

Board decision on the Validation of Niger

Decision reference: 2017-56/BM-38/BP-38-6-F

On 26 October 2017, the EITI Board came to the following decision on Niger's status:

Following the conclusion of Niger's Validation under the 2016 EITI Standard, the EITI Board concluded that Niger has made inadequate progress overall in implementing the EITI Standard. In accordance with requirement 8.3.c.iii, the EITI Board agreed that Niger will be suspended and will need to undertake corrective actions outlined below. [Having considered developments subsequent to Validation, the EITI Board also determined that Niger has made inadequate progress in meeting the EITI's requirements on civil society engagement, which also implies suspension as per requirement 8.3.c.i.] Progress with the corrective actions will be assessed in a second Validation commencing on 26 April 2019.

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

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

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







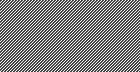
The Board welcomed ongoing efforts to automate EITI data collection as a first step towards mainstreaming EITI reporting under requirement 2-6. The Board takes note of these developments and looks forward to working together with Nigerien stakeholders on these issues. In the interim, the Board has determined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

Assessment card

The EITI Board agreed the following assessment card:

EITI Requirements		LEVEL OF PROGRESS				
		No	Inadequate	Meaningful	Satisfactory	Beyond
Categories	Requirements					
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	Revenue management and expenditures (#5.1)			■		
	Subnational transfers (#5.2)		■			
	Distribution of revenues (#5.3)	■				
Socio-economic contribution	Mandatory social expenditures (#6.1)		■			
	SOE quasi-fiscal expenditures (#6.2)		■			
	Economic contribution (#6.3)			■		
Outcomes and impact	Public debate (#7.1)			■		
	Data accessibility (#7.2)	■				
	Follow up on recommendations (#7.3)				■	
	Outcomes and impact of implementation (#7.4)			■		
Overall Assessment	Inadequate Progress		■	■		

Legend to the assessment card

-  The country has made no progress in addressing the requirement. The broader objective of the requirement is in no way fulfilled.
-  The country has made inadequate progress in meeting the requirement. Significant elements of the requirement are outstanding and the broader objective of the requirement is far from being fulfilled.
-  The country has made progress in meeting the requirement. Significant elements of the requirement are being implemented and the broader objective of the requirement is being fulfilled.
-  The country is compliant with the EITI requirement.
-  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.

Corrective Actions

The EITI Board agreed the following corrective actions to be undertaken by Niger. Progress in addressing these corrective actions will be assessed in a second Validation commencing on **26 April 2019**.

1. In accordance with requirement 1.2, companies should demonstrate that they are fully, actively and effectively engaged in the EITI process. In accordance with requirement 8.3.c.i, the company constituency is requested to develop and disclose an action plan for addressing the deficiencies in company engagement documented in the initial assessment and validator's report within three months of the Board's decision, i.e. by 26 January 2018.
2. In accordance with requirement 1.3.c, the government must ensure that there are no obstacles to civil society participation in the EITI process. For the suspension to be lifted, the government should ensure that the civil society protocol is fully adhered to, including ensuring that civil society representatives are able to engage in public debate related to the EITI process and express opinions about the EITI process without restraint, coercion or reprisal.
3. In accordance with requirement 1.4.a.ii, the MSG should ensure that its procedures for nominating and changing multi-stakeholder group representatives are public and confirm the right of each stakeholder group to appoint its own representatives. In accordance with requirement 1.4.b.ii and 1.4.b.iii, the MSG should undertake effective outreach activities with civil society groups and companies, including through communication such as media, website and letters, informing stakeholders of the government's commitment to implement the EITI, and the central role of companies and civil society. Members of the MSG should liaise with their constituency groups. In accordance with requirement 1.4.b.vi, the MSG should ensure an inclusive decision-making process throughout implementation, particularly as concerns industry and civil society.
4. In accordance with requirement 1.5.a, the MSG should maintain a current work plan that sets EITI implementation objectives that reflect national priorities for the extractive industries. In accordance with requirement 1.5.b, the work plan must reflect the results of consultations with key stakeholders. In line with requirement 1.5.c, the work plan must assess and outline plans to address any potential capacity constraints, identify and outline plans to address any potential legal or regulatory obstacles to EITI implementation, and outline the multi-stakeholder group's plans for implementing the recommendations from Validation and EITI reporting. In accordance with requirement 1.5.f, the work plan must be updated annually.
5. In accordance with Requirement 2.1.a, Niger must disclose a description of the legal framework and fiscal regime governing the extractive industries. This information must include a summary description of the fiscal devolution, an overview of the relevant laws and regulations, and information on the roles and responsibilities of the relevant government agencies.
6. In accordance with requirement 2.2.a, Niger should ensure annual disclosure of which mining, oil, and gas licenses were awarded and transferred during the year under review, highlighting the technical and financial requirements and any non-trivial deviations from the applicable legal and regulatory framework governing license awards and transfers.
7. In accordance with requirement 2.3, Niger should also ensure that the license holder names, dates of application, award and expiry, commodity(ies) covered and coordinates for all oil, gas and mining licenses held by material companies are publicly available.
8. In accordance with requirement 2.4, Niger is required to document the government's policy on

disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals through the EITI Report. This should include relevant legal provisions, any reforms that are planned or underway as well as an overview of contracts already published.

9. In accordance with requirement 2.6, the MSG should provide an explanation of the prevailing rules and practices related to SOEs' retained earnings and reinvestment. The government should also ensure annual disclosure of any changes in government ownership in SOEs or their subsidiaries, and provide a comprehensive account of any loans or loan guarantees extended by the state or SOEs to mining, oil, and gas companies.
10. In accordance with requirement 3.2, the MSG should ensure future EITI Reports provide disaggregated production volumes and values for all key minerals produced in the year(s) under review.
11. In accordance with requirement 4.1.a, Niger ensure that the materiality thresholds for selecting companies and revenue streams for reconciliation ensures that the exclusion of companies or revenues does not significantly affect the comprehensiveness of the EITI Report. The MSG is invited to consider whether setting a quantitative materiality threshold for selecting companies would ensure these aims are met. Niger should ensure that future EITI Reports clearly include all revenue streams listed under requirement 4.1.b in the scope of reconciliation. In accordance with requirement 4.1.c, the MSG should also ensure that the Independent Administrator assesses the materiality of non-reporting companies and government entities as well as provide its opinion on the comprehensiveness of the EITI Report. In accordance with requirement 4.1.d, the government should also ensure that future EITI Reports include aggregate information about the amount of total revenues received from each of the benefit streams agreed in the scope of the EITI Report.
12. In accordance with requirement 4.3, the MSG and the Independent Administrator are required to consider whether there are any agreements, or sets of agreements involving the provision of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities. Where the MSG concludes that these agreements are material, the MSG and the Independent Administrator are required to ensure that the EITI Report addresses these agreements, providing a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. Where reconciliation of key transactions is not feasible, the MSG should agree an approach for unilateral disclosure by the parties to the agreement(s) to be included in the EITI Report.
13. In accordance with requirement 4.4, the MSG should assess the materiality of any transportation revenues and disclose such revenues should they be assessed as material.
14. In accordance with requirement 4.5, the MSG must ensure that the reporting process comprehensively addresses the role of SOEs, including material payments to SOEs from extractives companies, and transfers between SOEs and other government agencies.
15. In accordance with requirement 4.6, it is required that the MSG establish whether direct payments from companies to subnational governments, within the scope of agreed revenue streams, are material. Where material, the MSG must ensure that direct company payments to subnational government entities are disclosed and reconciled in future EITI Report.
16. In accordance with Requirement 4.9.a, the EITI requires an assessment of whether the payments and revenues are subject to credible, independent audit, applying international auditing standards. In accordance with requirement 4.9.b.iii and the standard Terms of Reference for the Independent

Administrator agreed by the EITI Board, the MSG and Independent Administrator should:

- a. examine the audit and assurance procedures in companies and government entities participating in the EITI reporting process, and based on this examination, agree what information participating companies and government entities are required to provide to the Independent Administrator in order to assure the credibility of the data in accordance with Requirement 4.9. The Independent Administrator should exercise judgement and apply appropriate international professional standards¹ in developing a procedure that provide a sufficient basis for a comprehensive and reliable EITI Report. The Independent Administrator should employ his/her professional judgement to determine the extent to which reliance can be placed on the existing controls and audit frameworks of the companies and governments. The Independent Administrator's inception report should document the options considered and the rationale for the assurances to be provided.
 - b. ensure that the Independent Administrator provides an assessment of comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided.
 - c. ensure that the Independent Administrator provides an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested information. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, including naming any entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on the comprehensiveness and reliability of the report.
17. In accordance with requirement 5.1.a, the MSG should ensure that the allocation of extractives revenues not recorded in the national are explained, with links provided to relevant financial reports as applicable.
 18. In accordance with requirement 5.2.a, the MSG should assess the materiality of subnational transfers prior to data collection and ensure that the specific formula for calculating transfers to individual local governments be disclosed, to support an assessment of discrepancies between budgeted and executed subnational transfers.
 19. In accordance with requirement 6.1.a, the MSG should agree a clear distinction between mandatory and voluntary social expenditures prior to data collection and ensure that material mandatory social expenditures are comprehensively disclosed in future EITI Reports. Where beneficiaries of mandatory social expenditures are a third party, i.e. not a government agency, the MSG should ensure that the name and function of the beneficiary be disclosed.
 20. In accordance with requirement 6.2, the MSG should consider the existence and materiality of any quasi-fiscal expenditures undertaken by extractives SOEs and their subsidiaries, ensuring that all material quasi-fiscal expenditures are disclosed in future EITI Reports.
 21. In accordance with requirements 6.3, the MSG should ensure that future EITI Reports provide the

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

contribution of the mining, oil and gas sectors to GDP in absolute terms and an estimate of informal sector activity (6.3.a) as well as comprehensive extractives employment figures, in absolute and relative to total employment (6.3.d) for the year(s) under review.

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

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

This decision can be found online under: <https://eiti.org/validation/niger/2017>

The documentation on this Validation (Validation Report, MSG Comments and initial data collection) can be found here: <https://eiti.org/document/validation-niger-2017-documentation>