

Second Validation of Togo: Final assessment by the EITI International Secretariat

Table of Contents

1. Summary.....	2
2. Scorecard	3
3. Background.....	4
4. Review of corrective actions.....	5
4.1 Corrective action 1: MSG governance (#1.4)	5
4.2 Corrective action 2: Work plan (#1.5)	9
4.3 Corrective action 3: Policy on contract disclosure (#2.4)	11
4.4 Corrective action 4: State participation (#2.6).....	13
4.5 Corrective action 5: Barter and infrastructure transactions (#4.3).....	15
4.6 Corrective action 6: Transactions between SOEs and government (#4.5).....	16
4.7 Corrective action 7: Subnational transfers (#5.2).....	17
5. Assessments of requirements previously assessed as satisfactory in 1st Validation ...	19
5.1 Corrective action 7: License registers (#2.3)	19
6. Conclusion.....	21

1. Summary

Togo's second Validation commenced on 8 November 2019. The EITI International Secretariat has assessed the progress made in addressing the seven corrective actions established by the EITI Board following Togo's first Validation on 9 May 2018¹. The seven corrective actions relate to:

1. Multi-Stakeholder Group (MSG) governance (Requirement 1.4)
2. Workplan (Requirement 1.5)
3. Policy on contract disclosure (Requirement 2.4)
4. State participation (Requirement 2.6)
5. Barter agreements (Requirement 4.3)
6. SOE transactions (Requirement 4.5)
7. Subnational transfers (Requirement 5.2).

The Secretariat's assessment is that Togo has fully addressed five of the seven corrective actions and made "satisfactory progress" on the corresponding requirements. In addition, the Secretariat's preliminary assessment is that progress in meeting Requirement 2.3 on license registers has regressed to 'meaningful progress' at the start of the second Validation. However, new information disclosed since the commencement of Validation addressed the outstanding gaps on Requirement 2.3. Subject to the EITI Board's consideration of new information disclosed subsequent to the commencement of Validation, the Secretariat proposes that Requirement 2.3 should be assessed as "satisfactory progress". The outstanding gaps relate to MSG governance (Requirement 1.4) and the work plan (Requirement 1.5).








The draft assessment was sent to the Togo EITI MSG on 3 June 2020. Comments from the MSG were received on 22 July 2020. After consideration of the comments from the MSG, the assessment ~~was~~ ~~be~~ finalised for consideration by the EITI Board.

¹ EITI (May 2018), 'EITI Board decision on Togo's first Validation', accessed [here](#) in October 2019

2. Scorecard

EITI Requirements		Level of progress					Direction of Progress
Categories	Requirements	No progress	Inadequate	Meaningful	Satisfactory	Beyond	
Validation scorecard							
MSG oversight	Government engagement (#1.1)						=
	Industry engagement (#1.2)						=
	Civil society engagement (#1.3)						=
	MSG governance (#1.4)						→
	Work plan (#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 & expenditures (#5.3)						
Socio-economic contribution	Social expenditures (#6.1)						=
	SOE quasi-fiscal expenditures (#6.2)						=
	Economic contribution (#6.3)						=
Outcomes and impact	Public debate (#7.1)						=
	Data accessibility and open data (#7.2)						
	Recommendations from EITI (#7.3)						=
	Outcomes & impact (#7.4)						=

Legend to the assessment card

	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. The country has gone beyond the requirement.
	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.

3. Background

Togo was accepted as an EITI Candidate in October 2010. The first Validation of Togo against the EITI Standard commenced on 1 April 2017. On 9 May 2018, the EITI Board found that Togo had made meaningful progress in implementing the 2016 EITI Standard. Seven corrective actions were identified by the Board, as listed above. The Board encouraged Togo to address these corrective actions ~~to be assessed~~ in a second Validation commencing on 8 November 2019.

Togo EITI has undertaken a number of activities to address the corrective actions, including:

- Publishing its 2017 EITI Report on 7 November 2019²;
- Adopting the Order of the Minister of Mines and Energy appointing the members of the Steering Committee on 11 July 2017³;
- Publishing the updated MSG Terms of Reference (ToR) in October 2019⁴;
- Publishing the 2020 Togo EITI work plan in April 2019⁵;
- Publishing a self-evaluation report in November 2019⁶;
- Publishing its 2017 Annual Progress Report in March 2019⁷

The following section addresses progress on each of the corrective actions. The assessment is limited to the corrective actions established by the Board and the associated requirements in the EITI Standard. The assessment follows the guidance outlined in the Validation Guide.⁸ In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as “satisfactory progress” or “beyond” in

² EITI Togo (November 2019), ‘2017 EITI Report’, accessed [here](#) in November 2019.

³ EITI Togo (July 2017) ‘Decree on the nomination of MSG members’, accessed [here](#) in January 2020

⁴ EITI Togo (October 2019) ‘MSG Terms of Reference: Procedure for the renewal of the mandate of Stakeholder representatives’, accessed [here](#) in December 2019

⁵ EITI Togo (September 2018) ‘2019 EITI Workplan’, accessed [here](#) in December 2019

⁶ EITI Togo (December 2019), ‘Second Self-Evaluation Workshop’ report, accessed [here](#) in March 2020

⁷ EITI Togo (March 2019) ‘2017 Annual Progress Report’, accessed [here](#) in December 2019

⁸ EITI (2016) ‘EITI Validation Guide’, accessed [here](#) in March 2020

the 2018 Validation. While these requirements have not been comprehensively assessed, in the Secretariat's view there is no evidence to suggest progress has fallen below the required standard and no additional issues that warrant consideration by the EITI Board.

Commented [GG1]: Should we mention Requirement 2.3 here?

4. Review of corrective actions

As set out in the Board decision on Togo's first Validation, the EITI Board agreed seven corrective actions⁹. The Secretariat's assessment below discusses whether the corrective actions have been sufficiently addressed. The assessments are based on a desk review of minutes of the MSG meetings from February 2018 to November 2019, the 2017 EITI Report, the 2018 annual progress report, the triennial workplan for 2017-2019 and the 2019 annual workplan, alongside various documents submitted by the MSG to the secretariat, e-mail correspondences, and limited stakeholder consultations (in-person with the Technical Secretariat, as well as industry and civil society representatives in September 2019 in Lomé). Documents referenced as part of this review are available on the Togo EITI website.¹⁰

4.1 Corrective action 1: MSG governance (#1.4)

In accordance with Requirement 1.4, the MSG should update its internal governance document with provisions ensuring that (i) representation on the MSG comprises appropriate stakeholders; (ii) there are clear procedures for alternate Steering Committee members and replacement of Steering Committee members; (iii) MSG members liaise with their constituencies; (iv) there is a mechanism for dealing with conflicts of interest; and (v) the Steering Committee's policy on per diems is clear and transparent. The MSG should consider the adoption of the Ministerial order on the renewal of the MSG.

Findings from the first Validation

The first Validation concluded that Togo had made inadequate progress towards meeting this requirement. The Validation found that the invitation to participate in the EITI seemed to have been open and transparent through an invitation in the national press in 2015. Government representation on the MSG was based on the position of the individual in the government, whilst civil society and industry representatives were elected by their own constituencies. The ToR outlined the role and responsibilities of MSG members. An overview of the late 2015 nominations to the MSG described the tenure of MSG membership as being three years. Civil society had an agreed procedure for the renewal of members within its constituency. However, the ministerial order for the renewal of MSG members had not been promulgated, in a bid to have institutional memory ahead of the country's Validation. The provisions for replacement of MSG members remained unclear. There were no provisions requiring MSG members to liaise with their constituent groups or that the MSG had engaged in stakeholder mapping to ensure that all partners were included in the process. Companies represented on the MSG did not include representatives from the hydrocarbon or gold marketing sectors. Although the Steering Committee met regularly, the National Supervisory Committee had not been operational since 2015. The practice of per diems was not clear and the reimbursement of transportation expenses was not clarified by any official documentation. Although there had been conflict between the national secretariat and MSG at times, the internal procedures did not specify the treatment of conflict of interest situations.

⁹ 'EITI Board decision on Togo's first Validation' (May 2018), 'Board Decision 2018-24/BC-249: The Board agreed that Togo has made meaningful progress in implementing the 2016 Standard', accessed [here](#) in October 2019.

Progress since Validation

MSG composition and membership: Although the MSG membership was renewed in October 2019, a week before the start of the Second Validation, the structure of the MSG has not changed since the first Validation. At the time of Validation, the new MSG members had not been confirmed by Decree. According to Decree 2010-024/PR of 30 March 2010¹¹ on the creation, composition, organisation and functioning of the EITI, the government created the National Supervisory Committee, the Steering Committee and the Technical Secretariat to oversee EITI Implementation in Togo. The Supervisory Committee¹² and Steering Committee¹³ are both multi-stakeholder bodies. In July 2017 prior to the first Validation, EITI Togo published a decree renewing the membership of both committees. According to stakeholder consultations, the last renewal of the MSG occurred on 28 October 2019,¹⁴ right before the start of the second Validation, during which all members of the industry and civil society constituency were renewed. There was evidence of constituency consultations to ensure transitional provisions were in place. The official decree nominating these members was yet to be adopted at the start of Validation. Subsequent to the start of Validation, the MSG published the Decree¹⁵ N° 061/MME/CAB/2020 comprising the list of members nominated to the MSG.

The role of the Supervisory Committee is to define the EITI's broader political orientation, supervise the Steering Committee's work and resolve any political bottlenecks to EITI Implementation. Led by the Prime Minister Komi Sélom Klassou, it comprises 16 members including the Prime Minister as Chair of the Supervisory Committee, the Minister of Economy and Finance as the Vice Chair, and 14 other members including the Minister for Mines and Energy (who is the Chair of the Steering Committee), Minister for Environment, Minister for Commerce, Minister for Territorial Administration and Local Communities, Minister for Industry, a representative of the President of the Republic, the National Director of the West African Central Bank. The Supervisory Committee includes 5 representatives of mining associations, the President of the Association of journalists and 1 representative from civil society.

Although the Supervisory Committee is slated as the decision-making organ of the EITI, this committee did not meet in 2019. This contravenes Article 6 of the Decree¹⁶, which states that the Supervisory Committee should meet at least twice a year. There is no clear nominations or renewal procedure for Supervisory Committee members, and no evidence that members adhere to certain provisions in the Decree, such as holding at least 2 meetings a year. The last meeting of the Supervisory Committee was held on 15 October 2018. Subsequent to the start of Validation, the MSG published the Decree¹⁷ N° 2020- 052 /PMRT comprising the list of members nominated to the Supervisory Committee. MSG comments on the Validation report noted that members of the Supervisory Committee meet frequently in an informal capacity to discuss EITI implementation, and that efforts were being made to ensure that the provisions of the Decree were respected.

¹¹ EITI Togo (May 2010), 'Decree N° 2010-024/PR creating the EITI, accessed [here](#) in December 2019.

¹² EITI Togo (May 2017), Decree N° 2017-035/PMRT on the renewal of the members of the Supervisory Committee, accessed [here](#) in January 2020.

¹³ EITI Togo (July 2017), Order N° 37/MME/CAB 2017 on the renewal of the members of the Steering Committee, accessed [here](#) in January 2020. Members of the Supervisory Committee include the Minister of Mines and Energy, the Secretary General of the Ministry of Economy and Finance, the Permanent Secretary for Economic Reforms and Program Monitoring, the Director General of Customs, the Director General of Taxes, the Director General of Mines and Geology, the Director General of Industry, a representative of the Ministry of Territorial Administration, Decentralization and Local Government; two representatives of the National Assembly; a representative of the West African Central Bank, a representative of the Professional Association of Banks and Financial Institutions of Togo, a representative of the Ministry in charge of trade, five representatives of mining and oil companies in the exploitation phase, a representative of the professional association of extractive industries, four representatives of civil society organizations, one representative of the public media and one representative of the private media.

¹⁴ EITI Togo (October 2019) MSG Meeting minutes - List of MSG members for EITI Togo (2019 -2022) accessed [here](#) in March 2020

¹⁵ EITI Togo (June 2020) Decree nominating members of the MSG, accessed [here](#) in July 2020

¹⁶ EITI Togo (October 2010) Internal Regulations for the Supervisory Committee, accessed [here](#) in March 2020

¹⁷ EITI Togo (June 2020) Decree nominating members of the MSG, accessed [here](#) in July 2020

Commented [GG2]: @Chiugo Aghaji generally, there are a lot of details here and it is difficult to follow the thread of our arguments. This is particularly true for the first 3 paragraphs in this section. This is from someone who participated in the first Validation and knows Togo well. It will be difficult for Board members to follow. Let's aim for less detail and more concise language in future initial assessments. Our initial assessment is an important communications tool. Let's think about the main message we're trying to communicate with each paragraph and stick to that. Details can be found in the accompanying documentation.

Article 10 of the Decree creates the Steering Committee, which oversees implementation activities, follow-up on EITI Reporting and quality assurance of data submitted by government and companies. The Steering Committee, which constitutes the MSG in practice and is under the leadership of the Ministry of Mines and Energy. ~~The Committee~~ is comprised of 25 members including the Minister for Mines as the Committee Chair, 10 representatives of government agencies, 8 company representatives and bank representatives and 6 representatives from civil society and the media. The tenure of MSG members is three years, with membership then rotating to the alternates. However, a member may be replaced by their alternate in the event of resignation, loss of the capacity justifying his or her appointment or permanent impediment. Stakeholder consultations confirmed that MSG renewals occurred on a rotational basis for both the industry and civil society constituencies in practice.

Nominations and replacement procedures ~~may~~ have changed since the first Validation. In October 2019, the MSG published an update¹⁸ to the Decree on the nomination and renewal of MSG members and the roles and responsibilities of MSG members. According to the note, members are nominated by their respective constituencies and appointed by order of the Minister of Mines and Energy.

Civil society representation: The civil society constituency on the Steering Committee comprises six members¹⁹, including one from the Federation of Togolese NGOs (FONTOGO), one from the Union of Togolese NGOs (UONGTO), one from the West African Network on Peacebuilding (WANEP), one of the National Union of Independent Syndicates (UNSI), one from the Independent Union of Journalists (UIJT) and one from the Union of Publishing Companies (*Société des Editions* - EDITOGO). Stakeholder consultations confirmed that the civil society constituency was split into three sub-constituencies (professional NGOs, Syndicates and journalists) and that nominations and renewal procedures were different for each sub-constituency. For the public media sub-constituency, membership seems to rotate between four members (Representatives from Radio Lomé, EDITOGO, ATOP and a representative from Rural Radio and Public relations Programming) over a two-year period, meaning that each member sits on the MSG for only nine months. For professional NGOs, there seems to be a yearly rotation between nine members, where 3 members sit on the MSG at a time for a duration of one year each. Stakeholder consultations revealed that this practice, which was the norm in 2017, was changed in October 2019. ~~and~~ The wider civil society constituency decided to nominate members of each sub-constituency and their alternate for a non-renewable three-year term. MSG comments subsequent to the start of Validation, civil society meeting minutes²⁰ and the decree on MSG membership adopted in June 2020 after the start of Validation confirm this in practice. Stakeholder consultations also confirm that the broader civil society constituency is actively consulted and are engaged in the activities of the MSG.

Industry representation: The July 2017 Decree renewing Steering Committee members lists six members from the industry constituency (SCANTOGO, POMAR, CRYSTAL SARL, Togolaise des Grands Caous, GRANUTOGO representing the Professional Association of Extractive Industries in Togo – APIET Togo and the groundwater SOE, TdE). During stakeholder consultations, it was confirmed that the mining SOE, SNPT, was a member of the Steering Committee. Stakeholder consultation also showed that members of this sub-constituency were not aware of their convening, supervision and decision-making role within the EITI, aside from periodically reporting extractives data. According to MSG meeting minutes, the Professional Association of Extractive Industries in Togo (APIET Togo) volunteered to coordinate the constituency but ~~nominations and renewal procedures were not yet published at the start of Validation.~~

¹⁸ EITI Togo (October 2019), Procedure for the renewal of the mandate of MSG members, accessed [here](#) in January 2020.

¹⁹ EITI Togo (October 2019), Civil Society Constituency representatives, accessed [here](#) in December 2019

²⁰ 20 EITI Togo (October 2019) MSG Meeting minutes - List of members of the civil society constituency (2019 -2022) accessed [here](#) in July 2020

Commented [GG3]: This is not clear. We state in the previous sentence that the CS constituency is split into 3 sub-constituencies. We then describe the tenure for journalist and professional NGOs, but this does not include information on the tenure for syndicates.

Who are we referring to when you state the wider civil society? In this context, such a phrase isn't self-explanatory.

Commented [GG4]: Is tenure, mandate etc not covered by the MSG's ToR more generally? The default assumption would be in the absence of constituency specific ToRs (NOT an EITI requirement) that the MSG's TORs would apply.

Government representation: The July 2017 Decree²¹ renewing Steering Committee members lists six members of the government constituency. These include two representatives from Ministries²² (two from the National Assembly²³), one from the West African Central Bank and one from the Professional Association of Bankers and financial establishments in Togo (APBEF).- The nominations and renewal procedures are not codified, although the constituency sought to have more meetings in the lead up to Validation to clarify their constituency guidelines.²⁴

Terms of reference: Although nominations procedures seem to have changed in October 2019 before the start of the Second Validation, the official Terms of Reference and Internal regulation documents have not changed since the first Validation. The MSG is currently carrying out consultations on the nominations of government representatives after the Presidential elections in Togo in February 2020, as well as alternates.

Three working groups on governance, implementation and finance were created within the Steering Committee to review progress on work plan activities, the draft EITI Decree and the requirements of the EITI Standard. They also provide oversight of the internal governance of the ~~two~~ EITI **Supervisory and Steering** Committees and **of** the adequacy of funds for EITI implementation. Stakeholder consultations confirmed that these working groups were active in following up recommendations in the lead-up to Validation.

Decision-making: -For both MSGs, the decision-making procedures have not changed since the first Validation. According to the 2010 Decree²⁵ creating the Togo EITI, decisions are taken by consensus, but in cases where a vote is called, decisions are approved by simple majority. According to the Decree, decisions are taken by a two-thirds (2/3) majority in the absence of consensus. -The MSG Chair takes the final decisions in the case of a stalemate. - Meeting minutes and stakeholder consultations suggest that this procedure is followed in practice, and that most decisions are taken by consensus.

Record-keeping: Details of MSG discussions are reflected in meeting minutes and are available on the EITI Togo website²⁶. The technical secretariat prepares draft minutes of all meetings, which are subsequently approved by the MSG.

Per diems: - According to the Decree, there are no provisions for per diems for members of the Supervisory and Steering Committees. According to Article 5 of the internal regulations, however, seating or transportation allowances may be granted to Committee members and to persons invited in an advisory capacity, the amounts of which are fixed by Prime Ministerial Order. Stakeholder consultations confirmed that Steering Committee members do not receive per diems but receive seating allowances of USD 50 every 3 months to cover transport and logistical costs.

Attendance: Notices of meetings, accompanied by the necessary working documents, are sent to members fifteen (15) days before the meeting. In urgent cases, this deadline may be reduced to three (3) days. A review of meeting minutes shows that the Steering Committee has met regularly to discuss EITI implementation. Article 16 of Decree N 2010-024/PR requires that the MSG hold three ordinary meetings a year. A review of MSG meeting minutes indicates that the MSG held three ordinary meetings in 2019 (21 February, 16 April and 15 October 2019) and two extraordinary meetings (5

²¹ EITI Togo (July 2017), Decree on the nomination of MSG members, Accessed here in January 2020

²² Members of the Steering Committee - one from the Ministry of Territorial Administration, Decentralization and municipalities, and one from the Ministry of Commerce and the Promotion of the private sector).

²³ Members of the Steering Committee - Deputies from the Finance and Economic Development Committee and the Defence and Security Commission

²⁴ EITI Togo (October 2019), Meeting minutes from the administration constituency, accessed [here](#) in March 2020

²⁵ EITI Togo, Decree N° 2010-024/PR creating the EITI, accessed [here](#) in April 2020

²⁶ EITI Togo, Minutes of MSG meetings, accessed [here](#) in March 2020

September and 4 November).²⁷ Most of the discussions centred around governance issues, corrective measures and the publication of the 2017 EITI Report. Analysis of MSG meeting attendance (via MSG meeting minutes) shows attendance remained above 50% in 2019, with a quorum (defined as 50% plus one) reached at all meetings.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action on MSG oversight has been partly addressed and that Togo has achieved meaningful progress on Requirement 1.4. The Government of Togo and the MSG have made significant efforts to ensure a renewal of MSG members in practice. There was a renewal of all members of the civil society and industry constituencies, and consultations show that the nomination and election processes were carried out in an open, fair, transparent and inclusive way. There have also been efforts made by the civil society and government constituencies to clarify and document nominations and renewal procedures. The official decree approving the new MSG members was published after the start of Validation. However, constituency terms of reference for the industry constituency are yet to be published. The MSG also clarified the per diem policy, although official documentation for disbursement of seating or transportation allowance was not available. Although the Supervisory Committee did not meet in 2019, this had little effect on decision-making and implementation activities. -The Chair of the Steering Committee (Minister for Mines and Energy Marc Ably-Bidamon) sits on the Supervisory Committee and ensured high-level government support for implementation activities.

In accordance with Requirement 1.4, Togo should ensure that the procedures for nominating and replacing multi-stakeholder group representatives are public and implemented in a fair, open and transparent way. In particular, the civil society and industry constituencies should elaborate and publish clear nominations and representation guidelines through establishing internal regulations or a civil society code of conduct. The MSG may also wish to build capacities of civil society groups to ensure active participation in technical aspects of EITI Implementation. In anticipation of their work on systematic disclosures, the MSG is encouraged to carry out capacity building activities for its members to ensure that they provide effective oversight of all aspects of EITI disclosures in the transition to systematic disclosures. ~~This would which requires revisions~~ to Article 20 of 2010 Decree creating the Togo EITI, which places the responsibility of extractives data collection on the Independent Administrator. -The MSG should ensure that they share responsibility for ensuring disclosures of EITI data.

4.2 Corrective action 2: Work plan (#1.5)

In accordance with Requirement 1.5, the MSG should ensure that the work plan sets clear implementation objectives that are linked to the EITI Principles and reflect national priorities, and that the work plan clearly sets out the agreed activities and responsible parties.

Findings from the first Validation

The first Validation concluded that Togo had made meaningful progress towards meeting this requirement. The 2014 -2016 EITI work plan included limited reference to activities undertaken to achieve Togo's national priorities, such as the promulgation of a new Mining Code. The work plan indicated time-bound activities with a budget. Activities aimed at addressing any capacity constraints and related to the scope of EITI reporting were also identified. Meetings were scheduled for follow-up on EITI recommendations. The work plan considered the work of the Independent Administrator, but

²⁷ EITI Togo, meeting minutes and attendance list, accessed [here](#) in March 2020

other aspects, such as the dissemination of EITI Reports, had not been taken into account. The triennial work plans were available online to the public, but the annual versions were not published.

Progress since Validation

In addition to Togo EITI's 2017-2019 triannual work plan published in 2016, the MSG updated and adopted its 2019 work plan²⁸ in May 2019 to reflect new requirements in the 2016 and 2019 EITI Standard, as well as resources available to fund its activities. In its assessment of progress in implementation of the triannual work plan, the MSG highlighted that the activities in the 2017-2019 work plan were not fully implemented due to lack of funds. Stakeholder consultations confirmed that the MSG canvassed broadly in the preparation of the work plan, particularly with members of the civil society constituency.

Publicly accessible workplan: The 2017-2019 workplan and the updated 2019 work plan were published on the Togo EITI website²⁹ in May 2019.

Objectives and consultations: The objectives identified in the 2019 work plan -reflect some broader national priorities for the sector, such as encouraging economic development through job creation from the extractive sector; but put a heavier emphasis on the EITI reporting process. National priorities are not clearly spelled out and a clear link between the objectives of EITI implementation was not made.

-According to meeting minutes and stakeholder consultations, the work plan, prepared by the Technical Secretariat and adopted by the MSG on 16 April 2019, was the fruit of in-depth consultations with civil society, technical and financial partners and the MSG.

Measurable and time-bound activities: The 2019 work plan includes a table listing- a number of time-bound activities, with expected outputs from the activities- but does not include measurable outcomes of implementation. Most activities in the 2019 work plan are focused on EITI reporting, with timelines aligned with EITI reporting and Validation deadlines. Furthermore, -not all activities are time-bound.

Capacity constraints: The 2019 work plan includes capacity-building activities on mainstreaming and systematic disclosures. It does not address technical capacity constraints within the MSG nor relate to staffing of the technical secretariat.

Scope of EITI reporting: The work plan enumerates some technical aspects of EITI reporting, including integrating EITI Requirements into national governance systems, the sustainable financing of the EITI process, steps to encourage open data policies and beneficial ownership disclosures.

Legal or regulatory obstacles identified: The workplan does not include proposals to address any broader legal or regulatory obstacles, nor to include beneficial ownership in the legal and regulatory framework. The work plan does not review key achievements to date, or potential obstacles and risks to EITI implementation besides the issue of lack of funding.

Recommendations from Validation and EITI reporting: The work plan outlines proposals to follow up on recommendations from the previous Validation. The MSG carried out two pre-Validation workshops from 14 to 19 August 2019 and October 2019 to identify implementation gaps for each requirement and made efforts to fill these gaps.

Costings and funding sources: The work plan is fully costed and identifies the 4 primary sources of funding for EITI Implementation (government, World Bank/PAMOCI, AfDB and WAEMU) and the funding gaps identified. The government funds the MSG's operational expenditures, including salaries and

²⁸ EITI Togo (September 2018) '2019 EITI Workplan', accessed [here](#) in December 2019

²⁹ EITI Togo 2019 workplan, accessed [here](#) in March 2020

support for the national secretariat, funding of the 2017/2018 EITI Report and the annual contribution to the International Secretariat. The workplan highlights the sustained decrease in government funding, while expectations to fulfil new aspects of the EITI Standard increase. The World Bank/PAMOCI project funds other operational activities not covered by the government, including dissemination of reports, mainstreaming and contract transparency. The AfDB funds training stakeholders, dissemination of the 2015 and 2016 EITI Reports, translation of EITI Reports to local languages (*Ewé* and *Kabyè*), and Technical Secretariat members' participation at the EITI Global Conference in 2019.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action on the work plan has been partly addressed and that Togo has made meaningful progress with considerable improvements on Requirement 1.5. In accordance with Requirement 1.5, the MSG approved an update to the triannual work plan, which includes activities geared towards the scope of EITI Reporting. The work plan is publicly available and reflects some national objectives although these are mostly geared towards EITI Reporting. The work plan includes activities linked to clarifying governance procedures as well as disclosure requirements such as mainstreaming the EITI process, evaluating the results and impacts of EITI reporting, inclusion of beneficial ownership disclosures and elaboration of an open data policy. The work plan outlines the MSG's plans for following up on recommendations from EITI reporting and Validation. There is evidence that the MSG canvassed broadly in the preparation of the work plan.

In accordance with Requirement 1.5, Togo should ensure that national priorities are clearly identified and linked to clear objectives of EITI Implementation beyond reporting. The MSG should also ensure that ongoing activities towards reforms in key areas such as contract transparency and systematic disclosures are included in the work plan. The MSG is encouraged to include plans to address legal and regulatory obstacles to implementation, as well as capacity-building activities to ensure effective oversight of the EITI process. Togo is encouraged to strengthen processes for constituency coordination on the development of the EITI work plan and ensure that the broader government, industry, and civil society constituencies are consulted on future updates of the work plans. Togo may wish to publish more regular updates on work plan execution to reflect the detail with which the MSG and secretariat track implementation. This could further support the MSG's efforts to reach out to prospective donors to support specific work plan activities.

4.3 Corrective action 3: Policy on contract disclosure (#2.4)

In accordance with Requirement 2.4, the MSG should clarify the government's policy on contract transparency, including relevant legal provisions, actual disclosure practices and any government reforms that are planned or underway.

Findings from the first Validation

The first Validation concluded that Togo had made meaningful progress towards meeting this requirement. The 2014 EITI Report did not document the government's policy on disclosure of contracts that govern the extractive sector. Although the government did not have a clear written policy on the publication of contracts, there was a strong desire expressed by civil society and government during the International Secretariat's visit towards the publication of contracts. In practice, Ministerial orders and Presidential Decrees awarding licenses were published in the national gazette. However, the Decrees awarding large mines and hydrocarbons contracts were not yet published and few Ministerial orders for small mining licenses were published online.

Progress since Validation

Government policy: For the mining sector, the 2017 EITI Report documents the government's policy in terms of disclosure of contracts. According to article 9 of ~~Law Act~~ No. 2014-009³⁰ on transparency in public financial management, contracts between the public administration and public or private companies, including natural resource companies and companies operating public service concessions, are required to be made public. ~~The current Mining Code, and the draft law amending the Mining Code³¹, which was adopted by the Council of Ministers in July 2019, do not contain any specific provisions on the publication of mining contracts.~~

Practice and accessibility: In practice, mining contracts and licences entered after the 2014 ~~law Act~~ are published on the website of the Directorate of Mines and Geology (DGMG)³² and on the website of the *Projet de Développement et de Gouvernance Minière* (PDGM),³³ a World Bank supported project. The ~~Dg~~decrees, which includes the complete text of the contracts granting mining licenses are also published in the Official Gazette (*Journal officiel*)³⁴, where they may be consulted free of charge. Consultation of these websites indicates that Decrees for four of the nine licences awarded are publicly available. Stakeholder consultations confirmed that missing information for the remaining licences was due to the recent launch of the cadastre portal (launched in October 2019) and that these would be progressively updated. This confirms the assertion by the Independent Administrator~~orion~~ in the summary data file³⁵, that these publications do not encompass all the contracts.

For oil and gas contracts, the Hydrocarbon Code³⁶ does not set a standard PSC contract model and does not contain any contract disclosure provision. In practice, the contracts signed in 2010 between ENI and the government have not been published.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to the policy on disclosure of contracts has been fully addressed and that Togo has made satisfactory progress on Requirement 2.4. The MSG has documented the government's policy on contract disclosure, which is in favour of the contract publication. In its comments on the draft Validation report, the MSG highlighted its view that the article 9 of the 2014 Act reflects a clear government policy in favour of contract disclosure. Mining contracts are published on several online sites. The EITI Report lists information on contracts entered into for the year under review but does not -clearly list which contracts and licenses have been published in full. There are hence doubts regarding the exhaustivity of the data published in each repository.

To strengthen implementation, the MSG is encouraged to address the new provisions of Requirement 2.4, with particular attention on establishing a system for all licenses and contracts to be systematically published from 1 January 2021. The MSG is also encouraged to include in its work plan detailed activities towards comprehensive contract disclosures. The MSG may also wish would assess the comprehensiveness of the contract disclosures and the exhaustivity of the contractual data published in various repositories, as well as explore opportunities to collate all mining contract disclosures to a single repository to prevent duplication of efforts.

³⁰ Official gazette, Republic of Togo, accessed [here](#) in March 2020

~~³¹ Official gazette, Republic of Togo, accessed [here](#) in March 2020.~~

³² DGMG website, 'Mining contract decrees' publication by the DGMG, accessed [here](#) in March 2020

³³ PDGM website, 'Mining Contract Decrees', accessed [here](#) in December 2019

³⁴ Official gazette, Republic of Togo, available [here](#)

³⁵ EITI Togo (October 2019), 2017 Summary Data File, accessed [here](#) in March 2020

³⁶ Official gazette, Republic of Togo, accessed [here](#) in December 2019

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4.4 Corrective action 4: State participation (#2.6)

In accordance with Requirement 2.6, the MSG should disclose details regarding the terms attached to the SOE's equity stake, including their level of responsibility to cover expenses at various phases of the project cycle, e.g., full-paid equity, free equity, carried interest, for instance on the company's website. The MSG should also provide details on loans and loan guarantees to SNPT.

Findings from the first Validation

The first Validation concluded that Togo had made meaningful progress in meeting this requirement. The 2014 EITI Report disclosed dividend payments from national companies and mining companies where the state held 10% shares. The 2014 EITI Report provided some information on the prevailing rules and practices regarding the financial relationship between the government, SNPT and TdE, such as the transfer of dividends between the SOE and the state. The report did not clarify the rules for retained earnings, reinvestment and third-party financing for the SOEs in the country. This information was included in the management report and the decisions of the SNPT Supervisory Board communicated with the International Secretariat but was not publicly available. The report declared the level of ownership of the government and SOE in mining, oil and gas companies operating within the country's oil, gas and mining sector. The report did not identify any changes in the level of ownership during the reporting period. The report had not documented whether details about the loan from the World Bank to revive the SNPT were publicly accessible. The repayment of this loan from the state budget was not commented on in the 2014 EITI Report.

Progress since Validation

Materiality: The 2017 EITI Report confirms that state participation in the extractive industries gave rise to material revenues in 2017. The Treasury (*Direction Générale du Trésor et de la Comptabilité Publique* - DGTCP) received 332 700 000 XOF from the 10% free state equity in the extractive companies listed in the 2017 EITI Report (p.55).

Financial relationship with government: The 2017 EITI Report notes that two state-owned companies operate in the extractive sector, namely Togolaise des Eaux (TdE) in water and the Société Nouvelle des Phosphates du Togo (SNPT) in mining. The report confirms that both companies are 100% state-owned and do not hold interests in other extractive companies. They are subject to the same duties and taxes as the private companies.

The 2017 report describes SNPT's statutory right to decide on its own dividends, retain earnings and reinvest in its operations. The statutes of the SNPT are publicly available on the Togo EITI website³⁷. They describe the distribution of profits (in the form of dividends) to the state, subject to approval by SNPT's Supervisory Board ("*Conseil de Surveillance*"). They also confirm that the state's approval is required for a number of transactions, including the right to obtain loans and loan guarantees from SNPT, implying that the SNPT can resort to third-party (debt) financing. **According to stakeholders consulted, the same rules allegedly apply for the TdE, as a State-Owned Enterprise. The 2017 EITI Report's statement that the two SOEs are 100% owned by the state, implying that the SOEs do not have the right to issue equity to outside investors, although this is not explicitly stated in the EITI Report.**

The SNPT published its audited financial statements on the Togo EITI website³⁸ in October 2019. Together with the EITI Report, they describe the practice of SNPT's financial relations with government in 2017. After a review of SNPT's 2017 financial statements, the Independent Administrator concluded that no short- or long-term grants, loans subsidies were received from national or

³⁷ EITI Togo (October 2019) Statutes of the Société Nouvelle des Phosphates du Togo (SNPT), accessed [here](#) in December 2019

³⁸ EITI Togo (October 2019) Audited Financial Statement of the Société Nouvelle des Phosphates du Togo (SNPT), accessed [here](#) in December 2019

Commented [GG6]: Why do we say allegedly? I suggest we rephrase.

international institutions by SNPT in 2017 (p.60). After a review of SNPT's accounts by the General Auditor, the net earnings for 2017 amounted to XOF 1 616 748 411³⁹ (p.60).- Based on the proposal of the Board of Directors, the Supervisory Board decided to retain 10% of these net earnings as 'legal reserves'; while the remaining amount ("solde global du report à nouveau"), which amounted to XOF 3 949 176 321 at the end of 2017 was carried forward to the following year (p.60).

The EITI Report notes that the Supervisory Board declared dividends of XOF 3 200 000 000 to the state in 2017. The payment of these dividends does not appear in the 2017 EITI Report. Stakeholder consultations confirmed that these payments were made in 2018.

At the start of Validation, information on the practice of the financial relations between TdE and the government was not available. The report confirmed that the net earnings of TdE, which amounted to XOF 101 967 462 in 2017, were placed in reserve.

Commented [GG7]: If such information was provided following the start of Validation, it would good to state that here. If it was not provided after the start of Validation, the distinction between when the information was provided is unnecessary.

Government ownership: -The 2017 EITI Report notes that in addition to the two SOEs, TdE and SNPT, the state also holds a 7.5% equity interest in the rail company TOGO RAIL, involved in the Transport of mineral commodities.

The report also states that, after a review of the audited financial statements of TdE, the company holds a participation of FCFA 6,150,000 in the *Société de développement de la zone franche (SODEZOF)* (p.61). The terms of this participation are not publicly available. The report provides a list of the nine mining companies (Midnight Sun, Alzema, Granutogo, SAD Togo, STII, WACEM, MM Mining, Scantogo-Mine and Pomar) in which the State holds direct equity, as well as the specific equity interest in each (p.57). In line with Article 55 of the Mining Code, the state is statutorily entitled to a 10% 'free equity' of the share capital, except in artisanal and small-scale activities.- According to the report, additional equity participation could also be purchased by the state or the Togolese private sector, for up to 20% share capital. Although this additional equity can be purchased, it is unclear from the report whether full commercial terms are applied for the state. Stakeholder consultations highlighted that the state had agreed to inject additional paid equity, in line with a draft law amending the current Mining Code adopted by the Council of Ministers on 24 July 2019, but that the state had not yet implemented this reform.

Ownership changes: The 2017 Report (p.55) confirms that there was no change in state participation in 2017.

Loans and guarantees: The 2017 EITI Report confirms that the SOEs can borrow or loan money themselves, after receiving state approval (p.58), and that state approval was required for loan guarantees in excess of XOF 500 000. In practice, and according to the EITI Report and the 2017 financial statements of SNPT, there were no short-term or long-term borrowing commitments or grants received from national or international institutions for the year under review.

Regarding the SOE TdE, the EITI Report notes three financial "engagements" in 2017 (investment subsidies, loans, debt leasing and similar contracts) which amounted to XOF 2 607 325 234. After reviewing the company's financial statements, the Independent Administrator was unable to obtain detailed information on the details of these engagements such as dates, initial amounts, identity of borrowers and/or lenders and repayment modalities. This has contributed to the lack of clarity on the transfers of funds between the TdE and the state.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to state participation has been fully addressed and that Togo has made satisfactory progress on Requirement 2.6. Audited

³⁹ EITI Togo (October 2019)- Resolutions of the Supervisory Board relating to the Closing of the Accounts for the financial year 2017, accessed [here](#) in January 2020

financial statements and statutes of SNPT⁴⁰ are available online on the Togo EITI website, and provide an explanation of the statutory rules and practices governing transfers of funds between the SOEs and the state. The EITI Report also describes the financial relations in practice between SNPT and the state in 2017, including the inexistence of loans and loan guarantees, long and short-term debt commitments from national and international organisations, distribution of dividends and retained earnings (p.60). Although the report stated that additional equity participation could also be purchased by the state or the Togolese private sector, for up to 20% share capital, stakeholder consultations confirmed that the state had not purchased additional equity in the year under review. Given that TdE is a SOE in the water sector, weaknesses in EITI disclosures of its financial relations with government are not taken into consideration in the assessment of progress in meeting requirements of the EITI Standard.

To strengthen implementation and enhance citizens' access to information on the rules and practices governing extractives SOEs' relations with government, SNPT could consider developing its own standalone systematic disclosures, for instance through a website where company statutes, audited financial statements and disclosures relating to SNPT's operations beyond the extractive industries could be published. The MSG could also clarify the full legal and commercial terms related to the purchase of additional equity by the State on top of the 10% free equity in extractive companies.

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4.5 Corrective action 5: Barter and infrastructure transactions (#4.3)

In accordance with Requirement 4.3, the MSG should gain a full understanding of the terms of the relevant barter 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. The multi-stakeholder group and the Independent Administrator should ensure that the EITI Report addresses these arrangements, providing a level of detail commensurate with the disclosure and reconciliation of other payments and revenues streams.

Findings from the first Validation

The first Validation concluded that Togo had made meaningful progress in meeting this requirement. The Steering Committee had not defined any materiality threshold for infrastructure provisions and barter arrangements. Barter agreements existed and there was no information that these documents are publicly available. There was no evidence that the MSG had discussed the terms of the relevant agreements and contracts, the parties involved, the resources which had 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.

Progress since Validation

The 2017 EITI Report describes three contracts (Contracts 008, 009 and 010) signed in 2008 between the government and a construction company, *the Société Nationale Chinoise des Travaux de Pont et Chaussées* (SNCTPC). These contracts cover the development of road infrastructure in exchange for tax rebates and access to quarries close to the road construction sites, in addition to a regular payment by the government to SNCTPC. While these contracts were originally signed in 2008, an amendment was concluded on 12 May 2017 related to one of the contracts, which consisted of a road development valued at an estimated XOF 2 515 140 100 (19% of the total extractives revenues for 2017). Only this contract "008" was still active in 2017. According to the IA, based on

⁴⁰ EITI Togo (October 2019) Audited Financial Reports of SNPT, accessed [here](#) in March 2020

consultations with the Public Works Department (*Direction Générale des Travaux Publics*) (see p.81 in the EITI Report), these contracts cannot be qualified as barter arrangements or infrastructure provisions. However, given that the contracts covered the development of public infrastructure (roads) in exchange for tax exemptions and quarrying rights, it can be argued that the arrangement consists of a barter-type agreement in accordance with Requirement 4.3. The contract⁴¹ between the Public Works Department (DGTP) and SNCTPC was published on the Mining and Geology Department's (DGMG) website in September 2019.

The value of the public infrastructure developed under each of the three contracts is disclosed in the 2017 EITI Report, as well as the value of the additional work set by the addendums for Contracts 008 and 010 concluded respectively in 2017. The figures are disclosed by the Public Works Department (DGTP). The report includes a description of the infrastructure work (roads) and their location (p.80). In addition, the 2017 EITI Report provides the location, area and commodities extracted in the quarries by the SNCTPC (p.81). This information is disaggregated by quarry and type of commodity. The values of SNCTPC's tax rebates for the fiscal year covered, disaggregated by revenue stream, are disclosed, totalling XOF 560 413 350 in 2017. However, the report fails to provide any quality assurance procedures regarding the data disclosed.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action on barter and infrastructure transactions has been fully addressed and that Togo has achieved satisfactory progress on Requirement 4.3. The 2017 EITI Report includes a detailed description of three barter-type agreements between the government and a public works company (SNCTPC), involving the development of public infrastructure (roads) in exchange for tax rebates and quarrying rights. Only one of these contracts ("008") was still active in the year under review, with an addendum signed in 2017. While the report does not categorise these agreements as barter-type arrangements, the International Secretariat's view is that they do consist of the provision of public infrastructure in exchange for quarrying rights and tax rebates. This view has been backed up by the MSG of Togo EITI in its comments on the Validation assessment. Regardless of the EITI Report's categorisation of these agreements, it nonetheless provides the 2017 value of tax rebates and quarry products extracted from the licenses provided by the government, as well as the value of each infrastructure works.

To strengthen implementation, Togo is encouraged to ensure that the annual disclosure of the implementation of barter-type arrangements are supported with robust quality assurances. The data relative to the contract could be included in the reporting templates of SNCTPC or any company entering in a barter-type agreement with the State.

4.6 Corrective action 6: Transactions between SOEs and government (#4.5)

In accordance with Requirement 4.5, the MSG should ensure that SNPT provides the detailed information requested by the Independent Administrator allowing for more in-depth reconciliation with government figures.

Findings from the first Validation

The first Validation concluded that Togo had made meaningful progress in meeting this requirement. Validation found that SNPT disclosed its payments to the government in the 2016 EITI Report.

⁴¹ TogoMines website (September 2019), 'SNCTPC Infrastructure Agreement', accessed [here](#) in March 2020

Although SNPT comprehensively disclosed its payments to the government, it did not provide detailed receipts allowing for more in-depth reconciliation with government figures.

Progress since Validation

In terms of payments from companies to SOEs, the 2017 EITI Report notes that SNPT did not collect any revenues from extractives companies in 2017. *Togolaise des Eaux* (TdE) collects the “*taxe de prélèvement de la nappe* », which amounted to XOF 82 600 (less than 0,01% of the total revenues) in 2017. These company payments to TdE, which are retained by the SOE, are reconciled and presented in the report (p.89).

In terms of transactions between SOEs and government, the report confirms that SNPT and TdE are required to make payments to the government like any other private entity. In addition, since SNPT and TdE are 100% owned by the State, they pay dividends to the state. The 2017 EITI Report notes that SNPT’s Supervisory Board decided on a XOF 3 200 000 000 dividend for 2017. However, this payment did not appear in the 2017 reconciliation given that it was made in 2018, according to a government stakeholder. The EITI Report notes that no dividends from previous years were paid during the 2017 fiscal year⁴².

In terms of practice for the year under review, ad hoc transactions between the SNPT and the government did not exist. Given that TdE is a SOE in the water sector, weaknesses in EITI disclosures of its transactions with government are not taken into consideration in the assessment of progress in meeting requirements of the EITI Standard.

Secretariat’s Assessment

The International Secretariat’s assessment is that the corrective action on transactions between SOEs and the government has been fully addressed and that Togo has achieved satisfactory progress on requirement 4.5. The 2017 EITI Report confirms the lack of material transactions between companies and SNPT and the non-existence of ad hoc transaction between the government and SNPT.- Given that TdE is a SOE in the water sector, weaknesses in EITI disclosures of its transactions with government are not taken into consideration in the assessment of progress in meeting requirements of the EITI Standard.

To strengthen implementation, Togo may wish to explore means of systematically disclosing material SOEs’ payments to government through regular online publication of SNPT’s audited financial statement.

4.7 Corrective action 7: Subnational transfers (#5.2)

In accordance with Requirement 5.2, the MSG should liaise with the OTR to disclose the revenue sharing formula for any transfers between national and subnational government entities that are related to revenues generated by the extractive industries, including any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount that was transferred between the central government and each relevant subnational entity.

Findings from the first Validation

⁴² 2017 EITI Report, Table 21, accessed [here](#) in May 2020.

The first Validation concluded that Togo had made meaningful progress in meeting this requirement. The 2014 EITI Report documented statutory mandatory revenue sharing requirements. During scoping, the MSG had discussed and decided to unilaterally report these transfers, although not material. The regulation described the amount to be transferred to each sub-national government unit, but the formula was not yet disclosed by the OTR. The EITI report did not highlight discrepancies between what should have been transferred and the amount actually transferred. Subnational entities received a global amount without identification, making it impossible to identify the company and the nature of the payments.

Progress since Validation

The 2017 EITI Report confirms that mandatory subnational transfers of several extractive and non-extractive revenues exist (p.106). They are collected by the Tax Department (*Commissariat des Impôts*), transferred to the Treasury (DGTCP) before being transferred to Local Government Units (LGU). The transfer of a portion of a government revenue stream to Local Government Units is called “*ristourne*”. The report confirms that the revenue flows are not extractive-specific but that they were paid by several extractive companies in 2017.

The revenue sharing formula for each revenue stream is disclosed (p.107). The comparison between the theoretical amount of transfers calculated according to the formula (XOF 14 087 291 558) and the total of subnational transfers actually disbursed is provided in Table 23, disaggregated by revenue streams and by LGU, as reported by the DGTCP (p.104), noting that there were almost no discrepancies (total discrepancies of only XOF 7). The **Independent Administrator (IA)** reconciled transfers between the Tax Department (CI) and the Treasury (DGTCP), again noting no major discrepancies. Finally, the IA isolated the share of extractive companies in the total transferred, representing XOF 1 059 527 509, or 7,52% of the total transferred. The data is presented disaggregated by revenue stream (Table 26), and by company (Annex 15).

Only four of 15 LGUs have reported on the subnational transfers (“*ristournes*”) that they collected, totalling XOF 23 748 293 (p.114). The report notes that it was not possible to reconcile subnational transfers between DGTCP and LGU, because of a lack of reporting from LGU. (pp.10,105). The report includes no explanation as to why so many LGU did not report the subnational transfers (“*ristournes*”) they received. The Public Expenditure and Financial Accountability (PEFA) report from 2016 notes that annual financial reports of LGU do not exist in Togo⁴³. According to one government stakeholder, the country is currently implementing reforms aimed at enhancing the reporting capacities of LGU.

Togo did not meet the encouragement aiming to ensure the data quality and assurance of figures of the subnational transfers, given that the DGTCP did not provide all the agreed quality assurances for the year under review, according to the 2017 EITI Report (p.18).

According to the IA, there were no ad hoc transfers between the state and LGUs in 2017.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action on subnational transfers has been fully addressed and considers that Togo has achieved satisfactory progress on Requirement 5.2. Subnational transfers existed in Togo in the year under the review, albeit not extractive-specific even if they are also paid by extractive companies. The 2017 EITI Report discloses the revenue sharing formula, as well as the revenues transferred by the Tax Department (“*Commissariat des Impôts*”) to the Treasury (DGTCP). Additionally, as the “*ristournes*” are not extractive-specific, the IA calculated the extractive-specific share of extractive companies in the subnational transfers. Transfers from the Treasury (DGTCP) to local governments could only be partially reconciled, as only four of the 15 local

⁴³ PEFA (June 2016), Evaluation of Public Financial Management Systems report, accessed [here](#) in December 2019

governments submitted reporting templates. Reforms are currently ongoing to strengthen the organisation of the municipalities and will potentially allow for a more detailed reconciliation in the future exercise.

To strengthen implementation, Togo is encouraged to renew its efforts to increase the participation of local governments in the EITI reporting process and may wish to consider ways of strengthening the quality of disclosures related to subnational transfers.

5. Assessments of requirements previously assessed as satisfactory in 1st Validation

In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as “satisfactory progress” in the 2017 Validation. In particular, the Secretariat reviewed possible back-sliding in the 2017 EITI Report on the requirement related to License registers (Requirement 2.3). Subject to the Board’s consideration of the new mining cadastre portal⁴⁴ that came online 17 December 2019 after the commencement of Validation, the Secretariat’s assessment is that Togo continues to make “satisfactory progress” on Requirement 2.3.

5.1 Corrective action 7: License registers (#2.3)

Findings from the first Validation

The first Validation found that Togo had made satisfactory progress in meeting this requirement. The first Validation found that the 2014 EITI Report included the names of licence holders and date of award and expiry for all the licenses. Further information on the dates of application and coordinates for all licenses were available on the Ministry of Mines' website.

Progress since Validation

Togo’s 2017 EITI Report and the mining cadastre portal launched on 17 December 2019 contain details on the licence holder, dates of application, duration of licence, geographical coordinates, and the commodities covered by all extractive licenses, including those held by companies not included in the scope of reconciliation.

Although the 2017 EITI Report was missing expiry dates for all the licenses, the report included a link to the Mining and Geology Department (DGMG)⁴⁵ where the Decrees granting the licenses are publicly available, as well as a link to the official gazette (“*journal officiel*”). Expiry dates are provided, as well as the award and application dates. However, several licenses held by material companies are missing from the DGMG list, such as the license held by SOGEA STATOM.

The cadastre portal⁴⁶, published the 17th December 2019, includes dates of application, award, and expiry for extractive licenses. The commodity produced and the name of the license holder are also provided, as well as the coordinates. The project, funded by the World Bank and implemented by Trimble, developed the portal for the Mining and Geology Department (DGMG). It is the responsibility

⁴⁴ Togo Mining Cadastre Portal, accessed [here](#) in January 2020

⁴⁵ DGMG website, ‘Mining licence decrees’, accessed [here](#) in January 2020

⁴⁶ Togo Mining Cadastre Portal, accessed [here](#) in March 2020

of the DGMG to update the portal, in coordination with Trimble. Some license data are still missing or outdated, even for the licenses held by material companies for the fiscal year 2017. However, Stakeholder consultations clarified each gap identified on the license data contained on the cadastre portal.

- The quarrying license of SOGEA SATOM, a material company (013/MME/CAB/DGMG/2015), is missing. According to the cadastre office, this is due to erroneous coordinates in the “Arrêté” granting the permit, which is under review. It was also noted that the company stopped its activity in 2018.
- Many licenses held by material companies are currently under the status “under renewal”, including the 2 licenses held by SNPT. It was confirmed by government and industry stakeholders that those two licenses were renewed in late 2019, as the SOE needed to deliver an environmental impact study to be granted the exploitation permit. The portal will be updated by the DGMG.
- The license held by “Togo Carrière”, the fifth largest taxpayer for the year 2017, expired in August 2018, and is still marked as “under renewal” as of 4 March 2020.
- One of the licenses (PE-96-0001) held by “WACEM”, expired in 2016, is still marked as “under renewal” as of 4 March 2020.
- The license held by TGC (*Togolaise des Grands Caous*), another material company, expired in April 2018, and is still marked as “under renewal” as of 4 March 2020.
- The license held by Samaria, a material company, is currently marked as “under renewal” while the expiry date is set in June 2022.
- Shehu dan Fodio, a material company, has a date of license application in 2015 while the date of award is 2012 (PEMC-15-0005).

It was confirmed by a government official consulted that the inconsistencies listed above were already under review, as the online portal was still in a soft-launch phase. A separate explanation was provided for each missing data point, addressing the concerns about the comprehensiveness and the timeliness of the data included in the online portal.

Secretariat’s Assessment

The International Secretariat’s preliminary assessment is that Togo had made meaningful progress on Requirement 2.3 at the commencement of Validation. Subject to the Board’s consideration of new information published after the start of Validation, the International Secretariat’s assessment is that Togo has continued to make satisfactory progress on Requirement 2.3. Although some data points related to licenses are missing from the 2017 EITI Report and data published by the Mining and Geology Department (DGMG), including missing data related to at least one license held by a material company, the online cadastre published on 17 December 2019 includes all the license data points mandated under Requirement 2.3 and is currently almost comprehensive, four months after the first launch.

If the Board does not consider new information published after the commencement of Validation, Togo would need to address the following corrective action: In accordance with Requirement 2.3, Togo should ensure that all data required by the EITI Standard on licenses and contracts held by all material companies is comprehensively disclosed.

To strengthen implementation, Togo is encouraged to ensure that the cadastre covers all licenses held by companies operating in the extractive sector, including those held by non-material companies.

6. Conclusion

Having reviewed the steps taken by Togo to address the 7 corrective actions requested by the EITI Board as of the commencement of its second Validation (8 November 2019), it can be reasonably concluded that six of the eight corrective actions have been fully addressed. In addition, the Secretariat's assessment is that progress in meeting Requirement 2.3 on license registers has regressed to 'meaningful progress' at the start of the second Validation. However, new information disclosed since the commencement of Validation addressed the outstanding gaps on Requirement 2.3. Subject to the EITI Board's consideration of new information disclosed subsequent to the commencement of Validation, the Secretariat proposes that Requirement 2.3 should be assessed as "satisfactory progress". The outstanding gaps relate to MSG governance (Requirement 1.4) and work plan (Requirement 1.5).