

# Validation of the Republic of Congo

For decision

For discussion

For information

The Validation Committee recommends that the EITI Board agree that the Republic of Congo has made meaningful progress in implementing the 2016 EITI Standard. In accordance with requirement 8.3c, the Republic of Congo will be requested to undertake corrective actions before the second Validation on **<date of Board decision + 18 months>**.

The Validation Committee also recommends that the EITI Board agree that the Republic of Congo has made meaningful progress on requirement 1.3. The deficiencies relate to aspects of the Civil Society Protocol regarding expression and self-censorship. The Validation Committee will review its recommendation in accordance with the Implementation Committee's discussions regarding the clarification of requirement 8.3.c.i.

## Supporting documentation

Initial assessment by the International Secretariat [[English](#) | [French](#)]

Draft Validation report [[English](#) | [French](#)]

Comments on the draft Validation Report from Government [[English](#) | [French](#)] and CSOs [[English](#) | [French](#)]

Final Validation report [[English](#) | [French](#)]

## Has the EITI competence for any proposed actions been considered?

The Articles of Association mandate the Board to classify implementing countries as candidate countries or compliant countries (Article 5(2)(i)(a)). The EITI Standard ([Requirement 8.3](#)) addresses [EITI Validation deadlines and the consequences](#) following Validation.

## Financial implications of any actions

The recommendation implies a second Validation commencing in mid-2019. The cost of second Validations varies depending on the complexity of the extractive industries and the number of corrective actions. In this case, a second Validation is expected to cost circa 25 000 USD, including staff time and travel (if needed).

## Document history

Validation Report reviewed by the Validation Committee	4 December 2017; 12 January 2018
Validation Committee agreement on a Board Paper	26 January 2018
Submitted to the EITI Board	30 January 2018
Board Paper reviewed by the Validation Committee	6 June 2018
Submitted to the EITI Board	14 June 2018

# VALIDATION OF THE REPUBLIC OF CONGO

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## Proposed Board decision on the Validation of the Republic of Congo

The Validation Committee recommends that the EITI Board takes the following decision:

*Following the conclusion of the Republic of Congo’s Validation, the EITI Board decides that the Republic of Congo has made meaningful progress overall in implementing the EITI Standard. In accordance with requirement 8.3c, the Republic of Congo will be requested to undertake corrective actions before the second Validation on <date of Board decision + 18 months>.*

*The EITI Board decides that the Republic of Congo has made meaningful progress on requirement 1.3 Civil society engagement. [Given that the deficiencies relate to the Civil Society Protocol, pursuant to provision 8.3.c.i the Republic of Congo is suspended and will need to undertake corrective actions as outlined below.]*

*The Board congratulates the Government of Republic of Congo and the EITI Executive Committee on the progress made in improving transparency and accountability in the extractive industries by providing a trusted source of data to inform public debate. The Board welcomed regulatory reforms to embed transparency in government systems. The Board noted the adoption of a new Transparency Code in March 2017, which translates key EITI Requirements into national legislation, including contract transparency, state participation, reporting on cost-oil, revenues and expenditure by the national oil company, beneficial ownership disclosure, publication of production data, audit and reconciliation of government revenues, transparency of resource allocation and extra-budgetary spending, project-level reporting and open data. The Board encouraged full implementation of this ambitious legislation.*

*After ten years of EITI reporting, the Republic of Congo has also expanded the scope of EITI reporting to include the forestry sector. The Board welcomed this innovative use of the EITI reporting framework.*

*The Board recognises Republic of Congo’s earlier efforts to publish quarterly reports on oil sales providing detailed information on the sale of oil by the national oil company (SNPC) in the period 2004 to 2014. The Board took note that these reports, which are highly relevant for compliance with certain aspects of the EITI Standard, are no longer in the public domain. The Board encouraged continued publication of information on the sale of oil by SNPC and the corresponding transfers to the treasury as provided by the Ministry of Finance quarterly*

reports.

*The Board noted that despite the constrained general environment, civil society appears particularly engaged in the EITI process. Representatives from the civil society constituency attend MSG meetings regularly, conduct analysis of EITI Reports, produce communication materials and organise public events to inform citizens on issues related to the governance of the extractive industries. Civil society representatives in the MSG regularly express their views related to EITI activities and highlight their concerns, but self-censorship is also common practice to avoid reprisals. Cases of intimidation and arrest of journalists substantially engaged in the EITI process remain a concern.*

*The Board has determined that Republic of Congo will have 18 months, i.e. until **<date of Board decision + 18 months>** before a second Validation to carry out corrective actions regarding the requirements relating to civil society engagement (1.3), MSG governance (1.4), licence allocations (2.2), license register (2.3), state-participation (2.6), production data (3.2), in-kind revenues (4.2), barter agreements (4.3), SOE transactions (4.5), data quality (4.9), distribution of revenues (5.1), social expenditures (6.1), SOE quasi-fiscal expenditures (6.2) economic contribution (6.3) and public debate (7.1), with SOE quasi-fiscal expenditures being the main area of concern. Failure to achieve meaningful progress with considerable improvements across several individual requirements in the second Validation will result in suspension in accordance with the EITI Standard. In accordance with the EITI Standard, Republic of Congo's multi-stakeholder group may request an extension of this timeframe, or request that Validation commences earlier than scheduled.*

*The Board's decision followed a Validation that commenced on 1 April 2017. In accordance with the 2016 EITI Standard, an initial assessment was undertaken by the International Secretariat. The findings were reviewed by an Independent Validator, who submitted a draft Validation report to the MSG for comment. Stakeholder comments on the report were taken into consideration by the independent Validator in finalising the Validation report. The final decision was taken by the EITI Board.*

## Background

The government of the Republic of Congo (ROC) committed to implement the EITI on 9 June 2004 and established a multi-stakeholder group in October 2006, following broad consultations with stakeholders. The Republic of Congo became a Candidate country implementing the EITI in February 2008 and was declared Compliant with the EITI Rules in March 2013.

The Validation process under the Standard commenced on 1 April 2017. In accordance with the Validation procedures, an initial assessment [[English](#) | [French](#)] was prepared by the International Secretariat. The Independent Validator reviewed the findings and wrote a draft Validation report [[English](#) | [French](#)]. Comments were received from Government representatives [[English](#)] and civil society groups [[English](#) | [French](#)]. The Independent Validator reviewed the comments, before finalising the Validation report [[English](#) | [French](#)].

The Validation Committee reviewed the case on 4 December 2017 and 12 January 2018. Based on the findings above, the Validation Committee agreed to recommend the assessment card and corrective actions outlined below.

The Committee also agreed to recommend an overall assessment of “meaningful progress” in implementing the 2016 EITI Standard. Requirement 8.3.c. of the EITI Standard states that:

ii. Overall assessments. Pursuant to the Validation Process, the EITI Board will make an assessment of overall compliance with all requirements in the EITI Standard.

...

iv. **Meaningful progress.** The country will be considered an EITI candidate and requested to undertake corrective actions until the second Validation.








The Validation Committee agreed to recommend a period of 18 months to undertake the corrective actions. This recommendation takes into account that the challenges identified are relatively significant and seeks to align the Validation deadline with the timetable for Republic of Congo’s 2017 and 2018 EITI Reports.

## Assessment card

The Validation Committee recommends the following assessment:

EITI Requirements		LEVEL OF PROGRESS				
		No progress	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	Distribution of revenues (#5.1)			■		
	Subnational transfers (#5.2)	■				
	Revenue management and expenditures (#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)				■	

*Legend to the assessment card*

	<b>No progress.</b> All or nearly all aspects of the requirement remain outstanding and the broader objective of the requirement is not fulfilled.
	<b>Inadequate progress.</b> Significant aspects of the requirement have not been implemented and the broader objective of the requirement is far from fulfilled.
	<b>Meaningful progress.</b> Significant aspects of the requirement have been implemented and the broader objective of the requirement is being fulfilled.
	<b>Satisfactory progress.</b> All aspects of the requirement have been implemented and the broader objective of the requirement has been fulfilled.
	<b>Beyond.</b> The country has gone beyond the requirements.
	This requirement is only encouraged or recommended and should not be taken into account in assessing compliance.
	The MSG has demonstrated that this requirement is not applicable in the country.

## Corrective actions

The EITI Board agreed the following corrective actions to be undertaken by Republic of Congo. Progress in addressing these corrective actions will be assessed in a second Validation commencing on **<date of Board decision + 18 months>**:

1. In accordance with Requirement 1.3, the Government of Congo should ensure that there is an enabling environment for civil society participation, and 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.
2. In accordance with EITI Requirement 1.4, the government should renew the membership of the MSG in line with statutory documents. EITI Congo should review formalise and publish its per diem policy and set a reasonable amount in line with national practices. The MSG should ensure its TOR are in accordance with Requirement 1.4, publicly accessible, and implemented in practice.
3. To strengthen implementation, EITI Congo may wish to ensure that the fiscal framework, the roles and responsibilities of key government entities and current or recent reforms in the mining, oil and gas sectors are clearly described in future EITI reporting. EITI Congo may wish to consider whether the EITI Congo website could provide a platform for updated information on the legal environment and fiscal framework.
4. In accordance with EITI Requirement 2.2, EITI Congo should clearly define the number of mining, oil and gas licenses awarded and transferred in the year(s) under review, describe the statutory allocation and award procedures, including specific technical and financial criteria, and highlight any non-trivial deviations in practice. In addition, EITI Congo may wish to comment on the efficiency of the current license allocation and transfer system as a means of clarifying procedures and curbing non-trivial deviations.
5. EITI Congo is required to maintain a publicly available register or cadastre system(s) with timely

and comprehensive information in accordance with EITI Requirement 2.3. EITI Congo should ensure that future EITI Reports provide the dates of application and expiry, commodity(ies) covered and coordinates for all mining, oil and gas licenses held by material companies.

6. To further strengthen implementation and prepare for full disclosure of beneficial ownership by 2020, it is recommended that EITI Congo considers piloting beneficial ownership reporting in the forthcoming EITI Report in order to increase awareness of beneficial ownership transparency and pilot beneficial ownership definitions and thresholds. EITI Reports must document the government's policy and multi-stakeholder group's discussion on disclosure of beneficial ownership. EITI Congo may also wish to conduct broader outreach to the companies on the objectives of beneficial ownership transparency, as well as hold conversations with government agencies on how to make such disclosures mandatory.
7. In accordance with EITI Requirement 2.6, EITI Congo should ensure that future EITI Reports clarify the rules and practices governing financial relations between extractives SOEs and the government, the level of and terms associated with state equity participation in the sector as well as a comprehensive overview of loans and guarantees extended by the state or SOEs to extractives companies in the year under review. EITI Congo may wish to consider the extent to which implementation of Article 15 of the March 2017 Transparency Law would support progress in meeting aspects of Requirement 2.6.
8. To strengthen implementation, EITI Congo may wish to ensure that the description of the extractive industries in future EITI Reports includes a clear overview of significant exploration activities in the year under review.
9. In accordance with EITI Requirement 3.2, EITI Congo should ensure that future EITI Reports provide production volumes and values for all minerals produced in the ROC in the year(s) under review. EITI Congo may also wish to consider the extent to which such information could be regularly disclosed on government websites as a means of complying with provisions requiring publication of more granular production data in Article 66 of the March 2017 Transparency Law.
10. To strengthen implementation, EITI Congo may wish to ensure that future EITI Reports provide export volumes and values for all commodities exported in the year(s) under review, including artisanal-mined commodities like gold.
11. To strengthen implementation, EITI Congo may wish to ensure that the materiality threshold for selecting companies in future EITI Reports ensures that all payments that could affect the comprehensiveness of EITI reporting be included in the scope of reconciliation. The MSG is invited to consider whether setting a quantitative materiality threshold for selecting companies would ensure these aims are met.
12. In accordance with EITI Requirement 4.2, EITI Congo should ensure that future EITI Reports present information on the sale of the state's in-kind revenues disaggregated by buyer. The government is encouraged to reinstate the practice of publishing the Ministry of Finance's quarterly oil sales reports to ensure timelier compliance with Article 16 of the March 2017 Transparency Law and with Requirement 4.2 of the EITI Standard. The Validator notes the recent Public Eye report on a Swiss commodity trader in the Republic of Congo, and encourages the MSG



to take steps to provide more transparency in the role of oil commodity trading in future.<sup>1</sup>

13. In accordance with EITI Requirement 4.3, EITI Congo should assess the existence of any barter arrangements or infrastructure provisions during the scoping phase for its next EITI Report to ensure that reporting of the implementation of such agreements provides a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. The MSG, together with the IA, should gain a full understanding of the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state, the value of the balancing benefit stream (e.g. infrastructure works), and the materiality of these agreements relative to conventional contracts.
14. To strengthen implementation, EITI Congo may wish to undertake outreach to SOCOTRAM with a view to engaging it in EITI implementation. Given the significant public debate surrounding the Maritime Tax, the MSG could consider including SOCOTRAM in the scope of reporting, further adding to the EITI's impact on public debate.
15. In accordance with EITI Requirement 4.5, EITI Congo should undertake a comprehensive assessment of transactions between SOEs (SNPC and its subsidiaries) and oil and gas companies, as well as between SNPC's subsidiaries and government in its scoping of future EITI Reports. All SOEs collecting material revenues or making material payments to government should be included in future EITI reporting.
16. To further strengthen implementation, the MSG may wish to consider the extent to which implementation of the March 2017 Transparency Law would enable it to make progress in implementing project-level EITI reporting ahead of the deadline for all EITI Reports covering fiscal periods ending on or after 31 December 2018, agreed by the EITI Board at its 36th meeting in Bogotá.
17. To strengthen implementation, EITI Congo may wish to consider the extent to which it can leverage implementation of Article 63 of the March 2017 Transparency Law to ensure timelier disclosure of data required under the EITI Standard through routine government and company systems.
18. In accordance with EITI Requirement 4.9, EITI Congo should ensure that summary data tables for all EITI Reports are prepared in a timely manner in line with requirements of the Board-approved IA's ToR. The MSG and the IA are encouraged to provide a more detailed account of audit and assurance practices of material companies and government entities, including SOEs with a view to formulating recommendations that strengthen government and company audit and assurance systems. They may also wish to revisit the quality assurance requested from government entities included in the scope of reporting.
19. In accordance with EITI Requirement 5.1, EITI Congo should work with the IA in preparing the next EITI Report to clearly trace any mining, oil and gas revenues that are not recorded in the national

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<sup>1</sup> [https://www.publiceye.ch/fileadmin/files/documents/Rohstoffe/PublicEye\\_Gunvor-in-Congo\\_report\\_2017\\_68p.pdf](https://www.publiceye.ch/fileadmin/files/documents/Rohstoffe/PublicEye_Gunvor-in-Congo_report_2017_68p.pdf)



budget and provide an explanation of the detailed allocation of these off-budget revenues.

20. To strengthen implementation, EITI Congo is encouraged to assess the materiality of subnational transfers, provide the specific formula for calculating subnational transfers of extractives revenues to individual local governments, disclose any material subnational transfers in the year(s) under review and highlight 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.
21. To strengthen implementation, EITI Congo could consider including additional information on extractives revenues earmarked for specific purposes as well as on the budget-making and auditing process for government accounts in future EITI Reports.
22. In accordance with EITI Requirement 6.1, EITI Congo should systematically categorise types of mandatory social expenditures mandated by law or contract and ensure that reporting of mandatory social expenditures in future EITI Reports be disaggregated between cash and in-kind expenditures, by type of payment and beneficiary, clarifying the name and function of any non-government (third-party) beneficiaries of mandatory social expenditures. The MSG may also wish to consider the feasibility of reconciling mandatory social expenditures.
23. In accordance with EITI Requirement 6.2, EITI Congo should undertake a comprehensive review of all expenditures undertaken by extractives SOEs (and their subsidiaries) that could be considered quasi-fiscal. The MSG should develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, and should include SOE subsidiaries and joint ventures.
24. In accordance with EITI Requirement 6.3, EITI Congo should ensure future EITI Report include employment figures for the mining, oil and gas sectors. The MSG may also wish to work with the Ministry of Finance, the national statistics agency (CNSEE), customs and the Ministry of Labour and Social Security to ensure that reporting of key information required by the EITI Standard on the extractive industries' share of GDP, revenues and exports is embedded in routine government disclosures.
25. To improve accessibility of EITI disclosure, and in accordance with EITI Requirement 7.1, EITI Congo should resume its dissemination activities of all EITI disclosures, including the EITI Reports, the KPMG Reports and other useful materials that can contribute to a public debate on the EITI Congo website.
26. To strengthen implementation, the MSG may wish to consider commissioning an independent impact evaluation study to better document the extent to which EITI Congo has contributed in changing behaviour and improving the management of the extractive sector for the benefit of all citizens.