

Validation of Democratic Republic of the Congo

Response to MSG Feedback
CowaterSogema Independent Validator
22nd July 2019

The Validator wishes to thank the MSG for their helpful feedback. What follows is the Validator's response to the feedback from the MSG.

Requirement 1.4: MSG Governance

The Validator notes the comments from the MSG and the views of civil society for this requirement. It is clear that the MSG has made significant effort to meet the requirement. The final approval of the governance texts should go a long way in addressing the shortfalls identified for this requirement.

Requirement 2.2: Licence Allocations

The Validator notes the comments from the MSG for this requirement and welcomes the clarifications provided. However, the feedback does not significantly alter the findings of the initial assessment, and the recommendations for this requirement still stand.

Requirement 2.3: Register of Licences

The Validator notes the comments from the MSG for this requirement and welcomes the fact that the MSG will now follow up on the recommended actions from the draft report.

Requirement 2.6: State Participation

The Validator notes the comments from the MSG and the views of civil society for this requirement and is grateful for the recommendation regarding the status of SIMCO. However, there is no additional evidence provided to challenge the assessment and the recommendations.

Requirement 3.2: Production Data

The Validator notes the clarification provided by the MSG regarding the lack of standardised means to calculate production and the efforts by the MSG to resolve this issue. However, there is no additional evidence provided to challenge the assessment and the recommendations.

Requirement 4.1: Comprehensive disclosure of taxes and revenues

The Validator notes the response from MSG regarding the comprehensive of disclosure of taxes and revenues including methodology adopted by the MSG to select material reporting entities and revenue streams.

The MSG's March 2018 pre-Validation self-assessment highlighted that a number of companies and government entities had not disclosed all material revenue streams and that a number of provincial authorities had not disclosed all revenues unilaterally.

There were concerns about comprehensiveness of reconciled EITI data and EITI's ability to identify illegal payments. Complexity and challenges in disclosing the taxes were highlighted.

Difficulties were noted in initial assessment in comparing data entered in the online data portal due to inconsistencies in data entries by reporting entities.

Considering these and other points the initial assessment was made as meaningful progress by DRC.

The MSG has not provided any new information to warrant reconsideration of initial assessment, so original assessment as meaningful progress is not changed.

Requirement 4.6: Subnational direct payments

The points made by MSG to review consideration of upgrading the assessment from meaningful progress to satisfactory progress have been noted. Under requirement of 4.6 the validator is expected to document whether these revenue flows have been fully reconciled and disclosed.

The EITI reports had indicated the direct subnational payments in oil and gas and mining sectors but not on the basis of materiality as is the requirement of this provision.

The 2015 scoping study confirmed the lack of materiality threshold for the selection of extractives-specific revenue streams at the subnational level. It was not clear whether tax de development constituted direct subnational payment.

Considering the lack of clarity surrounding the materiality of direct subnational payments, the existence of other types of direct subnational payments that are not extractives-specific, and revenues collected by other provincial authorities, the assessment was given as meaningful progress.

The points brought out by MSG don't address these issues and thus original assessment of meaningful progress is retained.

Requirement 4.9: Data Quality

The EITI report included the IA's assessment that reconciled EITI data was comprehensive and reliable but the basis for this conclusion was unclear given significant gaps in company and government adherence to quality assurances agreed for EITI reporting. Several stakeholders also consulted expressed concerns about data reliability.

The report listed the names of reporting companies and government entities that did not adhere to the agreed quality assurances. The broader objective of data reliability was considered not achieved and initial assessment of meaningful progress was provided.

The MSG has not provided any substantial points to review the initial assessment and thus it (meaningful progress) is retained.

Requirement 5.1: Distribution of Revenue

The diagrams provided by EITI report did not indicate the specific revenues collected by specific SOEs, the share of these revenues transferred to Treasury, nor the specific revenues withheld by government entities and not transferred to the Treasury.

The Report did not provide an explanation of the allocation of funds retained by tax collecting agencies, nor of funds retained by SOEs' JVs. Allocation of these revenues retained by Government entities and SOEs was not clear.

The original assessment of meaningful progress is retained as no significant information is provided to review the initial assessment.

Requirement 6.1: Social Expenditures

The EITI report stated that mandatory social payments was required by only 4 out of 18 reporting mining companies without citing any reasons for other companies' lack of reporting of social payments, nor whether any non-reporting company was required to undertake mandatory social expenditures.

Stakeholders expressed significant concerns about the comprehensiveness of disclosures of mandatory social expenditures given the low number of reporting companies.

Low level of disclosures by material companies in both sectors, Mining and Oil and Gas, was another concern not addressed.

These points were considered in determining that overall underlining objectives under this requirement were not achieved and assigning meaningful progress.

These points still remain to be addressed and no review is considered necessary to make changes to original initial assessment of meaningful progress.

Requirement 6.2: SOE Quasi Fiscal Expenditures

The 2015 EITI Report did not discuss quasi-fiscal expenditures, even though it includes them as a revenue stream to be disclosed by SOEs in their reporting templates. The March 2018 pre-Validation self-assessment concluded that the MSG had not agreed to a definition of quasi-fiscal expenditures.

The 2016 Supplementary EITI Report tried to identify quasi-fiscal expenditures but could only identify potential quasi-fiscal expenditures.

The above points along with concerns of some CSO representatives that it was unlikely that SOEs didn't undertake quasi fiscal expenditures, indicated that significant aspects under this provision have not been fulfilled and objectives are far from achieved.

Inadequate progress, as originally assessed under this provision is not considered for review in light of points brought out by MSG as these don't bring in any new significant information to warrant review of initial assessment.