

The Extractive Industries Transparency Initiative: state of play

SUMMARY

In 2003, the Extractive Industries Transparency Initiative (EITI) was launched as a voluntary multi-stakeholder initiative for the extractive industries, bringing together governments, industry and civil society. Its main objective has been to create a global transparency standard which allows light to be shed on all payments made by extractive-industry companies to governments of resource-rich developing countries, and to cross-check all revenues received by these governments from the industry. Thanks to robust international political backing as well as financial and technical support, the EITI has seen rapid expansion across Africa, and beyond to Asia and Latin America. Considerable gaps in coverage have nevertheless remained and for the EITI to become a truly global standard, emerging economies and industrialised countries will need to join as well.

The introduction of mandatory financial reporting requirements for extractive-industries companies listed in Hong Kong, the US and the EU as well as severe criticisms of major shortcomings in the EITI, such as its voluntary nature and limited focus on a small part of the value chain, have been the main drivers of its 2013 revision. Most assessments of the impact of the EITI concur that its major achievement has been to bring together stakeholders with radically differing interests, but that the degree of empowerment of civil society varies considerably across countries. The EITI has also facilitated broader reforms going beyond mere revenue transparency, albeit so far only in a limited number of EITI countries which stand out as pioneers. Overall, results to date have been uneven and partial.



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Background

According to the World Bank, resource governance issues affect half of the world's population, since [3.5 billion people](#) live in countries abundant in oil, gas and mineral resources. In some resource-rich developing countries a significant part of revenues derived from extractive industries is lost for sustainable economic development and poverty reduction as a result of poor governance, corruption, tax avoidance and evasion or even violent conflicts. The loss of funds generated by illicit financial outflows alone is estimated to equal [ten times](#) the OECD countries' official development assistance (ODA) to developing countries.

The Extractive Industries Transparency Initiative (EITI) has been one attempt among many others¹ to enhance transparency and accountability in the governance of natural resources (oil, gas and mining) in developing countries and thus to mitigate the adverse effects of what is commonly referred to as the "[resource curse](#)".

In the wake of the UK-led "[Publish What You Pay](#)" coalition's campaign, former UK Prime Minister Tony Blair [launched](#) the idea of creating a *voluntary* global transparency standard at the 2002 World Summit on Sustainable Development in Johannesburg (South Africa). Against the backdrop of G8 commitments on fighting corruption and improving transparency made in the 2003 Evian [action plan](#), the EITI was formally set up at its first [Conference](#) in London on 17 June 2003 as a multi-stakeholder coalition bringing together governments, industry and, most importantly, civil society.

Relying on robust international political backing ([UN General Assembly](#), [G8](#), [G20](#), [European Commission](#), [African Union](#)) as well as financial and technical support ([World Bank](#), [IMF](#), [regional development banks](#) and [industry](#)), the EITI has evolved into a widely recognised soft law minimum transparency standard, but one so far mainly applied in the developing world. It has recently been [complemented](#) by US (and EU) hard law focusing on publicly listed (and large unlisted) extractive industry companies.²

At their summit at Lough Erne in Northern Ireland in June 2013, G8 leaders called for higher international transparency standards for extractive industries through common global reporting rules and wider membership of the EITI. The UK and France [committed](#) to joining the EITI, Italy stated its intention to follow suit as soon as possible, while Germany announced it would test EITI implementation in a pilot region in view of its

Mandatory US and EU legislation

Building on the logic of the EITI, [Section 1504](#) of the [2010 US Dodd-Frank Wall Street Reform and Consumer Protection Act](#) introduced mandatory financial transparency legislation requiring all US-listed extractive industry companies to disclose all payments made to the US and host-country governments. The Dodd-Frank Act's adoption led to the 2013 revision of the EU [Transparency](#) and [Accounting](#) Directives, featuring a specific "[equivalence clause](#)" to avoid duplicate reporting burdens on business. It has also triggered similar legislative initiatives *inter alia* in [Canada](#), [Norway](#) and [Switzerland](#). This trend towards mandatory transparency legislation, in turn, was instrumental in obtaining industry agreement to upgrade the voluntary EITI standard in May 2013. In July 2013, the US implementing rules for Section 1504 of the Dodd-Frank Act were successfully [challenged](#) by the American Petroleum Institute, a US industry association, before the US District Court in Washington DC, on the basis that the rules would create competitive advantages for those companies outside their scope. The US law is therefore not applicable until new implementing rules can be published.

While the US and EU mandatory financial transparency legislation is estimated to cover about [70%](#), by market capitalisation, of publicly listed extractive-industries companies internationally, many large companies, frequently state-owned, notably from the [BRICS](#) (Brazil, Russia, India, China and South Africa), fall outside its scope and are not covered by the EITI standard either.

future EITI candidacy. Japan and Russia, while supporting the EITI's goals, have only committed to encouraging their industry to become EITI supporters. Widely [endorsed](#) by US industry, in March 2014 the US [acquired](#) EITI candidate country status.

EITI governance structure and EITI standard

The EITI governance structure

The non-profit EITI Association, incorporated under Norwegian law, is [governed](#) by its Articles of Association which provide for three bodies. The Oslo-based permanent EITI [International Secretariat](#) [coordinates](#) the implementation of the EITI standard, including not only administrative tasks but also a broad array of substantive talks. A 20-member multi-stakeholder [EITI board](#), appointed for two years in [members' meetings](#), is the main decision-making body between biannual Global Conferences. It consists of five representatives each from countries implementing the EITI standard, [companies](#) and [civil society](#), three from the [supporting](#) industrialised countries not bound by the standard but which contribute to the initiative politically, financially and technically, one from [institutional investors](#) and a [chair](#). The EITI is [financed](#) by supporting companies and governments including Norway which are also donors to the [Multi Donor Trust Fund](#) that provides technical and financial support to developing countries implementing the EITI standard.

The EITI standard

The EITI standard is built on the rationale that the more payment/revenue flows are publicly disclosed, the less scope there is for corruption and the better governments can be held accountable by civil society for their management of revenues. The standard consists of ten [principles](#), agreed in 2003, which are the EITI's founding tenets (general statements about the commitment to citizen ownership of resources, transparency and accountability), its purpose (creation of an internationally accepted transparency standard in the oil, gas and mining sector) and objectives (full publication and verification of company payments and government revenues from oil, gas and mining to foster sustainable development and poverty reduction). General rules for the **disclosure process** and specific reporting **requirements** have been gradually added and refined over time.

The implementation of the [EITI standard](#) at country level requires the creation of a national **multi-stakeholder group** (MSG) consisting of government, industry and civil society representatives as well as an EITI national secretariat which together are routinely referred to by adding the first letter of the respective country's name (e.g. LEITI for Liberia). It also comprises the various stages of the technical reporting and monitoring process, such as the **disclosure** – in **separate** reports – of payments made by industry to the government and of revenue received by the government from industry, **reconciliation** of the two datasets by an independent auditor who investigates potential discrepancies, [validation](#) of the reports (to certify that the report has met the EITI reporting requirements, thus

[EITI sign-up steps](#)

1. The government is required to issue an unequivocal public statement of its intention to implement the EITI
2. The government is required to appoint a senior individual to lead on the implementation of the EITI
3. The government is required to commit to work with civil society and companies, and establish a multi-stakeholder group to oversee the implementation of the EITI
4. The multi-stakeholder group is required to maintain a current work plan, fully costed and aligned with the reporting and validation deadlines established by the EITI board.

ensuring the credibility of the EITI brand) and finally the **publication** of the report on the EITI website and its in-country **dissemination** to allow for discussion of its results.

To be eligible for EITI [candidate status](#), a country must fulfil **four sign-up steps**. As soon as a country has achieved candidate status, it has 18 months to publish its first EITI report, and 30 months to undergo an external validation of its report by a validator procured by the International Secretariat, certifying that the in-country EITI implementation is consistent with all **seven implementing requirements**. Once validation is successfully completed, the status of the country shifts from candidate to **compliant** country.

EITI implementing requirements

1. Effective oversight by the multi-stakeholder group (MSG).
2. Timely publication of EITI reports.
3. EITI reports must include contextual information about the extractive industries.
4. EITI reports must be comprehensive (full disclosure of all material payments).
5. Credible EITI reporting process (reliable data, independent administrator).
6. Comprehensive publicly accessible EITI reports contributing to public debate.
7. The MSG to act on lessons learned from EITI implementation.

Non-compliance with the EITI standard may lead the EITI board to temporarily suspend a country to bring about "corrective measures" and, if it fails to show "meaningful progress" within a certain period of time, to ultimately **delist** it. Examples of delisted countries include [Equatorial Guinea](#), [Gabon](#) and [São Tomé e Príncipe](#), with the latter having since become an EITI candidate again. Revoking EITI candidate or compliant status amounts to **reputational damage**³ which may result in the loss of the economic "[benefits](#)" of EITI-standard implementation. Criticism has centred on the lack of an [effective sanctions mechanism](#) and the potential abuse of the EITI label for a [public relations exercise](#) over long periods, as countries can hold candidate status for up to five years before delisting takes place.

In May 2013, the EITI rules were revised in order to incorporate some of the mandatory US and EU disclosure requirements, with the ultimate goal of providing a global standard and to remedy shortcomings identified in a 2011 [external assessment](#).⁴

Key changes include:

- to maintain compliant status, revalidation must be undertaken every *three* years instead of every five years as previously;
- annual activity reports on progress are also required from candidate countries;
- the EITI's frequently criticised [narrow scope](#) restricted to *revenue* transparency has been broadened to gradually encompass all stages of the value chain, e.g. licence/concession granting, [contract transparency](#) and the government *expenditure* side, an idea which the [World Bank's EITI++](#) has promoted since 2008;
- required disclosure of "contextual information" *inter alia* production figures, ownership of license holders, with ultimate [beneficial ownership](#) being *encouraged*, revenue allocation to state and local accounts, a description of the country's fiscal regime, with the disclosure of production contracts so far being *encouraged*;
- other key disclosure items: financial data from state-owned companies (SOEs), social expenditure and infrastructure investments and transfers to local governments; the disclosure of transit payments is *encouraged*;⁵
- stronger emphasis on data reliability to improve the [varying quality](#) of EITI reports;
- disaggregated reporting by individual company, government entity and revenue stream and, if appropriate, at *project* level in line with US and EU legislation has

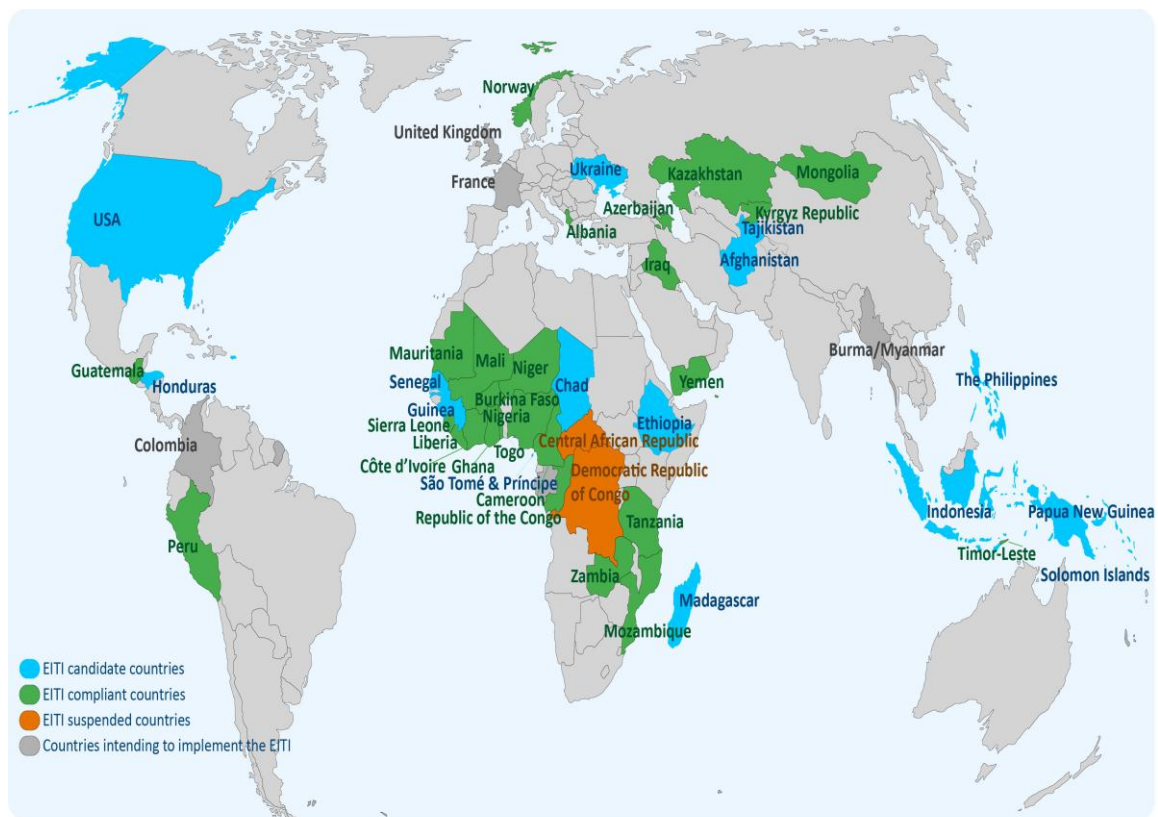
become compulsory; the previous EITI rules allowed what has been referred to as "["zombie" transparency](#)", i.e. highly aggregated reporting which in practice has been used by the [majority](#) of countries leading to datasets hardly [comparable](#) across countries and difficult to [align](#) with internationally recognised standards.

EITI membership and the impact of the EITI

Geographic expansion and its limits

During the recent past, [EITI membership](#) has seen a rapid expansion beyond Africa, notably to Asian but also Latin American countries, with some OECD countries set to join as well. As of June 2014, it consisted of 27 compliant countries and 17 candidate countries. This represents a noticeable increase compared to only two and twelve compliant countries in [2009](#) and 2011. [Burma/Myanmar](#), Colombia, France and the UK have announced their [intention](#) to implement the EITI. [Vietnam](#) and the [Seychelles](#) have made the most recent commitments. Australia is applying an [EITI pilot](#). In March 2014, the acceptance of Ethiopia as an EITI candidate [attracted fierce](#) criticism. This move has put the EITI's [credibility](#) at stake, as it reverses a 2010 board decision which invoked as grounds for the refusal of Ethiopia's candidacy a law (still in force) which prevents civil society from meaningful engagement in initiatives like the EITI.

Fig. 1: EITI candidate, compliant and suspended countries and prospective candidate countries



Source: [EITI website](#) as of end-June 2014

While some countries known for their poor transparency record such as [Chad](#) have become EITI candidate countries, and [South Sudan](#) has signalled its political will to sign up, Angola and Sudan have shown no sign of interest in joining the EITI. Other countries, too, have strongly resisted EITI membership because they either consider their own transparency rules as sufficient or even as more effective ([India](#), [South Africa](#)) or perceive the EITI as a [hypocritical](#) initiative by Western/Northern countries imposing

their rules on developing countries ([India](#), [South Africa](#) and [Zimbabwe](#)), while not exposing their own industry to these rules. Norway is so far the only EITI compliant industrialised country. Emerging markets are completely absent and most [OPEC members](#) are not represented either. Scepticism has therefore been [voiced](#) as regards the prospect of getting all resource-rich countries on board, and the big gaps in EITI membership have raised some doubts about the EITI's [transformative power](#) for the most corrupt countries.

Measuring the impact of the EITI

Measuring the impact of the EITI is challenging, not least due to the short time it has been operational. According to the EITI website, the EITI has had a quantifiable impact, since payments disclosed have significantly [increased](#) over time. Companies have reported payments worth [US\\$1 309 billion](#) in government revenue in EITI reports covering 202 fiscal years as of June 2014. EITI reports have contributed to the recovery of considerable amounts which would otherwise have been lost for the country's development. [Nigeria](#) is a case in point: NEITI audits have identified [US\\$9.8 billion](#) owed to the federal government of which US\$2 billion has been recovered.

In qualitative terms, the most frequently hailed EITI achievement is the promotion of greater [interaction and dialogue](#) between [stakeholders](#) within and across implementing countries (e.g. regional EITI conferences in [Africa](#), [Asia](#) and [Latin America](#)). Moreover, this has largely been [contingent on](#) the effective empowerment of civil society as regards its financial and technical means. The enabling environment required cannot be taken for granted ([Nigeria](#)), as past limitations of civil society activism in [Gabon](#), [Niger](#) and the [Republic of the Congo](#) and other countries have demonstrated. The EITI has increasingly facilitated linkages to wider, although often sector-related reforms, including the creation of licence registers ([Nigeria](#)), on-line mining contracts databases ([Sierra Leone](#)) or the revision of the tax-collection system ([Chad](#) and [Ghana](#)). But there are also reports on EITI implementing countries such as [Azerbaijan](#) and [Mozambique](#) which suggest the EITI's limited scope continues to allow large-scale diversion of funds to go on at stages of the value chain so far not covered by the EITI.

External assessments of the impact of the EITI

A 2008 [review](#) of the EITI's impact as measured against the World Bank's Doing Business and Voice and Accountability indexes as well as Transparency International's Corruption Perceptions Index found a positive correlation between EITI candidate countries with enhanced accountability and an improved business climate, but an inconclusive correlation between perceptions of corruption and EITI status.

A 2013 [analysis](#) of the performance of EITI candidate countries compared with non-EITI peers reveals that EITI membership ("the decision to commit, to write a first report, or to become a candidate") is associated with a "small but measurable" reduction in corruption and that this is in line with evidence about measures taken to enhance accountability. Evidence of a positive impact on the country's Corruption Perceptions Index score was found in the two years following EITI-related public activities. However the study clarifies that it is impossible to establish a cause-effect relationship between EITI implementation and the reduction of corruption, since it cannot be excluded that the improvement in CPI scores results from a separate factor which has also driven EITI implementation, e.g. political regime change.⁶

National implementation beyond the EITI standard

While some countries are struggling to meet the minimum standard, some others have gone beyond it by enshrining it in domestic law and/or by enlarging its application to more sectors of the economy. [Liberia](#) has included forestry and agriculture on top of the standard sectors of oil, gas and minerals, and the EITI standard has been incorporated into domestic law through the 2009 LEITI Act. Similarly, the [2007 NEITI Act](#) integrates the EITI standard into Nigerian domestic law. Nigeria already discloses contracts for concessions. In [Norway](#), [Ghana](#) and [Sierra Leone](#) the minerals and mining or petroleum laws include specific clauses on EITI implementation. [Togolese](#) EITI reports also cover the water sector and already disclose social payments, licence-holders and production data. [Mauritania](#) is discussing the inclusion of fisheries.

Some countries have started to scrutinise past compliance in award procedures and to review concession contracts with a view to establishing whether there is a need to renegotiate them ([Guinea](#) and Sierra Leone). LEITI initiated a "[post-award process audit](#)" which found that the procedure for awarding contracts from 2009 to 2011 in most cases was not complied with.

The EITI and the BRICS

Many large extractive-industries companies from the BRICS are not listed in [Hong Kong](#), the EU or the US and are thus [not covered](#) by the revenue transparency rules in force in these jurisdictions. EITI membership for the BRICS would close this gap and establish a level playing field among major extractive companies worldwide. Table 1 displays significant differences in transparency performance related to their extractive industries.

Table 1: BRICS' Resource Governance Index ranking and component scores

Rank (of 58)	Country	Resource measured	Institutional & legal setting	Reporting practices	Safeguards & quality controls	Enabling environment
5	Brazil	Hydrocarbons	81	78	96	66
12	India	Hydrocarbons	60	72	83	61
21	South Africa	Minerals	69	31	75	72
22	Russia	Hydrocarbons	57	60	62	39
36	China	Hydrocarbons	43	46	46	36

Source: [Resource Governance Index](#) 2013, pp. 8-9.

The BRICS are absent from the EITI for a variety of reasons:

Brazil has achieved a [good](#) level of revenue transparency based on the principles of the [Open Government Partnership](#) without its government carrying the EITI label. But the Brazilian companies [Petrobras](#) and [Vale](#) have been among EITI-supporting companies for many years. Critics nevertheless claim that public [debate](#) on the issue is lacking.

China has so far not embraced the EITI scheme, although it has [endorsed](#) it as a G20 member like all the BRICS. Some Chinese [academics](#) tend to perceive the EITI as an instrument that the West could use to [restrict](#) China's engagement in Africa. Other [researchers](#) have focused on identifying promising formats for engaging China in transparency issues in general and in the EITI in particular. Proposals to ensure [buy-in](#) and ownership of the EITI process in China range from building awareness among key stakeholders by [providing](#) a Chinese version of the EITI standard, involving China's academia in research projects on transparency, [introducing](#) the EITI in terms of potential

risks and long-term benefits for Chinese business. Since the voluntary [Forest Stewardship Council](#) has made quite some headway in China and a large number of Chinese companies are participating in the [UN Global Compact](#), it has also been [suggested](#) that Chinese support for the EITI could be triggered by bringing the scheme under the UN framework.

In **India**, public debate about the country's legal and illegal mining sector has [centred on](#) its ecological, social, cultural and economic implications (e.g. the loss of forest cover, mining-induced displacement and poor government revenues resulting from inadequate royalty rates). Public concern about transparency and accountability is a rather recent development. In general, there is a preference for legally mandated transparency and a strong [reliance](#) on the effectiveness of domestic [policy](#) and ([emerging](#)) [legislation](#) and the resulting belief that India would not stand to gain from EITI membership.

At the 2013 G8 summit, **Russia** only committed to encouraging its extractive industries to become EITI supporters. In this field, Russia [tends](#) to compare its standards with those in countries like China, Saudi Arabia and Qatar rather than with those in the EU or the US. It has therefore been [argued](#) that the EITI is not able to incentivise the Russian government and business to join the initiative.

In [South Africa](#), the experience of apartheid still informs the predominant policy concern of redistribution aimed at [redressing](#) historical imbalances in the [ownership](#) of and benefit from mineral endowment. In addition, the country applies [alternative](#) non-sector-specific transparency frameworks.

Stakeholders' views

The [mining industry](#) is supportive of the EITI, citing *inter alia* its contribution to reducing opportunities for large-scale corruption or embezzlement by elites. Its criticism centres on the strong dependence of in-country implementation on the political will of key political actors and therefore on its vulnerability to leadership change where the EITI is not enshrined in domestic law. It also deplores the absence of the emerging countries from the EITI. The US [oil and gas industry](#) commends the EITI for being an [effective](#) transparency mechanism which, unlike the US mandatory reporting rules, applies to all companies operating in a country [regardless](#) of whether they are listed or not, and does not [harm](#) business [competition](#).

This position contrasts sharply with the assessment of the EITI by [researchers](#) claiming that the initiative has offered large oil, gas and mining [companies](#) a "safe alternative" to mandatory regulation. They assert that the EITI's benefits have been overstated, as the standard fails to tackle tax avoidance and revenue distribution and overlooks the human and environmental impact of resource extraction. Some critics have argued that it is precisely the systemic weaknesses resulting from the EITI's [voluntary](#) nature, its narrow scope and limited oversight which may render the EITI attractive to corporations and governments.⁷ These features of the EITI model have been [blamed](#) by some NGOs for "slow and piecemeal" progress in some countries.

A World Bank-supported [survey](#) has found evidence of major restraints to civil-society engagement in the EITI. [NGOs](#) have raised concern that activists in several countries such as [Azerbaijan](#) continue to [face](#) threats, harassment and even imprisonment. Commentators have therefore recommended that the EITI [Rapid Response Committee's](#)

mandate is extended to address urgent human rights concerns also.⁸ [Researchers](#) have stressed the need to improve the MSG's effectiveness with decision-making based on equality of all stakeholders, to establish the EITI's long-term contribution to sustainable development and to use the NGO network as a platform to address broader social and environmental issues. Africa specialists take the view that the EITI has catalysed reforms in several countries and that emerging legislation on extractive industries gradually pays more attention to transparency, but they also recognise that progress has been partial and uneven.⁹

Further reading

[The impact and effectiveness of accountability and transparency initiatives: the governance of natural resources](#) / A. M. Acosta, Development Policy Review, 2013, 31, pp. 89-105.

[The transparency paradox: why do corrupt countries join EITI?](#) / L. David-Barrett and K. Okamura, Said Business School, University of Oxford, working paper no. 38, European Research Centre for Anti-corruption and State-building (ERCAS), 2013.

Endnotes

¹ Other prominent examples of voluntary transparency schemes include the [Forest Stewardship Council](#) (FSC), the industry-led [International Council on Mining and Metals](#) (ICMM), the [Kimberley Process Certification Scheme](#) (KPCS), the [Natural Resource Charter](#), the [OECD Guidelines for Multinational Enterprises](#), and the [UN Global Compact](#).

² While the EITI [seeks](#) accountability of *governments* to civil society in the EITI-implementing country, EU and US legislation aims at accountability of *companies* to regulators resulting subsequently in social accountability after publication of company data. The EU legislation is broadly similar to the US rules, but goes [beyond](#) them in two aspects: first, it includes the logging sector and, second, it applies also to large unlisted companies. A brief overview of differences and similarities of the US, EU and EITI disclosure requirements, including comparison charts, can be found in [Disclosing government payments update](#) / Ernst & Young, 2013, and [Tax transparency and country-by-country reporting – an ever changing landscape](#) / PricewaterhouseCooper, 2013.

³ [Certifying Natural Resources – A Comparative Study on Global Standards and Certification Schemes for Sustainability Part II – Empirical Assessment of Case Studies](#) / Bundesanstalt für Geowissenschaften und Rohstoffe, 2012, p. 136.

⁴ The assessment concluded: "While *transparency* has improved, *accountability* does not appear to have changed much, in part because necessary political, legal and institutional improvements have in most cases not been put in place. But another reason is that most EITI outreach is simple dissemination activities and not support for social actors to empower them to apply EITI data for increased accountability purposes. There are thus few indications that EITI programmes are so far having impact on dimensions such as governance, corruption, poverty reduction or other objectives stated in EITI's *Articles of Association*", [Achievements and Strategic Options. Evaluation of the Extractive Industries Transparency Initiative](#) / Scanteam, 2011, p. 3.

⁵ For more details see [Extractive Industries Transparency Initiative. Using the EITI standard for reform](#) / Revenue Watch, 2014, slides 14-18.

⁶ In a comparative study of several voluntary certification schemes, the EITI obtained low scores in terms of effectiveness (compliance and impact), legitimacy and efficiency. [Certifying Natural Resources. A Comparative Study on Best Practice and Future Scenarios for the Certification of Trading Chains in Mineral Production](#) / Bundesanstalt für Geowissenschaften und Rohstoffe, 2013. An EITI assessment from a human rights perspective recommends *inter alia* to tie the EITI standard to international law where possible, to revise it to include explicit human rights standards, to require implementing countries to disclose revenue flows leaving the country and to conceive an incentive regime to enhance the effectiveness of the EITI, [Extractive Industries Transparency Initiative \(EITI\): Evaluation Report](#) / Institute for Multi-Stakeholder Initiative Integrity, 2013, pp. 15-16.

⁷ Corruption and global governance / Ch. Cater, in: [Governing the world? Cases in Global Governance](#) / eds. S. Harman and D. Williams, 2013, p. 75.

⁸ [Extractive Industries Transparency Initiative \(EITI\): Evaluation Report](#), op. cit., p. 34.

⁹ [Africa Progress Report 2013, Equity in extractives, Stewarding Africa's natural resources for all](#) / African Progress Panel, 2013, p. 72.

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