

## **Annual Members' Assembly**

### **8-9 December 2021**

#### **Day 1**

#### **Paper 2a: Board recommendations from Institutional Working Group Report**

### **Context**

Following the 2020 Members' Assembly, the IATI Governing Board (GB) established a working group of members to seek advice on institutional arrangements for the initiative at the conclusion of the mandate of the current Secretariat Consortium on December 31st, 2022.

The Institutional Working Group (IWG) carried out its work between May-November 2021, undertaking a survey of members and leading stakeholder consultations. Consultant Mr. Richard Manning was engaged to support the IWG and finalise a report for consideration by the Governing Board at its fourth quarter meeting on November 22-23, 2021. The report is attached for members' review.

### **Report conclusions and Board deliberations**

Based on the extensive work done by the IWG and the feedback provided by members and stakeholders, the IWG proposed four recommendations to the GB with respect to the future institutional arrangement of IATI.

*1. IWG Recommends to the Members Assembly (MA) that IATI should remain a hosted initiative for at least 5 years from the end of the current hosting arrangement (ie to end-2027);*

In its discussion in the November meeting, the GB agreed to the risk/benefit analysis underlying this recommendation. GB therefore decided to put forward this recommendation for decision making/approval by the MA, explicitly taking into consideration that this decision might be reconsidered in 5 years time.

***Decision 1 for the MA: IATI remains a hosted initiative for at least 5 years from the end of the current hosting arrangement (i.e. to December 31, 2027).***

## *2. IWG considered that any new hosting arrangement, on whatever basis, should include the key elements listed in Section 6: Institutional Arrangements from 2023 of the IWG report;*

The GB agreed with the recommendation of the IWG that it is necessary to update and strengthen the 2013 Terms of Reference for the hosting arrangement by addressing as a minimum the key elements mentioned in the IWG report (reproduced below as Annex A). In its deliberations, the GB also concluded that the TORs should be updated to reflect the institutional changes that have taken place since 2013, and should further be strengthened based on the experience in working with the current hosting arrangement over the last 8 years, and with a view to consolidating and further strengthening the results achieved.

During the 2021 MA meeting, members will be invited to discuss these elements in small groups with a view to agreeing additional elements to be incorporated into the updated Terms of Reference, as the basis for negotiation with the current consortium hosts.

Members will further be invited to volunteer as part of a sub-working group of the IWG to assist with drafting these updated Terms of Reference, which will be submitted to members for approval through written procedure during the first quarters of 2022.

**Decision 2 for the MA: The Terms of Reference for the hosting arrangement should be updated and strengthened, to address the key principles recommended by the IWG, and other principles put forward by the GB and members.**

## *3. IWG recommends three sub-options for the hosting arrangement;*

In its report, the IWG proposes three different approaches with respect to the future hosting arrangement:

- 3a. Continued hosting by the present Consortium, subject to negotiating a new MOU with the improved and updated TOR, including the improvements deemed satisfactory to IATI;
- 3b. A modified search and selection process among potential hosting entities which were seen as acceptable to IATI on the basis of the improved and updated TOR, with a view to selecting and negotiating with a preferred host;
- 3c. A tendering process on the basis of the improved and updated TOR, possibly among a short-listed potential hosting entities (as in 2012/13).

Given the relative short timeframe remaining until the end of the current hosting arrangement and in order to safeguard continuity of the functioning of IATI, GB decided in its fourth quarter November 2021 meeting to put forward to the MA for decision a sequential approach in which, on the basis of the improved and updated TOR, negotiations by the GB will first start with the present Consortium with the intention to continue with the current, though adjusted arrangement. If, contrary to expectations, these negotiations fail to come to a satisfactory conclusion in the coming 3 months, it is proposed to start a modified search and selection process among a limited number of potential hosting entities as recommended in option 3.b. Members will be kept updated on the progress of the negotiations and involved in follow up procedures if no agreement can be reached.

Given the assessment by the IWG that the number of potential hosting entities is limited, not in the least as a result of the renewed TORs, and the need to provide for continuity in the functioning of IATI, the GB considered the third option as neither feasible nor desirable, and of too little added value compared to option 3.b. The GB therefore rejected option 3.c.

***Decision 3 for the MA:*** Members agree to the sequential approach in which the GB first enters into negotiations with the current hosting consortium on the basis of the adjusted TOR as proposed by the IWG in option 3.a. If these negotiations do not reach a satisfactory conclusion in the next 3 months, the GB, with the involvement of the IWG and members, will initiate the search for a hosting arrangement as indicated in option 3.b. of the IWG.

*4. IWG recommends to take a view on whether IATI should acquire its own legal personality, regardless of the sub-option selected with respect to the hosting arrangement.*

As the IWG concluded, currently IATI doesn't have its own legal personality at the moment. This is preventing IATI from entering into a (legally binding) agreement with any hosting arrangement and might negatively affect the negotiation power of IATI and the GB vis-a-vis its current hosting consortium. Currently it is only possible to establish hosting arrangements on the basis of memoranda of understanding, signed by the chair of the GB on behalf of IATI.

Without pre-empting the outcome of such a decision, IWG recommends that members form an opinion on whether or not to acquire a legal personality at this time and, if yes, where to register and in what form. With regard to the latter, whatever form is chosen, it should respect the character and nature of IATI as a network and community with members and a governing board. Of course it goes without saying that if in the future IATI decides to register as an independent network and community, acquiring a legal status is a *conditio sine qua non*.

If members agree to proceed with establishing a legal personality for IATI, the GB will undertake a scoping study together with the IWG to develop TORs for approval by members through written procedure during the first quarters of 2022.

***Decision 4 for the MA:*** Members agree to task the GB, with the support of the IWG, to initiate a scoping study with the aim to develop a TOR on the way forward in acquiring a legal personality for IATI.

## Annex A from IWG Report (Page 23, 6. Institutional Arrangements from 2023: Preferred Approach)

This section gives the IWG's views on how their recommended option of a hosting arrangement should be taken forward.

The IWG consider that any hosting arrangement, on whatever basis, should be based on the following key elements:

- A **new Memorandum of Understanding**, which would set out the main features of the new hosting arrangement and terms of reference. Continuing indefinitely to roll over arrangements made as long ago as 2013 was felt to be inadvisable, particularly for meeting legal needs of Member organizations.
  - To this end, the IWG does not recommend indefinitely rolling over any arrangement and recommends IATI review and draft a new MOU at least every 10 years regardless of its level of satisfaction with the host.
- A **medium-term agreement (no less than 5 years<sup>1</sup>**, but with an appropriate review point or points), to assist with staff retention and continuity. (It would also be normal for there to be a break clause whereby either side could give the other reasonable notice in the event of due cause.)
- A **clear line of internal responsibility** to a single senior person, on whose appointment the GB would be consulted. This would address concerns about inadequate clarity on lines of command in the present structure.
- A **clear line of external responsibility** whereby the senior person would be accountable to IATI Members through the GB, thus reinforcing accountability to the membership.
- A **performance management system** with metrics that could be periodically assessed by the GB.

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<sup>1</sup> As the 2015 Evaluation (Ian C Davies) put it: "IATI should plan on setting up a stable long term administrative support function, e.g. a "Secretariat," with a view to obtaining the best possible value for money for services, i.e. economy, efficiency and effectiveness, and without having to go to tender every few years."