

Azerbaijan: Assessment of progress with corrective actions 1 (i-iii)

AZERBAIJAN: ASSESSMENT OF PROGRESS WITH CORRECTIVE ACTIONS 1(I-III)

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Background

The Government of Azerbaijan announced its commitment to the EITI in 2003. The country was accepted as an EITI Candidate in 2007, and was the first country to become Compliant with the EITI Rules in 2009.

Following concerns related to the ability of civil society to participate in the EITI, the EITI Board in October 2014 requested Azerbaijan to undertake an early Validation against the EITI Standard¹. Based on the Validation report considered by the EITI Board at its 29th meeting, Azerbaijan was declared an EITI Candidate country with corrective actions to be completed by 15 April 2016².

¹ <https://eiti.org/document/28th-board-meeting>

² <https://eiti.org/document/29th-board-meeting>

After the second Validation that commenced on 1 July 2016 the EITI Board agreed at its 35th meeting in October 2016³ that Azerbaijan had made meaningful progress with considerable improvements across several requirements. In the lead up to the 35th EITI Board meeting, the Government of Azerbaijan announced some legal and regulatory reforms as well as other developments related to civil society. Specifically, on 21 October 2016 President Ilham Aliyev signed a Decree on the application of the principle of 'single window'⁴ which would procedurally facilitate the issuing of foreign grants to NGOs in Azerbaijan. The Decree would come into force on 1 January 2017.

The minutes from the 35th EITI Board meeting documents divergent views on whether these recent developments should be taken into account. The Board welcomed the reports regarding the developments. At the same time, there was little time to understand and evaluate the reported progress. The final EITI Board decision states:

The Board agrees that Azerbaijan has made meaningful progress in implementing the 2016 EITI Standard, and with considerable improvements across several individual requirements compared to the first Validation in 2015. Azerbaijan retains its Candidate status, taking into consideration recent developments.

The EITI Board agreed that Azerbaijan had not made satisfactory progress on requirement 1.3 on civil society engagement. Accordingly, Azerbaijan will need to take corrective actions. Failure to take corrective actions to the satisfaction of the Board will result in suspension in accordance with the EITI Standard. The Board tasked the International Secretariat with preparing an assessment in advance of the next Board meeting. On the basis of this assessment and in accordance with the EITI Standard, the Board will take a decision at its next meeting.

In addition, the Board agreed corrective actions related to requirements 1.4, 2.6, 6.2, 7.1 and 7.4 to be assessed in a third validation commencing on 26 July 2017 (...)

The EITI Board agreed the following corrective actions to be concluded by the next meeting:

The following corrective action will be evaluated in accordance with the EITI Standard at the next meeting of the EITI Board:

1. The government should take further steps to ensure satisfactory progress with the requirements related to civil society engagement 1.3.b-d. Specifically, the government should in accordance with 2.2 of the civil society protocol, ensure that there is an enabling legal and operational environment for civil society substantively involved in the EITI process. Specifically, this should include legal and regulatory amendments eliminating:

³ <https://eiti.org/document/35th-board-meeting>

⁴ http://www.qht.az/index.php?action=static_detail&static_id=11671

i. The need for civil society to obtain an extract every two years confirming their registration. ii.

The need for civil society to register grants with the Ministry of Justice.

iii. The need for foreign donors to register individual grants with the authorities, and obtain an opinion on the purposefulness of the grant.

The 35th EITI Board meeting tasked the International Secretariat with preparing an assessment of progress with corrective actions 1(i-iii). It was recognised that the assessment would focus on documenting any changes to the legal and regulatory framework, but that the actual implementation of any amendments would be subject to the assessment taking place during the 3rd Validation.

International Secretariat's assessment

CORRECTIVE ACTION 1(i): Legal and regulatory amendments eliminating the need for civil society to obtain an extract every two years confirming their registration

(i) Findings of the 2016 Initial Assessment and Validation:

The 2016 Initial Assessment states (pp.72-74):

New requirements for NGO registration were introduced as part of the February 2014 package of amendments of the NGO Law. While NGOs in Azerbaijan are allowed to operate without being registered and several unregistered NGOs exist, it is difficult for unregistered NGOs to function as they cannot receive funding, open a bank account or enjoy tax benefits (Ismayil and Remezaite, 2016, p.13) (...)

The International Secretariat understands that a registration is not time limited and is confirmed by a registration certificate. NGOs must obtain an extract of such a certificate from the Ministry of Justice (MoJ) at least once every two years in order to act as a legal entity. Challenges with the registration process have been widely documented: "According to the new amendments to the Law on "State Registration and State Registry of Legal Entities" of 17 December 2013²¹, all NGOs in Azerbaijan are required to register all changes to the founding documents or prerequisites with the Ministry of Justice and to obtain an extract of their registration certificate from the in order to be able as legal entity. The law stipulates that any changes such as change of address, change of number of members, change of chairperson, change of phone numbers NGOs shall be presented for registration. NGOs should submit all documentation for registration of changes in their founding documents no later than 40 days of those changes in the founding documents or facts. Registration departments shall register the changes in 5 days if no deficiencies identified. A failure to do so leads to administrative penalty. Furthermore, NGOs are forbidden to operate on the basis of nonregistered facts or information. Only upon confirmation of registration of such changes, NGOs can freely enjoy the benefits of its legal entity status, such as the use of bank accounts or signing grant agreements" (Ismayil and Remezaite, 2016, p.13) (...)

With regards to the extract confirming the registration, the International Secretariat understands that at least five Coalition members have not been able to obtain this from the MoJ. This does not include any of the registered MSG members, but some other Coalition members who are substantively engaged in the EITI process and who used to be MSG members.

The 2016 Initial Assessment cites the following stakeholder views (pp.79-80):

MoJ officials explained that the extract from the NGO Registry, confirming the validity of the registration, should be renewed every two years in conjunction with the NGO's general assembly, or whenever there are changes in the NGO's legal address, management and so on (...) MoJ officials said that the issuing of the extract takes 5 days and that refusal is very rare. The MoJ processed 582 requests for extracts in 2015, and 375 requests in the first half of 2016 (...)

One coalition member said that "I am denied the extract confirming the registration of my organization. According to the new law, every two years we have to obtain the extract showing that we are registered. I have applied 7 times in 2014, but every time the MoJ refused the registration (...)

Another Coalition member explained that he had applied three times for the extract and that every time the authorities came back pointing out a flaw that needed to be corrected, rather than pointing out all errors at once (...)

One Coalition member explained that "Our organisation has been registered since 2006. In May 2014, we organised our annual general meeting and subsequently submitted our papers to the MoJ to get the extract. We never received it. I cannot open a bank account without this paper. I cannot sign a grant agreement without this paper.

(ii) Progress since the 35th EITI Board meeting:

There have not been any amendments to the 2013 Law on State Registration and Registry of Legal Entities, and NGOs still need to update the NGO registration records every two years and obtain an extract from the registry every two years confirming the validity of their registration. While this document is still needed for several purposes such as bank accounts, etc., the amendments to the Rule on Registration of Grant Agreements of 11 January 2017 appears to eliminate the need to present this document when registering grants⁵.

An extract from the state registry has to be obtained in case there is a change of chairperson, board, legal address, etc. For some NGOs it has to be renewed annually, for others once every two years or every three years. The main impediment is that if validity of the extract has expired, the chairperson (legal representative) of the organization can no longer sign any grant contracts on behalf of the NGO.

(iii) International Secretariat's assessment:

According to the information available to the Secretariat, Azerbaijan has not undertaken "legal and regulatory amendments eliminating the need for civil society to obtain an extract every two years

⁵ Removal of clause 2.1.4 of the Rules on Registration of Grant Agreements.

confirming their registration” (corrective action 1(i)). Although the requirement to submit an extract upon registration of grants has been removed, the challenge of obtaining such an extract from the MoJ in the first place does not appear to have been addressed. Given the effects that the lack of such a document appear to have on the ability of an NGO to act as a legal entity, the International Secretariat concludes that corrective action has not been addressed.

Update as of 6 March 2017: The Government of Azerbaijan comments in its letter of 3 March that “The legislation of Azerbaijan does not require any regular reregistration, as well as obtaining an extract every two years confirming the registration. As that, the government cannot make any amendments to the provisions which do not exist in legislation. At the same time article 9.1. [of the Law of the Republic of Azerbaijan On state registration and state registry of legal entities] clearly requests NGOs to register with the Ministry of Justice in case there are further amendments to their charter as well as changes to the registry data, which does not mean that it happens every two years”.

The International Secretariat wishes to clarify that the requirement to register any changes in foundation documents, statutes etc. was introduced by the 2013 amendments to the Law on state registration and state registry of legal entities in 2013 (Article 9.1). It is indeed correct that these changes are to be reported when the change occurs, not necessarily every two years. The reference to every two years stems from the fact that most NGOs operate under statutes that stipulate that the management of the NGO should be re-elected every two years during the general assembly of the NGO. It is a requirement of the Law on NGOs Art 25.2 that the general assembly is held at least annually. If the general assembly results in changes to the NGO governance, including changes in NGO management, or Board, membership, addresses etc. or even re-appointment of the previous Board/management, then these changes are to be reported to the MoJ, resulting in the need to obtain an extract confirming the validity of the NGO’s registration.

Notwithstanding the erroneous reference to “every two years” in the initial corrective action, it is still a legal requirement for NGOs to obtain an extract whenever there are changes to its statutes or other founding documents. Although as noted above, the requirement to present an extract upon registration of a grant has been removed, NGOs are still required to present the extract for other purposes. The Law on state registration and state registry of legal entities states that the extract “shall be the main document for preparation of a seal, stamp, letterhead and trademark of the legal entity, opening of a bank account and registration in the relevant executive power bodies of the Azerbaijan Republic (...)”. For example, in the 2017 grant competition launched by the State Council of NGO support, submission of an extract was one of the requirement for participating in the competition⁶. As documented in the Validation report, extracts are also required for NGOs to open bank accounts or effectuate bank transactions. This was reportedly not the case prior to 2013.

In light of this, the Secretariat’s assessment is that the corrective action remains uncompleted given that NGOs still need to obtain an extract confirming the validity of their registration.

⁶ <http://www.cssn.gov.az/news.php?id=2146&lang=az>

CORRECTIVE ACTION 1(ii): Legal and regulatory amendments eliminating the need for civil society to register grants with the Ministry of Justice

(i) Findings of the 2016 Initial Assessment and Validation:

The 2016 Initial Assessment states (pp.74-75):

The legislative amendments and rules adopted in 2015 introduced new requirements for donors and NGOs to register grants. In effect, this is a double registration procedure in that many of the documents that are required of a foreign donor to register a grant are the same documents that subsequently have to be submitted by the recipient NGO (...)

NGOs need to obtain pre-approval from the MoJ to register a grant. According to ICNL, "the procedure for grants registration is extremely burdensome for grants recipients. The Rules also give the government broad authority to decide whether to grant such approval" (ICNL, September 2015, p.1). NGOs need to apply for registration within 15 days of signing the grant, compared to 30 under the old rules. The application needs to include a range of notarised or legalised documents to be reviewed by the MoJ against the relevance of the activities set out in the NGO's charter as well as other criteria.

The MoJ should respond to the grant registration application within 15 days, and has the right to extend this period for another 15 days. Once a grant has been registered with the MoJ, the NGO receives a notification confirming the registration of the grant agreement. NGOs need to present this notification in order to carry out any bank operations related to grants. The MoJ has the right to deny registration of a grant if it considers that there are gaps in the information provided in the application, or in the attached documents, and these gaps are not addressed by the NGO within five days.

According to ICNL, "The Rules do not require the Ministry of Justice to provide a justification of a denial of registration. A denial of grant registration cannot be appealed (except for procedural violations)" (ICNL, September 2015, p.4).

The 2016 Initial Assessment cites the following stakeholder views (pp.80-84):

With regards to grant registration procedures, the MoJ explained that there are three legal forms of financial support to NGOs: grant agreements; service and work agreements; and donations. For the grant agreement registration, both parties (a donor and a recipient) should comply with the rules for grant registration, and both parties need to register each individual grant. Both foreign and local organizations may provide financial support, but need to obtain a letter from the MoJ confirming the economic feasibility of the grant. MoJ officials explained that given that grants are tax exempt, strict rules were considered necessary. In the past, grants had also been used to fund terrorism and extremism, further justifying the need for these new procedures. Furthermore, the MoJ explained that the government wants to ensure that donor funds are equally distributed across regions and purposes, and avoid double funding of the same activity (...)

Others [civil society representatives] explained that in the past, the registration process for grants was less formal. "When you received a grant, you had to register it with the MoJ. Within one month you would receive an official letter of approval or refusal. If you don't receive anything, it was considered approved. Or at least it would be the MoJ's problem, because the timeline at their disposal to process the grant would have elapsed. It was more of a notification process than an approval process. Then every six months MoJ would issue a list of approved grants, and we could see

our grants on the list confirming that they had been registered. Interestingly, these lists were only made public until mid2013 (...)

None of the development partners consulted had come across any financial irregularities in their dealings with the coalition or coalition member organisations. One donor explained that in the past, although they did check that their grants were being awarded to registered NGOs, they did not check whether the NGO had registered the grant with the MoJ prior to disbursement. At the time, there was no such obligation on the donors. However, given the amendments to the NGO Law, any new contracts would now have a clause in them obliging the NGO to present evidence that the grant had been registered with the MoJ in order to effectuate the disbursement.

One civil society representative lamented that the situation on grant registration had not improved. No Coalition member had signed and registered any new grants from foreign donors since the new Rules were issued in November 2015 (...)

One Coalition member explained that: "In September 2014, I applied for the registration and the grant was refused. In December 2014, I wrote to the MoJ asking them to provide an official explanation for the refusal because I needed it for the donor. I received this letter in January 2015. The letter said that the grant agreement included a clause stipulating that if I don't use the grant for its intended purpose, then it must be returned to the donor, and this was not in line with Azeri legislation. However, this was just an excuse. If I had complained and proven that they were wrong, they would have found another excuse. Then suddenly when I reapplied in February 2016, the grant was registered. I didn't change a word in the agreement, but they signed it nevertheless". Other Coalition members confirmed that this was indeed a common reason cited by the MoJ for refusal of grants. "If the MoJ points to this clause then we know it is the end of the conversation." (...)

Another Coalition member explained that "The State Council for NGO support offered us AZN 7000 (USD 5k) to do a project, which would easily be registered by the Ministry of Justice. But then at the same time the Ministry of Justice would reject the registration of a similar project if the funding comes from other sources".

(ii) Progress since the 35th EITI Board meeting:

On 11 January 2017, the Cabinet of Ministers of Azerbaijan issued Decree #216 On amending the Rules on Registration of Grant Agreements. These Rules address requirements for registration of grants by donors and NGOs. A key amendment is the enabling of grants to be registered as 'service contracts'⁷ provided that the objective of the grant is for the NGOs to provide services and work. Neither the Rules nor the Law clearly define what constitutes "services and work". Donors are not required to obtain an opinion from the MoF on the financial and economic expediency of 'service contracts' prior to registration, thus making them easier to register. However, service contracts are subject to a 4 % tax.

Tax rate is 2% (for regional NGOs), 4% (Baku-based NGOs) and 18% those who voluntarily registered as VAT-payers or whose annual turnover exceeded 200,000 AZN.

⁷ Service contracts is another means under the NGO Law through which foreign donors can provide financial assistance to NGOs. For NGOs, the procedure for registration of service contracts is similar to that of grants however there is no registration obligation on the donors. In addition, service contracts are subject to 4% tax to be paid by the NGO.

The amendments also improve certain procedural aspects of grant registration. The deadline for NGOs to submit the grant registration application to the MoJ has been extended from 15 to 30 days from the date that the NGO signed the contract with the donor (Art. 1.5). This is considered a positive change given that the previous timeframe was deemed too short for NGOs to be able to compile and translate all the necessary documents. If there are deficiencies in the application that do not constitute grounds for rejection, the NGO is now given 10 days rather than 5 to address such deficiencies (Art. 4.6).

Decree #216 also reduces the number of documents related to the grant that donors and grant recipients previously had to submit to the government. Donors and grant recipients are no longer required to submit a proof of submission of annual financial report to the MoF, although the grant registration authorities (MoJ) will check that these have indeed been submitted⁸; nor are they required to submit notarised copies of identifications and powers of attorney, where applicable including notarised translations⁹. The donor no longer needs to present evidence of that the donor is authorised to issue grants¹⁰ and a copy of the charter¹¹. Furthermore, as a result of the “one-stop-shop” policy, the donor is no longer required to submit an opinion of the MoF on the financial-economic expediency of the grant as this will now be automatically transferred from the MoF to the grant registration unit in MoJ; and power of attorney. The amended Rules state that the grant registration timeframe will commence the day after the grant registration unit receives the opinion from the MoF (Art. 4.1-1). Grant recipients are no longer required to submit a copy of the extract confirming their registration¹². MoJ has to inform the applicant the next day if the grant registration package they submitted contains any deficiencies.

(iii) International Secretariat’s assessment:

Although the amendments to the 2015 Rules on Registration of Grant Agreements do not eliminate the need for NGOs to register grant agreements, they simplify registration procedures and may reduce the administrative burden for civil society and donors. Also, the internal procedures between the MoF and the MoJ with regards to ascertaining the financial-economic expediency of grant agreements should now be more coordinated. However, the double registration procedure is still retained, requiring both donors and the NGO to register grants. There is no assurance that if the grant is considered financially and economically expedient by the MoF and subsequently registered by the MoJ, that the recipient NGO will be granted the registration of the grant.

Thus, although there appears to have been progress on procedural aspects related to grant registration, the major concerns raised during the 2016 Validation still persist. The International Secretariat’s assessment is therefore that it appears that the corrective action has not been completed.

Update as of 6 March 2017: The Government of Azerbaijan comments in its letter of 3 March that “The legislation of Azerbaijan does not imply double registration of grants. The grant is registered once on

⁸ Removal of Art. 2.1.7 and introduction of Art. 3.1.10.

⁹ Amendment of clause 2.2.

¹⁰ Removal of Art. 2.1.6.

¹¹ Removal of Art. 2.1.4.

¹² Removal of Art. 2.1.4.

the basis of a single application by a recipient. As to “One-Stop-Shop” principle recipients submit all relevant documents (which were significantly reduced) only to the MoJ. Afterwards all necessary documentation and procedures are coordinated internally among relevant government agencies. The recipients are not required to be involved in that process at all (...) According to new amendments to the rules neither donors nor recipients are required to obtain opinion on expediency of grants” (pp.6-7). The letter reiterates that “once the grant is registered by the MoJ, it means that the recipient is granted the registration of the grant” (p.7).

The International Secretariat has re-considered the procedures for registering grants, and agrees that the reference to the double registration procedure is incorrect. Art. 1.4 of the Rules on registration of Grant Agreements states that “Agreements on provision of grants by donors (...) shall be presented by donors to the registration body for registration. Agreements received by the recipients of the Republic of Azerbaijan shall be presented by the recipients to the registration body for registration”. The Rules further state that “submission of documents on registration of a grant agreement that were made with foreign donors (...) and obtaining the opinion on financial-economic expedience of a grant shall be carried out based on “one-stop-shop” principle in accordance with Decree #339 of the Cabinet of Ministers of the Republic of Azerbaijan of 22 October 2015 On Rules on obtaining the right to provide grants in the Republic of Azerbaijan by foreign donors”. Art. 2.3 of Decree #339 states that “A foreign donor or recipient under the contract (their representative) shall submit within 30 days of signing a grant agreement an application to (...) Ministry of Justice of the Republic of Azerbaijan (...) for obtaining the opinion of the Ministry of Finance of the Republic of Azerbaijan on financial-economic expediency of the grant and subsequent registration of a grant agreement (decision) using ‘one-stop-shop’ principle”.

The Secretariat has received different opinions on whether it is the donor, the recipient, or both that have to register grants. According to the letter of the Government of Azerbaijan, it is the recipient NGO that should register the grant with the MoJ. While Art. 1.4 of the Rules on registration of Grant Agreements cited above seem to imply that both recipient and the donor need to register the grant, Art.2.3 of Decree #339 appears to imply that it could be either the donor or the recipient. Several stakeholders, including a legal analysis compiled by the Election Monitoring and Democracy Studies Centre of Azerbaijan¹³, seem to confirm that their understanding is the latter, i.e. that either the NGO or the donor can submit the application for registering the grant.

Regardless of the procedure for registering the grant, it is clear that any grant still needs to be registered with the Ministry of Justice, who will then issue a grant registration notification to the applicant upon successful registration of the grant. This is confirmed in the letter by the Government of Azerbaijan which states that “It is worth to note that the legislation on grants do not apply merely to NGOs. Recipients can also be commercial and non-commercial institutions, states, individuals and so on. The only intention of registration of grants is to maintain transparency and accountability through the registration of grant relations between recipients and donors. The corrective action requiring to eliminate the need to register grant agreements was set out on the basis of complaints from NGO

¹³ Legal analysis by Election Monitoring and Democracy Studies Centre of Azerbaijan
https://eiti.org/sites/default/files/documents/review_of_changes_to_financial_grant_regulations_eng.pdf

representatives on long lasting and sometimes ineffective registration process of grants. The requirement on registration itself was always there before and after amendments to the legislation”.

In light of this, the Secretariat’s assessment is although the procedure for registering a grant appears to have been simplified, the corrective action remains uncompleted given that grants still need to be registered with the Ministry of Justice and a notification of the registration needs to be obtained before the NGO can use the grant.

CORRECTIVE ACTION 1(iii): Legal and regulatory amendments eliminating the need for foreign donors to register individual grants with the authorities, and obtain an opinion on the purposefulness of the grant

(i) Findings of the 2016 Initial Assessment and Validation:

The 2016 Initial Assessment states (pp.74-75):

While foreign donors did not previously have to sign any agreements with the authorities, the amendments to the NGO Law on 17 October 2015 stipulate that local NGOs can receive donations from foreign donors only if the foreign donor has an agreement with the authorities. Foreign donors must obtain a permission to give a grant in Azerbaijan for each grant agreement individually. To acquire such a right, the opinion of the MoF on financial and economic reasonability of such a grant is required. In order to obtain the opinion from the MoF, the donor needs to submit a range of documents including the draft grant agreement with information about its purpose, amount, intended recipient, duration, the project proposal, and the budget; a justification of financial and economic expediency of grant; foreign donor registration certificate; and power of attorney verifying the authority of the signatory to sign the application.

The MoF has the right to deny registration of a grant if it considers that there are gaps in the information provided in the application, and if the purpose of the grant and its financial and economic justification is unclear. According to ICNL, “If the government is already addressing the needs covered by a proposed grant, this will be grounds for considering the grant as financially and economically nonexpedient. This provision is rather vague and leaves MoF with broad discretionary power to reject applications from “unwanted” donors, on the basis that the government of Azerbaijan is already providing grants to local NGOs in variety of areas, including human rights, elections monitoring, and other areas” (ICNL, December 2015, p.4).

The MoF has to respond to the application within 15 days, and has the right to extend this period for another 15 days, if it determines that “there is a need for further examination” (ICNL, December 2015, p.3). The MoF then issues an opinion twice a year, which is shared with other key ministries such as the MoJ. Once a grant agreement has been registered with the MoF and the opinion has been issued, the recipient NGO can apply for registration of the grant with the MoJ.

The 2016 Initial Assessment cites the following stakeholder views (pp.81-82):

Several development partners expressed frustration over the new grant registration procedures. The double registration process requiring the donor to apply and obtain approval from the authorities for every single grant regardless of the size of the grant, and for any single change to the grant agreement, was bureaucratic and heavy handed. In addition, the possibility that the government

might afterwards refuse the NGO to register the same grant made it difficult for donors to take the risk. One development partner had been forced to cancel over EUR 6 million worth of grants to NGOs because of the new rules. Some donors said that the new Rules for grant registration have also affected the disbursement of grants signed prior to the rules coming into force. According to some, the government had indicated that grants signed before the new rules were issued could be registered according to the old procedure. However, only some NGOs had been able to register such grants, while other NGOs have had such grants rejected and decision-making around this appeared ad-hoc and selective. A couple of donors confirmed that they were now considering using service agreements to fund NGOs(...)

The CSSN [Council for State Support to NGOs] representative further explained that if a donor did not want to register in Azerbaijan or follow the procedure set out in the Rules for registration of grants from foreign donors, any donor would be welcome to sign an MoU with the CSSN to enable disbursement of funds to NGOs. The CSSN would act as an operator of the funds and the NGOs receiving these funds would sign a sub-agreement with the CSSN.

Some development partners also perceived the funding from the CSSN as an attempt by the government to infiltrate the coalition and inflaming tensions between civil society groups. Although this was the only funding source available, the grants were so small that it would not be possible to run longer term projects that could lead to any kind of meaningful or sustainable outcomes. Several donors confirmed that they had been offered to channel funds through the CSSN, but were reluctant to do so because of the potential influence that the Council would then have in terms of how these grants would be allocated.

(ii) Progress since the 35th EITI Board meeting:

On 26 January 2017 the Cabinet of Ministers issues a Decree amending the “2015 Rules on Obtaining the right to provide grants in the territory of Azerbaijan by foreign donors”. The amendments do not eliminate the major areas of concern highlighted in the Validation such as the need for donors to obtain the right to provide grants, including obtaining a favourable opinion of the Ministry of Finance on the financial-economic expediency of the grant.

Rather, the amendments appear to mainly simplify the process by merging the application for the right to issue grants with the application for the option on the financial-economic expediency of the grant and introducing one point of contact, the MoJ. The new provision 4.1 of the Rules stipulate that if the grant is considered financially and economically expedient by the MoF, the donor will automatically have the right to issue the grant. The amendments also seek to speed up the grant registration process by introducing tighter deadlines for the MoF and MoJ to process the donor’s request. Upon receipt of the grant registration package, the MoJ only has one working day to review all grant registration documents and inform the donors and applicants on the completeness (Art. 2.5) MoJ will then submit the documents to the MoF, which now has seven days to provide its opinion on the financial-economic expediency of the grant, rather than 15 days as before (Art. 3.1). This period can only be extended for 7 days (Art. 3.1). If the opinion is negative, the donor needs to be informed by the MoJ within 3 days of receiving the opinion from the MoF (Art.3.2-1).

Finally, the amendments also include some changes in the documents that the donor has to submit for the registration process. There is no longer need for need for submitted notarized translations of

documents provided (Art. 2.4) and the donor is no longer required to submit copies evidencing their registration as a donor, their charter etc.¹⁴.

While an evaluation of the application of these new Rules is not part of the assessment provided in this paper, the International Secretariat's understanding is that some NGOs and foreign donors are trying to test the new grant registration system and have signed small grant agreements and service agreements that they are currently trying to register. Although the stipulated timeframe for the government to process and decide on these grants have expired, the grants have not yet been registered by the authorities nor have they been rejected. It is also worth noting that the EU has obtained a waiver from the donor registration requirements given their bilateral agreement with Azerbaijan. However, the waiver only applies to grants for education and rural developments. The International Secretariat understands that other donors have sought similar exemptions on the same grounds but have not yet been successful.

(iii) International Secretariat's assessment:

Although there have been amendments to the Rules on Obtaining the right to provide grants in the territory of Azerbaijan by foreign donors, the Rules still require donors to obtain an opinion on the financial-economic expediency of the grant (Art. 4.1) and requires donors to register individual grants, sub-grants, additional contracts related to the grants and any amendments to the grant documents (Art.

1.3). The International Secretariat's assessment is therefore that the corrective action is not addressed.

Update as of 6 March 2017: The Government of Azerbaijan comments in its letter of 3 March that "It seems there is a misinterpretation of rules of Cabinet of Ministers. As mentioned above, the grant is registered once on the basis of a single application by a recipient. As to "One-Stop-Shop" principle recipients submit all relevant documents (number of which were significantly reduced) only to the MoJ. Afterwards all necessary documentation and procedures are coordinated internally among relevant government agencies. The donors are not required to be involved in that process at all (...) According to new amendments to the rules neither donors nor recipients are required to obtain opinion on expediency of grants".

The International Secretariat has re-considered the procedures for donors to provide grants as well as the need to obtain an opinion on the expediency of grants. Art. 2.1 of the Rules on obtaining the right to provide grants in the Republic of Azerbaijan by foreign donors state that "The right to provide grants in the territory of the Republic of Azerbaijan by a foreign donor shall be obtained for each individual grant agreement". "The requirements for obtaining the right to provide grants by foreign donors (...) shall also apply to sub-grants and additional contracts on the grant agreement as well as cases of any changes in the agreement" (Art. 1.3). Art 2.2. further states that "An opinion of the Ministry of Finance of the Republic of Azerbaijan on the financial-economic expediency of the grant shall be required for obtaining the right to provide grants". Art. 4.1 also confirms that "if the opinion of the Ministry of Finance on financial-economic expediency of a grant is provided to the coordinating state body, the foreign donor shall be considered to possess the right to provide grant". As noted under corrective

¹⁴ Removal of Art.2.3-2.

action ii above, Art. 2.3 implies that it can either be the donor or the recipient that makes the application to receive the opinion on the financial-economic expediency of the grant. Thus, although the recent amendments have changed the procedure for obtaining the opinion, obtaining the opinion is still a pre-requisite for donors to provide grants, and is required for every individual grant including changes to grant agreements. In light of this, the Secretariat's assessment is that the corrective action remains uncompleted.

Conclusion

At its 35th meeting, the EITI Board requested Azerbaijan to undertake three corrective actions by the time of the next Board meeting in order to avoid suspension from the EITI. These corrective actions required undertaking legal and regulatory amendments to eliminate the need for (i) civil society to obtain an extract every two years confirming their registration; (ii) civil society to register grants with the Ministry of Justice; and (iii) foreign donors to register individual grants with the authorities, and obtain an opinion on the purposefulness of the grant.

In January 2017, Azerbaijan undertook regulatory amendments related to the 2015 Rule on Registration of Grant Agreements, and the 2015 Rules on Obtaining the right to provide grants in the territory of Azerbaijan by foreign donors. These regulations are of relevance to corrective actions 1(ii) and 1(iii). Although these amendments appear to simplify procedural aspects, they do not appear to address the underlying concerns documented in the 2016 Validation and do not eliminate or amend the requirements for NGOs to register grants with the MoJ, nor do they eliminate or amend the requirements for foreign donors to register individual grants with the authorities and obtain an opinion on the purposefulness of the grant, as requested by the EITI Board. It is unclear why these concerns were not addressed in the amendments. Furthermore, no amendments have been made to the 2013 Law on State Registration and Registry of Legal Entities with regards to the need to obtain an extract confirming the registration of an NGOs, which according to the 2016 Validation is necessary in order for NGOs to operate as legal entities. In light of this, the International Secretariat's conclusion is that the corrective actions have not so far been met.