

Board decision on the Validation of the Democratic Republic of the Congo

Decision reference: 2019-55/BM-45

Table of contents

The Board's decision	3
Background	4
Scorecard	5
Corrective actions	7
News	9

The Board's decision

The EITI Board came to the following decision:

Following the conclusion of the Democratic Republic of Congo (DRC)'s first Validation, the EITI Board decided that the DRC has made meaningful progress overall in implementing the 2016 EITI Standard. While there is anecdotal evidence that EITI implementation has contributed to changing practices and mitigating the risk of corruption, the Board expresses concern that corruption and mismanagement of funds in the extractive sector persist. The Board encourages the new government, led by President Felix Tshisekedi, to use the EITI to help advance its anti-corruption agenda and ensure that the extractive industries benefits citizens. The new government is encouraged as a priority to reconstitute a functioning MSG, that can update the EITI work plan in line with national priorities. The Government of the DRC is also urged to ensure that there are no legal, regulatory or practical constraints for civil society to fully, actively and effectively engage in all aspects of EITI implementation and debate about natural resource governance, particularly in terms of freedom of expression, operation and association.

The Board congratulates the Government of the DRC, the Multi-Stakeholder Group (MSG) and local stakeholders on the progress made in improving transparency in the extractive sector in recent years, despite a complex industry that has traditionally been closed to public scrutiny. EITI implementation has opened up key parts of the extractives sector to public oversight, including contractual terms awarded to some of the country's largest companies, transactions between state-owned enterprises (SOEs) and government as well as the implementation of infrastructure-for-minerals deals. EITI reporting has shed light both on the fragmented oversight of the sector and the operations of the numerous companies operating in the DRC. Implementation of the EITI has led to gradual improvements in government agencies and companies' data management procedures, with online disclosures by the Ministry of Mines and the Ministry of Finance showing the potential for transitioning towards timelier, systematically disclosed data.

Despite broader challenges to civic space in a dynamic and turbulent environment, the EITI's multi-stakeholder platform has provided a key channel for civil society to participate in discussions about the management of the sector and to have access to public decision-making. The success of the multi-stakeholder approach has been most apparent in the EITI's multi-stakeholder contribution to regulatory reform, including the inclusion of transparency provisions in the Mining law and regulations related to licensing, beneficial ownership and government ownership.

The oversight of EITI implementation itself has faced internal governance challenges. While industry and civil society engagement has proven resilient in often challenging circumstances, the Board encourages the government to respect all constituencies as equal partners and to exert adequate oversight over the governance of implementation, including financial management and the nomination of the National Coordinator. Given the ambitions linked to the EITI process, its potential to yield even greater impact and the remarkable engagement of all constituencies, EITI implementation in the DRC should be an example in terms of probity and adherence to the EITI's Code of Conduct and Civil Society Protocol. The government is encouraged to ensure that international civil society organisations are able to contribute to local civil society's efforts on extractives governance.

Gaps identified in EITI disclosures have shed light on significant weaknesses in government oversight, including related to SOEs' group-level financial relations, off-budget extractive revenues

and implementation of regulations related to subnational transfers and companies' social expenditures. Moreover, EITI reporting has revealed different transparency and accountability challenges across different extractives subsectors. The DRC is encouraged to build on innovations in the 2019 EITI Standard to address other areas of particular interest for local stakeholders, including the formalisation of the artisanal and small-scale mining sector given its significance in the DRC, the environmental and social impact of extractives at the local level, and the participation of women in the sector. Civil society is encouraged to enhance its use of EITI data to further drive improvements in the management of the extractives sector.

The Board has determined that the DRC will have **18 months, i.e. until 16 April 2021** before a second Validation to carry out corrective actions regarding the requirements relating to MSG governance (#1.4), license allocation (#2.2), license register (#2.3), state participation (#2.6), production data (#3.2), comprehensiveness (#4.1), SOE transactions (#4.5), direct subnational payments (#4.6), data quality (#4.9), distribution of revenues (#5.1), subnational transfers (#5.2), mandatory social expenditures (#6.1) and SOE quasi-fiscal expenditures (#6.2).

Background

In accordance with the 2016 EITI Standard, an initial assessment was undertaken by the International Secretariat [[English](#)] [[French](#)]. The findings were reviewed by an Independent Validator, who submitted a draft Validation report [[English](#)] [[French](#)] to the MSG for comment. The MSG's comments on the reports [[English](#)] [[French](#)] were taken into consideration by the independent Validator in finalising the Validation report [[English](#)] [[French](#)] and the independent Validator responded to the MSG's comments [[English](#)] [[French](#)].

The Government of the DRC committed to implement the EITI on 17 March 2005, and issued a Prime Ministerial Decree in November 2005 creating the EITI National Committee (the MSG). The country was accepted as an EITI Candidate in February 2008. Following two Validations, the Democratic Republic of the Congo was declared [compliant under the EITI Rules](#) in July 2014. On 25 October 2016, the Board agreed that the country's Validation under the 2016 EITI Standard would commence on 1 July 2018. On 4 September 2018, the EITI Board agreed that the Democratic Republic of the Congo was [eligible for an extension](#) of its Validation deadline. The Validation commenced on [1 October 2018](#).

Given the lack of a functioning MSG since November 2018 due to the country's political transition (the lack of government appointments left five ministerial seats on the MSG vacant), the MSG's still-functioning Technical Working Group (or GTT) drafted and submitted comments on behalf of the MSG. Formed in May 2018, the GTT is composed of four members of the MSG, technical experts from government entities, companies and CSOs, as well as experts from the national secretariat. The GTT received approvals for the comments from at least one MSG representative from each constituency. The comments were considered valid by the Independent Validator, given that they represented the opinion of all constituencies.

The Validation Committee reviewed the case on 14 August, 28 August and 30 September 2019. Based on the findings above, the Validation Committee agreed to recommend the assessment card outlined below. The Committee also agreed to recommend an overall assessment of "meaningful progress" in implementing the 2016 EITI Standard. Requirement 8.3.c of the EITI Standard states that:





























ii. Overall assessments. Pursuant to the Validation Process, the EITI Board will make an assessment of overall compliance with all requirements in the EITI Standard.

...

iv. **Meaningful progress.** The country will be considered an EITI candidate and requested to undertake corrective actions until the second Validation.

The Validation Committee agreed to recommend a period of **18 months** to undertake the corrective actions. This recommendation takes into account that the challenges identified are relatively significant and seeks to align the Validation deadline with the timetable for the DRC's upcoming EITI Reports.

Scorecard

EITI Requirements		Level of Progress					
Categories	Requirements	No Progress	Inadequate	Meaningful	Satisfactory	Beyond	
MSG oversight	Government engagement (#1.1) 						
	Industry engagement (#1.2) 						
	Civil society engagement (#1.3) 						
	MSG governance (#1.4) 						
	Workplan (#1.5) 						
Licenses and contracts	Legal framework (#2.1) 						
	License allocations (#2.2) 						
	License register (#2.3) 						
	Policy on contract disclosure (#2.4) 						
	Beneficial ownership (#2.5) 						
	State participation (#2.6) 						
Monitoring production	Exploration data (#3.1) 						
	Production data (#3.2) 						
	Export data (#3.3) 						

EITI Requirements		Level of Progress				
Categories	Requirements	No Progress	Inadequate	Meaningful	Satisfactory	Beyond
Revenue collection	Comprehensiveness (#4.1)					
	In-kind revenues (#4.2)					
	Barter agreements (#4.3)					
	Transportation revenues (#4.4)					
	SOE transactions (#4.5)					
	Direct subnational payments (#4.6)					
	Disaggregation (#4.7)					
	Data timeliness (#4.8)					
	Data quality (#4.9)					
Revenue allocation	Distribution of revenues (#5.1)					
	Subnational transfers (#5.2)					
	Revenue management and expenditures (#5.3)					
Socio-economic contribution	Mandatory social expenditures (#6.1)					
	SOE quasi-fiscal expenditures (#6.2)					
	Economic contribution (#6.3)					
Outcomes and impact	Public debate (#7.1)					
	Data accessibility (#7.2)					
	Follow up on recommendations (#7.3)					
	Outcomes and impact of implementation (#7.4)					
Overall Progress						

No progress. All or nearly all aspects of the requirement remain outstanding and the broader objective of the requirement is not fulfilled.

Inadequate progress. Significant aspects of the requirement have not been implemented and the broader objective of the requirement is far from fulfilled.

Meaningful progress. Significant aspects of the requirement have been implemented and the broader objective of the requirement is being fulfilled.

Satisfactory progress. All aspects of the requirement have been implemented and the broader objective of the requirement has been fulfilled.

Beyond. The country has gone beyond the requirements.

This requirement is only encouraged or recommended and should not be taken into account in assessing compliance.

The MSG has demonstrated that this requirement is not applicable in the country.

Corrective actions

The EITI Board agreed the following corrective actions to be undertaken by the DRC. Progress in addressing these corrective actions will be assessed in a second Validation commencing on **16 April 2021**.

1. In accordance with Requirement 1.4, the industry constituency should agree to public nominations procedures ahead of MSG member selection and the DRC should renew the MSG's membership in line with statutory procedures. The DRC should update its internal governance rules to cover all provisions of Requirement 1.4.b and ensure that any deviations from the ToR in practice are properly codified. In accordance with Requirement 1.4.b.vi, the DRC must clarify the practice of per diems for attending EITI meetings or other payments to MSG members to ensure that it does not affect the governance of EITI implementation, or cause any conflict of interest.
2. In accordance with Requirement 2.2, the DRC is required to publicly disclose information about licenses awarded and transferred, including any non-trivial deviations from the applicable legal and regulatory framework and the detailed technical and financial criteria assessed. The DRC is encouraged to ensure the EITI works closely with the relevant ministries to also disclose information about pending applications. In the event of bidding rounds, the DRC is required to disclose the bid criteria, the full list of applicants and is encouraged to document the results of the process.
3. In accordance with Requirement 2.3, the DRC is required to maintain a publicly available register or cadastre system with timely and comprehensive information regarding all licenses held by extractive companies. The DRC should work closely with the Ministry of Hydrocarbons, the Hydrocarbon General Secretariat (SGH) and partners to ensure that a register of oil and gas licenses is publicly available. The CAMI is encouraged to improve the timeliness and comprehensiveness of data on its online cadastre, adding geographical coordinates where possible. It might also wish to make its data available in open data format.
4. In accordance with Requirement 2.6, the DRC should ensure that there is a publicly available and comprehensive list of extractives companies in which the government, or any SOE, holds equity, and the existence of any change in the year under review and a description of the terms associated with the government's, or SOE's, equity should also be included. The DRC should ensure that the prevailing rules and practices regarding the financial relationship between the government and SOEs, e.g. the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing

are publicly disclosed. The DRC should ensure that the terms of loans and loan guarantees provided by the state and SOEs to extractives companies are comprehensively disclosed in the public domain.

5. In accordance with Requirement 3.2, the DRC is required to publicly disclose production values by commodity, and where relevant by state/region, for all extractive commodities produced in the year under review. The DRC is encouraged to explore ways of using the EITI to roll out the new valuation methodology for extractives production agreed in May 2018 by all mining companies. It may wish to work closely with the Ministry of Mines to ensure that production data compiled by the Cellule Technique de Coordination et Planification Minière (CTCPM) is widely disseminated and compared with data disclosed by mining companies. The DRC is urged to ensure the EITI works closely with the SGH and the CHEVRON ODS, MIOC and TEIKOKU consortium to publicly disclose oil production values in future.
6. In accordance with Requirement 4.1, the DRC should ensure that all companies selected in the scope of reporting comprehensively report all material payment flows, and that decisions on the materiality of revenue flows are based on government unilateral disclosure of total extractives revenues, including those not statutorily-mandated, but nevertheless collected. The DRC should also ensure that full unilateral government disclosure of material revenues, including from non-material companies, is presented disaggregated by revenue flow rather than by company. The DRC may wish to consider revisiting its scoping and materiality decisions, potentially including a two-tiered approach for mid-sized and larger companies, to strike a balance between the comprehensiveness of disclosures and the quality of reporting. To strengthen implementation, the DRC is urged to reassess the existence of government in-kind revenues on an annual basis, with a view to publicly disclosing volumes collected, volumes sold and proceeds of sales per buyer once production commences within areas covered by oil and gas PSCs.
7. In accordance with Requirement 4.5, the DRC should ensure that the role of SOEs, including company payments to SOEs and transfers between SOEs and government entities, is comprehensively and publicly addressed. This should include the disclosure and reconciliation of all material transactions involving SOEs.
8. In accordance with Requirement 4.6, the DRC is encouraged to establish whether direct subnational payments are material. The DRC should clearly document the method behind selecting and reconciling revenue streams, building on improvements in the 2016 scoping study. Following changes in mining legislation in June 2018, the DRC is encouraged to work closely with provincial governments to systematically disclose timely and comprehensive information about payments of shares of mining royalties to relevant subnational governments.
9. In accordance with Requirement 4.9, the DRC should review the agreed quality assurances required from companies and government entities for their EITI reporting. The DRC may wish to ensure that data collection deadlines are established with a view to ensuring full adherence with the quality assurances agreed to for EITI reporting.

10. In accordance with Requirement 5.1, the DRC is required to explain the allocation of extractive revenues that are not recorded in the national budget, including revenues withheld by tax collecting agencies and SOEs. The DRC is encouraged to collaborate with the Ministry of Finance, the Ministry of Budget and SOEs to disclose the allocation of these revenues and provide references to financial reports where relevant. The DRC EITI is also encouraged to provide more information about the “special accounts” to which the CAMI contributes.
11. In accordance with Requirement 5.2.a, the DRC should ensure that material subnational transfers in the extractive sector are publicly disclosed, highlighting discrepancies between subnational transfers in practice and calculations based on the revenue-sharing formula, disaggregated by province and Decentralised Territorial Entity (ETD). The DRC is encouraged to work closely with the Provincial Mining Divisions (*Divisions Provinciales des Mines*), the Ministry of Finance and the DGRAD to publicly disclose timely and comprehensive data about subnational transfers of mining royalties until the change in revenue-sharing in June 2018. In accordance with Requirement 5.2.b, the DRC is encouraged to ensure that any material discretionary or ad-hoc subnational transfers are also disclosed and, where possible, reconciled.
12. In accordance with Requirement 6.1, the DRC is required to disclose material mandatory social expenditures and, where possible, to reconcile them. The DRC is encouraged to pursue its EITI disclosures of voluntary social expenditures. Following legal reforms in the mining sector, the government may wish to explore opportunities for publicly disclosing social and environmental expenditures through routine government systems.
13. In accordance with Requirement 6.2, the DRC is required to disclose quasi-fiscal expenditures where state participation in the extractive sector gives rise to material revenue payments. The DRC should ensure close consultations with SOEs and the Ministry of Portfolio to ensure comprehensive EITI reporting of such expenditures and to develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, including SOE subsidiaries and joint-ventures.

News

Democratic Republic of Congo recognised for progress on EITI implementation

The Democratic Republic of Congo has made meaningful progress in implementing the EITI. Despite the country's positive direction of travel in strengthening transparency, major challenges in accountability and governance remain.

The EITI Board decided today at its meeting in Addis Ababa, Ethiopia, that the [Democratic Republic of Congo has made meaningful progress](#) in implementing the [EITI Standard](#). Recognising efforts to open up the sector and acknowledging the strong potential of the EITI to yield further impact, the

Board nevertheless expressed concerns about the persistence of corruption and mismanagement, as well as broader restrictions to civic space.

“In a country where the extractive industries have consistently accounted for over 80% of exports during the last three decades, the sector’s potential for positive impact on livelihoods is immense,” commented Helen Clark, the EITI’s Board Chair. “Progress has been made in a complex environment. I would urge the Government of the DRC to carefully consider the Validation findings and the next steps it can take to continue its journey towards transparency.”

Successes in transparency and improving government systems

The DRC hosts some of the world’s most extensive deposits of copper, cobalt, coltan, diamonds and gold. [Validation](#), the EITI’s quality assurance process, showed that EITI reporting has shed light on the profile and operations of the numerous companies operating in the DRC, as well as the implementation of the SICOMINES infrastructure-for-minerals deal.

Validation highlighted that the EITI has had an impact on the organisational culture of government agencies and companies, changing the way they report on their activities, payments and revenues. For example, the [Ministry of Finance](#) and the [Ministry of Mines](#) show the potential for transitioning towards the routine disclosure of data. Government agencies are encouraged to tackle challenges related to the comprehensiveness and reliability of the data they disclose through greater collaboration with supreme audit institutions and other oversight bodies. Gaps between the government’s contract disclosure policy and practice is one key area where weaknesses in sector oversight were identified by EITI stakeholders.

The DRC EITI also represents an authoritative voice on beneficial ownership transparency, in a context where discussing the link between politically-exposed persons and natural resources is often seen sensitive. EITI stakeholders succeeded in including beneficial ownership transparency provisions in the [2018 Mining Code](#) and suggested related provisions in the oil and gas, mining and forestry sectors in a draft decree.

Fragile wins in civic space, in a challenging context

Although Validation did not find violations to the [Civil Society Protocol](#) in respect of civil society organisations substantially involved in the EITI, the Board expressed concerns about the wider environment in which civil society organisations operate in the Democratic Republic of Congo. Within the extractives sector, however, the Validation documented the remarkable extent of the civil society constituency’s engagement in the EITI and in extractives transparency. For example, the [Congomines](#) website, supported by the Carter Centre, constitutes alongside the DRC EITI [website](#) a rich repository of information and demonstrates how civil society actors can use the EITI to catalyse investigations into the management of sector revenues. In the DRC, the EITI has witnessed the emergence of an informed and committed local civil society, working on key issues such as mining revenues paid to provinces or the corporate governance of SOEs.

The EITI has contributed to building trust between stakeholders that have not traditionally worked together. However, a governance crisis in 2016 that led to the suspension of the former national coordinator revealed challenges in ensuring that the multi-stakeholder group (MSG) effectively

carries out its mandate and operates in a transparent manner. The Board therefore encourages the DRC EITI to reconstitute the MSG, and to prioritise a robust process for the recruitment of a national coordinator and the sound management of its financial resources.

The urgent need for progress towards accountability

Stakeholders consulted during Validation questioned progress in bridging the gap between transparency and accountability in the management of the extractive industries. Many noted that transparency alone was not enough to ensure that the development of the DRC's natural resources benefits the country's citizens, despite a [stated](#) objective for the DRC EITI to "*contribute to sustainable development in the DRC through the responsible and transparent management of natural resources*". The Board encouraged the new government, led by President Félix Tshisekedi, to use the EITI to help advance its anti-corruption agenda. The EITI can indeed help identify areas most prone to corruption in the sector, including opaque awards of licenses and contracts.

The decision by the EITI Board allows the DRC 18 months to carry out thirteen corrective actions. Local stakeholders including civil society actors should be at the forefront of demanding further transparency, using reliable and timely information in requesting reforms to drive positive change. The [EITI Standard](#) provides entry points to monitor key issues such as the implementation of regulation on the allocation of revenue to local communities, the contribution of the artisanal and small-scale mining sector to the economy, social and environmental investments by companies, and assessment of whether the country is signing deals in the extractives sector that benefit its citizens.

Notes to Editors

About Validation

The EITI holds all implementing countries to the same global standard. During the Validation process - the EITI's quality assurance mechanism - each implementing country is evaluated on their degree of progress in implementing the EITI Standard.

Validations are intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is in line with the provisions of the EITI Standard. The Validation report, in addition, seeks to identify the impact of the EITI in the country being validated, the implementation of activities encouraged by the EITI Standard, lessons learnt in EITI implementation, as well as any concerns stakeholders have expressed and recommendations for future implementation of the EITI. The outcome of a Validation report is an overall assessment of Satisfactory, Meaningful, or Inadequate progress.

More information about the Validation procedure can be found [on EITI's Overview of Validation page](#).