

IC Paper 39-2-B

27 March 2019

Submitted by: EITI International Secretariat

on: 20 March 2019

Request for adapted implementation: Iraq

For decision

For discussion

For information

Recommendation:

The International Secretariat recommends that the Implementation Committee recommends that the Board accepts the Iraqi multi-stakeholder group's request for adapted implementation with respect to the Kurdistan region for the reporting period 2016-2018.

The application was made because the Federal Government of Iraq is not able to compel companies and government agencies in the Kurdistan region to participate in the EITI process. The Federal Government and multi-stakeholder group have committed to ongoing efforts to ensure that EITI Reports are as comprehensive as possible.

REQUEST FOR ADAPTED IMPLEMENTATION: IRAQ

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1 Recommendation

The Implementation Committee recommends that the Board takes the following decision:

The EITI Board accepts Iraq multi-stakeholder group’s request for adapted implementation with respect to the Kurdistan Region. The request is granted for the reporting period 2016-2018. Thereafter, the Iraq multi-stakeholder group should review progress and consider whether a further request is necessary.

The EITI Standard allows for adapted implementation “where the country faces exceptional circumstances that necessitate deviation from the implementation requirements” ([Requirement 8.1](#)). In taking this decision, the EITI Board notes that the national government is not able to compel companies and government agencies in the Kurdistan region 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 in the region with a view to ensuring comprehensive disclosure in accordance with the EITI Standard. Where comprehensive information is not obtained from these entities, the multi-stakeholder group is expected to reference other publicly available sources of information. It is a requirement that there continues to be full unilateral disclosure of any revenues received by the Federal Government of Iraq from companies and government agencies in the Kurdistan region. EITI Reports should include an assessment of the comprehensiveness of this information, highlighting any gaps in the information available.

2 Background

Iraq is the second largest crude oil producer in the Organization of the Petroleum Exporting Countries (OPEC) after Saudi Arabia and holds the world's fifth-largest proved crude oil reserves. Most of Iraq's major known fields – all of which are located onshore – are producing or are in development¹. According to the International Energy Agency², Iraq has the potential to earn USD 5 trillion in oil revenues between 2013 and 2035.

In Baghdad-administered Iraq, the industry is completely state-owned, with the State Organization for Marketing of Oil (SOMO) selling crude to 40 accredited international companies on behalf of four producing companies, South Oil Company, North Oil Company, Missan Oil Company and Midland Oil Company.

The Iraqi Kurdistan region has provided a key challenge for EITI implementation. Iraqi Kurdistan, officially called the Kurdistan Region of Iraq in the Iraqi constitution, is an autonomous region located in northern Iraq. The region is officially governed by the Kurdistan Regional Government (KRG). The KRG passed its own Oil and Gas Law in 2007 and has awarded dozens of Production Sharing Contracts (PSCs) since then. Iraqi Kurdistan's oil and gas industry is dominated by a handful of players, with four companies accounting for over 98% of oil and gas production in the KRG-controlled areas in 2015.

Iraq was accepted as an EITI Candidate country by the Board on 10 February 2010. Following protracted negotiations between the IEITI and the KRG, the Iraq EITI produced an update of its 2010 report in May 2013, including a chapter on Kurdistan's oil and gas production and revenues from exports, assessed by the Supreme Audit Board. However, further efforts to collaborate with the KRG stalled. In February 2014, Iraq EITI submitted a request for adapted implementation, being unable to guarantee the comprehensive disclosure of material payments collected by the KRG. The Board granted the request for the 2012 and 2013 EITI Reports³.

None of the subsequent IEITI Reports were successful in securing the KRG's participation, nor was a new request for adapted implementation presented to the Board. Furthermore, while Iraq's initial adapted implementation request in 2014 did not preclude the Federal Government from conducting outreach to companies operating in the KRG, there is no evidence that the Independent Administrator (IA), the MSG or the national secretariat have engaged with any of the four main companies operating in Iraqi Kurdistan to secure their participation in EITI reporting.

These challenges, and the implications for Iraq's implementation of the EITI, are outlined in more detail in

¹ US Energy Information Administration. Iraq. Accessed 19 March.
<https://www.eia.gov/beta/international/analysis.php?iso=IRQ>

² International Energy Agency (2009). Iraq Energy Outlook. Accessed 19 March 2019.
https://www.iea.org/publications/freepublications/publication/WEO_2012_Iraq_Energy_OutlookFINAL.pdf

³ EITI (April 2014). Adapted implementation request for the 2012 Iraq EITI Report. Accessed 19 March 2019.
<https://eiti.org/sites/default/files/documents/Adapted%20Implementation%20Request%20-%20response%20-%20apr%2014%20%282%29.pdf>

the 2017 Validation of Iraq⁴.

The current adapted implementation request seeks to extend the approach agreed by the Board in 2014 to the reporting period 2016-2017.

3 Relevant rules and precedents

Requirement 8.1 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 workplan. 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”.

Most of the adapted implementation requests made to date have addressed the issue of reporting in federal systems, the participation of semi-autonomous regions and similar challenges. These include:

- An adapted implementation request from Iraq covering the 2012 Report, approved by the Board in April 2014⁵.
- The candidature application⁶ from the United States of America, which included an adapted implementation request regarding the requirement for sub-national reporting (4.2d) due to the scope and complexity of state-level revenue collection.
- A request from The São Tomé and Príncipe regarding disclosures from the Joint Development Zone

⁴ EITI (October 2017). Validation of Iraq. Accessed 19 March 2019. <https://eiti.org/document/validation-of-iraq-2017-documentation>

⁵ The adapted implementation request from Iraq was approved through Board Circular 167 issued on 1 April 2014. The assessment is available on the internal website ([Implementation Committee paper 23-3](#)).

⁶ EITI (December 2013). United States of America EITI 2013 candidature application. Accessed 19 March. <https://eiti.org/document/united-states-of-america-eiti-2013-candidature-application>

was approved by the Board in February 2016⁷.

- Applications from Ukraine in 2016⁸ and 2018⁹ regarding coverage of extractive industries in the Donetsk and Luhansk oblasts of Ukraine and Crimea.
- In February 2019 a candidature application from Argentina, including a adapted implementation request relating to sub-national implementation, was accepted by the EITI Board¹⁰.

4 Overview of Iraq’s request for adapted implementation

The multi-stakeholder group notes that the government and the multi-stakeholder group are not able to oblige the Kurdistan Region Government or the companies operating there to submit information for EITI Reports. They argue that the lack of comprehensive information from the KRG should not be held against Iraq in Validation.

The adapted implementation request covers the reporting period 2016-2017 and includes a commitment to: (1) continue engaging with companies and government agencies, (2) ensure that the EITI Report includes links to other publicly available sources of information where available, (3) ensure full unilateral disclosure of any revenues received by the Government of Iraq from companies and government agencies in this region.

5 Assessment of Iraq’s request for adapted implementation

The Secretariat has assessed Iraq’s multi-stakeholder group’s request for adapted implementation in accordance with requirement 8.1. Table 1 addresses five aspects or criteria cited in Requirement 8.1 of the EITI Standard.

Table 1 – Assessment of the Iraqi request for adapted implementation

Criteria	Secretariat’s Assessment
1. The request must be endorsed by the multi-stakeholder group and reflected in the workplan.	The request is from the MSG, signed by the National Coordinator Alaa Mohie El Deen. The MSG endorsed the request on 18 December 2018.

⁷ EITI (February 2016). The EITI Board accepts the São Tomé and Príncipe request for adapted implementation. Accessed 19 March 2019. <https://eiti.org/BD/2016-3>

⁸ EITI (October 2016). The EITI Board approves Ukraine’s request for adapted implementation. Accessed 19 March 2019. <https://eiti.org/BD/2016-20>

⁹ EITI (February 2018). The EITI Board approves Ukraine’s request for adapted implementation. Accessed 19 March 2019. <https://eiti.org/BD/2018-10>

¹⁰ EITI (February 2019). The Board admitted Argentina as an EITI candidate country. Accessed 19 March. <https://eiti.org/BD/2019-14>

	Iraq's 2018-2019 work plan does not make a specific reference to seeking adapted implementation, but the importance of this request has been emphasized in consultations with the MSG and national secretariat.
2. Must seek prior EITI Board approval.	The application was made in advance of the publication of Iraq's 2016 EITI Report. The application also refers to the 2017 Report. The International Secretariat suggest that the application is extended to cover fiscal year 2018, as the circumstances are unlikely to change in the near future, and extending the validity of the request will encourage the MSG to move forward with the 2018 Report with certainty as to the required coverage.
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 Iraqi Kurdistan region. The rationale behind the request is clear vis-à-vis the practical barriers in obtaining information from the region and entities that are not under the authority of the Federal Government of Iraq.
4. The need for comparable treatment between countries.	Adapted implementation requests from Iraq, São Tomé and Príncipe and Ukraine have been granted in similar circumstances.
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 Iraq. The Secretariat therefore recommends that the Board approves the adapted implementation request for the EITI Reports for the reporting period 2016-2018, after which the situation should be reviewed and a new request for adapted implementation submitted if necessary.

Annex A – Request for adapted implementation (English)

Republic of Iraq
Ministry of Oil

Iraqi Extractive Industries Transparency Initiative



جمهورية العراق
وزارة النفط

مبادرة الشفافية للصناعات البترولية في العراق

Reference: 420

Date: 27/11/2018

Eddie Rich
Executive Director (Acting)
Extractive Industries Transparency Initiative
Oslo, Norway
Skippergata 22, 0154 Oslo, Norway

ADAPTED IMPLEMENTATION REQUEST FOR THE IRAQI 2016 and 2017 EITI REPORTS

Dear Mr. Rich,

This letter serves as a request for the adaptive implementation with respect to coverage of the Iraqi Kurdistan Region at IEITI 2016 and 2017 reports on the below indicated requirements, this request arises due to the ongoing exceptional circumstances as the Federal Government is currently not able to compel companies and local government agencies in the region to participate in EITI process.

Kurdistan Region Government has exclusive contracts with the companies operating in the region, where the Federal Government has neither authority on, nor has it information about.

An example of that is the failure of both of the General Secretariat of Cabinet and the Federal Board of Supreme Audit attempts to obtain information on these contracts (not only those related to EITI).

Federal Ministry of Oil from its side already has a lawsuit against the region government for extracting and importing oil without referring to it.

All the above mentioned cases pictures the current political situation in which both of companies and local government agencies wouldn't respond to Federal Government claims and requests of disclosure.

A committee from the MSG members was formed in last February to visit the region and discuss KRG commitment to take part in EITI process, but this visit wasn't achieved due to lack of response from the region's side. The same outcome unfortunately resulted from meetings between: KRG representative in the MSG with the secretary general of KRG Cabinet, Iraqi EITI national coordinator with representatives of the region in the parliamentary energy committee, and his meeting with Kurdish political figure Dr. Barham Saleh (currently President of Iraq).

As per the actions taken by the Independent Administrator, the IA has made communications several times since August 13th 2018 with no avail. Also, Iraqi EITI National Coordinator has handed an official letter to KRG Representative in the MSG to be delivered to KRG Ministry of Natural Resources based on his request, where this letter included the Scope of Work Template to be filled by the reporting entities. Yet, no information was received so far. In addition, an email was sent to Mr. Michael Howard (in charge of EITI affairs assigned by the KRG Ministry of Natural Resources) to obtain his assistance in the issue, and though he received a phone call from the Secretary of the Regional Council of Oil and Gas Affairs to provide them with the Scope of Work and the possibility of meeting them. Still, he failed to make any progress towards that for lack of response.

The IA then sent an official letter to the National Secretariat in September 2nd 2018, suggesting moving towards adaptive implementation to the risks related to the timeline of the project, as well as those related to contravening the standards, especially the material ones.

The MSG plan to visit the President of Iraq as he was the first KRG official to meet the chair of EITI Board Mr. Peter Eigen back in 2008, also there are indications that an agreement will be made at the House of Representatives to innate the law of oil and gas especially after the legislation of National Oil Company, which- from the MSG perspective- will facilitate the things in terms of data disclosure under EITI from KRG. In addition, the efforts of this report will be renewed with the new federal Minister of Oil, and the MSG is working on joining the delegations of Ministry of Oil to visit Kurdistan Region in order to address these challenges in the coming years.

For now, and as a result of the issues detailed above, the need for adaptive implementation was built up, taking into account that any data and contextual information that is publically available will be included at the report.

Requirements requested under adaptive implementation:-

Req. 2, Legal and institutional framework, including allocation of contracts and licenses.

Req. 3, Exploration and production.

Req. 4, Revenue collection.

Req. 5, Revenue allocations.

Req. 6, Social and economic spending.

Req. 7, Outcomes and impact

On behalf of the whole Iraqi EITI-MSG, we thank you for your continued support.

Yours sincerely,



Alaa Mohie.El.Deen

National Coordinator

Iraqi Extractives industries Transparency initiative

27/11/2018