Board decision on the Validation of the Republic of Congo

Decision reference: 2020-68/BC-295
Table of contents

The Board’s decision .................................................................................................................. 3
Background .................................................................................................................................. 4
Scorecard ...................................................................................................................................... 5
Corrective actions ........................................................................................................................ 7
The Board's decision

The EITI Board came to the following decision:

The EITI Board agrees that the Republic of Congo has fully addressed six of the 15 corrective actions from the country’s first Validation. Consequently, the Republic of Congo has made meaningful progress overall in implementing the 2016 EITI Standard, with considerable improvements across several individual requirements.

The Board congratulates the Government of the Republic of Congo and the Multi-Stakeholder Group (Comité national ITIE) on the progress achieved in improving transparency in license information, crude oil sales, transactions related to state-owned enterprises and the extractive industries’ contribution to the national economy. The Board commends the Republic of Congo on its publication of contracts in the mining, oil and gas sectors. The Republic of Congo’s efforts to expand EITI implementation to the forestry sector are welcome. The Board acknowledges the expansion of transparency through EITI reporting to areas of relevance to public debate and policy-making, including disclosures of all companies’ oil sales, costs of oil production and the routine publication of the national oil company SNPC’s (Société nationale des pétroles du Congo) audited financial statements, albeit at a non-consolidated group level. The Board encourages stakeholders in the Republic of Congo to ensure that their proactive engagement in all aspects of EITI implementation is consistent and sustainable over time.

The Board takes note of the Republic of Congo’s plans to transition to systematic disclosures of EITI data through government and company systems. The Board encourages the government and the MSG to explore opportunities to accelerate the transition to mainstreamed implementation by adapting future cycles of EITI reporting to build on the emerging systematic disclosures, including through the Ministry of Finance’s SYSCORE online reporting platform and further development of key websites such as that of the Ministry of Petroleum and SNPC.

The Board recognises that gaps remain in disclosures related to state-owned enterprises, including analysis of the rules and practice related to the intra-SNPC group financial relations. The Board welcomes the government and MSG’s commitment to disclose additional information on debt and pre-financing agreements, the Centrale Électrique du Congo power project and the transfers to the domestic CORAF refinery. In accordance with commitments to the IMF, the Board takes note of the recording of deductions from oil revenues in the government’s fiscal reports (TOFE) from mid-2018 onwards and encourages the government to fully integrate the related expenditures into the budget-making process. Further efforts are also required to ensure transparency in license allocations, the management of extractive revenues and social expenditures. Despite improvements in the formalisation of MSG nomination procedures, the Board notes that further efforts are required to strengthen multi-stakeholder oversight for EITI implementation. The Board encourages the government and MSG to pursue efforts to ensure comprehensive transparency of extractive contracts and beneficial ownership of extractive license-holders and applicants.

The Government of the Republic of Congo is urged to continue to ensure that there are no legal, regulatory, administrative or practical constraints for civil society to fully, actively and effectively engage in all aspects of EITI implementation. The Board noted evidence that the civil society protocol has been used several times in the Republic of Congo to cover stakeholders not engaged in EITI implementation. The Board noted improvements in the environment for civil society’s participation in EITI implementation since the first Validation, even if administrative and practical
Board decision on the Validation of the Republic of Congo
Decision reference: 2020-68/BC-295
11 September 2020

Constraints appear to constrain some aspects of civil society’s engagement in EITI-related outreach and dissemination activities.

The Board has determined that the Republic of Congo will have 18 months before a third Validation, i.e. until 11 March 2022, to carry out corrective actions regarding civil society engagement (Requirement 1.3), MSG oversight (Requirement 1.4), license allocations (Requirement 2.2), state participation (Requirement 2.6), barter agreements (Requirement 4.3), distribution of revenues (Requirement 5.1), social expenditures (Requirement 6.1), quasi-fiscal expenditures (Requirement 6.2), and public debate (Requirement 7.1). Failure to achieve satisfactory progress in the third Validation will result in suspension in accordance with the EITI Standard. In accordance with the EITI Standard, the Republic of Congo’s Multi-Stakeholder Group (MSG) may request an extension of this timeframe or request that Validation commences earlier than scheduled.

Background

The Republic of Congo joined the EITI in 2004. On 29 June 2018, the Republic of Congo was found to have made meaningful progress in implementing the 2016 EITI Standard. The Republic of Congo’s second Validation against 2016 EITI Standard commenced on 29 December 2019. The EITI International Secretariat has assessed the progress made in addressing the 15 corrective actions established by the EITI Board following the Republic of Congo’s first Validation. The corrective actions are related to:

1. Civil society engagement (Requirement 1.3)
2. MSG oversight (Requirement 1.4)
3. License allocations (Requirement 2.2)
4. License registers (Requirement 2.3)
5. State participation (Requirement 2.6)
6. Production data (Requirement 3.2)
7. In-kind revenues (Requirement 4.2)
8. Barter and infrastructure provisions (Requirement 4.3)
9. Transactions related to state-owned enterprises (Requirement 4.5)
10. Data quality (Requirement 4.9)
11. Distribution of extractive industry revenues (Requirement 5.1)
12. Social expenditures (Requirement 6.1)
13. Quasi-fiscal expenditures (Requirement 6.2)
14. Economic contribution (Requirement 6.3)
15. Public debate (Requirement 7.1).

The Board asked the Republic of Congo to address these corrective actions to be assessed in the second Validation. The Republic of Congo has undertaken a number of activities to address the corrective actions:

- The MSG met three times in 2017, once in 2018 and four times in 2019, based on MSG meeting minutes published on the EITI Congo website.
- On 12 June 2018, the MSG discussed the Ministry of Finance and Budget’s development of a new extractive revenues reconciliation system (SYSCORE), that would function as an e-reporting system for extractives payments and revenues.
- On 22 June 2018, Minister of Interior, Decentralisation and Territorial Administration Charles
Nganfouomo chaired a meeting of the MSG to discuss the recommendations of the Republic of Congo’s first Validation under the EITI Standard.

- On 25 October 2018, the civil society constituency agreed Terms of Reference for procedures to nominate and replace the constituency’s MSG members.
- On 19 December 2018, the MSG approved and published the 2017 annual progress report.
- On 7 January 2019, the MSG approved the inception report for its 2016 and 2017 EITI Reports.
- In mid-2019, the Ministry of Hydrocarbons launched the country’s first online oil and gas cadastral portal, developed by the Revenue Development Foundation (RDF).
- On 5-11 October 2019, the EITI International Secretariat undertook a pre-Validation and implementation support mission to Brazzaville and Pointe Noire.
- On 15 November 2019, the MSG approved Terms of Reference for dissemination workshops for the 2016 and 2017 EITI Reports.
- On 18 December 2019, the MSG updated and adopted its 2020 EITI work plan, published on the EITI Congo website.
- On 18 December 2019, the MSG approved and published the 2018 annual progress report.
- On 23 December 2019, the MSG approved the inception report for its 2018 EITI Report.
- On 27-28 December 2019, the government issued three new Government Decrees institutionalising the EITI and MSG, appointing the MSG Chair and Vice-Chairs and nominating the Permanent Secretary of EITI Congo.

The Republic of Congo’s second Validation commenced on 29 December 2019. The Secretariat assessed the progress made in addressing the 15 corrective actions established by the EITI Board. The draft assessment was sent to the MSG on 14 April 2020. Following MSG comments received on 10 June 2020, the assessment was finalised for consideration by the EITI Board.

### Scorecard

<table>
<thead>
<tr>
<th>EITI Requirements</th>
<th>Level of Progress</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Categories</strong></td>
<td><strong>Requirements</strong></td>
</tr>
<tr>
<td>MSG oversight</td>
<td><strong>Government engagement (#1.1)</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Industry engagement (#1.2)</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Civil society engagement (#1.3)</strong></td>
</tr>
<tr>
<td></td>
<td><strong>MSG governance (#1.4)</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Workplan (#1.5)</strong></td>
</tr>
<tr>
<td>Categories</td>
<td>Requirements</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Licenses and contracts</strong></td>
<td>Legal framework (#2.1)</td>
</tr>
<tr>
<td></td>
<td>License allocations (#2.2)</td>
</tr>
<tr>
<td></td>
<td>License register (#2.3)</td>
</tr>
<tr>
<td></td>
<td>Policy on contract disclosure (#2.4)</td>
</tr>
<tr>
<td></td>
<td>Beneficial ownership (#2.5)</td>
</tr>
<tr>
<td></td>
<td>State participation (#2.6)</td>
</tr>
<tr>
<td><strong>Monitoring production</strong></td>
<td>Exploration data (#3.1)</td>
</tr>
<tr>
<td></td>
<td>Production data (#3.2)</td>
</tr>
<tr>
<td></td>
<td>Export data (#3.3)</td>
</tr>
<tr>
<td><strong>Revenue collection</strong></td>
<td>Comprehensiveness (#4.1)</td>
</tr>
<tr>
<td></td>
<td>In-kind revenues (#4.2)</td>
</tr>
<tr>
<td></td>
<td>Barter agreements (#4.3)</td>
</tr>
<tr>
<td></td>
<td>Transportation revenues (#4.4)</td>
</tr>
<tr>
<td></td>
<td>SOE transactions (#4.5)</td>
</tr>
<tr>
<td></td>
<td>Direct subnational payments (#4.6)</td>
</tr>
<tr>
<td></td>
<td>Disaggregation (#4.7)</td>
</tr>
<tr>
<td></td>
<td>Data timeliness (#4.8)</td>
</tr>
<tr>
<td></td>
<td>Data quality (#4.9)</td>
</tr>
<tr>
<td><strong>Revenue allocation</strong></td>
<td>Distribution of revenues (#5.1)</td>
</tr>
<tr>
<td></td>
<td>Subnational transfers (#5.2)</td>
</tr>
<tr>
<td></td>
<td>Revenue management and expenditures (#5.3)</td>
</tr>
<tr>
<td><strong>Socio-economic contribution</strong></td>
<td>Mandatory social expenditures (#6.1)</td>
</tr>
<tr>
<td></td>
<td>SOE quasi-fiscal expenditures (#6.2)</td>
</tr>
<tr>
<td></td>
<td>Economic contribution (#6.3)</td>
</tr>
<tr>
<td><strong>Outcomes and impact</strong></td>
<td>Public debate (#7.1)</td>
</tr>
<tr>
<td></td>
<td>Data accessibility (#7.2)</td>
</tr>
<tr>
<td></td>
<td>Follow up on recommendations (#7.3)</td>
</tr>
<tr>
<td></td>
<td>Outcomes and impact of implementation (#7.4)</td>
</tr>
</tbody>
</table>

**Level of Progress**

- No Progress
- Inadequate
- Meaningful
- Satisfactory
- Beyond
### EITI Requirements

<table>
<thead>
<tr>
<th>Categories</th>
<th>Requirements</th>
</tr>
</thead>
</table>

#### Overall progress

<table>
<thead>
<tr>
<th>Level of Progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Progress</td>
</tr>
<tr>
<td>Inadequate</td>
</tr>
<tr>
<td>Meaningful</td>
</tr>
<tr>
<td>Satisfactory</td>
</tr>
<tr>
<td>Beyond</td>
</tr>
</tbody>
</table>

---

**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.

**Outstanding progress (Beyond).** The country has gone beyond the requirements.

---

**Corrective actions**

The EITI Board agreed the following corrective actions to be undertaken by Republic of Congo. Progress in addressing these corrective actions will be assessed in a third Validation commencing on 11 March 2022:

1. In accordance with Requirement 1.3, the Government of Congo should ensure that there is an enabling environment for civil society participation in the EITI process, and ensure that the rights of civil society and media substantively engaged in the EITI, including but not restricted to members of the multi-stakeholder group, are respected. The Government of Congo should ensure that there are no de facto administrative or practical barriers from any tier of government on civil society’s ability to freely organise public EITI-related dissemination and outreach activities. The government is encouraged to consider the extent to which capacity-building and outreach activities to local government officials could ensure that civil society is consistently able to hold dissemination and outreach events without the presence of security forces and without prior approval, in accordance with provisions of the Constitution and the 1901 Law on associations. To strengthen implementation, civil society may wish to consider more consistently documenting dissemination activities undertaken by CSOs in communities affected by extractive activities, as well as their use of EITI data. The civil society constituency is encouraged to explore alternative channels, including from development partners and international civil society, for developing its technical and financial capacities to fully engage
in all aspects of EITI implementation, including use and analysis of EITI data.

2. In accordance with Requirement 1.4.a, the Republic of Congo should ensure that every constituency is adequately represented on the MSG pursuant to open and transparent nomination procedures that ensure MSG members from civil society, industry and government are independent of each other in both policy and operational terms. In accordance with Requirement 1.4.b, the Republic of Congo should ensure that any non-trivial deviations from its ToR, including both the Decree institutionalising the EITI and the MSG’s own Internal Rules, are properly codified and do not weaken the MSG’s effective oversight of all aspects of EITI implementation. The status of arrears and future payments of per diems should be clarified, with levels of payments to MSG members regularly published in accordance with Requirement 1.4.b.vii, to allay any concerns of conflict of interest in MSG membership. To strengthen implementation, the Republic of Congo is encouraged to consider the extent to which it could replicate the model of tripartite consultations of the MSG in other channels of government and company transparency and accountability mechanisms, while ensuring alignment between the work of different multi-stakeholder channels such as the newly established (multi-stakeholder) Transparency and Accountability Committees established by the March 2017 Transparency Code and under the IMF’s extended credit facility respectively.

3. In accordance with Requirement 2.2.a, the Republic of Congo should ensure public disclosure of a description of the technical and financial criteria assessed in license transfers in the mining and oil and gas sectors, as well as an assessment by the MSG of any material deviations from the applicable legal and regulatory framework governing license awards and transfers for all contract and license awards and transfers during the accounting period covered by the most recent EITI disclosures, including for companies whose payments fall below the agreed materiality threshold. The Republic of Congo may wish to use EITI reporting to disclose commentary on the efficiency and effectiveness of licensing procedures. The Republic of Congo is invited to consider the extent to which information on the process for awarding and transferring mining, oil and gas licenses in practice could be systematically disclosed as a means of complying with Article 14 of the March 2017 Transparency Code (Law 10-2017).

4. In accordance with Requirement 2.6, the Republic of Congo should ensure public disclosure of the prevailing rules and practices regarding the financial relationship between the government and SOEs, including disclosures of transfers, retained earnings, reinvestment and third-party financing related to SOE joint ventures and subsidiaries. The Republic of Congo should disclose details regarding the terms attached to SNPC’s equity stakes in extractives companies and projects, including their level of responsibility for covering expenses at various phases of the project cycle, e.g. full-paid equity, free equity or carried interest. Where there have been changes in the level of government and SNPC ownership during the EITI reporting period, the government and SNPC are expected to disclose the terms of the transaction, including details regarding valuation and revenues. To strengthen implementation as encouraged under Requirement 2.6.c, the Republic of Congo is encouraged to describe the rules and practices related to SNPC’s operating and capital expenditures, procurement, subcontracting and corporate governance, e.g. composition and appointment of the Board of Directors, Board’s mandate and code of conduct. The Republic of Congo is invited to consider the extent to which
information on the rules and practices related to the financial relations between extractives
SOEs (SNPC in particular) and the state could be systematically disclosed as a means of

5. In accordance with Requirement 4.3, the Republic of Congo is 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. This
could include arrangements in which there is physical delivery of crude oil to specific buyers
in reimbursement of loans or the provision of infrastructure works. To be able to do so, the
multi-stakeholder group and the Independent Administrator need to gain a full understanding
of: the terms of the relevant agreements and contracts, the parties involved, the resources
which have been pledged by the state, the value of the balancing benefit stream (e.g.
infrastructure works), and the materiality of these agreements relative to conventional
contracts. Where the multi-stakeholder group concludes that these agreements are material,
the multi-stakeholder group is required to ensure that EITI implementation addresses these
agreements and disclosures provide a level of detail and disaggregation commensurate with
the other payments and revenue streams. The multi-stakeholder group is required to agree a
procedure to address data quality and assurance of the information set out above, in
accordance with Requirement 4.9. The Republic of Congo is invited to consider the extent to
which information on barter and infrastructure arrangements could be systematically
disclosed as a means of complying with Article 66 of the March 2017 Transparency Code (Law

6. In accordance with Requirement 5.1, the Republic of Congo should ensure that an explanation
of the allocation of extractives revenues, whether cash or in kind, that are not recorded in the
national budget is publicly disclosed, with links provided to relevant financial reports as
applicable. The Republic of Congo is invited to consider the extent to which information on the
allocation of extractives revenues not recorded in the national budget could be systematically
disclosed as a means of complying with Articles 12 and 46 of the March 2017 Transparency

7. In accordance with Requirement 6.1, the Republic of Congo should ensure that the legal or
contractual basis for mandatory social expenditures is publicly disclosed. The Republic of
Congo should ensure that public disclosures of mandatory social expenditures include
descriptions of the payments and the identity and functions of any non-government
beneficiaries. These disclosures should be comprehensive of all material mandatory social
expenditures undertaken by all companies included in the scope of reporting.

8. In accordance with Requirement 6.2, the Republic of Congo should undertake a
comprehensive review of all expenditures funded by extractives revenues that are not
transferred to the Treasury that could be considered quasi-fiscal or otherwise. The MSG
should develop a reporting process with a view to achieving a level of transparency
commensurate with other payments and revenue streams, and should include SOE subsidiaries
and joint ventures. The Government is encouraged to explain the statutory framework for the
annual transfer of crude oil to CORAF, setting out clearly whether this represents a form of
subsidy, and the annual value of the subsidy if applicable. The Republic of Congo is invited to consider the extent to which information on quasi-fiscal expenditures could be systematically disclosed as a means of complying with Articles 6, 31, 32 and 33 of the March 2017 Transparency Code (Law 10-2017).

9. In accordance with Requirement 7.1, the Republic of Congo must ensure that government and company disclosures comprehensible, actively promoted, publicly accessible and contributes to public debate. The Republic of Congo should ensure that the information is widely accessible and distributed, that outreach events, whether organised by government, civil society or companies, are undertaken to spread awareness of and facilitate dialogue about governance of extractive resources, building on EITI disclosures across the country in a socially inclusive manner.