

UK EITI MSG response to draft validation report

02 July 2019

Introduction

The UK EITI multi-stakeholder group (MSG) is grateful for the work of the International Secretariat for producing their initial report and for the Independent Validator for their assessment. The MSG is pleased to take this opportunity to respond.

The UK has been a key supporter of EITI since its inception and became an implementing country in October 2014. The UK government will continue to encourage high standards of transparency and corporate responsibility within its domestic energy sector, and to work with and through EITI to maintain momentum for greater transparency worldwide.

The MSG has proved a valuable forum for government, civil society and extractive industries to meet, and EITI implementation is now an important part of the UK Government's broader framework for corporate transparency and open government. The MSG has benefitted from strong support from the oil and gas, and mining and quarrying industries, and a high level of payments data coverage has been achieved, despite submission of such data being voluntary. Our four reports have brought together key information about those sectors and demonstrated that they are delivering economic value for the nation in a transparent and accountable way.

Since becoming an implementing country, the MSG has had regular and meaningful contact with the EITI International Secretariat and is grateful for the support the Secretariat has provided. We are particularly grateful to Eddie Rich, a frequent observer of our meetings, who has provided not only valuable input, but also useful insights into the work and thinking of the International Board. As he prepares to depart EITI, we would like to wish Eddie all the best for the future.

The validation process began on 1 July 2018 and featured a visit by the validation team in September of the same year. The professionalism, dedication and hard work of the team made the process far smoother than anticipated, for the MSG, our secretariat, and our wider stakeholders. The resulting report on initial data collection and stakeholder consultation was finalised on 30 April 2019. A draft validation report was provided to us on 16 May 2019, though subsequently amended in light of some presentational errors identified by the MSG and resent to us on 6 June 2019.

The MSG believes the initial report was thorough and high-quality and are grateful to the work of the authors in the International Secretariat. That said, we would like to draw attention to the delays in finalising the report, and that as a result there have been a number of significant developments within UK EITI since the validation process started. In the circumstances, we believe these should be considered by the Independent Validator and by the EITI Board as they finalise their assessment. These developments include publication of our fourth report, agreement of a new framework for civil society representation, and publication of a thorough review of the scope for UK EITI to be mainstreamed. They are explained in more detail in the relevant sections below.

Summary of MSG's response

The MSG is pleased to see that the draft validation recognises the significant progress that the UK has made in EITI implementation to date. The MSG believes that we have made meaningful progress in meeting the EITI Standard and are pleased to see that the initial assessment endorses this. We understand this would represent one of the strongest initial EITI validations of those nations so far assessed.

Areas of agreement

We are pleased that the UK is assessed as having achieved satisfactory progress or beyond on a majority of the relevant categories of the Standard. We particularly welcome the assessment that the UK has exceeded requirements in the areas of our legal framework, beneficial ownership, exploration data and

elements of disaggregation. These are areas where the UK has established a world-leading position – and has influenced other nations to follow suit:

- On the *legal framework* and *exploration data*, the assessment recognises the systematic disclosure of key information online. This is in accordance with the UK’s broader commitments to open government, and links to its active involvement in and support for the Open Government Partnership since 2011.
- On *beneficial ownership*, the UK was the first country in the G20 and one of the first countries in the world to establish a public register of company beneficial ownership, in 2016. The information on the register is public and free to access, alongside core company information from Companies House, the UK companies register. The UK Government has used its experience to help other EITI implementing countries work towards establishing their own beneficial ownership registers. Officials from the UK Government presented at EITI conferences on beneficial ownership in Jakarta in October 2017, Dakar in October 2018, and Manila in February 2019.
- On *disaggregation*, in addition to the transparency we have delivered in our domestic sector, the UK played a leading role in shaping the EU approach to reporting on payments to governments in extractive activities worldwide. This has itself informed the EITI’s approach to project-level transparency, formalised in the new 2019 Standard.

The MSG recognises that there are some limited areas where further progress is required in order to fully achieve the EITI Standard. We agree that the following areas are fairly assessed as ‘meaningful’ progress, and will act on the related recommendations:

- *MSG Governance (#1.4)*
- *License allocations (#2.2)*
- *License register (#2.3)*
- *Mandatory social expenditures (#6.1)*
- *Public debate (#7.1)*
- *Outcomes and impact of implementation (#7.4)*

The MSG notes that the Independent Validator has proposed downgrading the International Secretariat’s initial assessment from satisfactory to meaningful in the category of *public debate*. The MSG accepts the Independent Validator’s recommendations on public debate and recognises that more could be done to increase UK EITI’s impact. The MSG, via its communications subgroup, is actively looking at ways to do this. MSG members, ministers and senior officials have already raised awareness of UK EITI at a number of industry conferences since publication of our fourth report in February 2019. Plans are underway for further awareness-raising events after validation. The MSG plans to develop a new and fully independent UK EITI website to widen our reach and improve accessibility of the data collected. Our vision is to develop a comprehensive portal of information, which will underpin our efforts to mainstream, based on our recent scoping study. We aim to have this website in place within the next year.

Areas of disagreement

The MSG believes that in the following areas, the draft validation has not reached a fair assessment, and should be re-assessed:

- *Civil society engagement (#1.3)*
- *Contract disclosure (#2.4)*
- *Production data (#3.2)*
- *Export data (#3.3)*

The MSG *strongly* disputes the Independent Validator’s assessment that ‘civil society has not been substantively or meaningfully engaged in the EITI implementation in the UK so far’ and the assessment that civil society engagement has been inadequate. This assessment is essentially unevidenced in the Validator’s report. We believe that the assessment should be restored to the International Secretariat’s rating of ‘meaningful’.

During most of the time that the MSG has been in existence, there has been substantial civil society engagement and representation, both in the MSG and in its working groups. A range of civil society groups, representing both international NGOs and domestic interests, were engaged and energetic participants in the MSG from its inception through to late 2017, as evidenced in minutes of the 25 meetings held over that period, and as recognised in the initial validation report.

The MSG acknowledges that during 2018 civil society representation has not been as broad or as active as we would have liked. Those groups who had decided to withdraw from the MSG during that period could have chosen to return at any point. Although they chose not to, they continued an active dialogue with the MSG secretariat, which has ultimately resulted in agreement of a revised framework for civil society representation. This framework has broad support from civil society groups and was agreed by the MSG in May 2019. The framework will see the return of the Civil Society Network (CSN) to its position as coordinator, but with a number of changes to its principles, including to actively encourage representation from local communities. A number of members of the Civil Society Network have agreed to fund the appointment of a CSN coordinator, who will administer the nominations process and coordinate civil society involvement in the MSG. The formal appointment of civil society MSG members will take place once the CSN co-ordinator is in place, which we expect to happen shortly. We believe this will put us in a position to achieve a rating of 'satisfactory' when we are next validated.

The MSG would also like to challenge the Independent Validator's downgrading of our approach to contract disclosure from 'satisfactory' to 'inadequate' and think that the International Secretariat's rating is a more accurate assessment of the situation in the UK. The aggregates sector, which accounts for the vast majority of terrestrial mineral extraction in the UK, requires planning permission and environmental permits, not licences. Licences are only required for marine dredging or where the ownership of the land is held by The Crown Estate (TCE). Marine dredging licenses are awarded by the Marine Management Organisation and are publicly available. Regarding Crown Estate licenses, the MSG agree that there are areas where TCE could be more transparent and that there is a need to clarify what they publish and if they are sharing information in the right way. This will be addressed in the coming months; however, we would highlight that this comprises a very small amount of the overall aggregates sector and, on this basis, would challenge the downgrade.

The MSG questions the International Secretariat's rating of 'meaningful' for production data and thinks it should be upgraded to 'satisfactory.' The British Geological Survey (BGS) publishes production information in their annual United Kingdom Minerals Yearbook (<https://www.bgs.ac.uk/mineralsUK/statistics/ukStatistics.html>). UK EITI have always included the latest available statistics, but in some cases these have been relatively out of date due to publishing deadlines. MSG has included estimates in its reports since 2017: the 2017 report, which was published after the validation deadline, included production estimates for the majority of construction and industrial minerals. MSG intends that in future we will make the latest statistics available through the new UK EITI website as soon as they are published by BGS.

The MSG would also like to challenge the International Secretariat's rating of 'meaningful' for export data and think it should be upgraded to 'satisfactory.' The Office for National Statistics (ONS) collect and publish export statistics for a number of mining and quarrying commodities, including coal, lignite and unworked gravel and sand. These figures are published in the UK EITI report. However, export data on most individual construction and industrial minerals is not collected as these minerals are not a material source of revenue for the UK. This is unlikely to change in the foreseeable future. The MSG is not aware of public appetite for this data to be collected.

Finally, the MSG would also like to correct some figures stated in both reports: the Supplementary Charge should be 10%, not 32% and the Petroleum Revenue Tax is now set permanently at zero (0%), not 50%.

Conclusion

In conclusion, the MSG is largely content with the draft validation report, but we ask the validator and the EITI Board to reconsider the areas set out above. The MSG thanks the International Secretariat and the



Independent Validator for their work in this validation process and looks forward to working with them in the future in order to achieve full compliance with the EITI standard as soon as possible.

Response to the Independent Validator's detailed findings

Validation report finding	MSG response
<p>1 <i>For Requirement 1.3, due to the internal conflicts over nomination and civil society leadership, civil society has not been effectively engaged in UKEITI. In line with the EITI Standard's definition of Inadequate Progress - "Significant aspects of the requirement have not been implemented and that the broader objective of the requirement is far from fulfilled" - the Validator suggests a downgrade to Inadequate Progress. Civil Society has not been substantively or meaningfully engaged in the EITI implementation in the UK so far.</i></p>	<p>The UK EITI MSG strongly disputes the Independent Validator's assessment that 'civil society has not been substantively or meaningfully engaged in the EITI implementation in the UK so far' and thinks that the assessment should be restored to the International Secretariat's rating of 'meaningful'.</p> <p>During most of the time that the MSG has been in existence, there has been substantial civil society engagement and representation, both in the MSG and in its working groups. A range of civil society groups, representing both international NGOs and domestic interests, were engaged and energetic participants in the MSG from its inception through to late 2017, as evidenced in minutes of the 25 meetings held over that period, and as recognised in the initial validation report.</p> <p>Although some civil society groups declined to formally participate in the MSG in 2018, they continued an active dialogue with the MSG secretariat, which has ultimately resulted in agreement of a revised framework for civil society representation.</p>
<p>2 <i>For Requirement 2.4, 2.4b of the Standard states, "It is a requirement of the 2016 Standard that the EITI Report documents the government's policy on disclosure of contracts and licences that govern the exploration and exploitation of oil, gas and minerals." The Initial Assessment points to the UK Government's adoption of Open Contracting and the Open Government Partnership's national action plans. However, these do not appear to be sufficient to meet 2.4b. This is buttressed by the Initial Assessment stating, "it is unclear from the report whether the government has a policy to publish the full text of all licenses in the mining and quarrying sector."</i></p>	<p>The MSG questions the International Secretariat's rating of 'meaningful' for production data and thinks it should be upgraded to 'satisfactory.' The British Geological Survey (BGS) publishes production information in their annual United Kingdom Minerals Yearbook (https://www.bgs.ac.uk/mineralsUK/statistics/ukStatistics.html). UK EITI have always included the latest available statistics, but in some cases these have been relatively out of date due to publishing deadlines.</p> <p>MSG has included estimates in its reports since 2017: the 2017 report, which was published after the validation deadline, included production estimates for the majority of construction and industrial minerals. MSG intends that in future we will make the latest statistics available through the new UK EITI website as soon as they are published by BGS.</p> <p>The Independent Validator recommended that the UK should ensure that export volumes and values are publicly disclosed for every mineral commodity exported annually. However, most mineral exports are not a material source of government revenue so detailed trade data are not collected.</p>

<p>3 <i>For Requirement 7.1, to all intents and purposes, it looks like the UK EITI Reports are clear and comprehensive, albeit with issues of timeliness raised by some stakeholders. 7.1a-d are met. However, contribution to public debate appears to be weak, at least partly because of the CSOs representation issue. The initial assessment states that “There have been limited efforts to promote this work beyond Report launch events, and there is limited evidence to suggest that the EITI has contributed to public debate.” Meanwhile, 7.1e requires “Ensure that outreach events, whether organised by government, civil society or companies, are undertaken to spread awareness of and facilitate dialogue about the EITI Report across the country.” Stakeholder views in the initial assessment state that “The majority of stakeholders noted that the EITI had not had a significant impact on the public’s understanding of the extractives.” The Validator therefore finds it difficult to accept that there has been satisfactory progress on this requirement given these statements.</i></p>	<p>The MSG accepts this recommendation and recognises that more could be done to increase their contribution to public debate. Therefore, the MSG, via the Communications subgroup, is actively looking at ways of raising awareness and stimulating public debate around UK EITI.</p> <p>For example, the publication of the 4th UK EITI report in February was referenced by the Secretary of State for International Trade at International Petroleum Week. Recently MSG members took part in an Open Government event around transparency in the extractive industries and we secured a slot at the MPA Annual Conference to speak about UK EITI.</p> <p>The MSG plans to develop a new and fully independent UK EITI website to widen our reach and improve accessibility of the data collected. Our vision is to develop a comprehensive portal of information, which will underpin our efforts to mainstream, based on our recent scoping study. We aim to have this website in place within the next year.</p>
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Response to the Independent Validator’s recommendations

Validation report recommendations	MSG response
<p>1 <i>In accordance with Requirement 1.3.a, the civil society constituency should demonstrate that they are fully, actively and effectively engaged in the EITI process. Specifically, civil society should ensure that they are able to fully contribute and provide input to the EITI process by ensuring that the constituency is adequately represented on the MSG, with agreed mechanisms for wider constituency engagement.</i></p>	<p>See response to detailed finding 1 above.</p>
<p>2 <i>In accordance with Requirement 1.4.a.ii, the MSG should ensure that the civil society constituency is adequately represented, and that the civil society constituency appoints its own representatives, bearing in mind the desirability of pluralistic and diverse representation.</i></p>	<p>The Civil Society Network (CSN) has already agreed to return to the MSG and agreed to several key changes to their principles, including encouraging representation from local communities.</p> <p>A number of members of the Civil Society Network have agreed to fund the appointment of a CSN coordinator, who will administer the nominations process and coordinate civil society involvement in the MSG. The formal appointment of civil society MSG members will take place once the CSN co-ordinator is in place, which we expect to happen shortly.</p> <p>We believe this will put us in a position to achieve a rating of ‘satisfactory’ when we are next validated.</p>

<p>3</p>	<p><i>In accordance with Requirement 2.2, the UK should disclose information related to the award or transfer of licenses pertaining to the companies covered in EITI reporting. This information should include the number of mining, oil and gas licenses awarded and transferred in the year covered by the EITI reporting cycle, a description of the award procedures, including specific technical and financial criteria assessed, and highlight any non-trivial deviations in practice. The UK is encouraged to consider innovative solutions for embedding a public accountability mechanism to ensure transparency on any non-trivial deviations from statutory procedures in its systematic disclosures of information per Requirement 2.2.</i></p>	<p>The aggregates sector, which accounts for the vast majority of terrestrial mineral extraction in the UK, requires planning permission and environmental permits, not licences. Licenses are only required for marine dredging or where the ownership of the land is held by The Crown Estate (TCE). Marine dredging licenses are awarded by the Marine Management Organisation and are publicly available. Regarding Crown Estate licenses, the MSG agree that there are areas where TCE could be more transparent and that there is a need to clarify what they publish and if they are sharing information in the right way. This will be addressed in the coming months; however, we would highlight that this comprises a very small amount of the overall aggregates sector and, on this basis, would challenge the downgrade.</p>
<p>4</p>	<p><i>In accordance with Requirement 2.3, the UK should maintain a publicly available register or cadastre system(s), including comprehensive information on all active licenses held by all mining and quarrying companies included in the scope of EITI reporting. In the interim the UK should ensure that future EITI reporting provides the information set out under Requirement 2.3.b for all mining and quarrying companies. The UK is encouraged to consider the extent to which integration of EITI reporting with the work of organisations like the British Geological Survey could ensure systematic disclosure of information mandated under Requirement 2.3.b.</i></p>	<p>See response to detailed finding 2 above.</p>
<p>5</p>	<p><i>In accordance with Requirement 3.2, the UK should ensure that estimates of production values are publicly disclosed for all minerals produced in the year under review. The UK is encouraged to consider the extent to which estimates prepared based on average benchmarks could ensure that general estimates of the value of production is in the public domain.</i></p>	<p>The British Geological Survey (BGS) publishes production information in their annual United Kingdom Minerals Yearbook (https://www.bgs.ac.uk/mineralsUK/statistics/ukStatistics.html). UK EITI have always included the latest available statistics, but in some cases these have been relatively out of date due to publishing deadlines. MSG has included estimates in its reports since 2017: the 2017 report, which was published after the validation deadline, included production estimates for the majority of construction and industrial minerals. MSG intends that in future we will make the latest statistics available through the new UK EITI website as soon as they are published by BGS.</p>
<p>6</p>	<p><i>In accordance with Requirement 3.3, the UK should ensure that export volumes and values are publicly disclosed for every mineral commodity exported annually.</i></p>	<p>ONS collect and publish export statistics for a number of mining and quarrying commodities, including coal, lignite and unworked gravel and sand. These figures have been published in the UK EITI reports. However, export data on most individual construction and industrial minerals is not collected as these minerals are not a material source of revenue for the UK. This is unlikely to</p>

		<p>change in the foreseeable future. The MSG is not aware of public appetite for this data to be collected.</p>
<p>7</p>	<p><i>In accordance with Requirement 6.1, the UK should assess the materiality of mandatory social expenditures ahead of future EITI reporting and ensure that reporting of mandatory social expenditures be disaggregated by type of payment, nature of in-kind contributions and beneficiary(ies), clarifying the name and function of any non-government (third-party) beneficiaries where applicable.</i></p>	<p>The MSG currently only report payments under the S.106 of the Town and Country Planning Act 1990. There have only been two such payments reported as not all S.106 payments are extractive related or material enough to report. The MSG will consider reporting a number of schemes around shale gas in the UK.</p>
<p>8</p>	<p><i>In accordance with requirement 7.4, the MSG, with the full, active and effective engagement of civil society, should review the impact of the first five years of EITI implementation and explore the opportunities to further leverage the EITI platform to enrich public debate on the governance and stewardship of the UK's oil, gas and mineral resources.</i></p>	<p>The MSG Communications subgroup proposed the idea of a number of post-validation awareness raising events that look to take stock of where the UK is in terms of EITI compliance. It is also hoped that a separate validation subgroup will take forward a number of the recommendations from the report.</p> <p>See also response to detailed finding 3.</p>