

1.5. Work plan

The Supervisory Board of the Extractive Industries Transparency Initiative of the Kyrgyz Republic (“the Supervisory Board”) is concerned by the fact that the Validator evidently did not receive the full version of the Work Plan, since the arguments provided there do not find confirmation in the document itself. Activities for increase of validation potential are described in sections 5 and 7 of the Work Plan, respectively.

We draw your attention to the fact that pursuant to Government Resolution No. 317, the responsibility for raising funds rests with the EITI Secretariat, which participated in the Donor Council twice in 2013-2014, as well as from separate meetings with the participation of other representatives of the Supervisory Board.

It is true that sections 2.4 and 4.4 do not define the cost of the activities, since they are supposed to be covered by the same grant as section 2.10, which calculates the cost of preparation of the Report. It is also true that there is a reference to donors without naming specific organizations, which is due to the absence of agreements with any specific organizations for these items.

The Validator states: “The Work Plan contains comments on the need to implement amendments to the Law ‘On Subsoil’, but there are no specific plans as to how this issue will be addressed”. In fact, amendments to the Law are being prepared in accordance with the legislative process and the state body overseeing the EITI – the State Committee for Industry, Energy and Subsoil Use of the Kyrgyz Republic – participated in the initiation of a package of amendments to the Law of the Kyrgyz Republic “On Subsoil” in 2016. These amendments include the items envisaged in the Work Plan and are being reviewed by the Kyrgyz Parliament in a second hearing.

Comments in the Preliminary Report regarding inconsistency of activities in the Work Plan with the goals of EITI implementation also did not find understanding of the Supervisory Board. We believe that the Report itself, disclosure of beneficial ownership, meetings of the Supervisory Board and validation are processes that enhance management of natural resources and increase transparency and accountability of the Government in management of the sector. We suppose that creating investment appeal is a function of the EITI, due to the lack of objective information about mining industries in our country in the English-speaking world. Western media tend to publish negative news about mining industries in the Kyrgyz Republic for a number of reasons, which are often connected with the interests of specific companies. Therefore, for us, investment appeal is achieved by demonstrating compliance with the EITI Standard and by means of the information report.

We are convinced that we deserve a “satisfactory” assessment of progress for this requirement.

2.2 License allocations

Neither of the Reports provides a specific rationale for why progress of the Kyrgyz Republic for this item is not “satisfactory”. The Preliminary Report states: “Although the stakeholders who were interviewed were not aware of any irregularities, the EITI Report does not confirm that all the auctions and direct negotiations conducted in 2014 were carried out in accordance with the applicable legal and regulatory regime and standard technical and financial criteria”.

We submitted a comment to the validator, in which a representative of the authorized body for licensing of subsoil use certified that all the procedures, which were carried out, were conducted lawfully, and any facts to the contrary would entail legal action.

In spite of the fact that the EITI Report contains full information on all the items required in section 2.2, including a critical review of the licensing procedures, it is evident that we are not assessed in accordance with this section of the Standard.

It should be noted that the Independent Administrator, as the Standard requires, points out problems in the EITI Report regarding licensing connected with the issue of licenses through “direct negotiations”. In

respect of the described risk, the draft law, which provides for enhancement of the licensing procedures (“the right of first bid”) and which was prepared by a member of Parliament jointly with the Government, is currently undergoing a second reading in Parliament, which, on the contrary, demonstrates progress in EITI implementation.

The subjectivity of opinions in the Validation Reports regarding this section and failure to follow the EITI Standard do not contribute to enhancing confidence in the EITI validation procedure on the part of the implementing Government.

2.3 Register of licenses

The Supervisory Board, as stated in the comments to the Validator, considers progress in keeping the Register of Licenses to be satisfactory. The members of the Validation Committee can access the [license database, list of existing applications, interactive map of licensed areas](#). In spite of the fact that information on the date of acceptance of applications has been published since June 2015, taking into account the multi-functionality and informational completeness of the mechanisms of the register of licenses and the interactive map, we believe that the progress is satisfactory.

The interactive map not only enables access to information about the coordinates of the license areas that are visualized on the map, but also provides filters to check for existing licenses, ascending as far as the small administrative divisions of rural councils. Moreover, the register of licenses is linked to registration details of the legal entity, which provide data on legal registration of companies as well as owners for certain licenses. Moreover, a publicly available link in the register of licenses makes it possible to find data of the open budget with a detailed breakdown of amounts received from the taxpayer.

Also, a new tool, “License Retention Fee”, was introduced in 2017, which enables local councils to look up information about the amount to be credited to the account of the local administration as a license retention fee.

We believe that the existing tools of the register of licenses are informative and innovative and that the progress of our Republic regarding this section is satisfactory.

2.4 Disclosure of contracts

We believe that the Validator has unreasonably lowered the score for this section. In spite of limited technical capabilities for disclosure of scanned copies of license agreements, the policy and regulatory legal acts on licensing are exhaustively described in the EITI Report for 2013-2014, including on pages 120-130.

The text and format of licenses is standard (see example in Annex), since in 99% of cases the Government of the Kyrgyz Republic grants subsoil right through license agreements in accordance with the Regulation on the Licensing of Subsoil Use (publicly available on the website and also described in the Report for 2013-2014). We draw your attention to the fact that the Open Register of Licenses provides all the information about a license agreement, which is relevant for the public.

Moreover, as stated in the Preliminary Report, where technically feasible, the Government considers the disclosure of licenses to be possible and there are no legal obstacles in place. Disclosure of licenses was included in the EITI 2016 Work Plan. Accordingly, what “policy for the disclosure of licenses” was supposed to be discussed in this section?

2.6 State participation

The requirement of the EITI Standard for state participation clearly states: “where state participation in the extractive industries gives rise to material revenue payments, implementing countries must disclose: ...”.

According to the materiality threshold and the list of companies, only two Open Joint Stock Companies, the controlling interest of which is owned by the State, had material payments: JSC Kyrgyzaltyn and JSC

Kyrgyzneftegaz, due to which their payments were subject to reconciliation. At the same time, according to the requirement of the Standard, section 6.4 of the EITI Report, “State Participation in Extractive Projects”, describes the prevailing rules and practice of financial relationships of companies with the Government, focusing on the prevailing practice of relationships with JSC Kyrgyzaltyn.

Since all substantial elements of the requirement of the Standard have been implemented, it is unclear to us why progress is assessed as “inadequate”.

4.1 Comprehensiveness of data

Contrary to what is stated by the Validator, the Supervisory Board documented a decision on the materiality threshold and a rationale for it in the Minutes of Meeting No. 21 of 9 December 2014. More detailed information about the rationale, taken from the same Minutes, is also described in the Preliminary Report for this section.

With respect to the information set out in the Preliminary Report, we believe that the Supervisory Board has sufficient grounds for the usage of materiality thresholds (Resolution of the Government, Minutes of Meeting of the Supervisory Board No. 14, 21). The “criterion”, to which the Preliminary Report refers, that needs to be in place for adding companies to the list, is not mentioned in the EITI requirements. On the contrary, the interest of the Supervisory Board in reconciling data on additional companies can only prove commitment to making the EITI Report effective. The Supervisory Board’s primary aspiration was to ensure comprehensiveness of data, and we documented our considerations not only in Minutes but also in the Resolution of the Government of the Kyrgyz Republic, which, on the contrary, should be considered a positive experience.

We believe the low score for this section to be unjustified.

4.3 Infrastructure provisions and barter arrangements

The Preliminary Report states: “Although there are no strong signs of existence of infrastructure provisions and barter arrangements in the Kyrgyz Republic, it seems that neither the Supervisory Board nor the Independent Administrator have adequately considered the relevance of this matter”. The Supervisory Board wrote in its comments to the Validator that the Kyrgyz Republic does not have legal framework for infrastructure provisions and barter arrangements. The companies representative also stated in the comments to the Validator that his words were incorrectly interpreted in the Preliminary Report.

What discussion should the Supervisory Board have carried out in this respect, if the country has no provisions for such agreements and there are no such agreements?

4.4 Transportation revenues

As mentioned in the comments to the Preliminary Report, the Kyrgyz Republic is not an oil & gas export or transit country. The companies representative stated in the comments to the Validator that his words were incorrectly interpreted in the Preliminary Report. It is evident to the stakeholders that the requirement is not relevant for the Kyrgyz Republic.

4.6 Subnational direct payments and recommendations 4.5, 4.6, 4.7, 4.8, 4.9

The Validator’s Report states: “Progress regarding this requirement will be critical in addressing long-term community problems related to the impact and benefits from mining activities at the local level”. Did the Validator diagnose a situation of conflict in local communities in the Kyrgyz Republic, which justified the statement that addressing problems with subnational payments was critical?

Developing the potential and financial literacy of the local population is not in the competence of the Supervisory Board. The Supervisory Board pointed out the flaws in subnational payments, members of the Supervisory Board joined a working group of the Ministry of Economy of the Kyrgyz Republic for the improvement of Regulations on Development Funds and their proposals were included in the draft version

of the new Regulation. Accordingly, the Supervisory Board is committed to complying with Requirement 4.6, in connection with which the Board considers it necessary to harmonize the legal framework with respect to reporting of the Regional Development Funds as an indispensable and effective measure to address the issue.

At the same time, the Supervisory Board draws attention to the fact that five recommendations in the same format, without an informed rationale to support them, does not amount to recommended actions, but rather represents an “order from above” regarding the priorities of EITI implementation in the Kyrgyz Republic. The Supervisory Board considers it reasonable to reduce the recommendations to a single one, which factually reflects the EITI Standard.

4.7 Level of disaggregation

In accordance with the requirements of the EITI Standard, the deepest possible level of disaggregation was used in the Kyrgyz Republic, with the approval and understanding of the Supervisory Board,.

At the moment, disaggregation by project is highly problematic, since data on taxes received from companies on a cash basis are captured by the identification number of their registration (Taxpayer Identification Number). Not all companies use different types of registration for individual projects, so that disaggregation of 86 out of the 136 companies, which participate in reporting by projects, would have been highly problematic and would have been impossible without close cooperation between the State Tax Service and company representatives (which might have been a risk for the quality of reconciliation).

The problem of breaking down extractive activity by projects has been raised many times during discussions of the Supervisory Board (Minutes No. 22, as well as meetings of the working group for preparation of the Terms of Reference for the Independent Administrator), and members of the Supervisory Board, as mentioned in the Preliminary Report, are satisfied with the existing level of disaggregation (by individual payments, companies and Government bodies).

At this stage we consider the current progress to be satisfactory since the approach of the Supervisory Board to this issue is consistent. The Supervisory Board is ready to consider the possibility of achieving in the future the level of disaggregation that is consistent with the requirements of the United States Securities and Exchange Commission and the European Union.

4.9 Data quality

The assessment for this section was met with indignation by the members of the Supervisory Board: it is unclear to us why the Preliminary Report justifies a low score by reference to requirements that do not exist in the Standard.

The situation is highly unacceptable due to the fact that, in accordance with the requirements of the Standard for the year of preparation of the Report, all the procedures that were used had been discussed (Minutes of the Supervisory Board No. 20 of 12 June 2014, No. 22 of 26 March 2015), codified in Government Resolution No. 317, and have the confidence of the members of the Supervisory Board. A summary of conclusions for the data reconciliation procedure is provided in the Report on page 16.

The two Meeting Minutes of the Supervisory Board contain the following explanations:

Requirement 5.2 states:

The Multi-Stakeholder Group and the Independent Administrator are required to agree Terms of Reference based on the “agreed procedures for the EITI Report” and based on standard Terms of Reference endorsed by the EITI Board. Should the Multi-Stakeholder Group wish to adapt or deviate from these agreed procedures, the approval of the EITI Board must be sought in advance (Requirement 1.5).

Regarding data collection, the Terms of Reference (section 2.1) state:

2.1. The most widespread procedure is that the Independent Administrator is authorized by the MSG to distribute the reporting forms and collect the completed forms and auxiliary documentation related thereto, as well as any other requested contextual or other information that must be collected by the MSG directly from entities, which participate in reporting. The Government usually provides contact details for the reporting entities and helps the Independent Administrator to ensure that all reporting entities participate to the fullest extent.

The Kyrgyz Republic uses an alternative approach, by which the EITI National Secretariat helps in collecting data from state bodies, while data from companies are collected by the State Agency for Geology and Mineral Resources through the existing reporting mechanism. The information collection procedure is approved by a Government Resolution and, in the future, EITI Reports will be collected through the reporting mechanism for subsoil users, which is being implemented by the State Agency for Geology and Mineral Resources.

In order to ensure the independence of obtained data, the collected information is supplied to the Independent Administrator separately: from companies by the State Agency for Geology and Mineral Resources, and from state bodies by the EITI Secretariat.

It is evident that the International Secretariat is trying to criticize the country's policy without adequate grounds for so doing.

It is disappointing that no account is taken of the local context and applicable law, which does not require mandatory conduct by companies of an independent audit. Small companies, which are in the majority in the Kyrgyz Republic, do not undergo an independent audit and, as mentioned in the Preliminary Report, recommendations to conduct a mandatory audit discourage companies from supporting the EITI.

In connection with the indignation felt by the parties after publication of the Preliminary Report, the Supervisory Board once again discussed the data collection procedures and confirmed their effectiveness in the context of our country (Minutes of the EITI Supervisory Board No. 3 of 16 December 2016).

The Independent Administrator also denies the absence of discussions, which is mentioned in the conclusions of the Preliminary Report regarding this requirement.

6.1 Social expenditures

We would draw your attention to the fact that the International Secretariat and the Validator again deviated from the EITI Standard. As of 2013-2014 there were no transfers of social payments required by law or contract, except for the payments by Kumtor Gold Company mentioned in section 6.5.6 of the Report for 2013-2014 and the payments that were subject to reconciliation (payment for social infrastructure).

It is evident to all those who are familiar with the local context that there were no competitions, for which it is required to design a "social package", and the Regional Development Funds did not have an adequate legal framework to transfer money. Companies may in fact have voluntary direct social payments but they cannot fall within the scope of the assessment for this section, since they are not required under law or contract.

The Preliminary Report writes about "insufficient discussions"; however, the Standard requires the materiality of payments to be considered by a decision of the Board and "encourages" discussion of unilateral reconciliation. In view of what has been said, there could not have been any issue of materiality in respect of the Report, and requirements that are "encouraged" are not a reason to lower the score.

7.1 Public debate

Once again we call your attention to deviation of the assessment for this section from the requirement of EITI Standard No. 7.1: the Preliminary Report contains an assessment by categories, which is not found in the provisions of the Standard.

All the items of Requirement 7.1 related to the format, languages, accessibility and distribution were complied with to the fullest extent (available in xls online, 3 languages, simple and concise narration, brief simplified version also available online, articles about presentation of the Report, over 1000 copies).

Besides the work to disseminate the Report, which were mentioned in the Preliminary Report, civil organizations that are members of the Supervisory Board have continued these activities since its publication through EITI community liaison offices (EITI Consortium), visits to regions to hold consultations and distribute printed versions of the Report (“Our Century”) and preparation of video material (“Our Century”), including work carried out after the World Bank grant came to an end.

Representatives of the business community in the EITI Supervisory Board also included EITI issues in the agenda of meetings of the Committee for Subsoil Use of the International Business Council.

The Government, represented by the coordinating state body, provided significant support in making amendments to laws in the sphere of subsoil use with respect to compulsory EITI reporting and beneficial ownership. The representatives of the above-mentioned Committee use the EITI and the data of the Report in all presentations about the activities of the Committee, both inside the country and abroad.

It is unclear what volume of unperformed activities of the Work Plan the Secretariat is referring to in this instance, since, on our assessment, all the activities for the section “Distribution of the Report” have been performed with the support of more than three international organizations. Considering that the Supervisory Board used every possibility given the available means, we strongly assert that we deserve a satisfactory assessment for this section.