and will contribute to public debate.*

This provision recognises that implementing countries may face a wide range of constitutional and practical challenges in disclosing information about extractive industry activities that are not fully controlled by the implementing state. The provision highlights the need to ensure that "the EITI Principles are upheld, including ensuring that the EITI process is sufficiently inclusive, and that the EITI Report is comprehensive, reliable and will contribute to public debate".

An adapted implementation request from Iraq was approved by the Board in April 2014, excluding sub-national payments made to the autonomous region controlled by KRG. The São Tomé and Príncipe adapted implementation request on disclosures in the Joint Development Zone was approved by the Board in February 2016. The Ukrainian case is similar, since the government does not control the regions in question. The Board previously approved a request from Ukraine for adapted implementation in October 2016 pertaining to the 2014-15 EITI reports and in January 2018 pertaining to the 2016-17 EITI reports.

## 4. Overview of Ukraine's request for adapted implementation

In the adapted implementation request, the multi-stakeholder group requests that the possible lack of comprehensive information on the Donetsk and Luhansk regions and Crimean Peninsula would not be held against Ukraine in Validation. The request argues that the government and the multi-stakeholder group are not able to oblige the self-proclaimed authorities at territories of Donetsk and Luhansk regions and Crimean Peninsula or the companies operating there to submit information for EITI Reports. The request states that the government and multi-stakeholder group will continue their efforts to obtain the data from the conflict zone and include them to the EITI Report.

The timely publication of the 2013, 2014-15 and 2016 EITI Reports under exceptionally challenging economic, political and military circumstances and other efforts undertaken by the Government of Ukraine and the multi-stakeholder group to comply with the EITI Standard over the last five years demonstrate significantly positive progress in implementing the EITI.

Under the adapted implementation request pertaining to the 2016 EITI Report, Ukraine was asked to (1) continue to engage with companies and government agencies with activities in these regions; (2) ensure that the EITI Report includes links to other publicly available sources of information where information from the entities in the region was not provided; and (3) ensure full unilateral disclosure of any revenues received by the Government of Ukraine from companies and local government agencies in these regions.

With regards to continued engagement with companies in Donetsk and Luhansk regions, unfortunately, the Independent Administrator, Ernst and Young, could not obtain information from the companies operating in the conflict regions. One of the biggest coal producers (70% of total coal production), the DTEK Group, lost control over its coal mines in Donetsk and Luhansk regions. The Ministry of Energy and Coal confirmed the loss of control over 88 state-owned coal mines in the conflict zone in March 2017.

With regards to including links to other publicly available sources of information, the EITI Report refers to the reports from the State Fiscal Service and the State Research and Development Enterprise "State Informational Geological Fund of Ukraine".

With regards to ensuring full unilateral disclosure of any revenues received by the Government of Ukraine from companies and local government agencies in these regions, Annex 13 of the 2016 EITI shows that the sole collector of tax revenues in Ukraine, the State Fiscal Service, has provided full unilateral disclosure of total income from non-reporting companies, including some companies in the conflict zone, for each material revenue stream. The report also provides the amount of coal produced in 2016 in Donetsk and Luhansk regions. In terms of gaps and omissions, the EITI Report could not provide specific comments towards assessing the comprehensiveness of government ownership due to the lack of information regarding the regions which are affected by the EITI Board-approved Adapted implementation request.

## 5. Assessment of Ukraine's request for adapted implementation

The Secretariat has assessed Ukraine's multi-stakeholder group's request for proportionate

implementation in accordance with Article 1 on adapted implementation. Table 1 addresses five aspects or criteria cited in Article 1 of the EITI Standard.

*Table 1 – Assessment of Ukraine’s proposal for proportionate implementation*

Criteria	Secretariat’s Assessment
1. The request must be endorsed by the multi-stakeholder group and reflected in the workplan.	<p>The request is from the MSG, signed by deputy Chair Olena Pavlenko. The MSG has approved the request on 8 August and it was sent on 29 August 2019.</p> <p>The application was prepared by the EITI national secretariat and shared with the MSG members for comments and approval.</p> <p>Ukraine’s 2019 work plan makes a specific reference to seeking adapted implementation.</p>
2. Must seek prior EITI Board approval.	The application has been made in advance of Ukraine’s 2017-18 EITI Report based on evidence from the draft scoping study undertaken in July-August 2019 to inform the coverage of the 2017 EITI Report.
3. The request should “explain the rationale for the adapted implementation”, and the “exceptional circumstances that necessitate deviation from the implementation requirements”.	The request provides an account of the challenges and efforts associated with complying with the Standard regarding the conflict zone. The rationale behind the request is clear vis-à-vis the practical barriers in obtaining information from regions and entities that are not under the authority of the Government of Ukraine.
4. The need for comparable treatment between countries.	As noted above, previous adapted implementation requests from Iraq, Sao Tome and Ukraine have been granted and provide relevant precedents.
5. Ensuring that the EITI Principles are upheld, including ensuring that the EITI process is sufficiently inclusive, and that the EITI Report is comprehensive, reliable and will contribute to public debate.	The Secretariat’s view is that the proposed approach is pragmatic and in line with the EITI Principles. The government and multi-stakeholder group have committed to ongoing efforts to ensure comprehensive reporting.

## 6. Conclusion

The Secretariat’s assessment is that the request sufficiently demonstrates the exceptional

circumstances in Ukraine. The Implementation Committee therefore recommends that the Board approves the adapted implementation request for the EITI reporting covering years 2018 and 2019, after which the situation should be reviewed and a new request for adapted implementation submitted if necessary. The Implementation Committee recommends that the Board's decision specifies that the multi-stakeholder group continues to undertake efforts to ensure the disclosure of any revenues received by the Government of Ukraine or any contextual information available from the Donetsk and Luhansk regions according to the EITI Standard.

**Board members:**

Ruslan Baimishev  
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Samuel Urkato  
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## Annex A: Ukraine request for adapted implementation (English)

To Ms Helen Clarke, Chair of the Board

Request for adapted implementation

Dear Ms Clarke,

Permit us to appeal to you in the name of the EITI Multilateral Implementation Group (EITI MIG) in Ukraine about a matter that is exceptionally important for conducting EITI in Ukraine.

As you know, Ukraine joined the EITI in 2009, and obtained the status of candidate country in 2013. After the Revolution of Dignity, the Ukrainian government confirmed readiness to implement the EITI, and, regardless of the annexation of the Crimea by Russia and the military actions in Donbass, the country has achieved significant progress in its implementation. Specifically,

- Three EITI reports have been published, which cover 2013-2016 and the coal, metal ore, clay and sand mining sectors, as well as extraction and transportation of oil and gas, and the scope of the reports has broadened significantly;
- A regulatory base has been created for implementation of the EITI in Ukraine by passing Law of Ukraine “About guaranteeing transparency in the mining sectors” No. 2545 – VIII of 18.09.2018;
- Ukraine is the first country in which the open register of beneficial owners <https://usr.minjust.gov.ua/ua/freesearch> has begun functioning, which has been possible due to creating the appropriate regulatory and legislative base. Furthermore, the Ministry of Justice of Ukraine has created a working group on the matter of implementing a checking mechanism for information about a beneficial owner (controller), which has been joined by the member of the MIG and member of the International Board of the EITI, Oleksiy Orlovsky;
- In the course of 2015-2018, more than 200 events dedicated to the EITI were conducted in Ukraine, with special focus on the regions.

At the time being, preparation for the fourth EITI report is in progress, in particular, the initial report with reconciliation of data. As in the previous year, in certain districts of Luhansk and Donetsk Regions, a struggle is being conducted against illegal armed groups and active fighting that continues to the present moment, which has been preventing enterprises from functioning or has led to their destruction. Accordingly, the difficulty of access and the absence of information about the activity of a significant part of the enterprises located in the temporarily occupied territories in Joint Forces Operations Zone prevents their inclusion to the degree required by the Standard.

Last year, EITI MIG informed the Board in its letter about the exceptional conditions that exist in the east of Ukraine, and provided details about the number of enterprises, in particular in the coal sector, that remain in the above-mentioned territories, and appealed to the Board with a request for adapted implementation of the EITI Standard for the third and fourth reports in accordance with Paragraph 1 of the Adapted Implementation of the EITI Standard of 2019. The Board



approved the report submitted during its session in Oslo, and issued a permit for adapted implementation for the reports covering 2016 and 2017.

Unfortunately, the situation has not changed this year. Thus, for example, the company DTEK, which provided around 70% of the total amount of coal mined in Ukraine, has lost its assets in the temporarily occupied territories in the Joint Forces Operations Zone. More detailed information about this can be found by clicking on the following links: <http://nct.dtek.com/> and <https://nct.dtek.com/media-center/dtek-zayavlyaet-o-potere-upravleniya-predpriyatiyami-raspolozhennymi-na-vremenno-nekontroliruemoy-territorii-donetskoy-i-luganskoy-oblasti/> Furthermore, the Security Service of Ukraine strongly recommends refraining from any contact with enterprises situated in territories temporarily not under the control of Ukraine.

The facts stated make it impossible to obtain any information from the enterprises in the territories temporarily not under control in the Joint Forces Operations Zone, which significantly affects the preparation of part of the fourth EITI report.

It should be noted that it is also impossible to obtain data from the enterprises situated in the Crimea, which has been annexed by Russia. The majority of the enterprises conduct activity in the marine extraction of oil and gas sector.

We would like to draw your attention to the fact that the EITI MIG used measures for unilateral partial disclosure of information in the EITI report for 2016. Transactions of mines for mining of coal situated in the Joint Forces Operations Zone, including tax payment data (on the basis of SDS data), and the volume of coal mined (on the basis of SIHGU Geoinform Ukraine) (Article 18) were partially disclosed. More detailed information can be found on pages 17-18, 24, 33-34 of the [English version of the EITI report for 2016](#).

We are appealing with a request that the Board consents to adapted implementation for the EITI reports covering 2018 and 2019, as well as asking that the situation in Luhansk and Donetsk Regions and the Crimea during evaluation of the EITI Standard be taken into account, especially in the validation process.

So, in summarising the above, in accordance with the decision passed by the EITI MIG, this letter is requesting that adapted implementation be examined in accordance with Paragraph 1 of the Adapted Implementation of the EITI Standard of 2019. We hope that the Board of the EITI approves our request, taking into account the existing situation in the country. At the same time, we wish to assure you that we will continue to implement all the steps aimed at obtaining data and including it in the EITI report for Ukraine, in order to guarantee its comprehensiveness and compliance with the EITI requirements.

Best regards,

Deputy Head of MSG,  
O. Pavlenko [signed]