

Decision reference: 2017-56/BM-38

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The Board's decision

The Board came to the following decision regarding Niger's status:

The Board agrees that Niger has made inadequate progress overall in implementing the 2016 EITI Standard. The Board's determination of Niger's progress with the EITI's requirements is outlined in the assessment card below.

With respect to the requirement 1.3 regarding civil society participation, the EITI Board used its discretion to consider events subsequent to the commencement of Validation. The Board noted that the situation had deteriorated significantly between March and September 2017. The Board concluded that there was not an enabling environment for civil society participation, and that Niger was no longer adhering to the civil society protocol. Therefore, Niger was assessed as having made "inadequate progress".

In addition, areas of concern relate to industry engagement (1.2), governance of the multi-stakeholder group (1.4), work plan (1.5), legal framework (2.1), license allocations and register (2.2 and 2.3), policy on contract disclosure (2.4), state participation (2.6), production data (3.2), comprehensiveness (4.1), barter agreements (4.3), state-owned enterprises transactions (4.5), direct subnational payments (4.6), data quality (4.9), revenue management and expenditures (5.1), subnational transfers (5.2), mandatory social expenditures (6.1), quasi-fiscal expenditures (6.2) economic contribution (6.3), public debate (7.1) and outcomes and impact of implementation (7.4).

Accordingly, the EITI Board agreed that Niger will need to take corrective actions outlined below. Progress with the corrective actions will be assessed in a second Validation commencing on **26 April 2019**. In accordance with the EITI Standard, Niger's MSG may request an extension of this timeframe, or request that Validation commences earlier than scheduled.

The Board's decision followed a Validation that commenced on 1 November 2016. In accordance with the 2016 EITI Standard, an initial assessment was undertaken by the International Secretariat. The findings were reviewed by an Independent Validator, who submitted a draft Validation report to the MSG for comment. The MSG's comments on the report were taken into consideration by the independent Validator in finalising the Validation report and the independent Validator responded to the MSG's comments. The final decision was taken by the EITI Board.

Background

Niger has been an EITI implementing country since 2007. Niger's decision to implement the EITI was primarily intended to support the government's efforts to diversify the economy away from its dependence on mining, for the benefit of citizens. Niger was accepted as an EITI Candidate on 27 September 2007, and the Niger EITI MSG was formally established by Prime Ministerial Decree 0073/PM on 4 July 2005. Niger was designated compliant under the EITI Rules in March 2011.

The Validation process commenced on 1 November 2016. In accordance with the Validation procedures, an [initial assessment](#) was prepared by the International Secretariat. The Independent Validator reviewed the findings and wrote a [draft Validation report](#). [Comments](#) were received from the MSG. The Independent Validator reviewed the comments and responded to the MSG, before finalising the [Validation report](#).

The Validation Committee reviewed the case on 28 August 2017. During these discussions, concerns were raised regarding Niger's adherence to requirement 1.3 on civil society participation. The concerns related to incidents before the commencement of Validation (on 1 November 2016) and more recent events. The Validation procedure states that: "Without prejudice to the ability of the Board to exercise their discretion to consider all available evidence, the Secretariat should not take into account actions undertaken after the commencement of Validation".

The Validation Committee requested that the Secretariat provide an updated assessment of requirement 1.3. The updated assessment (attached as an annex, below) concludes that the situation had deteriorated significantly between March and September 2017 and that Niger is no longer adhering to requirement 1.3. It recommended that "should the Validation Committee wish to exercise its discretion to consider events subsequent to the commencement of Validation, the International Secretariat recommends that Niger is found to have made inadequate progress on requirement 1.3". The government and MSG were invited to comment. The Validation Committee reviewed the situation on 4 October, and agreed that, subject to considering the MSG's comments, to recommend an assessment of "inadequate progress" on Requirement 1.3.

Based on the findings above, the Validation Committee agreed to recommend the assessment card and corrective actions outlined below.

The Committee also agreed to recommend an overall assessment of "inadequate 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.

...

iii. **Inadequate progress.** The country will be suspended and requested to undertake corrective actions until the second validation. For the suspension to be lifted, the country must in its second validation demonstrate at least meaningful progress.

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 deadline for the 2016 EITI Report.

Scorecard

EITI Requirements		Level of Progress				
Categories	Requirements	No Progress	Inadequate	Meaningful	Satisfactory	Beyond

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)				■	
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)	■				

EITI Requirements		Level of Progress				
Categories	Requirements	No Progress	Inadequate	Meaningful	Satisfactory	Beyond
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 Niger. Progress in addressing these corrective actions will be assessed in a second Validation commencing on **26 April 2019**:

1. In accordance with requirement 1.2, companies should demonstrate that they are fully, actively and effectively engaged in the EITI process. In accordance with requirement 8.3.c.i, the company constituency is requested to develop and disclose an action plan for addressing the deficiencies in company engagement documented in the initial assessment and validator's report within three months of the Board's decision, i.e. by **26 January 2018**.

2. In accordance with requirement 1.3.c, the government must ensure that there are no obstacles to civil society participation in the EITI process. For the suspension to be lifted, the government should ensure that the civil society protocol is fully adhered to, including ensuring that civil society representatives are able to engage in public debate related to the EITI process and express opinions about the EITI process without restraint, coercion or reprisal.
3. In accordance with requirement 1.4.a.ii, the MSG should ensure that its procedures for nominating and changing multi-stakeholder group representatives are public and confirm the right of each stakeholder group to appoint its own representatives. In accordance with requirement 1.4.b.ii and 1.4.b.iii, the MSG should undertake effective outreach activities with civil society groups and companies, including through communication such as media, website and letters, informing stakeholders of the government's commitment to implement the EITI, and the central role of companies and civil society. Members of the MSG should liaise with their constituency groups. In accordance with requirement 1.4.b.vi, the MSG should ensure an inclusive decision-making process throughout implementation, particularly as concerns industry and civil society.
4. In accordance with requirement 1.5.a, the MSG should maintain a current work plan that sets EITI implementation objectives that reflect national priorities for the extractive industries. In accordance with requirement 1.5.b, the work plan must reflect the results of consultations with key stakeholders. In line with requirement 1.5.c, the work plan must assess and outline plans to address any potential capacity constraints, identify and outline plans to address any potential legal or regulatory obstacles to EITI implementation, and outline the multi-stakeholder group's plans for implementing the recommendations from Validation and EITI reporting. In accordance with requirement 1.5.f, the work plan must be updated annually.
5. In accordance with Requirement 2.1.a, Niger must disclose a description of the legal framework and fiscal regime governing the extractive industries. This information must include a summary description of the fiscal devolution, an overview of the relevant laws and regulations, and information on the roles and responsibilities of the relevant government agencies.
6. In accordance with requirement 2.2.a, Niger should ensure annual disclosure of which mining, oil, and gas licenses were awarded and transferred during the year under review, highlighting the technical and financial requirements and any non-trivial deviations from the applicable legal and regulatory framework governing license awards and transfers.
7. In accordance with requirement 2.3, Niger should also ensure that the license holder names, dates of application, award and expiry, commodity(ies) covered and coordinates for all oil, gas and mining licenses held by material companies are publicly available.
8. In accordance with requirement 2.4, Niger is required to document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals through the EITI Report. This should include relevant legal provisions, any reforms that are planned or underway as well as an overview of contracts already published.
9. In accordance with requirement 2.6, the MSG should provide an explanation of the prevailing rules and practices related to SOEs' retained earnings and reinvestment. The government should also ensure annual disclosure of any changes in government ownership in SOEs or their

subsidiaries, and provide a comprehensive account of any loans or loan guarantees extended by the state or SOEs to mining, oil, and gas companies.

10. In accordance with requirement 3.2, the MSG should ensure future EITI Reports provide disaggregated production volumes and values for all key minerals produced in the year(s) under review.
11. In accordance with requirement 4.1.a, Niger ensure that the materiality thresholds for selecting companies and revenue streams for reconciliation ensures that the exclusion of companies or revenues does not significantly affect the comprehensiveness of the EITI Report. The MSG is invited to consider whether setting a quantitative materiality threshold for selecting companies would ensure these aims are met. Niger should ensure that future EITI Reports clearly include all revenue streams listed under requirement 4.1.b in the scope of reconciliation. In accordance with requirement 4.1.c, the MSG should also ensure that the Independent Administrator assesses the materiality of non-reporting companies and government entities as well as provide its opinion on the comprehensiveness of the EITI Report. In accordance with requirement 4.1.d, the government should also ensure that future EITI Reports include aggregate information about the amount of total revenues received from each of the benefit streams agreed in the scope of the EITI Report.
12. In accordance with requirement 4.3, the MSG and the Independent Administrator are required to consider whether there are any agreements, or sets of agreements involving the provision of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities. Where the MSG concludes that these agreements are material, the MSG and the Independent Administrator are required to ensure that the EITI Report addresses these agreements, providing a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. Where reconciliation of key transactions is not feasible, the MSG should agree an approach for unilateral disclosure by the parties to the agreement(s) to be included in the EITI Report.
13. In accordance with requirement 4.4, the MSG should assess the materiality of any transportation revenues and disclose such revenues should they be assessed as material.
14. In accordance with requirement 4.5, the MSG must ensure that the reporting process comprehensively addresses the role of SOEs, including material payments to SOEs from extractives companies, and transfers between SOEs and other government agencies.
15. In accordance with requirement 4.6, it is required that the MSG establish whether direct payments from companies to subnational governments, within the scope of agreed revenue streams, are material. Where material, the MSG must ensure that direct company payments to subnational government entities are disclosed and reconciled in future EITI Report.
16. In accordance with Requirement 4.9.a, the EITI requires an assessment of whether the payments and revenues are subject to credible, independent audit, applying international auditing standards. In accordance with requirement 4.9.b.iii and the standard Terms of Reference for the Independent Administrator agreed by the EITI Board, the MSG and Independent Administrator should:

- a. examine the audit and assurance procedures in companies and government entities participating in the EITI reporting process, and based on this examination, agree what information participating companies and government entities are required to provide to the Independent Administrator in order to assure the credibility of the data in accordance with Requirement 4.9. The Independent Administrator should exercise judgement and apply appropriate international professional standards^[1] in developing a procedure that provide a sufficient basis for a comprehensive and reliable EITI Report. The Independent Administrator should employ his/her professional judgement to determine the extent to which reliance can be placed on the existing controls and audit frameworks of the companies and governments. The Independent Administrator's inception report should document the options considered and the rationale for the assurances to be provided.
 - b. ensure that the Independent Administrator provides an assessment of comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided.
 - c. ensure that the Independent Administrator provides an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested information. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, including naming any entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on the comprehensiveness and reliability of the report.
1. In accordance with requirement 5.1.a, the MSG should ensure that the allocation of extractives revenues not recorded in the national are explained, with links provided to relevant financial reports as applicable.
 2. In accordance with requirement 5.2.a, the MSG should assess the materiality of subnational transfers prior to data collection and ensure that the specific formula for calculating transfers to individual local governments be disclosed, to support an assessment of discrepancies between budgeted and executed subnational transfers.
 3. In accordance with requirement 6.1.a, the MSG should agree a clear distinction between mandatory and voluntary social expenditures prior to data collection and ensure that material mandatory social expenditures are comprehensively disclosed in future EITI Reports. Where beneficiaries of mandatory social expenditures are a third party, i.e. not a government agency, the MSG should ensure that the name and function of the beneficiary be disclosed.
 4. In accordance with requirement 6.2, the MSG should consider the existence and materiality of any quasi-fiscal expenditures undertaken by extractives SOEs and their subsidiaries, ensuring that all material quasi-fiscal expenditures are disclosed in future EITI Reports.
 5. In accordance with requirements 6.3, the MSG should ensure that future EITI Reports provide the contribution of the mining, oil and gas sectors to GDP in absolute terms and an estimate of informal sector activity (6.3.a) as well as comprehensive extractives employment figures, in absolute and relative to total employment (6.3.d) for the year(s) under review.

6. In accordance with requirement 7.1, the MSG must ensure that EITI Reports are comprehensible, actively promoted, publicly accessible and contribute to public debate. Key audiences should include government, parliamentarians, civil society, companies and the media. In accordance with requirement 7.1(e), the MSG should also ensure that outreach events, whether organised by government, civil society or companies, are undertaken to spread awareness of and facilitate dialogue about EITI Reports across country. The MSG should discuss the role the EITI could play in achieving national priorities and how it can generate public debate around natural resource use.
7. In accordance with requirement 7.4iv-v, the MSG should ensure that future annual progress reports include an assessment of progress with achieving the objectives set out in the work plan including the impact and outcomes of the stated objectives, as well as a narrative account of efforts to strengthen the impact of EITI implementation on natural resource governance. This should include an overview of the multi-stakeholder group's responses to and progress made in addressing the recommendations from reconciliation and Validation in accordance with Requirement 7.3

The MSG is encouraged to consider the other recommendations in the Validator's Report and the International Secretariat's initial assessment, and to document the MSG's responses to these recommendations in the next annual progress report.

^[1] For example, ISA 505 relative to external confirmations; ISA 530 relative to audit sampling; ISA 500 relative to audit evidence; ISRS 4400 relative to the engagement to perform agreed-upon procedures regarding financial information and ISRS 4410 relative to compilation engagements.

News

Niger progressing slowly against the EITI Standard

EITI Board suspends the country noting in particular a recent deterioration in civil society space.

Today the international EITI Board agreed that Niger has made progress against key issues in the 2016 EITI Standard but that significant areas of concern needed to be addressed. Having been compliant with the EITI Rules since 2011, this is the first time that Niger has been assessed against the EITI Standard. Acknowledging the security challenges in the country, the EITI Board identified gaps, but also opportunities to make the EITI process more meaningful in Niger. Niger is a leading producer of uranium, ranked as the world's fourth largest producer in 2016 behind Kazakhstan, Canada and Australia. The country has produced uranium since the 1970s, coal since 1975, gold since 2004 and crude oil since 2011.

"Niger has made some progress in difficult circumstances. We encourage all stakeholders in Niger to work together to resolve key issues related to space for civil society so that this suspension can be lifted as soon as possible." said Fredrik Reinfeldt, Chair of the EITI Board.

Progress in a challenging environment

Niger's decade long EITI implementation has led to tangible public finance reforms. Contract transparency is now mandated by the constitution, even if it is not always implemented in practice. These notable achievements by a landlocked country in a volatile region were made despite falling prices of oil and uranium; difficulties of access to the international market for oil production, and increasing transnational security threats. In addition, more than 80% of Niger's land area of 1.27 million km² is in the Sahara Desert. A recent discovery of gold in the Djado plateau along the Algerian and Libyan border, where the government is also combatting Islamist groups, has made the governance of the extractive sector even more complex.

The Board praised the commitment of the Government of Niger to the process in challenging circumstances. It concluded that the country had made progress on publication of exploration activities, production and export data and revenue management and expenditure. Niger also demonstrated strong ownership of the EITI process with key stakeholders involved in the production and dissemination of the EITI Reports.

However, more to do including opening space for civil society

In addition to internal governance challenges of the EITI process itself, key areas of concerns included the overall quality of EITI reporting. Validation concluded that Niger had made inadequate progress or no progress on 14 EITI Requirements. Outstanding EITI requirements included transparent systems for license allocation, the lack of a comprehensive public license register, gaps between the government policy on contract transparency as mandated by the constitution and the practice of limited disclosure of contracts. EITI Requirements related to state-owned enterprises, data reliability, subnational payments and mandatory social expenditure remained outstanding. Several arrests of civil society representatives in recent months, including journalists and members of the EITI national committee, was also a concern.

An opportunity to use the process to drive reforms

While EITI reporting has successfully been expanded to the oil and gas sector, including midstream refining, the EITI process has tended to operate as a parallel process focused on compliance rather than on addressing the country's natural resource governance priorities. Despite logistical challenges, Niger's EITI stakeholders have generated a robust national debate on public management of the country's resources. Dissemination of EITI reports to local communities has responded to demand for information, such as on subnational transfers, production figures and revenue management by the government.

Jonas Moberg, Head of the EITI commented that *"Niger has made progress in opening up the extractives sector. It now has the opportunity to establish systems to automatically disclose data and to draw all stakeholders - local communities, parliamentarian, anti-corruption watch-dogs - into the national debate about the governance of the sector."* said

Full text of the Board decision

Following the conclusion of Niger's Validation under the 2016 EITI Standard, the EITI Board concluded that Niger has made inadequate progress overall in implementing the EITI Standard. In accordance with requirement 8.3.c.iii, the EITI Board agreed that Niger will be suspended and will need to undertake corrective actions outlined below. Having considered developments subsequent to Validation, the EITI Board also determined that Niger has made inadequate progress in meeting the EITI's requirements on civil society engagement, which also implies suspension as per requirement 8.3.c.i. Progress with the corrective actions will be assessed in a second Validation commencing on 25 April 2019.

The Board recognised Niger's pioneering role in demonstrating the relevance of the EITI to Africa's largest uranium producer. It recognised the country's significant physical, institutional and strategic challenges as a land-locked country ranked at the bottom of the United Nations' Human Development Index. Validation has confirmed that Niger's multi-stakeholder group has actively engaged in all aspects of EITI reporting. Validation and subsequent assessments have also demonstrated the importance of the EITI to provide space for civil society oversight of the management of the extractive industries, amidst concerns from some stakeholders that civil society space is being closed.

In making its decision, the Board takes note of the Government of Niger's efforts to ensure transparency provisions in the 2010 Constitution and expand EITI reporting to the oil and gas sector, including the midstream, and encourages it to implement this statutory openness through accessible, regular disclosure of information on the sector to its citizens.

Validation and subsequent assessments also put the spotlight on longstanding discussions among Nigerien stakeholders about the freedom of expression for civil society to demand information on extractives governance. The challenges for EITI Niger are to ensure freedom of expression about the sector for civil society and to establish robust mechanisms to channel voices not directly represented on the MSG into the national debate to ensure EITI implementation meets domestic challenges.

The Board welcomed ongoing efforts to automate EITI data collection as a first step towards mainstreaming EITI reporting under requirement 2-6. The Board takes note of these developments and looks forward to working together with Nigerien stakeholders on these issues. In the interim, the Board has determined that Niger will have 18 months to carry out corrective actions as outlined below.

Notes

- [Validation](#) is the EITI's independent evaluation mechanism. It assesses countries against progress made in meeting the 2016 Standard.
- The **Board decision** in full, including corrective actions and impact of the EITI in the country, can be found here: eiti.org/validation/niger/2017
- The reports giving an extensive review of Niger's extractive sector can be found here: <https://eiti.org/document/validation-of-niger-2017-documentation>
- The Board has taken decisions on the status of Niger on 26 October 2017: eiti.org/document/validation-schedule-decisions
- See [here](#) for a full explanation of the various levels of progress under the EITI Standard.
- For further information about the EITI in Niger, please visit the [country page](#) on the EITI

website and Niger's [own EITI website](#).