

For decision

For discussion

For information

Kyrgyz Republic Validation

Summary

The Validation Committee recommends that the EITI Board agrees that Kyrgyz Republic has made inadequate progress in implementing the 2016 EITI Standard. In accordance with requirement 8.3.c.iii, the Kyrgyz Republic will be suspended and will need to take corrective actions.

KYRGYZ REPUBLIC VALIDATION

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Supporting documentation

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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 early 2018. The cost of second Validations varies depending on the size of the country and the extractive industries and the scope of the corrective actions. In this case, a second Validation is expected to cost circa USD 25 000, including staff time, travel and the cost of engaging the Independent Validator.

Document history

Comparison table and supporting documentation reviewed by the Validation Committee	15 February 2017
Validation Committee agreement on a Board Paper	21 February 2017
Submitted to the Board	22 February 2017

Recommendation

The Validation Committee makes the following recommendation to the EITI Board:

The Board agrees that the Kyrgyz Republic has made inadequate progress overall in implementing the 2016 EITI Standard. In taking this decision the EITI Board noted the revival of the commitment by the Government of the Kyrgyz Republic and the important contributions by civil society and industry to the process. The Board highlighted that although there is a need for

improvement in terms of disclosure of information related to the extractive sector, the EITI reporting process has underscored opportunities for reform. The Board was encouraged by the efforts of the government, industry and the civil society in the last couple of months and the Supervisory Board to act on the recommendations from EITI institutional setup study to strengthen EITI implementation. The Board was also encouraged by the efforts of the Supervisory Board to ensure disclosure of beneficial ownership and mandatory EITI reporting, amount of information disclosed under the EITI Standard available on government portals on monthly basis as well as increase of reporting companies and level of disaggregation.

The Board's determination of Kyrgyz Republic's progress with the EITI's requirements is outlined in the assessment card, below. The EITI Board agreed that the Kyrgyz Republic had not made satisfactory progress on requirements 1.1, 1.4, 2.2, 2.3, 2.4, 2.6, 3.2, 3.3, 4.3, 4.4, 4.5, 4.6, 4.9, 5.2, 6.1.a, 6.2, 6.3, 7.1, 7.3 and 7.4. The major areas of concern relate to state participation (#2.6), export data (#3.3), barter agreements (#4.3), transportation revenues (#4.4), SOE transactions (#4.5), direct subnational payments (#4.6), data quality (#4.9), subnational transfers (#5.2), mandatory social expenditures (#6.1.a) SOE quasi-fiscal expenditures (#6.2) and follow up on recommendations (#7.3). The EITI Board disagreed with the validator on the following requirements: industry engagement (#1.2), work plan (#1.5), policy on contract disclosure (#2.4), production data (#3.2), comprehensiveness (#4.1), disaggregation (#4.7)¹.

In accordance with requirement 8.3.c.iii, the EITI Board agreed that the Kyrgyz Republic will be suspended and will need to take corrective actions outlined below. Progress with the corrective actions will be assessed in a second Validation commencing on <date of Board decision + 18 months>. Failure to achieve meaningful progress with considerable improvements across several individual requirements in the second Validation will result in delisting in accordance with the EITI Standard. In accordance with the EITI Standard, the Kyrgyz Republic's Supervisory Board 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 July 2016. In accordance with the 2016 EITI Standard, an initial assessment was undertaken by the International Secretariat. The findings were reviewed an Independent Validator, who submitted a Validation Report to the EITI Board. Kyrgyz Republic's Supervisory Board were invited to comment throughout the process. The Supervisory Board's comments on the report were taken into consideration. The final decision was taken by the EITI Board.

Background

The government of Kyrgyz Republic committed to implement the EITI in January 2004. A multi-stakeholder group, the Supervisory Board (SB) was formed in December 2010. The Kyrgyz Republic has subsequently published five EITI Reports covering eleven fiscal years (2004-2014).

¹ As per the VC minutes of 16 February 2017, available from [link].

The Validation process commenced on 1 July 2016. In accordance with the Validation procedures, an [initial assessment](#) was prepared by the International Secretariat. The MSG were invited to comment. [Comments](#) were received and shared with the Validator. The assessment was then reviewed by the Independent Validator, who prepared the [Validation Report](#). The MSG were invited to comment on the Report. Again, comments were received from the [MSG](#), the [MSG Vice Chair](#), the [industry constituency](#) and the [Independent Administrator](#).

The Validation Committee reviewed the case on 15 February 2017. Based on the findings above, the Validation Committee agreed to recommend the assessment card and corrective actions outlined below. As per Requirement 8.3.c. this includes a requirement that the MSG agrees and discloses a time-bound action plans for addressing weaknesses in government engagement and data quality and assurance within 3 months.

The Committee also agreed to recommend an overall assessment of “inadequate 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.

...

iii (c) **Inadequate progress**. The country will be suspended and requested to undertake corrective actions until the second Validation. For the suspension to be lifted, the country must in its second Validation demonstrate at least meaningful progress.








The Validation Committee agreed to recommend a period of 18 months to undertake the corrective actions.

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)			Meaningful		
	Industry engagement (#1.2)				Satisfactory	
	Civil society engagement (#1.3)				Satisfactory	
	MSG governance (#1.4)			Meaningful		
	Workplan (#1.5)				Satisfactory	
Licenses and contracts	Legal framework (#2.1)				Satisfactory	
	License allocations (#2.2)			Meaningful		
	License register (#2.3)			Meaningful		
	Policy on contract disclosure (#2.4)			Meaningful		
	Beneficial ownership (#2.5)					
	State participation (#2.6)		Inadequate			
Monitoring production	Exploration data (#3.1)				Satisfactory	
	Production data (#3.2)			Meaningful		
	Export data (#3.3)		Inadequate			
Revenue collection	Comprehensiveness (#4.1)				Satisfactory	
	In-kind revenues (#4.2)					
	Barter agreements (#4.3)	No progress				
	Transportation revenues (#4.4)	No progress				
	SOE transactions (#4.5)		Inadequate			
	Direct subnational payments (#4.6)		Inadequate			
	Disaggregation (#4.7)				Satisfactory	
	Data timeliness (#4.8)				Satisfactory	
	Data quality (#4.9)		Inadequate			
Revenue allocation	Distribution of revenues (#5.1)				Satisfactory	
	Subnational transfers (#5.2)		Inadequate			
	Revenue management and expenditures (#5.3)					
Socio-economic contribution	Mandatory social expenditures (#6.1.a)		Inadequate			
	Discretionary social expenditures (#6.1.b)					
	SOE quasi-fiscal expenditures (#6.2)	No progress				
	Economic contribution (#6.3)			Meaningful		
Outcomes and impact	Public debate (#7.1)			Meaningful		
	Data accessibility (#7.2)					
	Follow up on recommendations (#7.3)		Inadequate			
	Outcomes and impact of implementation (#7.4)			Meaningful		
Overall assessment	Inadequate Progress		Inadequate			

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.
	Beyond. 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. Progress in addressing these corrective actions will be assessed in the next Validation commencing on <date of Board decision + 18 months>:

1. In accordance with requirement 1.1.c, the government must be fully, actively and effectively engaged in the EITI process. In accordance with requirement 8.3.c, the Supervisory Board is required to disclose a time-bound action plan for addressing the deficiencies in government engagement documented in the initial assessment and the Validator's Report within **three** months of Board's decision, i.e. by <date + 3 months>.
2. In accordance with requirement 1.4.b.vi, Supervisory Board should agree and publish its procedures for nominating and changing multi-stakeholder group representatives. This should include ensuring that there is a process for changing group members that respects the principles set out in Requirement 1.4.a. Supervisory Board 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 (requirement 1.4.b.ii).
3. In accordance with requirement 2.2.a.iv, Kyrgyz Republic is required to disclose any non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards.
4. In accordance with requirement 2.3.b, Kyrgyz Republic is required to maintain a publically available register or cadastre system(s) that among other requirements include the coordinates of the license area and the date of the application (requirement 2.3.b.ii-iii). Where coordinates are not collated, the government is required to ensure that the size and location of the license area are disclosed in the license register and that the coordinates are publically available from the

relevant government agency without unreasonable fees and restrictions. Where registers or cadastres are incomplete the EITI Report should include the information set out in 2.3.b (requirement 2.3.c).

5. In accordance with requirement 2.4.b, the next EITI Report should document the government's policy on disclosure of license agreements that govern the exploration and exploitation of minerals. This should include actual disclosure practices and any reforms that are planned or underway.
6. In accordance with requirement 2.6.a, Kyrgyz Republic must disclose an explanation of the prevailing rules and practices regarding the financial relationship between the government and state-owned enterprises (SOEs), e.g., the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing. It should also disclose their level of ownership in mining companies operating within the countries mining sector, including those held by SOE subsidiaries and joint ventures, and any changes in the level of ownership during the reporting period. Any loans or loan guarantees provided by the government or SOE(s) to oil, gas and mining companies operating within the country should be disclosed. (requirement 2.6.b).
7. In accordance with requirement 3.2, Kyrgyz Republic must disclose production data for the fiscal year covered by the EITI Report, including the value of production by commodity, and by region where relevant.
8. In accordance with requirement 3.3, Kyrgyz Republic must disclose export data for the fiscal year covered by the EITI Report, including total export volumes and the value of exports by commodity, and, when relevant, by state/region of origin.
9. In accordance with requirement 4.3, the Supervisory Board 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 Supervisory Board concludes that these agreements are material, the Supervisory Board 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, Supervisory Board should agree an approach for unilateral disclosure by the parties to the agreement(s) to be included in the EITI Report.
10. In accordance with requirement 4.4, where revenues from the transportation of oil, gas and minerals are material, the government and state-owned enterprises (SOEs) are expected to disclose the revenues received. The Supervisory Board should evaluate the materiality of any transportation revenues collected by the government, and if applicable, endure an adequate disclosure process.
11. In accordance with requirement 4.5, Supervisory Board must ensure that the reporting process comprehensively addresses the role of SOEs, including material payments to SOEs from oil, gas and mining companies, and transfers between SOEs and other government agencies.
12. In accordance with requirement 4.6, it is required that the Supervisory Board establish whether direct payments, within the scope of the agreed benefit streams, from companies to subnational

government entities are material. Where material, the multi-stakeholder group is required to ensure that direct company payments to subnational government entities and the receipt of these payments are disclosed and reconciled in the EITI Report.

13. In accordance with requirement 4.9.b.iii, the Supervisory Board and the Independent Administrator are required to agree a Terms of Reference for the EITI Report based on the standard Terms of Reference and the 'agreed upon procedure for EITI Reports' endorsed by the EITI Board. Where the multi-stakeholder group concludes that there is routine disclosure of data required by the EITI Standard (e.g. Open Budget Portal) and is subject to credible audit, the MSG may seek approval from the EITI Board to mainstream EITI implementation in accordance with the 'Agreed upon procedure for mainstreamed disclosures' (Requirement 4.9.c).

In accordance with requirement 8.3.c.i, the Supervisory Board is required to disclose a time-bound action plan for addressing the weaknesses in data reliability documented in the initial assessment and the Validator's Report within three months of Board's decision, i.e. by <date + 3 months>.

14. In accordance with requirement 5.2.a, Kyrgyz Republic should disclose the revenue sharing formula, if any, as well as 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.
15. In accordance with requirement 6.1.a, where material social expenditures by companies are mandated by law or the contract with the government that governs the extractive investment, Kyrgyz Republic must disclose and, where possible, reconcile these transactions. The Supervisory Board should establish the existence and materiality of mandatory and discretionary social expenditures and ensure that any material expenditures are disclosed in accordance with requirement 6.1.
16. In accordance with requirement 6.2, Kyrgyz Republic must include disclosures from SOE(s) on their quasi-fiscal expenditures. The Supervisory Board is required to establish the materiality of any quasi-fiscal expenditures and 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.
17. In accordance with requirement 6.3, implementing countries must disclose information about the contribution of the extractive industries to the economy for the fiscal year covered by the EITI Report, including the size of the extractive industries in absolute terms and an estimate of informal sector activity (requirement 6.3.a). Total government revenues generated by the extractive industries (including taxes, royalties, bonuses, fees, and other payments) in absolute terms should also be disclosed in the next EITI Report (requirement 6.3.b).
18. In accordance with requirement 7.1, Supervisory Board must ensure that the EITI Report is comprehensible, actively promoted, publicly accessible and contributes to public debate. Key audiences should include government, parliamentarians, civil society, companies and the media. The Supervisory Board should ensure that outreach events, whether organised by government, civil society or companies, are undertaken to spread awareness of and facilitate dialogue about the EITI Report across the country (requirement 7.1.e).
19. In accordance with requirement 7.3, the Supervisory Board is required to take steps to act upon

lessons learnt; to identify, investigate and address the causes of any discrepancies; and to consider the recommendations resulting from EITI reporting.

20. In accordance with requirement 7.4, the Supervisory Board is required to review the outcomes and impact of EITI implementation on natural resource governance. The Supervisory Board is required to list each recommendation and corresponding activities that have been undertaken to address the recommendations and the level of progress in implementing each recommendation through the annual activity reports (APRs) (requirement 7.3.a.iii). The APR should also include a narrative account of efforts to strengthen the impact of EITI implementation on natural resource governance, including any actions to extend the detail and scope of EITI reporting or to increase engagement with stakeholders (requirement 7.3.a.v).

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