Extractive Industries Transparency Initiative (EITI)

Second Validation of Kazakhstan

Final assessment by the EITI International Secretariat

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1. Summary

Kazakhstan's second Validation commenced on 13 August 2019. The EITI International Secretariat has assessed the progress made in addressing the ten corrective actions established by the EITI Board following Kazakhstan's first Validation in 2017.[1] The ten corrective actions relate to:

1. MSG governance (*Requirement 1.4*)
2. License registers (*Requirement 2.3*)
3. State participation (*Requirement 2.6*)
4. Production data (*Requirement 3.2*)
5. Barters and infrastructure arrangements (*Requirement 4.3*)
6. Transport revenues (*Requirement 4.4*)
7. Data reliability (*Requirement 4.9*)
8. Social expenditures (*Requirement 6.1*)
9. Quasi-fiscal expenditures (*Requirement 6.2*)
10. Outcomes and impact (*Requirement 7.4*)

The International Secretariat's assessment is that Kazakhstan has fully addressed three of the ten corrective actions, having made "satisfactory progress" on the corresponding requirements, and has made "meaningful progress" *with considerable improvements* in addressing the other seven corrective actions. In addition, the International Secretariat's assessment is that there has been back-sliding on Requirement 2.2 regarding license allocations.

The draft assessment was sent to the Kazakhstan EITI National Stakeholders' Council (NSC, the local MSG) on 22 November 2019. The Russian version followed on 6 December 2019. Following comments from the NSC received on 15 January 2020, the assessment was finalised for consideration by the EITI Board.

[1] https://eiti.org/document/kazakhstan-validation-2017

2. Background

Kazakhstan was admitted as an EITI Candidate in September 2007 and was designated compliant with the 2011 EITI Rules in October 2013. The first Validation of Kazakhstan against the 2016 EITI Standard commenced on 1 July 2017. On 13 February 2018, the EITI Board found that Kazakhstan had made meaningful progress overall. Ten corrective actions were identified by the Board, pertaining to the following requirements: MSG oversight (#1.4), license register(s) (#2.3), state participation (#2.6), production data (#3.2), barter agreements (#4.3), transport revenues (#4.4), data reliability (#4.9), social expenditures (#6.1), quasi-fiscal expenditures (#6.2) and outcomes and impact of implementation (#7.4). The Board asked Kazakhstan to address these corrective actions to be assessed in a second Validation commencing on 13 August 2019.

Kazakhstan has undertaken a number of activities to address the corrective actions:

- On 7 April 2018, the NSC's working groups on reconciliation and Validation met to plan activities related to addressing corrective actions in the 18 months before Kazakhstan's second Validation.
- On 22 June 2018, the company UHY SAPA Consulting LLP was contracted to undertake the work of Independent Administrator for Kazakhstan's 2017 EITI Report.
- In June 2018, the new Subsoil and Subsoil Use Code came into force, which included provision for the full disclosure of subsoil licenses.
- The Kazakhstan EITI NSC approved and published the 2017 EITI Report in October 2018.[2]
- On 18 October 2018, the NSC reviewed the implementation of the ten corrective actions from Kazakhstan's first Validation under the 2016 EITI Standard. The NSC amended the composition and mandate of its working groups on reconciliation, Validation and implementation of new aspects of the EITI Standard.
- On 18 and 30 January 2019, the NSC held workshops on the implementation of the EITI work plan and the transition towards systematic disclosures of EITI data in Almaty and Astana respectively.
- On 14 February 2019, the NSC updated the EITI work plan with activities aimed at transitioning towards systematic disclosures of EITI data and preparing a mainstreamed implementation request to the EITI Board.
- The International Secretariat undertook an implementation support mission to Nur-Sultan on 21-24 May 2019.
- In May 2019, the civil society coalition Dialogue Platform held elections for the constituency's new representatives on the NSC.
- On 17 June 2019, the NSC approved and published Kazakhstan EITI's 2018 annual progress report.
- On 12 August 2019, the NSC approved and published an addendum to the 2017 EITI Report.[3]

The following section addresses progress on each of the corrective actions. The assessment is limited to the corrective actions established by the Board and the associated requirements in the 2016 EITI Standard. The assessment follows the guidance outlined in the Validation Guide.[4] In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as "satisfactory progress" or "beyond" in the 2017 Validation. While these requirements have not been comprehensively assessed, the

[2] Kazakhstan EITI (October 2018), "13th Kazakhstan EITI Report covering 2017" and appendices, accessed here in April 2019.
[3] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', accessed here in August 2019.
[4] Validation Guide can be assessed here.

Secretariat's view is that there has been back-sliding on Requirement 2.2 related to license allocations and that the assessment of this requirement warrants consideration by the EITI Board for downgrading to "meaningful progress".

3. Review of corrective actions

As set out in the Board decision on Kazakhstan's first Validation, the EITI Board agreed ten corrective actions.[5] The Secretariat's final assessment below discusses whether the corrective actions have been sufficiently addressed. The assessments are based on the 2019 work plan, the 2017 EITI Report, the 2017 and 2018 annual progress reports and minutes of the NSC meetings from December 2017 to August 2019, alongside various documents submitted by the national secretariat to the International Secretariat, e-mail correspondence, and stakeholder consultations (in-person and via skype).

3.1 Corrective action 1 – MSG governance (#1.4)

In accordance with Requirement 1.4.a.i and 1.4.a.ii on MSG governance, civil society should agree a process for ensuring diverse and representative participation of civil society in the National Stakeholder Council. The invitation to participate in the work of the NSC must be open, transparent and independent. In accordance with Requirement 1.4.a.ii and the NSC MoU, civil society members of the NSC should also make sure that their funding sources and affiliations are transparent.

Findings from the first Validation

The first Validation found that Kazakhstan had made meaningful progress in implementing this requirement. The government had established a multi-stakeholder group with clear governance rules and practices. Most constituencies had developed good routines for nominations and liaison with their wider constituencies. There were minor weaknesses in the implementation of the requirements, namely: the lack of publication of the procedure for nominating Parliamentarians to the NSC, a lack of consolidated overview of changes in government participation over the years, and a lack of implementation of the rules agreed in June 2017 for civil society organisation (CSO) representatives to publish their funding sources and affiliations.

In addition to these issues, there were concerns related to civil society representation on the NSC. The constituency had strived to develop an inclusive platform for all NGOs to take part in the EITI, with clear governance rules, open elections, and annual rotations to decision-making positions. In an attempt to further increase inclusiveness, the DP also decided that non-members could be nominated to decision-making positions and participate in EITI work, but they would not have voting rights. Despite what appeared to be sound and fair rules for constituency governance and coordination, two coalitions had decided not to join this platform. Although this was their choice, the overall result was that the civil society voice in the EITI was suffering. The considerable in-fighting among the coalition had prevented civil society from pursuing a clear strategy in their EITI work. It had also put the EITI work burden on a few individuals, rather than spreading it across the wider network of NGOs, building on their strengths be they analytical related to public debate or access to the grassroots. In light of this, although the requirements for an open invitation to participate in the EITI and for an independent nomination process appeared to have been fulfilled, the broader objective of ensuring diverse and representative participation of civil society had not been achieved.

[5] Board decision on the first Validation of Kazakhstan can be assessed here.

Progress since Validation

NSC composition and membership (Requirement 1.4.a): The National Stakeholders Council (NSC, the local MSG) was established in 2005 and is governed by the Memorandum of Understanding (MoU). The MoU was revised in 2013 and its annex (covering its composition, responsibilities and internal procedures) was updated in 2017[6], prior to the first Validation under the EITI Standard. There appear to be deviations from provisions on the statutory composition of the NSC in the MoU and its annex on the one hand, and actual practice as reflected on the EITI Kazakhstan website[7] on the other. The MoU's annex states that the NSC should consist of three to six government representatives, six parliamentarians, six company representatives and six CSO representatives. In practice, the composition[8] of the NSC is different comparing to the MoU's 2017 annex and, as of July 2019, comprised one Chair, one Deputy Chair, seven government representatives, four parliamentarians, five company representatives and six civil society representatives. The key changes to the composition of the NSC in 2017 and 2019 are clearly tracked on the EITI Kazakhstan website.[9]

The company associations "Kazenergy" (for oil and gas) and "AGMP" (for mining) have separate regulations available on the national EITI website[10], while the civil society coalition "Dialogue Platform" has published the constituency's internal guidelines on its Facebook page.[11] However, there is no evidence of any clear nominations procedures for the four parliamentarians who sit on the NSC, as was the case in the first Validation.

Civil society representation: With regards to civil society representation on the NSC, the MoU states that the civil society representation on the NSC is organised by the CSO coalition "Dialogue Platform" (DP). There have been no changes to the DP's regulations since the first Validation. According to the DP's regulations, any Kazakh citizen is eligible to become an NSC member, although the person must be nominated by a representative of the DP through one of its sub-coalitions. Several times over the period 2013-2018, representatives of "Aykyndyk" and "Azamattyk Kurultay", CSOs not part of the DP, requested to establish a quota for NSC seats for CSO organisations outside of the DP coalition, noting that they wanted to have an independent election process. This request was not supported by other CSOs however, given that they considered that there was no evidence of any barriers that could prevent non-DP civil society representatives from nominating their candidates through the DP platform. Additionally, stakeholder consultations confirmed that any CSO representative could apply to become a member of the NSC's working groups on reconciliation, Validation and new requirements, without being required to become a member of the DP coalition.

On 26 March 2019, the DP met to discuss projects realised in the last year, changes in the name of the "Oil Revenues under Public Oversight" coalition to "Public Oversight ", membership in the DP, corrective actions from the first Validation and preparations for NSC elections.[12] During the meeting, it was noted that the DP coalition currently consisted of two sub-coalitions, "Public Oversight" and "Civil Alliance of Kazakhstan". Stakeholders consulted confirmed that there were no barriers to joining the DP, although there were capacity constraints, relatively low interest and logistical challenges of collaborating with CSOs not based in Almaty or Nur-Sultan. Previously the DP's membership comprised five sub-coalitions, although the sub-coalition "Confederation of Labour Union" ceased operations and communication was lost with the sub-coalition "Community of Youth Professionals". In addition, the

[6] The MoU and all supporting documents are available on the national EITI website here.
[7] EITI Kazakhstan website, NSC membership section, accessed here in August 2019.
[8] NSC composition is available here, accessed on 22 July 2019.
[9] EITI Kazakhstan website, NSC membership section, *op.cit.*.
[10] Ibid.
[11] Dialogue Platform's regulations from 2014 are available here, accessed on 22 July 2019.
[12] Minutes of the meeting are available here, accessed on 22 July 2019.

sub-coalition “Union of NGOs of Kazakhstan” was undergoing renewal of its registration and was thus temporarily inactive in the year leading up to the start of Validation. Stakeholder consultations explained that the re-registration process was prompted by changes in the government administrative divisions in which the sub-coalition operated, but that they expected the re-registration process to be completed shortly. During the DP meeting, it was noted that there should be stricter rules related to excluding sub-coalitions from the DP in case of continuous absence at meetings and weak engagement in the DP’s activities.

In practice, civil society last refreshed their representation in the NSC in June 2019. CSO representatives were notified about the upcoming elections in April 2019[13] and the nomination process commenced in May 2019. Three channels were used for the announcement of the nomination process, including DP mailing list that includes non-DP members, DP’s public Facebook page[14], members’ personal pages and other Facebook groups, an announcement on the national EITI website[15] and through a letter to the non-DP member the “Aykyndyk” Coalition. The announcement about the upcoming elections highlighted the fact that any candidate, including non-DP members, could be nominated to the NSC through the DP platform by one of the member sub-coalitions. More information about the election process, including ballot papers, can be found on the website of one of the CSOs, “Echo”, a member of the “Public oversight” sub-coalition.[16]

A total of twelve candidates, both representatives of DP members and independent organizations, were nominated by members of the DP to stand for elections to the NSC.[17] This included both members of the DP coalition as well as non-DP CSO representatives. The elections resulted in the nomination of three main NSC members[18] and three alternates.[19] Of the six nominated NSC members, two were elected from each of the sub-coalitions that are members of the DP (“Public Oversight” and “Civil Alliance of Kazakhstan”), while two NSC members[20] were non-DP member CSOs.

Concurrently however, on 20 May 2019, two nominations from the “Aykyndyk” Coalition were submitted to the national and international EITI secretariats, although all stakeholders consulted confirmed that these names had not been submitted to the DP for consideration. The two candidatures were not considered by the DP in the election process as they had not been submitted to DP in line with their procedures. During stakeholder consultations, certain non-DP CSOs noted that their main concern was not the nomination process itself, but rather the election process once candidates were nominated, given that they considered it unlikely that there would be support for non-DP candidates from those electing representatives. However, stakeholder consultations confirmed that the key non-DP CSOs critical of the DP-led election process had not tested the system in 2019, given that they had not submitted candidatures to DP but rather to third parties. Several non-DP CSOs noted that they would be willing to participate in nominations to the NSC if they were organised by an entity considered “neutral” by all sections of the civil society constituency.

NSC Terms of Reference (Requirement 1.4.b): The NSC’s ToRs, enshrined in the MoU, continue to be in line with Requirement 1.4.b as in the first Validation.

[13] See, for example, the DP Facebook group here, accessed on 22 July 2019.
[14] Dialogue Platform Facebook page, accessed here in August 2019.
[15] Announcement is available here, accessed on 29 August 2019.
[16] Ibid; ballot papers are available here, accessed on 29 August 2019.
[17] Overview of the election process is available here, accessed on 29 August 2019.
[18] Zhibek Akhmentova, Tatyana Sedova (not a DP member), Natalya Yantsen.
[19] Diana Medvednikova, Svetlana Mogiluyk, Zhanat NurgAliyev (not a DP member).
[20] Tatyana Sedova and Zhanat Nurgaliyev.

According to provision 2.9 of the 2017 annex to the NSC's MoU, NSC members are required to publish information about their sources of funding on the national EITI website. Information about funding of CSO representatives that where part of the NSC from May 2018 to May 2019 was published in the addendum[21] to the 2017 EITI Report and as a separate document on the national EITI website[22]. A report on DP's EITI-related activities in 2017-2018 only notes that participation to EITI activities and working groups is on a volunteer basis, without providing an overview of the NGOs' funding sources more generally.[23] The addendum notes that all CSO representatives that were members of the NSC in May 2018-May 2019 were working in non-profit organisations and that their participation in EITI activities was financed by their respective organisations. The addendum also notes that several members participated in trainings funded by the EBRD in this period. It confirms that CSOs' work on the NSC and in working groups is not paid as well as that all CSO representatives are not affiliated with the government or companies. While all CSOs directly involved in EITI implementation considered that the current publication of CSOs' funding sources was sufficient to avoid allegations of conflict of interest or lack of CSOs' independence, several non-DP CSOs not engaged in EITI implementation made general allegations during consultations for Validation about the lack of independence of CSOs engaged in EITI from government and companies. However, they did not provide any specific evidence for these general allegations. All civil society stakeholders consulted highlighted the tense and robust discussions about funding for civil society ahead of the 10th EITI Kazakhstan National Conference in September 2019[24], which highlighted the constituency's vigilance to potential allegations of conflict of interest and the need to further discuss modalities of potential funding from government and companies.

All NSC members consulted considered that the provisions of the NSC's MoU were adhered to in practice. However, several NSC members representing civil society constituency noted that the NSC's work was primarily handled by its working groups, in which civil society tended to be the most engaged. Some considered that the engagement of the government and industry constituencies on the NSC's working groups was not sufficient to ensure adequate multi-stakeholder oversight of all aspects of implementation. One NSC member lamented that the NSC tended to approve the working groups' work without discussion.

Civil society capacity constraints: All civil society stakeholders consulted highlighted the reduction in available funding from donors such as the Soros Foundation as a key constraint in civil society engagement in EITI. They noted the end of financial support for EITI from the Soros Foundation since 2019 as a key risk for civil society engagement going forward. Difficulties in access to funding for travelling to Nur-Sultan was highlighted by several CSO representatives as the main constraints on participation in NSC meetings. Several CSOs consulted called for further attempts to ensure online connection for the meetings. Several CSOs directly engaged in EITI considered that funding constraints were a key factor for civil society conflicts over the structure of their engagement in EITI implementation, given that some NGOs saw their participation in EITI as a means of securing funding. The funding challenges for the constituency as a whole contributed to a tendency for Almaty and Nur-Sultan based CSOs to be more active in EITI implementation than those based in extractives-dependent regions.

The second key constraint on civil society engagement in EITI implementation appears to be the divisions within the civil society constituency. While CSOs members of the DP tended to be actively engaged in all aspects of EITI implementation, most CSOs consulted considered that the lack of active

[21] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.6-7.
[22] Donor support is available here, accessed on 29 August 2019.
[23] Public Oversight (ECHO) website (June 2018), 'Report on the activities of DP NGOs implementing the Transparency Initiative in Kazakhstan', accessed here in September 2019.
[24] EITI Kazakhstan (September 2019), 'Press-release about X-th Anniversary National Conference on the Extractive Industries Transparency Initiative (EITI) September 26, 2019', accessed here in October 2019.

engagement by non-DP CSOs based in extractives regions weakened the constituency's technical capacity to engage in EITI, given the knowledge of several non-DP CSOs on extractives and public finance management issues. A CSO representative consulted noted plans by CSOs on the NSC to reach out to new NGOs as part of their EITI outreach, particularly to organisations working on environmental issues. Upon extensive consultations, it appeared that non-DP CSOs concerns were less due to the process for nominating CSO NSC members than to a more fundamental lack of trust between different civil society coalitions.

Analysis of relevant documentation, including the NSC meeting minutes, confirms that it is possible to participate in the NSC meetings as an observer. All available evidence suggests that CSO representatives were allowed to participate in the NSC meetings as observers, with several examples of non-NSC CSO and media representatives' participation in the NSC meetings in 2017-2019[25]. However, despite evidence of engagement of non-DP CSOs such as the "Aykyndyk" coalition in the NSC working groups in the past, there is no evidence of engagement of these CSOs in any aspect of EITI implementation in the 2017-2019 period despite still being members of certain EITI working groups on paper. In practice however, civil society stakeholders consulted confirmed that the DP provided regular updates on EITI implementation through various communication channels (emails, google groups and Facebook), even if some CSOs not members of the DP criticised what they considered as weak outreach and dissemination of EITI-related information by civil society NSC members.

In the NSC's comments on the draft assessment, the civil society constituency on the NSC expressed support for the assessment of "meaningful progress" on Requirement 1.4, recognizing the ongoing challenges in NSC oversight of EITI implementation. However, the NSC comments noted the challenges in developing a civil society NSC nomination process that would please all members of the broader constituency, given that consultations have been ignored or boycotted in the past. Concerns over the proposal for allocating quotas for specific CSOs were also voiced. The NSC comments noted financial constraints hindering the development of new procedures for the election of civil society NSC members. The comments noted financial constraints for the constituency as a whole, noting that Almaty-based NGOs faced similar challenges in accessing donor funds compared to NGOs based in extractives regions. Noting efforts to attract new environmental NGOs to engage in EITI, the NSC comments emphasise the civil society constituency's efforts to develop online collaboration mechanisms as a means of overcoming the impact of funding challenges.

Secretariat's Assessment

<u>The International Secretariat's assessment is that the corrective action on MSG oversight has been partly addressed and considers that Kazakhstan has made meaningful progress *with considerable improvements* on Requirement 1.4</u>. The government has established a multi-stakeholder group with clear, publicly-available governance rules and practices. However, stakeholder comments about uneven engagement across the four constituencies in the NSC's working groups are a concern. Three of the four constituencies have developed publicly-available procedures for nominations and liaison with their wider constituencies, which appear to be followed in practice, although there is no evidence that parliamentarians developed any criteria since the first Validation. The main changes in NSC membership in 2017 and 2019 are disclosed on the EITI Kazakhstan website. The civil society constituency's rules requiring CSO representatives to publish their funding sources and affiliations has been implemented in practice, even though allegations of conflict of interest and lack of CSO independence from government and industry have persisted on the part of certain CSOs not members of the Dialogue Platform coalition. While the civil society constituency last undertook a renewal of its NSC representation in June 2019 following an open, fair and transparent process, the election

[25] See for example, NSC meeting minutes from October 2018, February 2019, May 2019, accessed here on 17 September 2019.

procedure for nominating CSO NSC members continues to be boycotted in practice by several CSOs not part of the Dialogue Platform coalition, the platform established to structure the constituency's engagement in EITI. The nomination of two of the six CSO NSC members from organisations outside the Dialogue Platform indicates that the nomination process was open to all CSOs irrespective of their membership in the Dialogue Platform. However, considerable in-fighting among the different sections of the civil society constituency had prevented civil society from pursuing a clear strategy in their EITI work. Financial constraints on civil society's participation in EITI implementation appear to have continued to increase since 2018 due to further declines in donor support for civil society. There is no indication that divisions within the civil society constituency have decreased since the first Validation and the EITI work burden appears to continue to be placed on a few individuals, rather than spreading it across the wider network of NGOs. Thus, although the requirements for an open invitation to participate in the EITI and for an independent nomination process have been fulfilled, the broader objective of ensuring diverse and representative participation of civil society had not been achieved.

In accordance with Requirement 1.4.a.i-ii, all constituencies represented on the National Stakeholders Council (NSC), including parliamentarians, should ensure that the invitation to participate in the NSC is open and transparent and that all constituencies on the NSC are adequately represented, bearing in mind the desirability of pluralistic and diverse representation. In accordance with Requirement 1.4.b.i-ii, all constituencies should ensure that their NSC members have the capacity to carry out their duties and undertake effective outreach activities with their broader constituencies. The NSC is urged to find cost-effective solutions to facilitate all constituencies' engagement in EITI, including for instance mechanisms for remote participation in NSC meetings. In accordance with Requirement 1.4.b.iii, all NSC members are required to liaise with their constituency groups and effectively engage in all aspects of EITI implementation.

3.2 Corrective action 2 – License registers (#2.3)

In accordance with Requirement 2.3 on license registers, the government should publish the date of application for licenses and contracts, as well as the date of award and duration of the licenses and contracts, ideally on the online license register.

Findings from the first Validation

The first Validation found that Kazakhstan had made meaningful progress in meeting this requirement. In accordance with Requirement 2.3, Kazakhstan had provided links and explanations in the EITI Report on how to access the online license register. The online register included the name of the license holder, the coordinates of the license area, the award date, and the commodity being produced, but does not always including the duration of the license nor the date of application. Similar but less detailed data was available from pdfs published on the Committee of Geology and Subsoil use website. However, despite these shortcomings, the information provided in the EITI Report on how to use the cadastre, its various search functions etc. were welcome additions, in particular as this system was relatively new in the country, and of interest and relevance for prospective investors.

Progress since Validation

Systematic disclosures: In October 2017, the Kazakhstan EITI NSC published a pilot feasibility study by EY on transitioning to systematic disclosures of EITI data in Kazakhstan.[26] The interactive map[27] of the Committee of Geology and Subsoil Use of the Ministry of Industry and Infrastructure Development (MIID) provides a cadastral portal with information on all active mining, oil and gas licenses, including

[26] Kazakhstan EITI (October 2017), 'Feasibility study: Systematic disclosures of EITI data in Kazakhstan', accessed here in April 2019.

[27] Committee of Geology and Subsoil Use of the Ministry of Industry and Infrastructural Development, Interactive portal of subsoil extractives licenses, accessed here in April 2019.

license name, license-holder name, date of award and commodities covered, but not dates of application and expiry. The online cadastral portal allows users to estimate the geographical coordinates of each license to within one degree deviation. The MIID publishes lists of active licenses by year for oil and gas[28] and for mining[29], from which the dates of expiry for all active licenses are provided. A webpage on the MIID website provides a list of the applicants and dates of application for all solid mineral licenses awarded in 2018[30], although this information only covers licenses awarded from September 2018 onwards, not in previous years including 2017. The 2017 EY mainstreaming study noted that the portal provide all of the main data listed under Requirement 2.3.b, but considered that "some important information still had to be recorded" (p.27). Several government stakeholders consulted explained that the main data point missing from the online portal were dates of application for all oil and gas licenses and solid mineral licenses awarded prior to 2018.

EITI reporting: The Kazakhstan EITI NSC approved and published the 2017 EITI Report in October 2018.[31] The report confirms the number of active extractives contracts as of 1 January 2018 (p.50[32]), including 403 in solid minerals[33] and 214 in oil and gas.[34] The report provides a link to the interactive map of the Committee of Geology and Subsoil Use of the Ministry of Industry and Infrastructural Development[35], a cadastral portal that provides information on all active mining, oil and gas licenses , including license name, license-holder name, dates of award and expiry, commodities covered and license coordinates, but not dates of application (pp.48-49).

For oil and gas sector, the report provides a link[36] to a PDF list of all 149 active oil and gas licenses updated to 1 January 2018, including license name, license-holder name, type of contract, duration and status, but not dates of application, commodities covered or coordinates (p.48). The report also lists information on ten PSAs in oil and gas, including partner names and equity interest (pp.68-69), as well as each PSA's investment, social spending and taxes (p.70).

For mining sector, the report provides a link[37] to a PDF list of 431 mining licenses, including license name, license-holder name, date of award and status of the license, but not dates of application or expiry, commodities covered or coordinates (p.48). The 2017 EITI Report addendum describes and provides a link to the Ministry of Industry and Infrastructure Development's register of solid minerals licenses[38], which includes all information listed under Requirement 2.3.b aside from dates of application.[39] The addendum also provides a link to a page on the MIID website[40] that provides a list of the applicants and dates of application for all solid minerals licenses awarded in 2018[41], although this information only covers licenses awarded from September 2018 onwards, not in 2017.

[28] Ministry of Industry and Infrastructure Development website, "Hydrocarbons licenses" webpage, accessed here in August 2019.
[29] Ministry of Industry and Infrastructure Development website, "Solid Minerals licenses" webpage, accessed here in August 2019.
[30] Ministry of Industry and Infrastructure Development website, 'List of applications for license' webpage, accessed here in August 2019.
[31] Kazakhstan EITI (October 2018), "13th Kazakhstan EITI Report covering 2017" *op.cit.*.
[32] All references to page numbers of the 2017 EITI Report refer to printed page numbers, not page numbers of the PDF version.
[33] Of the 403 contracts for solid minerals, there were 182 contracts for exploration, 101 for mining and 109 for exploration and mining.
[34] Of the 214 contracts for oil and gas, there were 62 contracts for exploration, 71 for combined exploration and production, 70 for mining and 11 PSAs.
[35] Committee of Geology and Subsoil Use of the Ministry of Industry and Infrastructural Development, Interactive portal of subsoil extractives licenses, accessed here in April 2019.
[36] Committee of Geology and Subsoil Use of the Ministry of Industry and Infrastructural Development, 'Перечень по углеводороному сырью на 1.01.2018 г. по данным №2-ЛКУ', accessed here in April 2019.
[37] *Ibid*.
[38] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.10-11.
[39] Ministry of Industry and Infrastructure Development website, 'Register of Licenses Issued' webpage, accessed here in August 2019.
[40] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.10-11.
[41] Ministry of Industry and Infrastructure Development website, 'List of applications for license' webpage, accessed here in August 2019.

The 2017 EITI Report addendum clarifies that the only missing data point for mining, oil and gas licenses active in 2017 were the dates of application, despite the provision of these dates for mining licenses awarded from September 2018 onwards. The addendum explains that the sourcing of dates of application would be a difficult and time-consuming process.[42] Upon consultations, government stakeholders explained that dates of application for all licenses, including in mining and oil and gas, would be published on a monthly basis for licenses awarded from September 2018 onwards, in line with the new Subsoil and Subsoil Use Code and as confirmed in the 2017 EITI Report addendum.[43]

In the NSC's comments on the draft assessment, the NSC agreed with the assessment of "satisfactory progress" on this requirement.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action on license registers has been addressed and considers that Kazakhstan has made satisfactory progress on Requirement 2.3. Kazakhstan has provided links and explanations in the 2017 EITI Report on how to access the online license register. The online register included the name of the license holder, the coordinates of the license area, the award date, and the commodity being produced, but does not always include the duration of the license nor the date of application. Similar but less detailed data was available from PDFs published on the Committee of Geology and Subsoil use website. The 2017 report addendum provides guidance on accessing dates of expiry for all licenses from documents published on the Ministry of Industry and Infrastructure Development website as well as dates of application for mining, oil and gas licenses awarded from 2018 onwards. While dates of application for licenses awarded prior to 2018 are not publicly accessible, EITI Kazakhstan has been transparent about these gaps and has undertaken actions to ensure that dates of application would be publicly accessible for all mining, oil and gas licenses awarded from 2018 onwards. While the lack of public disclosure of dates of application is a clear gap for extractives licenses active in 2017, the International Secretariat considers that this gap is of marginal importance given the NSC's efforts to ensure that dates of application for all newly-awarded extractives licenses be publicly accessible in future.

To strengthen implementation, Kazakhstan is encouraged to ensure that dates of application for mining, oil and gas licenses awarded prior to 2018 be publicly disclosed, to support public debate on the historical efficiency of the license allocation process.

3.3 Corrective action 3 – State participation (#2.6)

In accordance with Requirement 2.6 on state-participation, the government should engage SOEs in the EITI process and ensure that future EITI Reports comprehensively.

- lists all SOEs and all subsidiaries engaged in exploration, production or transportation of oil, gas and minerals. For each of these SOEs and subsidiaries, any ownership held in oil, gas and mining assets should be disclosed, as well as any changes in ownership during the financial year and the terms and valuations related to such changes in ownership. The terms attached to the equity stake of the SOE and/or subsidiary in each of their projects should also be transparent.
- Describes the rules and practices regarding the financial relationship between each SOE and/or subsidiary and the government, e.g. the rules and practices governing transfers of funds between the SOE/SOE subsidiary and the state, retained earnings, reinvestments and

[42] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.10-11.
[43] *Ibid*, pp.55-56.

third-party financing. The description could also include other benefits such as e.g. preferential rights to licenses and contracts, etc.
- Details on any loans or loan guarantees provided by the government and SOEs, to any private companies or subsidiaries or affiliates that are engaged in oil, gas and mining activities.

Findings from the first Validation

The first Validation found that Kazakhstan had made meaningful progress in meeting this requirement for the following reasons:

- In accordance with Requirement 2.6, Kazakhstan had provided an overview of some of the SOEs engaged in the extractive sector. However, it was not clear if the EITI Report comprehensively listed all SOEs and SOE subsidiaries engaged in exploration, production or transportation of oil, gas and minerals. This information might be available for some or all SOEs in their annual reports, without being referenced or incorporated into the EITI process. It also appeared that the EITI Report did not fully account for the government's ownership in SOE subsidiaries and any changes associated with such government ownership as both the EITI Report and other sources indicated changes in ownership that were not mentioned or explained. Furthermore, the report did not comment on terms attached to the government's equity stake in each of the projects.
- The report stated that there were no rules governing the financial relationship between SOEs and the government. This statement was not backed up by any evidence and contradicted the findings of the 2017 RGI, suggesting that further clarifications were needed.
- The NSC had attempted to improve the SOE disclosures, including by providing some information on loans and quasi-fiscal expenditures *(see Requirement 6.2)* in the 2015 Supplementary Report. Despite these efforts, information available in other public sources seemed to suggest that this information did not provide the full picture of total SOE loans and debts in 2015.
- The NSC acknowledged the gaps in reporting on SOEs, explaining in the supplementary report that the requirement had been "partially implemented" (p.37). The report explained that "*The supplement to the report includes information on the financing of projects (mainly of a social nature) with state participation, as well as projects financed from own funds of companies without recourse to the state budget. The information is taken from open sources on official websites of national companies, as well as responses of national companies in the extraction and transportation sectors to official requests by the Ministry for Investment and Development. It was decided at the NSC meeting of 15 June 2017 to consider the possibility of a study on quasi-fiscal expenditures using the funds of donors (…).*" Stakeholder consultations supported the impression that SOEs had not been engaged in providing information related to Requirement 2.6. Rather, the data was mainly sourced from publicly-available reports and websites.

Progress since Validation

Systematic disclosures: *Materiality*: In October 2017, the Kazakhstan EITI NSC published a pilot feasibility study on transitioning to systematic disclosures of EITI data in Kazakhstan.[44] The study found that the list of 44 SOEs in Kazakhstan was set in Decree RK GD 376 of 6 April 2011 and disclosed on the 'Adilet' online database[45], but notes that the list does not indicate which SOEs hold subsoil licenses (p.30).

[44] Kazakhstan EITI (October 2017), 'Feasibility study: Systematic disclosures of EITI data in Kazakhstan', accessed here in April 2019.
[45] Link to document: http://adilet.zan.kz/rus/docs/P1100000376

Government ownership: In terms of state participations, the study explains that details of the legal shareholding, roles and responsibilities of the following SOEs are available on the respective companies' websites: NWF Samruk-Kazyna JSC[46] (the Government of Kazakhstan holds 100% of shares), KazMunaiGas JSC[47] (NWF Samruk-Kazyna JSC holds 90% alongside the National Bank of Kazakhstan's 10% + 1 share) and NAC KazAtomprom JSC[48] (NWF Samruk-Kazyna JSC holds 100% of the shares) (pp.30-31). The study also notes that information on the shareholding of Tau-Ten Samruk JSC (100% owned by NWF 'Samruk-Kazyna JSC) and KazGeology JSC (100% owned by the MIID Committee of Geology and Subsoil Use) is available in the 2016 EITI annual progress report (pp.10,31,116). The EY study does not assess the public availability of information on the terms associated with state equity in the extractive industries.

Financial relations: The 2017 EY study recommends that extractives SOEs publish their annual reports based on international standards of accounting, subject to audits to international standards (p.47).

Loans and guarantees: With regards to loans and guarantees, the 2017 EY mainstreaming study notes that the 2016 financial statements of NWF Samruk-Kazyna JSC and NAC KazAtomprom provide the overall amount of loans and guarantees, without disaggregation by individual recipient company (p.32). The study notes the lack of other sources of information on loans and guarantees aside from these audited financial statements. It notes that, in line with Decree RK GD 739 of 20 July 2010[49], the Ministry of Finance is responsible for keeping records of all state guarantees through an automated system for 'collection, processing and storage of information' (p.33). The study recommends the development of dedicated reporting templates on the EGSU portal to collect and disclose data on loans and guarantees provided by government and SOEs to extractives companies (p.49). Alternatively, the study suggests the integration of the Ministry of Finance government guarantee data collection system with the EGSU portal to ensure that all information on loans and guarantees is disclosed through the EGSU portal (p.49).

EITI reporting: *Materiality*: The 2017 EITI Report states that six of the 44 SOEs in Kazakhstan are considered material for EITI reporting purposes, albeit without justification for the basis of this assessment (p.75). These include:

- Samruk-Kazyna National Welfare Fund Joint Stock Company (JSC),
- KazMunaiGas JSC,
- Kazatomprom JSC,
- Tau-Ken Samruk JSC,
- Kazakhstan Temir Zholy JSC,
- KazgeologyJSC.

The report confirms that JV Betpak-Dala LLP did not carry out operations in 2016 or 2017 and that it is planned to be liquidated in the first half of 2018 (p.144).

However, the Kazakhstan Temir Zholy (KTZh) JSC website makes clear that it is a state-owned railway operator, rather than a company primarily engaged in the upstream extractive industries.[50] This implies that the company would not meet the definition of SOEs in Requirement 2.6.a, even though EITI Kazakhstan appears to have considered it a material SOE for EITI reporting purposes in 2017.

[46] Link to website: https://www.sk.kz/about-fund/about-the-fund/
[47] Link to website: http://www.kmg.kz/rus/kompaniya/obshaya_informaciya/
[48] Link to website: http://www.kazatomprom.kz/ru/content/kompaniya/o-kompanii
[49] Link to GD: http://adilet.zan.kz/rus/docs/P100000739_
[50] Kazakhstan Temir Zholy JSC website, "About our company" webpage, accessed here in August 2019.

Financial relations: In terms of *statutory financial relations*, the report notes that there are no specific rules or practices governing the transfer of funds between SOEs and the state (pp.143,230). However, the report also describes the government subsidies to Samruk-Kazyna National Welfare Fund under the “Nurly Zhol” program that aims at developing infrastructure to boost connectivity with international markets[51] (p.86). The report explains that subsidiaries pay dividends to their SOE shareholders and that the SOEs themselves pay dividends to their shareholders, based on the consolidated results of all of their subsidiaries (p.143).

The 2017 EITI Report addendum provides some additional information on the corporate governance of the six material SOEs[52] and clarifies that SOEs have the right to agree their own dividends, retain earnings, reinvest in their operations and secure third-party financing.[53] However, the report includes the IA’s concerns over the lack of clear rules governing the transfer of funds between SOEs and the state and the impact on the comprehensiveness of the reconciliation of SOE transactions (p.230).

In terms of *financial relations in practice*, the 2017 EITI Report provides a brief overview of the four of the six material SOEs, including ownership of equity interests in other companies and details of their balance sheets sourced from their 2017 financial statements:

- Samruk-Kazyna National Welfare Fund JSC (p.76),
- KazMunaiGas JSC (p.77),
- Kazatomprom JSC (p.83),
- Tau-Ken Samruk JSC (pp.76-77).

The report does not provide information on the 2017 balance sheets of two material SOEs, Kazakhstan Temir Zholy JSC and Kazgeology JSC. Appendix 2-2 presents the results of reconciliation of dividends accrued and dividends paid by subsidiaries of SOEs to their SOE mother company, including the value of discrepancies per SOE subsidiary. The report provides the value of state subsidies to Samruk-Kazyna in 2017 and its restructuring of liabilities (p.85). The report describes the redirecting of funds under the “Nurly Zhol” program towards a company named Baiterek National Holding JSC (see Note 18.4 in the report) (pp.86-87). It provides an overview of the company’s balance sheet, implying that it is owned by Samruk-Kazyna.

Appendix 4 of the 2017 EITI Report provides information on quasi-fiscal expenditures undertaken by six companies in which the state holds equity (out of a total of 12 companies presented, half of which stated they did not conduct quasi-fiscal expenditures), including company name, location of activities, description of project/expenses (more or less detailed), deadline for completion, value of planned and actual expenditures (although not systematically for 2017, it appears sometime cumulative) and name of recipient for most (but not all) quasi-fiscal expenditures reported.

The 2017 EITI Report addendum provides some information on the financial relations of SOEs and government in practice in 2017 for five of the six material SOEs (excluding Kazakhstan Temir Zholy JSC), including the value of dividends paid in 2017 and the value of retained earnings, but only provides the value of 2017 reinvestment for three of the SOEs (KazAtomProm, Tau-Ken Samruk and KazGeology) and the value of third-party financing for two SOE (Tau-Ken Samruk and KazGeology). The value of 2017 reinvestments is not provided for Samruk-Kazyna or KazMunayGas and the value of 2017 third-party financing is not provided for Samruk-Kazyna, KazAtomProm or KazMunayGas.

[51] More information about the program can be accessed online, for example, here.
[52] EITI Kazakhstan (August 2019), ‘Addendum to the 2017 EITI Report’, *op.cit.*, pp.42-43.
[53] *Ibid*, p.57.

However, the addendum provides links to the audited 2017 financial statements of the six SOEs and confirms that the balance sheets of the SOEs' subsidiaries are included in the SOEs' financial statements.[54]

During consultations, one civil society representative noted that the NSC had not discussed the issue of SOEs' financial relations with the state with the SOEs' management themselves, noting that the addendum consisted of references to information in the SOEs' annual reports rather than the product of consultations with SOEs' management. One stakeholder noted that the national secretariat had sent requests for data from the material SOEs, even if these were not consistently answered beyond the provision of data from the SOEs' publicly-accessible financial statements. Several other civil society representatives consulted raised concerns over a perceived lack of clarity in SOEs' financial management, noting recurring large budget transfers to SOEs like Samruk Kazyna and Kazakhstan Temir Zholy without clarity on the use of these funds and amidst consistent loss-making of some key SOEs. They also expressed concern over the alleged lack of clarity on each SOE's dividend policy, noting large retained earnings by the extractives SOEs with little accountability in the use of the retained funds.

Third-party financing: The 2017 EITI Report describes the system of loans to SOEs in line with covenants set by the government through Samruk-Kazyna National Welfare Fund (p.83). It describes:

- The USD 1.5bn Tokyo-Mitsubishi UFJ Bank loan to Kazakhstan to acquire a 50% interest in KMG Kashagan B.V., including key terms (p.84).
- Samruk-Energy JSC repayment of a USD 500m Eurobond in 2017, without further details (p.84).
- NC KTZh JSC issued RUB 15bn in bonds on the Moscow Stock Exchange in 2017 (p.84).
- United Chemical Company LLP received a USD 409m loan from the State Development Bank of China in 2017 (p.84).

The report provides a table summarising the value of loans (and changes from 2016 to 2017) of subsidiaries of the Samruk-Kazyna National Welfare Fund (p.84). It also describes the system of third-party financing for KMG Kashagan's acquisition of its additional interest in the North Caspian project (from 8.33% to 16.81%) in October 2008 (p.87). The principle of KMG Kashagan's debt is USD 1.7bn, with annual interest of LIBOR 1m +3%. In December 2017, KMG Kashagan repaid the first tranche of this debt (USD 532.265m of principle and USD 247.820m of interest), with a second payment in August 2017 and a third payment due in November 2018. The report provides calculations of amortized cost. The report states that in December 2017 the expiration date of the NC KMG option to repurchase a 50% stake in KMG Kashagan BV Private Settlement Company was postponed from 2018-2020 to 2020-2022 (p.88).

The report also provides the values of loans from the government to Samruk-Kazyna National Welfare Fund (p.85), including (net and gross of repayable within 12 months for 2016 and 2017):

- Bonds repurchased by the National Bank of Kazakhstan at the expense of the assets of Samruk-Kazyna,
- Loans from the government,
- Loans from the National Bank.

The report describes a series of bonds issued by KazMunaiGas JSC and its subsidiaries and joint-ventures, including:

- In September 2017, KazTransGas placed 10-year Eurobonds worth USD 750m with a yield of 4.4%, for its debt refinancing (p.88).

[54] *Ibid*, p.44.

- In 2017, KazTransGas placed 10-year Eurobonds worth USD 750m with a yield of 4.4%, listed on the Irish Stock Exchange and Kazakhstan Stock Exchange (p.88).
- State-owned Intergas Central Asia JSC successfully repaid Eurobonds for the remaining amount of USD 128m (outstanding from a USD 600m loan in 2007); Intergas Central Asia JSC converted into KZT a total of USD 220m in long-term foreign-currency liabilities to the EBRD, reducing its currency risks (p.88).
- The joint venture of KazTransGas JSC and Trans Asia Gas Pipeline Ltd (a subsidiary of CNPC), Beineu Shykent Gas Pipeline LLP, made a partial early repayment of USD 400m of liabilities to the syndicate of Development Bank of China and Bank of China (pp.88-89).

The report describes intra-SOE lending within KazMunayGas JSC, with KazTransGas JSC carrying out a partial early repayment of liabilities worth USD 350m to its parent company, NC KazMunayGas JSC (p.89).

The report describes an EBRD credit line to KazTransGas Aimak JSC in 2017, disbursing funds worth KZT 14.3bn allocated for the implementation of investment programs (gas pipeline infrastructure) in Mangistau, Aktyubinsk and Kostanay regions (p.89).

Pre-sales agreements: The report describes several pre-sales agreements for crude oil and liquefied natural gas. It describes a presales agreement for oil and gas concluded by NC KMG in 2016 (p.85). The agreement includes the delivery of 38m tons of crude oil and 1m tons of liquefied natural gas from 2016 to March 2021. The report explains that NC KMG received an advance payment of USD 488.536m in 2017 as part of the agreement, “minus transaction costs”. The report explains that the contract provides for pricing of crude deliveries at the market price, with the prepayment refunded through deliveries of oil and gas. The report provides the value of KMG’s total (cumulative) repayments in kind as of end-December 2017 (USD 750m). The report states that the prepayment balance accrues interest at a rate of LIBOR+1.85% annually.

The report describes a pre-sales agreement concluded by KMG Kashagan B.V in 2016 and subsequently amended in 2017 (pp.85-86). The deal was for sales of Kashagan oil at “the minimum volume” up to a total of 7m tons between January 2017 and December 2021. In 2017 the company signed a supplementary agreement extending to 11.5m tons deliveries by September 2022. The report states that KMG Kashagan received an “additional” prepayment of USD 596.974m in 2017 under this agreement, to be redeemed against future oil deliveries from Kashagan. The report confirms that the start of repayments in oil was in January 2017, with cargos (contractually) valued at market price. The interest rate is provided as a monthly LIBOR+2.05%. KMG is required to deliver the cargos “unencumbered”.

In August 2017, KMG Kashagan B.V. signed an additional agreement to increase the amount of the Transaction on advance payment of oil concluded in November 2016 with Vitol S.A., in order to raise funds to repay the second tranche of obligations under the Purchase and Sale Agreement of October 2008, concluded in order to acquire an 8.48% interest in the PSA for the Northern Caspian. In August 2017 KMG Kashagan B.V. received an additional pre-payment of USD 600m and early repaid the second tranche of obligations under the OST 2008 (principal and accrued interest) with a payment of USD 804.4m (p.88).

Government ownership: The report provides a list of government ownership in the extractive industries. The report describes the government’s 100% ownership of Samruk-Kazyna NWF JSC (p.142), albeit without listing the specific government entity that holds the state equity in Samruk-Kazyna NWF JSC, and lists the five extractives companies[55] in which Samruk-Kazyna NWF JSC holds equity, including the specific equity interest in each (p.76). However, the report does not seem to

[55] JSC National Company KazMunayGas (“NC KMG”), KMG Kashagan B.V., “National Company” Kazakhstan Temir Zholy” JSC, “National Atomic Company” KazAtomProm” JSC (“NAK KAP”) and JSC “National Mining Company” Tau-Ken Samruk”.

describe the terms associated with government equity in Samruk-Kazyna NWF JSC nor with Samruk-Kazyna NWF JSC's equity in the other five companies.

The report describes the government's ownership of equity in KazMunaiGas JSC, split between a 90% interest held by Samruk-Kazyna NWF JSC and a 10% interest held by the National Bank of Kazakhstan (p.78). Noting that KazMunaiGas JSC includes 191 constituent organisations (p.77), the report provides KazMunaiGas JSC's equity interests in 17 exploration and production companies (p.79), seven transportation and storage companies (p.79), ten refining and marketing companies (p.80) and 17 service companies (p.80). The report also provides KazMunaiGas EP's (KazMunayGas subsidiary) equity interests in two wholly-owned exploration and production companies[56], three joint-ventures[57] and two geological exploration companies[58] (p.81). The report also provides KazTransOil JSC's equity interests in five companies[59] (p.82). The report also lists 12 subsidiaries and "affiliates"[60] of KazTransGas JSC, although it does not provide the specific equity interest of KazTransGas JSC in each (p.82). However, the report does not describe the terms associated with government equity in KazMunaiGas JSC nor the terms associated with KazMunaiGas JSC's equity interests in extractives companies.

The report describes Samruk-Kazyna NWF JSC's 100% equity interest in NAC Kazatomprom JSC (p.76) and NAC Kazatomprom JSC's equity interests in 15 subsidiaries and "affiliates"[61] (p.83). However, in its description of SOE subsidiaries' dividends, the report lists three additional companies[62] in which NAC Kazatomprom JSC holds equity interests (pp.143-144), without explanation for the discrepancy in number of companies in which NAC Kazatomprom JSC holds equity interests. The terms associated with NAC Kazatomprom JSC's equity interests in these extractives companies are not described in the report.

The report describes Samruk-Kazyna NWF JSC's 100% equity interest in Tau-Ken Samruk JSC (p.76) and lists four extractives companies[63] in which Tau-Ken Samruk JSC holds equity interests (p.76), albeit without information on the specific equity interests held by Tau-Ken Samruk JSC in each of the four companies. The terms associated with Tau-Ken Samruk JSC's equity interests in the four extractives companies are not described in the report. However, the 2017 EY mainstreaming study (p.31) and the 2016 EITI annual progress report (p.10) state that Tau-Ten Samruk JSC also owns a 29,8% equity interest in Kaztsink LLP.

The report describes Samruk-Kazyna NWF JSC's 100% equity interest in Kazakhstan Temir Zholy JSC (p.76), the railway operator, but does not clarify whether Kazakhstan Temir Zholy JSC holds any equity interests in other companies. The terms associated with Samruk-Kazyna NWF JSC's 100% equity interest in Kazakhstan Temir Zholy JSC are not described in the report.

The report does not describe the level of state ownership in KazGeology, nor confirm the government entity that holds the equity in KazGeology. However, it notes that KazGeology paid a dividend of KZT

[56] Ozenmunaygaz JSC and Embamunaigas JSC.
[57] 50% interest in JV Kazgenmunai LLP, 50% interest in CCEL (Karazhanbasmunai JSC) and 33% interest in PetroKazakhstan Inc.
[58] 50% interest in Ural Oil and Gas LLP and 100% interest in "KS EP Investments BV" (Karpovskly Sevemy LLP).
[59] 51% interest in NWTC MunaiTas JSC
[60] Amangeldy Gas LLP, KMG Kansu Operating LLP, JSC Intergas Central Asia, Asian Gas Pipeline LLP, Beineu-Shymkent Gas Pipeline LLP, KazTransGaz-Bishkek LLC, AstanaGaz KMG JSC, KazTransGaz Aimak JSC, KazTransGaz-Tbilisi LLC, KazTransGas Onimderi LLP, KazRosGaz LLP and Intergas Finance B.V.
[61] Kazatomprom Sa-Uran LLP (100%), Affiliated Enterprise Ortalk LLP (100%), Karatau LLP (50%), APPAK LLP (65%), RU-6 LLP (100%), Kyzylkum LLP (30%), Bayken U LLP (5%), Semizbay-U LLP (51%), Inkai LLP (40%), Kazakh-French enterprise Katco LLP (49%), JV Akbastau JSC (50%), JV Zarechnoye JSC (49.98%), JV Budenovskoe LLP (51%), JV YGHK LLP (30%) and JV Khorasan U LLP (33.98%).
[62] JV "Southern Gorno-Chemical Company" LLP (30%), «MC Ortalyk» LLP (100%) and JV Betpak Dala LLP (30%).
[63] Tau-Ken Mining LLP, Masalsky GOK LLP, Northern Katpar LLP and 'ShalkiyaZinc LTD' JSC.

79.467m to the Governmental Revenue Board for Esil District of Astana (p.143), implying that the Esil District of Astana holds the state's equity in KazGeology, although this is not explicitly stated in the report. While the report refers to KazGeology's subsidiaries in confirming the lack of dividends collected from KazGeology's subsidiaries in 2017 (p.144), it does not provide a list of KazGeology's equity interests in other companies nor the terms associated with such KazGeology equity participations. However, a review of KazGeology's website indicates that it holds equity interests in 28 other companies, although it is unclear how many of these operate in the upstream extractive industries.[64]

In consultations, a civil society representative criticised the fact that EITI reporting had focused only on companies incorporated within Kazakhstan and left out important assets such as the Eurasian Resources Group (ERG), in which Kazakhstan's government held a 40% interest.

Changes in state participation: The report describes several changes in state participation in 2017, although the terms of these transactions are not systematically described. These include:

- A December 2017 restructuring of the JV Inkai LLP, a joint venture between Kazatomprom and Cameco, whereby Kazatomprom raised its equity participation in the JV from 40% to 60% and took over operational control (p.144). However, the report does not describe the terms of the transaction, nor details on any consideration paid. Cameco's publicly-accessible 2017 annual report describes the terms of the restructuring in equity ownership and explains the transition in terms of respective shares of annual production during the ramp-up to 10.4m pounds in annual production. It appears that no separate consideration was paid as part of the restructuring.[65]
- The liquidation in 2017 of three companies[66] in which Kazatomprom held equity (p.144). However, the report does not describe the terms of the liquidation of these three companies.
- The February 2017 additional 0.0881% equity in NC KazMunaiGas acquired by Samruk-Kazyna NWF JSC, through its contribution of an additional KZT 12.969bn (p.76).
- The restructuring of KazMunaiGas Exploration and Production JSC's two production subsidiaries, Ozenmunaygas and Embamunaigas, which led to KazMunaiGas Exploration and Pordutcion JSC's exclusion from the scope of reporting in the 2017 EITI Report (p.153). However, it is unclear whether this restructuring took place in 2017 or in a previous year, and the terms of the restructuring are not further explained in the report.
- The December 2017 acquisition by KazMunaiGas Exploration and Production JSC of its global depositary receipts (GDRs) on the London Stock Exchange (LSE), which led to an increase in KazMunaiGas Exploration and Production JSC's equity interest in KSEP Investments BV32 from 51% to 100%, its interest in JV Kazgermunai, CCEL and Ural Group Limited BVI to 50%, and its interest in PetroKazakhstan Inc. to 33% (p.81).
- The sale of 10% of KazTransOil's shares to the public through the "People's IPO" programme (p.81), although it is unclear from the report whether this sale of KazTransOil shares took place in 2017. However, a review of publicly-available third-party sources indicates that KazTransOil's "People's IPO" took place in 2012.[67]
- The liquidation in 2017 of KazTransOil's subsidiary Batumi Terminals Limited (BTL), which led to the restructuring of Batumi Oil Terminal LLC and Petrotrans Limited to give KazTransOil a 100% direct equity interest in each (p.81).

[64] Saryarka BV JSC, Bektau BV JSC, TOO "KazGeoTech", Ydygei Project LLP, AltaiGeo LLP, East Copper LLP, Minerals Gold LLP, Altynkazgan Projec LLC, Benkala Cuprum Project LLP, Dusembay Project LLP, Itauyz Project LLP, Tamdy-Sainbulak Project LLP, Mailishat Resources LLP, Charsky Resources LLP, Shiderty-Ekibastuz Resources LLP, Surovsky Resources LLP, Tekturmas Resources LLP, Ozernoy Project LLP, ALS Kazgeochemistry LLP, Association of legal entities "Kazakhstan Association of Public Reporting on the results of geological exploration, mineral resources and mineral reserves, and Corporate Foundation "Zhas Geolog". See KazGeology JSC corporate website, 'Subsidiaries and affiliates' webpage, accessed here in April 2019.
[65] See Cameco (2018), '2017 annual report', accessed here in October 2019, pp.66-67.
[66] Kazakh-Russian Company Nuclear Power Stations JSC (KRKAS), Kazatomprom-Sorbent LLP and KAS LLC.
[67] Reuters (December 2012), "Kazakh oil pipeline attracts strong demand as first People's IPO", accessed here in August 2019.

- The creation in December 2017 of a wholly-owned subsidiary of KazTransOil, named "Magistralniy Vodovod" LLP (p.82).

Loans and guarantees: The report describes different sets of loans involving extractives SOEs. These include loans from the Samruk-Kazyna National Welfare Fund to its subsidiaries in line with covenants set by the government, types of third-party debt financing of SOE operations both through bank loans and corporate domestic bonds and Eurobonds, and reimbursements of certain SOE debt by other SOEs. However, the level of formal sovereign and SOE guarantee on the different types of financing are not consistently made explicit.

In terms of *loans and guarantees to Samruk-Kazyna National Welfare Fund*, the report provides a table summarising the bonds and loans extended to the SOE (net and gross of repayable within 12 months for 2016 and 2017) from the National Bank of Kazakhstan and the government (p.85). In April 2017, NC KazMunayGas provided an additional interest-free loan to Samruk-Kazyna worth KZT 18.4bn. During April-May 2017, the company paid remuneration on Eurobonds worth KZT 35.042bn (p.88).

The report notes that the government had a total of KZT 76.155m in outstanding guarantees on "a number of loans" to Samruk-Kazyna as of end-2017 (p.87). It lists the specific loans that are explicitly guaranteed by the government:

- In December 2017, a total of KZT 65.629bn in loans from Samruk-Kazyna NWF were guaranteed by the government (p.87).
- In January 2017, KazMunayGas partially redeemed bonds held by the Development Bank of Kazakhstan, for a total of KZT 22.569bn (p.87).
- In January 2017, ANPZ LLP (a subsidiary of NC KazMunayGas JSC) paid principal and interest on loans received from Development Bank of Kazakhstan worth KZT 21.093bn and KZT 9.756bn (p.87).
- In February 2017 NC KazMunayGas issued 1,296,788 shares in exchange for gas pipelines and related facilities valued at KZT 12.968bn and cash worth KZT 1300 (p.87).
- In April 2017, NC KazMunayGas issued Eurobonds worth a total of USD 10.5bn, while Kazmunaigaz Finance Sub B.V. (a subsidiary) raised USD 2.75bn (p.87).

In terms of *loans and guarantees to SOEs guaranteed by Samruk-Kazyna NWF,* the report describes the system of loans to extractives SOEs in line with covenants set by the government through Samruk-Kazyna National Welfare Fund (p.83), implying that the government has provided guarantees for these third-party loans to SOEs although this is not explicitly stated. The report provides a table summarising the aggregate value of loans to SOEs, and changes from 2016 to 2017, of subsidiaries of the Samruk-Kazyna National Welfare Fund (p.84). It also describes:

- The USD 1.5bn Tokyo-Mitsubishi UFJ Bank loan to Kazakhstan to acquire a 50% interest in KMG Kashagan B.V., including key terms (p.84).
- Samruk-Energy JSC repayment of a USD 500m Eurobond in 2017, without further details (p.84).
- NC KTZh JSC issued RUB 15bn in bonds on the Moscow Stock Exchange in 2017 (p.84).
- United Chemical Company LLP received a USD 409m loan from the State Development Bank of China in 2017 (p.84).

In terms of *loans and guarantees to KazMunaiGas entities*, the report describes a series of bonds issued by KazMunaiGas JSC and its subsidiaries and joint-ventures, albeit without clarifying whether there are any state guarantees on these different debts, including:

- In September 2017, KazTransGas placed 10-year Eurobonds worth USD 750m with a yield of 4.4%, for its debt refinancing (p.88).

- In 2017, KazTransGas placed 10-year Eurobonds worth USD 750m with a yield of 4.4%, listed on the Irish Stock Exchange and Kazakhstan Stock Exchange (p.88).
- State-owned Intergas Central Asia JSC successfully repaid Eurobonds for the remaining amount of USD 128m from USD 600m in 2007; Intergas Central Asia JSC converted into KZT a total of USD 220m in long-term foreign-currency liabilities to the EBRD, reducing its currency risks (p.88).
- The joint venture of KazTransGas JSC and Trans Asia Gas Pipeline Ltd (a subsidiary of CNPC), Beineu Shykent Gas Pipeline LLP, made a partial early repayment of USD 400m of liabilities to the syndicate of Development Bank of China and Bank of China (pp.88-89).

The report describes intra-SOE lending within KazMunaiGas JSC, with KazTransGas JSC carrying out a partial early repayment of liabilities worth USD 350m to its parent company, NC KazMunayGas JSC (p.89).

The 2017 EITI Report addendum clarifies that KazMunayGas does not receive any guarantee from the state for its third-party financing[68], but does not clarify whether there were any other state guarantees (in 2017) to the other SOEs covered in the 2017 EITI Report.

In the NSC's comments on the draft assessment, it argued that the assessment of Requirement 2.6 should be upgraded to "satisfactory progress" given that all information on SOEs was disclosed in the addendum to the 2017 EITI Report (pp.12-22), including links to their publicly-accessible annual financial reports. The NSC emphasised that none of the parties on the NSC had considered this information to be insufficient and that there had been no requests for additional disclosures. However, the NSC's comments did not focus on the specific gaps identified in this assessment.

Secretariat's Assessment

<u>The International Secretariat's assessment is that the corrective action on state participation has been partly addressed and considers that Kazakhstan has made meaningful progress *with considerable improvements* on Requirement 2.6</u>. The 2017 EITI Report provides a clear assessment of the materiality of extractives SOEs, provides an insufficient description of the statutory financial relations between SOE subsidiaries, SOEs and the state, and a general overview of the financial relations of the six material SOEs in practice in 2017. The 2017 EITI Report addendum published before Validation provides additional information on the financial relations in 2017 between SOEs and the state, although there are gaps in the coverage of some material SOEs' reinvestments and third-party financing. While the 2017 EITI Report and its addendum provide a list of companies in which each of the SOEs hold equity interests, the terms associated with different SOE equity interests are not described. The 2017 EITI Report describes changes in state participation in 2017, but does not consistently describe the terms of all changes in state participation in the year under review. While an overview of third-party financing of SOEs and intra-SOE debt (loans and bonds) and loan guarantees is provided, it is unclear from the report which of these loans are guaranteed by the government.

In accordance with Requirement 2.6, Kazakhstan should ensure that a comprehensive list of equity participations held by each material SOE be disclosed, together with the terms associated with state and SOE equity in each of the companies. Kazakhstan should ensure that the financial relations between SOEs and government are described for the year under review by EITI reporting, including transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing. Kazakhstan should also clarify the existence of any loans or guarantees from the

[68] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.44-45.

government or SOEs to any company operating in the mining, oil and gas sector, including any state guarantees on SOE third-party financing.

3.4 Corrective action 4 – Production data (#3.2)

In accordance with Requirement 3.2 on production data, the government should disclose production values for minerals and metals.

Findings from the first Validation

The first Validation found that Kazakhstan had made meaningful progress in meeting this requirement. In accordance with Requirement 3.2, Kazakhstan had disclosed detailed data on production volumes, disaggregated by commodity and producing region. However, production values were only available for oil and gas and not for other commodities.

Progress since Validation

Systematic disclosures: The October 2017 feasibility study[69] on systematic disclosures highlighted the provisions of the Rules for Maintenance of the Single Database of Petroleum Production and Turnover approved by RK ME Order 40 of 27 January 2015[70], whereby IACOG (Information-Analytical Centre of Oil and Gas) JSC was required to receive daily production data from all subsoil users in both hard copy and electronic formats (p.38). While the current EGSU system allows for companies to report their annual production data, the EY study recommended the integration of the MNE Statistical Committee and EGSU systems, using a single reporting template to submit figures to the two entities in the short term and integrating the two databases (MNE and EGSU portal) in future (p.50).

EITI reporting: _Production volumes_: The 2017 EITI Report provides the volumes of 2017 production, disaggregated by major producing company or region (for minerals), for crude oil and gas condensate (p.94), natural gas (pp.95-96), coal (p.93), gold (pp.116-119), silver (p.120), copper (pp.120-121), polymetals (disaggregated between copper (refined, raw, unalloyed), untreated lead and raw zinc (pp.121-122), iron ore (p.122), manganese ore (p.123), bauxite (p.123), chrome ore (p.123) and uranium extract (pp.123-124). Appendix 6 provides this same information on volumes, disaggregated by main region. The report also provides less disaggregated data on production volumes (pp.97-98,151).

Production values: The 2017 EITI Report does not provide the values of production, aside from an average monthly price of uranium (p.124) from which uranium production values could be estimated. The 2017 report addendum provides ranges of production costs for eight mineral commodities (copper, gold, iron ore, manganese, bauxite, chromite, coal and uranium) but raises methodological concerns about extrapolating production values based on these ranges of costs.[71] Production costs or values are not provided for lead and zinc. It also provides estimates of 2017 production values for three fossil fuel commodities (thermal coal, crude oil and natural gas).[72]

Commentary: The report provides information on the geographical location of production (pp.97-98-101,151,Appendix 6). It also provides commentary on production projections for crude oil and gas condensate (p.95) as well as natural gas (pp.96-97). Upon consultation, several civil society representatives called for future EITI reporting to provide annual statistics for production volumes for

[69] Kazakhstan EITI (October 2017), 'Feasibility study: Systematic disclosures of EITI data in Kazakhstan', accessed here in April 2019.
[70] Link to the Rules: http://adilet.zan.kz/rus/docs/V1500010456
[71] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.20-21.
[72] *Ibid.*, p.58.

every mineral commodity produced, given challenges in sourcing this data from the Central Statistics Committee website.[73]

In the NSC's comments on the draft assessment, it is argued that the assessment of Requirement 3.2 should be upgraded to "satisfactory progress" given that the addendum to the 2017 EITI Report provided links to the Statistics Committee website where the average production costs were available for all minerals produced. However, the NSC's comments do not address the methodological concerns related to estimating production values by using these averages, as highlighted in the 2017 EITI Report addendum.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action on production data has been partly addressed and considers that Kazakhstan has made meaningful progress *with considerable improvements* on Requirement 3.2. The 2017 EITI Report provides production volumes for 2017 for all major mineral commodities produced, but only provides a reference price for uranium (from which production value could be estimated), not the other 13 commodities produced in the year under review. The 2017 report addendum published before Validation provides ranges of production costs for all mineral commodities produced in 2017 aside from lead and zinc as well as estimates of production values for coal, oil and gas. However, the report highlights methodological concerns over the reliability of production value estimates based on average production costs. Nonetheless, the provision of ranges of production costs is a considerable improvement on the findings of the first Validation.

In accordance with Requirement 3.2, Kazakhstan should ensure that the value of production, or an estimate thereof, be provided for each extractives commodity produced in the year under review.

3.5 Corrective action 5 – Barters and infrastructure arrangements (#4.3)

In accordance with Requirement 4.3 on barter arrangements, the government and the NSC should establish the relevance and applicability of barter arrangements, i.e. whether oil, gas and minerals are fully or partially exchanged for any goods or services. This should include assessment of whether any bilateral swap agreements with Russia could qualify as a barter arrangement.

Findings from the first Validation

The first Validation found that Kazakhstan had made meaningful progress in meeting this requirement, but that further work was required to establish the relevance and applicability of barter disclosures in Kazakhstan. It seemed that barter agreements between companies and the government did not exist. However, the swap arrangements between the Government and Kazakhstan and the Government of Russia could constitute a type of barter whereby Russia provides goods (refined oil and gas products) in return for physical delivery of crude oil.

Progress since Validation

Systematic disclosures: The October 2017 feasibility study[74] only lamented the lack of contract disclosure for infrastructure and barter transactions, hindering a full understanding of barters and infrastructure arrangements, and referred to the NSC's 67th meeting of 15 June 2017 on the issue (p.33).

[73] Central Statistics Committee website, accessed here in September 2019.
[74] Kazakhstan EITI (October 2017), 'Feasibility study: Systematic disclosures of EITI data in Kazakhstan', *op.cit.*.

EITI reporting: Based on information in the 2017 EITI Report, there appear to be three barter arrangements in force in Kazakhstan in 2017, one in natural gas with Russia and Uzbekistan, and two involving the provision of loans to KazMunayGas against future deliveries of crude oil and liquefied natural gas.

Natural gas swap: The report describes a December 2006 natural gas swap agreement between Kazakhstan, Russia and Uzbekistan, whereby KazMunaiGaz JSC delivers all of its natural gas production from the Karachaganak gas field against gas from OAO Gazprom and NHC Uzbekneftegaz at equal prices and in equal volumes (pp.105,141). The report explains that annual contracts are concluded to agree the counter supply of gas. Uzbekistan supplies natural gas to southern Kazakhstan while receiving the same amount on the Kazakh-Russian border to sell to Russia (saving the cost of moving the gas via western Kazakhstan) in the Kostanay region. The report describes the bilateral government agreement between Kazakhstan and Russia, whereby (since 2007) KazRosGaz LLP has supplied gas to Kazakhstan and replaced the Russian gas consumed by Kostanay oblast with Uzbek and Turkmen gas consumed by the southern regions of Kazakhstan with similar volumes of processed Karachaganak gas at fixed prices agreed by NC JSC KazMunaiGaz and OAO Gazprom (p.105). However, the report does not appear to provide the volumes of gas involved in the swap arrangement in 2017. The 2017 report addendum provides the volumes and values of natural gas involved in the Russia-Kazakhstan-Uzbekistan swap agreement in 2017.[75]

KazMunayGas' pre-financing agreements: The 2017 EITI Report describes two pre-sales agreements for crude oil and liquefied natural gas. It describes a presales agreement for oil and gas concluded by NC KMG in 2016 (p.85). The agreement includes the delivery of 38m tons of crude oil and 1m tons of liquefied natural gas from 2016 to March 2021. The report explains that NC KMG received an advance payment of USD 488.536m in 2017 as part of the agreement, "minus transaction costs". The report explains that the contract provides for pricing of crude deliveries at the market price, with the prepayment refunded through deliveries of oil and gas. The report provides the value of KMG's total (cumulative) repayments in kind as of end-December 2017 (USD 750m), but does not provide the volumes of crude oil and liquefied natural gas delivered in 2017 in specific repayments of the loan under the pre-financing arrangement. The report states that the prepayment balance accrues interest at a rate of LIBOR+1.85% annually.

The report describes a pre-sales agreement concluded by KMG Kashagan B.V in 2016 and subsequently amended in 2017 (pp.85-86). The deal was for sales of Kashagan oil at "the minimum volume" up to a total of 7m tons between January 2017 and December 2021. In 2017 the company signed a supplementary agreement extending to 11.5m tons deliveries by September 2022. The report states that KMG Kashagan received an "additional" prepayment of USD 596.974m in 2017 under this agreement, to be redeemed against future oil deliveries from Kashagan. The report confirms that the start of repayments in oil was in January 2017, with cargos (contractually) valued at market price. The interest rate is provided as a monthly LIBOR+2.05%. KMG is required to deliver the cargos "unencumbered". In August 2017, KMG Kashagan B.V. signed an additional agreement to increase the amount of the Transaction on advance payment of oil concluded in November 2016 with Vitol S.A., in order to raise funds to repay the second tranche of obligations under the Purchase and Sale Agreement of October 2008, concluded in order to acquire an 8.48% interest in the PSA for the Northern Caspian. In August 2017 KMG Kashagan B.V. received an additional pre-payment of USD 600m and early repaid the second tranche of obligations under the OST 2008 (principal and accrued interest) with a payment of USD 804.4m (p.88). However, the report does not provide the volumes of crude oil delivered by KazMunayGas to Vitol in 2017, in specific repayment of the loans under the pre-financing arrangement.

Crude oil swaps: In terms of swaps of crude oil for refined oil products, the report describes a system of "counter-deliveries" whereby Kazakhstan delivered crude oil to Russia in compensation for losses by Russia in the delivery of oil products to Kazakhstan in 2012-2013 (p.141). KazMunaiGas EP

[75] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.21-25.

delivered 447k tons of crude oil in 2014 and 916k tons in 2015 (up to August 2015) as counter-deliveries (pp.141-142). However, while the report notes that Russia supplied 28% of Kazakhstan's consumption of AI-92 gasoline in 2017, it states that KMG EP's 2017 annual report does not refer to any "counter-deliveries" to cover losses on these deliveries (p.142). Consultations with government stakeholders confirmed the lack of "counter-deliveries" of crude oil under the agreement in 2017. The report briefly describes plans to resume crude oil swaps between Russia, Kazakhstan, Iran and the Caspian states, although these do not seem to have been effective in 2017 (p.142). The 2017 report addendum confirms that there were no swaps of crude oil between Kazakhstan and Iran in 2017.[76]

Other: The 2017 report addendum describes an arrangement of swaps of uranium between different entities of the KazAtomProm group, explaining that the equivalent volumes of uranium are exchanged between different companies within the group at different delivery points.[77] However, this appears to be a logistical arrangement aimed at minimising transport costs, rather than an exchange of goods between unrelated parties.

While the 2017 EITI Report notes in the section on barter and infrastructure arrangements the fact that extractives companies finance infrastructure facilities in the regions, it categorises this as a type of local infrastructure "for the social sphere" (p.141) rather than as a contractual infrastructure provision. Indeed Appendix 5 provides the Ministry of Energy and MIID's reporting of company payments to funds allocated to treatment plants, monitoring of pollution of the subsoil, social sphere and training of specialists on the basis of LCT reports, categorising these as social expenditures (*see Requirement 6.1*).

In the NSC's comments on the draft assessment, it argued that the assessment of Requirement 4.3 should be upgraded to "satisfactory progress" given that the volumes of natural gas involved in the swap arrangements active in 2017 were disclosed in the 2017 EITI Report and its addendum. However, the NSC's comments did not refer to the pre-financing arrangement with Vitol, which is considered an outstanding gap in Kazakhstan's coverage of barter arrangements in this assessment.

Secretariat's Assessment

<u>The International Secretariat's assessment is that the corrective action on barter and infrastructure arrangements has been partly addressed and considers that Kazakhstan has made meaningful progress *with considerable improvements* on Requirement 4.3</u>. The 2017 EITI Report provides a description of two types of barter arrangements, covering natural gas swaps with Russia and Uzbekistan on the one hand and the provision of two separate loans in exchange for future delivery of crude oil and liquefied natural gas. In previous Validations, such as the Validation of Chad in 2018, the EITI Board considered the exchange of loans for future deliveries of crude oil has been considered a form of barter arrangement. While the 2017 report addendum provides the volumes handled under the natural gas swap arrangement in 2017, it does not provide the volumes of crude oil and liquefied natural gas delivered in 2017 in reimbursement of the two pre-financing arrangements concluded by KazMunayGas. Requirement 4.3 requires that the EITI Report provide "*a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams*", which would imply the need to clarify the terms of the pre-financing loan arrangement, the repayment modalities and the specific volumes and values of crude oil delivered in the year under review in partial repayment for the loan.

In accordance with Requirement 4.3, Kazakhstan should ensure the public disclosure of transactions under material barter agreements such as pre-financing arrangements (which involve the provision of loans in exchange for future deliveries of extractives commodities). The disclosures should provide a

[76] *Ibid.*, p.59.
[77] *Ibid.*, pp.21-25.

level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. In practice, this requires disclosures of the terms of the pre-financing loans and the volumes and values of crude oil and liquefied natural gas delivered in the context of the arrangements in the year under review.

3.6 Corrective action 6 – Transport revenues (#4.4)

In accordance with Requirement 4.4 on transportation, the government and the NSC should strengthen its plans for overcoming barriers to full transparency in revenues from transportation of oil, gas and minerals in the country, including by engaging more directly with transportation companies.

Findings from the first Validation

The first Validation found that Kazakhstan had made meaningful progress in meeting this requirement. While the NSC had made efforts to increase transparency in transportation arrangements, data on total volumes of minerals transported as well as tariffs and revenues collected by the SOE from this transportation had not been disclosed. Although KazTransOil and KazTransGas had disclosed this information, the revenues received in tariffs and other payments were not disaggregated by paying company.

According to the Validation Guide, "*Disclosure of material transportation revenues is expected, but not required for compliance with the EITI provisions. Where transportation revenues are material but not disclosed, Validation is expected to evaluate whether the MSG has documented and explained the barriers to provision of this information and any government plans to overcome these barriers*". Some of the challenges related to disclosures by Themir Zholy were explained in that it was difficult to disaggregate revenues and volumes of cargos of minerals and metals from other cargos that the railway company was involved in. However, the Validation considered that the NSC could strengthen its plans for overcoming remaining barriers to full transparency in transportation of oil, gas and minerals by engaging further and more directly with the transportation companies.

Progress since Validation

Systematic disclosures: While noting the availability of data on oil and gas transport arrangements, volumes and revenues in the annual reports of KazTransOil JSC[78] and KazTransGaz JSC[79], the October 2017 feasibility study[80] calls for Kazakhstan Temir Zholy JSC to publish information on the mineral cargos transported and revenues generated in their annual reports, mirroring the practice for oil and gas (p.53).

EITI reporting: *Crude oil*: The 2017 EITI Report confirms that aggregate revenues from the transportation of crude oil totalled KZT 179.5bn in 2017 (p.136). It describes the process for crude oil transportation in Kazakhstan, including (pp.132-134):

- Atyrau-Samara oil pipeline (KazTransOil JSC - 100%); with a throughput of 17.5m tons of oil per year and a total length of 697km (of which 535km is the Kazakhstan section) provides access to the markets of the Russian Federation through the pipeline system of Transneft PJSC to the ports of Chernoy and Baltiysky of the seas.
- CPC oil pipeline (NC KazMunaiGas JSC –20.75%); with a throughput capacity of 41m tons of oil per year and a total length of 1,510 km (of which 452km is the Kazakh section) connects the Tengiz field and the Yuzhnaya Ozereevka marine terminal on the Black Sea (Novorossiysk RF). Owned by Russia - 31%, Kazakhstan - 20.75% and mining companies.

[78] See KazTransOil website, Annual reports section, accessed here in April 2019.
[79] See KazTransGas website, Reports section, accessed here in April 2019.
[80] Kazakhstan EITI (October 2017), 'Feasibility study: Systematic disclosures of EITI data in Kazakhstan', *op.cit.*.

- the Atasu-Alashankou oil pipeline (KazTransOil JSC - 50%); Through the “Alashankou” delivery point of the Atasu - Alashankou main oil pipeline. - supplementary agreement signed with PJSC Rosneft on the existing contract for the provision of oil transportation services to increase the total transit volume of Russian oil through the Republic Kazakhstan in China to 10 million tons per year. Supply of Kashagan crude oil through the Atyrau-Samara pipeline.
- KazTransOil JSC pipeline network: Deliveries of Russian oil have been launched through the system of main oil pipelines of KazTransOil JSC along the route Omsk - Pavlodar - Shymkent - the Shagyr oil-loading ramp (loaded into a railway cistern).
- Sea terminal Aktau - carried out by the vessels of the subsidiary organization of NC KazMunayGas JSC - NMSK Kazmortransflot LLP. Three main existing lines: Aktau - Baku (Caspian Sea); Aktau - Makhachkala (Caspian Sea); Routes in the waters of the Black and Mediterranean Seas (p.134).

The report provides the volumes of crude oil transported in 2017:

- 15.9m tons through the Atyrau-Samara oil pipeline (p.132),
- 58.5m tons through the CPC oil pipeline (p.132),
- 12.289m tons of oil a year through the Atasu-Alashankou oil pipeline (p.133),
- 2017 volumes through the KazTransOil JSC pipeline network (p.133, 134-137), disaggregated by route,
- Aggregate volumes transported through the sea terminal Aktau (p.133).

Appendix 7 provides the tariff rates and transportation volumes of KazTransOil JSC, as confirmed in the report (p.134). The report provides the value of transport revenues collected by KazTransOil JSC in 2017 (p.136). The report explains that it covers the value of transport revenues collected by the SOEs that handle oil transport, but notes that it is impossible to trace these transport revenues to the budget as the transportation companies do not make payments directly related to their transportation activities, but common taxes and payments (p.134). The value of KazTransOil JSC’s combined tax and other payments to government in 2017 (p.136), as well as disaggregated by revenue stream (p.137).

The report provides additional coverage of legal reforms and tariff adjustments related to oil transport (pp.135-136). Appendix 7 provides a list of all 82 companies involved in oil transportation operated by KazTransOil JSC.

Natural gas: The report describes Kazakhstan’s gas pipeline infrastructure (p.137) and confirms that the KazTransGas JSC group of companies handles all natural gas transportation in Kazakhstan, mainly through the companies JSC Intergas Central Asia, and joint ventures of Asian Gas Pipeline LLP, Beine-Shymkent Gas Pipeline LLP (p.137):

- “Central Asia-Center”, of a length of about 4,000 km, capacity of 60bn cu m (Turkmen and Uzbek gas);
- “Bukhara-Ural”, of a length of about 4,500 km, capacity of 7.2 bn cu m (Uzbek gas);
- “Orenburg-Novopskov and MG “Soyuz”, of a length of 760 km, capacity of 10 bn cu m and 20 bn cu m(Russian gas);
- “Kazakhstan-China”, of a length of about 1,310 km, part of the Central Asia-China gas pipeline designed to transport gas from the largest gas field Galkynysh (Turkmenistan) to China, with an operating capacity of 37 bn cu m, and prospects of expansion to 55 bn cu m.

Appendix 7 provides the volumes of natural gas transported by four companies, the tariffs, the transport revenues received and the value of the company’s payments to government in 2017, as confirmed in the report, which also provides tariffs (pp.139-140). The value of aggregate 2017 transport revenues collected by KazTransGas JSC and the four other companies is also provided in the report (p.140). The report confirms that KazTransGas JSC makes only common tax and other payments to government that are not specific to its transport revenues (p.140).

Appendix 7 provides a list of all of the gas pipelines operated by KazTransGas JSC in 2017 and provides an overview of the operations of Asian Gas Pipeline LLP and Beineu-Bozoi-Shymkent Gas Pipeline LLP. New gas pipeline infrastructure being developed both for exports and for domestic gasification is described (p.138).

Railway transport: The report provides a description of the system of transport by railway in Kazakhstan, including the types of tariffs collected (pp.140-141). The SOE NC Kazakhstan Temir Zholy JSC handles railway transportation (p.141). The report states that "NC" Kazakhstan Temir Zholy" JSC does not disclose information on cargo transported or transport revenues collected in its annual report, in contrast to KazTransOil JSC and KazTransGaz JSC (p.141). It also notes that "NC" Kazakhstan Temir Zholy" JSC does not account separately for taxes and other payments to the budget for transport revenues (p.141). There is no information in the report on types of extractives commodities transported by rail, nor an assessment of whether transport revenues from rail are material. The Independent Administrator's letter on the 2017 EITI Report (included at the end of the report) recommends that NC "Kazakhstan Temir Zholy" disclose information on extractives transport revenues in line with "KazTransOil" JSC and "KazTransGaz" JSC (p.230). Appendix 7 provides the various NC KTZH tariff for the transportation of goods in the domestic market and for exports, per type of mineral commodity transported, for the different transport options.[81]

The 2017 report addendum explains that the NSC has followed up with Kazakhstan Temir Zholy JSC to seek information on revenues collected in 2017 from the transportation of extractives commodities, but notes the company's response that such information is considered a "commercial secret". Upon consultations, several government representatives highlighted resistance from Kazakhstan Temir Zholy JSC to disclosing data on revenues from the transportation of extractives commodities and noted concerns that it had not been possible to overcome such barriers to disclosure. Based on the disclosure of SOE transactions in Appendix 2.2 however, it appears that Kazakhstan Temir Zholy JSC did not pay any dividends to government in 2017, which was confirmed in stakeholder consultations. This implies that any extractives transport revenues collected by Kazakhstan Temir Zholy JSC in 2017 were retained by the SOE.

A civil society representative consulted noted that Kazakhstan Temir Zholy charged the same rates for all commodities, irrespective of whether they were extractives commodities or other goods, and that it was not possible to disaggregate the extractives component of transport revenues from the company's total freight transport revenues. Nonetheless, several civil society representatives consulted considered that more work was needed to disclose transport revenues collected by Kazakhstan Temir Zholy given the 2017 EITI Report's statement that the main commodities transported by the SOE were bulk and liquid cargoes, such as coal, grain, oil, ore, mineral fertilizers.

In the NSC's comments on the draft assessment, it noted that information on transportation revenues was provided in the 2017 EITI Report, given the provision of links to websites of KazTransOil, KazTransGas and KTZ. While the NSC's comments note that it considers the information on transport revenues in the 2017 EITI Report to be an "exhaustive presentation", it notes that a "more in-depth, detailed" interpretation of Requirement 4.4 was envisaged in future.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action on transport revenue has been partly addressed and considers that Kazakhstan has made meaningful progress *with considerable improvements* on Requirement 4.4. The 2017 EITI Report provides descriptions of the system for transport of crude oil, natural gas and mineral commodities by pipeline and rail, but only provides information on the volumes transported and revenues received for crude oil and natural gas (by pipeline), disaggregated by route, not for rail transport of mineral commodities. The 2017 report

[81] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.45-46.

addendum is transparent about the challenges in outreach to the state-owned railway operator Kazakhstan Temir Zholy JSC and highlights the SOE's objections to disclosing revenues from the transport of extractives commodities by rail, linked to concerns over commercial confidentiality.

In accordance with Requirement 4.4, Kazakhstan should ensure that revenues collected by SOEs from the transportation of extractives commodities be publicly disclosed, disaggregated by company, where material.

3.7 Corrective action 7 – Data reliability (#4.9)

In accordance with Requirement 4.9 and the Standard Terms of Reference for Independent Administrators, the NSC should make sure that the production of future EITI Reports includes the development of an inception report. The NSC should also ensure that the Independent Administrator carries out a review of prevailing auditing and accounting practices in government agencies and that the approach to data assurance for government agencies is reflected in the inception report. Alternatively, the NSC is encouraged to explore opportunities for fully transitioning to mainstreamed implementation.

Findings from the first Validation

The first Validation found that Kazakhstan had made meaningful progress in meeting this requirement. Although the NSC had agreed ToRs for the EITI Report, it was not always followed. An example was the lack of production of an inception report. The lack of this report had arguably affected the quality of the EITI Report in that no document confirming the NSC's decisions on requirements like quasi-fiscal expenditures or SOEs had resulted in gaps in reporting. Another example was that the Independent Administrator had not carried out a review of prevailing auditing and accounting practices in accordance with the TOR. Although this did not appear to have affected the quality of company data and the associated procedures for data assurance, it had led to lack of clarity on what assurance procedures were used for verifying the veracity of government data.

Apart from a failure to always follow the TOR, it appeared that Kazakhstan had made satisfactory progress against remaining provisions under Requirement 4.9. In light of the discontent by some stakeholders regarding the current Independent Administrator and the inability of the NSC to change the Independent Administrator due to government procurement rules, the NSC was encouraged to explore opportunities for fully transitioning to mainstreamed implementation. This would move EITI reporting online and funds currently used on hiring an Independent Administrator could be spent on improving data availability online. It would also remove the seemingly cumbersome practice of MoF handing data to the Independent Administrator, which the Independent Administrator then inputs into the EGSU reporting systems

Progress since Validation

Systematic disclosures: The October 2017 feasibility study[82] argues that Kazakhstan has strong potential for systematically providing quality assurance on their financial data, noting statutory requirements for companies and government entities to be audited.

[82] Kazakhstan EITI (October 2017), 'Feasibility study: Systematic disclosures of EITI data in Kazakhstan', *op.cit.*.

For *companies*, the study describes provisions (Article 5) of Law 304 of 20 November 1998 on company audits[83] requiring subsoil license holders to be subject to mandatory auditing procedures in accordance with the International Auditing Standards. Clause 1 of the Resolution of the Board of RK National Bank 282 of 31 August 2012 on rules for publishing financial statements by joint stock companies and financial organizations[84], these companies are required to publish approved consolidated annual financial statements compliant with international financial reporting standards in the mass media by 31 August of the year subsequent to the reporting period. The study also notes EITI reporting procedures through the EGSU system requiring companies to provide assurance on the underlying audit performed (p.59).

For *government entities*, the study notes provisions (Articles 3 and 5) of RK Law 392-V on state audit and financial controls[85] of 12 November 2015, requiring agencies in budget planning and execution to be subject to state audit. The RK Accounts Committee (AC) is responsible for audits of government entities and is required to adhere to standards of state audit and financial control based on international standards. The budget execution report is required to be submitted to Parliament by 15 May of the subsequent year and the Accounts Committee is required to present the government with its opinion on the government's consolidated financial statements within two months. The Accounts Committee's website provides the budget execution reports for each financial year.[86] The October 2017 study raises concerns over inefficiencies in the EITI's online reporting process through the EGSU, noting for instance several duplications of work and the IA's manual input of government data in the EGSU portal.

EITI reporting: *Procurement of the IA*: A review of the IA's ToRs indicates that the main deviations from the Board-approved ToRs consist of data collection being undertaken through the EGSU e-reporting portal.

The report confirms that "UHY SAPA Consulting" LLP was contracted based on a public service procurement #75 of 22 June 2018 by the RSI Committee of Geology and Subsoil Use of the Ministry of Industry and Infrastructural Development (p.1). Stakeholder consultations confirmed that the IA was procured following the same process as for previous EITI Reports, through a national procurement process with the Ministry of Industry and Infrastructure Development overseeing the process on behalf of the NSC. The findings of the first Validation were that this approach was in accordance with Requirement 4.9.

Inception report: The IA produced a 2017 inception report, which was approved by the NSC on 28 June 2018.[87] The inception report drew on company and government reporting through the EGSU portal and provided a review of audit and assurance practices as well as material entity reporting for 2017 payments and revenues. While the primary reporting templates were previously approved by the NSC as part of the EGSU portal upgrades, the 2017 inception report includes five additional reporting templates, which were approved as part of the NSC's review of the 2017 inception report. The 2017 report addendum confirms the NSC's review of the IA's 2017 inception report.[88]

Review of audit practices: For *government*, the report briefly describes statutory audit procedures including reference to controls on budget allocations, including extractive companies, provided by the External State Financial Control Program according to the annual Plans of Control Measures of the Accounts Committee (p.152).

[83] Link to the Law: http://adilet.zan.kz/rus/docs/Z980000304
[84] Link to the Order of NBK Board: http://adilet.zan.kz/rus/docs/V1200008003
[85] Link to the Law: http://adilet.zan.kz/rus/docs/Z1500000392
[86] Link to webpages: (1) http://esep.kz/rus/show1/article/257 (2) http://esep.kz/rus/showin/article/2767 (3) http://esep.kz/rus/show1/article/27
[87] EITI Kazakhstan (June 2018), 'INITIAL REPORT on a preliminary analysis of the preparation of the 13th national EITI report for 2017', accessed here in August 2019.
[88] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, p.25.

For *companies*, the report provides a cursory overview of Law 304 on auditing of extractive companies' costs and expenses of 20 November 1998 (pp.21-22). In practice, the report confirms that 148 extractives companies provided their audited 2017 financial statements compiled according to IFRS (p.152). It notes that an audit was carried out by November 2018 into the extractives companies that did not submit their 2017 financial statements, but noted that the combined payments to government of non-complying companies was only 0.52% of total taxes collected (KZT 1.9742m) in 2017 (p.152). Appendix 1-4 and 1-5 provide information on the reporting companies' adherence with quality assurances, including submission of their 2017 financial statements, as confirmed in the report (p.152). However, the report does not provide guidance on accessing the audited financial statements.

<u>Assurance methodology</u>: The report explains that the financial data on which the reconciliation was based was sourced from the KGD MF RK - Analytical Report Designer (p.152). It explains that the reporting entities' submissions of data "*are drawn up in accordance with the instructions and reflect the amounts of Payments actually made during the reporting period. Responsibility for the quality and accuracy of information rests with the first manager or authorized representative of the Payer / Recipient. All the information provided was confirmed by an audit, as reported in the cover letters signed by the top managers of the companies*" (p.228). These quality assurances are in line with those reviewed as part of Kazakhstan's first Validation under the 2016 EITI Standard.

The report also provides an overview of the work of the IA (pp.8-10,13-17,152) and confirmation that EITI reporting was on a cash-accounting basis (p.13).

<u>Confidentiality</u>: The report confirms that the IA undertook its work in line with ISRS 4400 (p.8), which implies that adequate confidentiality provisions were put in place for the treatment of information pre-reconciliation.

<u>*Reconciliation coverage:*</u> The report provides the reconciliation coverage target[89] in light of materiality decisions in Appendix 11 (Table 1). While the report does not provide the final reconciliation coverage in light of omissions caused by seven companies' non-reporting, this final coverage can be calculated based on disaggregated data on individual material companies' payments to government in Appendix 11.

<u>*Assurance omissions:*</u> The report states that 148 extractives companies provided their audited financial statements for 2017 compiled according to IFRS (p.152), while Appendices 1-4 and 1-5 provide the value of each material mining, oil and gas company's payments to government in 2017 and their compliance with quality assurances for their EITI reporting, from which an assessment of the materiality of each non-complying reporting company's payments to government can be estimated. However, it is unclear from the EITI Report whether all reporting companies provided signed management attestations for their EITI reporting templates. Stakeholder consultations confirmed that all reporting companies had provided the requested management sign-off for their reporting templates.

<u>*Data reliability assessment:*</u> While the report states that the IA "makes no representations about the accuracy or completeness" of EITI data (p.13), it notes the IA's view that 148 material companies' submission of their 2017 audited financial statements "*means that the payment information provided in payers reports is verified and confirmed audit report*" (p.152) even though the basis for IFRS accounts is accrual accounting, while EITI reporting is cash-based. Upon consultations, the IA and

[89] Of 99.57% of revenues in oil and gas and 99.28% in mining.

several government officials explained that it was possible to compare cash-based EITI reporting with accrual-based audited financial statements based on the cashflow analysis in the latter.

The 2017 EITI Report addendum provides a supplementary note by the IA on the comprehensiveness and reliability of the reconciled financial data.[90] The note clarifies the IA's view that the reconciled financial data in the 2017 EITI Report is comprehensive and reliable. Both the NSC and the civil society constituency's views in particular are reflected in the 2017 report addendum, noting stakeholders' confidence in the IA's assessment of comprehensiveness and reliability.[91]

Sourcing of information: The contextual information appears to be consistently sourced. No other stakeholder than the IA appears to have included any commentary in the report.

Summary tables: The Kazakhstan EITI Secretariat submitted draft summary data for the 2017 EITI Report to the International Secretariat in December 2018. While review of the draft summary 2017 data tables was still ongoing at the start of Validation, these were expected to be published on the Kazakhstan country page of the EITI website in line with previous years.[92]

Recommendations: While the 2017 EITI Report and its addendum only provide a review of the NSC's follow-up on corrective actions from Validation, not from past EITI Reports, the 2018 annual progress report provides an overview of follow-up on past EITI Reports.[93] However, the 2017 EITI Report includes a set of 11 recommendations on the basis of the 2017 EITI Report (pp.229-230), ranging from recommendations related to EITI reporting and to broader reforms.

In the NSC's comments on the draft assessment, it agreed with the assessment of "satisfactory progress" on Requirement 4.9.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action on data reliability has been addressed and considers that Kazakhstan has made satisfactory progress on Requirement 4.9. The NSC approved ToRs for the IA on 14 February 2018 that deviated from the Board-approved template in a codified way. It appears that the NSC has also approved the recruitment of the IA, even if the appointment was through government procurement systems. The NSC approved the reporting templates in its review of the inception report. While there are concerns over the comprehensiveness of the review of audit and assurance procedures and practices, with a description of procedures but not of practices for government, there are no requirements in the Board-approved IA ToRs for the detailed findings of the review of audit procedures and practices to be included in the EITI Report itself. The quality assurances agreed for EITI reporting by both government and companies is confirmed as being the same as previous years in the EITI Report, as part of the EGSU online reporting portal. The largest material companies and government entities appear to have complied with the agreed quality assurance procedures. Although the 2017 EITI Report does not include the IA's clear assessment of the comprehensiveness and reliability of reconciled financial data presented in the report, its addendum published before Validation clarifies the IA's view that the reconciled financial data is comprehensive and reliable. Kazakhstan appears to have prepared summary data tables for all of its EITI Reports, including 2017. A review of follow-up on past EITI recommendations is included in the 2017 report addendum, while the 2017 EITI Report itself presents a set of new recommendations based on the 2017 report.

[90] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.49-51.
[91] *Ibid.*, p.61.
[92] EITI website, Revenue collection section of Kazakhstan country page, accessed here in August 2019.
[93] EITI Kazakhstan (2019), 2018 Annual Progress Report, accessed here on 19 September 2019, pp.58-60.

To further strengthen EITI implementation, Kazakhstan may wish to work with companies and government entities in the scope of EITI reporting to ensure routine reporting of payments to government as required under the EITI Standard through statutory public disclosures.

3.8 Corrective action 8 – Social expenditures (#6.1)

In accordance with Requirement 6.1, the NSC should clarify the various types of mandatory social expenditures that exist and ensure that all material social expenditures are covered in the next EITI Report.

Findings from the first Validation

The first Validation found that Kazakhstan had made meaningful progress in meeting this requirement. The NSC had made extensive efforts related to the 1% social investments that were part of the contractual obligations, including reconciling company and government data on social expenditures, as well as including information on what ought to be paid in accordance with the contracts versus what was paid. However, stakeholder consultations seemed to suggest that other mandatory social expenditures existed, including social expenditures paid under MoUs. The presentation of the data on social expenditures in the EITI Report could also be improved.

Progress since Validation

Systematic disclosures: The October 2017 feasibility study[94] does not refer to any systematic disclosures of social expenditures by extractives companies.

EITI reporting: *Mandatory social expenditures*: The 2017 EITI Report confirms that social expenditures were material in 2017, totalling KZT 47.9bn, of which 83% (KZT 39.9bn) was from oil and gas companies (p.148). The KZT 47.9bn value, however, appears to be different comparing to the total sum of social investments provided in Appendix 5, which is around KZT 15bn. While the report does not explicitly confirm that social expenditures are mandatory, it implies so by providing the budget classification code BCC 206114 on "Deductions for subsoil users for the socio-economic development of the region and the development of its infrastructure" (p.148). The categorisation of expenditures under the BCC 206114 classification as mandatory is consistent with the findings of Kazakhstan's first Validation.

Appendices 1-4, 1-5 and 1-6 to the 2017 EITI Report present the results of reconciliation of mandatory social expenditures under BCC 206114 between disclosures from mining, oil and gas companies and reporting by akimats. However, this data includes only the value of these expenditures, but does not specify whether these were consistently provided in cash or in-kind, nor the identity of any non-government beneficiaries. Stakeholders consulted confirmed that mandatory social expenditures under BC 206 114 were always paid in cash, they noted that mandatory social expenditures through other means were paid both in cash and in-kind depending on the company and project.

Appendix 5 provides the detail of mining, oil and gas companies' deductions for social development and local infrastructure, as confirmed in the 2017 report addendum.[95] Appendix 5 presents both payments under BCC 206 114 as well as payments in five other categories (waste-water treatment, mineral pollution monitoring, social and local infrastructure, training costs and "list of specialties"). These are unilateral disclosures by the Ministry of Energy and the MIID, disaggregated by payment stream and by company. The title of Appendix 5 notes that all of these expenditures are in accordance with terms of companies' licenses and contracts, implying that they are all considered mandatory

[94] Kazakhstan EITI (October 2017), 'Feasibility study: Systematic disclosures of EITI data in Kazakhstan', *op.cit.*.
[95] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, p.62.

social expenditures. However, the total value of expenditures under BCC 206114 in Appendix 5 (KZT 2,3800,002,000) is substantially different from the total value of these same payments in Appendix 1-6 (KZT 10,502,833,000). In addition, the appendices 1-6 and 5 do not distinguish whether social expenditures were made in cash or in-kind, nor consistently list the identity of non-government beneficiaries of mandatory social expenditures.

Voluntary social expenditures: The report describes additional social expenditures "*in the framework of memorandums and social partnership agreements*", with a link[96] to such meetings on the EITI Kazakhstan website (p.148). It describes a system of open meetings in akimats of administrative regions to report on companies' social expenditures within each region (p.148). While it is unclear from the 2017 EITI Report whether these additional social expenditures are mandatory or voluntary, the 2017 report addendum clarifies that these social expenditures (in the framework of memorandums with akimats) are considered voluntary social expenditures.[97] The report describes a MoU signed between NAC Kazatomprom JSC, UMP JSC and East Kazakhstan Oblast Akimat, for the period 2017-2019 to spend a total of KZT 3bn for the socio-economic development of the eastern Kazakhstan region (p.148). The report does not list other MoUs concluded between extractives companies and akimats, despite recommendations from Kazakhstan's first Validation.

Appendix 3-2 covers companies' reporting of expenditures on social development and local infrastructure, aside from social payments under BCC 206114, disaggregated by region, as noted in the main report (p.228). Information includes name of project or event, value of expenditures, name of company making payments and some description of the project. However, the disclosures do not distinguish between social expenditures provided in cash and in-kind, nor the identity of any non-government beneficiary. One CSO consulted stated that some of the mandatory social expenditures reported through EITI were provided in kind, not in cash, although there was consensus that social expenditures under the BC 206114 code were paid in cash. The 2017 report addendum clarifies that Appendix 3-2 represents companies' social expenditures for the development of the social sphere of the regions, both through contracts and in accordance with memoranda with akimats, agreements, voluntary expenses and akimats data.[98] As confirmed in the addendum[99], the NSC has categorised these social expenditures as voluntary.

The report notes that Appendix 11 provides an examination of discrepancies in the reconciliation of social expenditures (p.228), although this appears to be a typo that should in fact read Appendix 12. Appendix 12 provides an overview of the causes for discrepancies in the reconciliation of expenditures on social development and local infrastructure, with the exception of funds transferred to BCC 206114.

Opinions expressed in consultations differed markedly on the issue of what constituted mandatory social expenditures. Several civil society representatives consulted considered that all Appendices of the 2017 EITI Report (1-6, 3-2 and 5) represented primarily mandatory social expenditures, but noted that it was possible that some voluntary social expenditures had also been reported as part of Appendices 3-2 and 5. One CSO consulted considered that all social expenditures disclosed in the appendices were mandatory. Several CSOs explained that, while companies were supposed to pay social expenditures of 1% of companies' annual investments under the BCC 206114 budget code (Appendix 1-6), some companies had continued to undertake social expenditures under the old system, under agreements with akimats (Appendix 3-2). They considered that Appendix 3-2 represented data reported by extractives companies, while Appendix 5 represented reporting by the Ministry of Energy and the Ministry of Industry and Infrastructural Development on the basis of local governments' reports. They noted that local government reporting may have been done incorrectly and

[96] Kazakhstan EITI (July 2016), 'Meetings in akimats', accessed here in August 2019.
[97] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, p.62.
[98] *Ibid.*, p.62.
[99] *Ibid.*, p.62.

called for the NSC to properly explain data on social expenditures disclosed in future EITI Reports. Several CSOs noted that the lack of contract disclosure hindered the NSC's ability to gain a comprehensive understanding of the scope of mandatory social expenditures. Secretariat staff reiterated the view in the 2017 report addendum that expenditures in the Appendix 3-2 represented voluntary social expenditures under the terms of separate agreements with akimats. Several stakeholders highlighted the publication of a 2019 study[100] on social expenditure data disclosed through EITI by the Institute of National and International Development Initiatives, calling for more collaboration with companies for clarifying the extent of social contributions.

In the NSC's comments on the draft assessment, it argued that the assessment of Requirement 6.1 should be upgraded to "satisfactory progress" given that "a lot of work has been done" on this issue. However, it notes that "work continues on the subject of a clear division between voluntary and mandatory payments". The NSC comments reiterate the view that the only mandatory social expenditures were those included in companies' work programmes and agreed with local governments, i.e. those under budget code BCC 206114. The comments further note that only voluntary social expenditures are provided in kind. However, the Secretariat's stakeholder consultations in preparing this assessment revealed a difference of opinion between different constituencies, including on the NSC, on the definition of mandatory social expenditures and the statement that only voluntary social expenditures are provided in kind.

Secretariat's Assessment

<u>The International Secretariat's assessment is that the corrective action on social expenditures has been partly addressed and considers that Kazakhstan has made meaningful progress *with considerable improvements* on Requirement 6.1</u>. The 2017 EITI Report presents the reconciliation of mandatory social expenditures under the BCC 206114 budget code as well as the unilateral disclosure of other social expenditures. While the report and its addendum categorise these additional social expenditures as voluntary, opinions were split among NSC members consulted over whether the additional social expenditures reported were voluntary, mandatory, or a mix of both. In addition, the data presented on mandatory social expenditures under BCC 206114 do not appear consistent across the different annexes to the 2017 EITI Report and do not distinguish between cash and in-kind social expenditures, nor consistently identify non-government beneficiaries.

In accordance with Requirement 6.1, Kazakhstan should ensure a clear categorisation between mandatory and voluntary social expenditures and that, where material, mandatory social expenditures are comprehensively disclosed, including whether the expenditure is undertaken in cash or in-kind, the nature and deemed value of in-kind transactions, and the identity of any non-government beneficiary.

3.9 Corrective action 9 – Quasi-fiscal expenditures (#6.2)

In accordance with Requirement 6.2, the government and the NSC should ensure that SOEs disclose any material quasi-fiscal expenditures. Quasi-fiscal expenditures include arrangements whereby SOE(s) undertake public social expenditure such as payments for social services, public infrastructure, fuel subsidies and national debt servicing, etc. outside of the national budgetary process. The multi-stakeholder group is required to 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.

[100] Institute of National and International Development Initiatives (2019), 'Social Investment in the EITI', accessed here in September 2019.

Findings from the first Validation

The first Validation found that Kazakhstan had made inadequate progress in meeting this requirement. Although some information had been disclosed in the 2015 Supplementary Report, stakeholder consultations indicated that there were gaps in the information disclosed. This had also been recognised by the NSC through their decision to carry out a separate study on this issue.

Progress since Validation

Systematic disclosures: The October 2017 feasibility study[101] noted that SOEs' annual reports frequently contained data on expenditures that could be partially or wholly categorised as quasi-fiscal, such as sponsorships, charity support and state subsidies. However, the study noted that the "origin" of funds used for specific expenditures was not identified in the annual reports, hindering a clear distinction between fiscal and quasi-fiscal activities in light of budget transfers to Samruk-Kazyna NWF JSC (p.34). The study recommended the development of an additional template on the EGSU system to cover quasi-fiscal expenditures (pp.56-57).

EITI reporting: Drawing on SOEs' annual reports for its assessment, the 2017 EITI Report explains that quasi-fiscal expenditures were included in the EITI reporting template for the first time in 2017 and that a dedicated report on QFEs is provided in Appendix 4 (p.149). It also indicates that Samruk-Kazyna National Welfare Fund receives replenishment of its authorized capital from the budget (p.149).

For Samruk-Kazyna NWF JSC, the report refers (and provides a link[102]) to data on sponsorship and charitable assistance and government available in the company's 2017 annual report (pp.148-149). The 2017 report addendum clarifies that the SOE's charitable assistance is entirely undertaken by the Samruk-Kazyna Trust Corporate Fund and provides a link to the trust fund's website where detailed information on its social development projects is available.[103] The report describes a series of expenditures by the Samruk-Kazyna National Welfare Fund, based on its financial statements, that could be described as quasi-fiscal (p.149), including the affordable housing scheme, financing of the acquisition of United Chemical Company's 48% interest in Firma ALMEX PLUS LLP and its interest in KPI Inc. LLP, financing of an integrated gas and chemical complex in the Atyrau region, and financing of the "Chemical Park Taraz" special economic zone (p.150).

Appendix 4 provides information on quasi-fiscal expenditures undertaken by six companies in which the state holds equity (out of a total of 12 state-owned companies presented, half of which stated they did not conduct quasi-fiscal expenditures), including company name, location of activities, description of project/expenses (more or less detailed), deadline for completion, value of planned and actual expenditures (although not systematically for 2017, it appears sometimes cumulative) and name of recipient for most (but not all) quasi-fiscal expenditures reported. This information is republished in the 2017 report addendum, which states that there were no other quasi-fiscal expenditures undertaken in the year under review.[104]

The report states that "some" (unspecified) companies undertook quasi-fiscal expenditures of "almost" KZT 833bn, but notes the limits of the assessment of quasi-fiscal expenditures by explaining that companies do not provide a detailed breakdown of expenses that could allow for a clear categorisation of quasi-fiscal costs (p.149). It notes, for instance, that companies part of the Samruk-Kazyna NWF made quasi-fiscal expenditures through Samruk-Kazyna Trust, valued at KZT 15bn, according to their financial statements. However, it notes the lack of clarity over whether Samruk-Kazyna NWF's charitable events were financed by the company's own profits, which would imply that they were quasi-fiscal, or by budget funds provided by the state, which would imply they were not

[101] Kazakhstan EITI (October 2017), 'Feasibility study: Systematic disclosures of EITI data in Kazakhstan', *op.cit.*.
[102] Samruk-Kazyna NWF JSC website, Reports and plans section, accessed here in April 2019.
[103] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.18-19.
[104] *Ibid.*, pp.25-26.

quasi-fiscal. The report further cast doubt on reporting companies' understanding of the definition of quasi-fiscal expenditures and calls for additional research into the issue (p.149). The IA's letter on the 2017 EITI Report (included at the end of the report) notes what it considers "*shows discrepancies in the interpretation of the term quasi-fiscal expenditures*" (p.230). The report includes the IA's recommendation for an additional study on QFEs given what it considers are mis-categorisations of certain expenditures as quasi-fiscal. The IA calls for the inclusion of a clear "definition of quasi-fiscal costs and methods for their identification" in the EGSU e-reporting regulations ("*Methodological Guidelines on the procedure for compiling and submitting a report on the Transparency Initiative of the Extractive Industries in the Integrated Information System Subsoil Use Management of the Republic of Kazakhstan (IIS EGSU NP RK)")* (p.230).

Although consultations with government stakeholders implied that subsidies on the sales of natural gas to the domestic market by KazMunayGas and its subsidiaries (such as KazTransGas) were not offset by transfers from the government budget, the 2017 report addendum states that KazTransGas did not provide subsidies on natural gas in 2017.[105]

A civil society representative consulted noted that the NSC had not discussed the issue of quasi-fiscal expenditures in preparing the 2017 EITI Report and that the reporting templates lacked sufficient guidance for SOEs to be able to fill them out. The representative noted the need for the NSC to reach agreement with the IA on a classification of quasi-fiscal expenditures before data collection involving the management of SOEs. Several civil society representatives consulted considered that the 2017 EITI Report's coverage of quasi-fiscal expenditures was incomplete given the lack of reporting by KazMunayGas and its subsidiaries and confusion among the NSC and the IA over the definition of quasi-fiscal expenditures. Several other civil society representatives consulted questioned the 2017 report addendum's statement that there were no quasi-fiscal subsidies on natural gas sales to the domestic market in 2017 and considered that such off-budget subsidies were provided by subsidiaries of JSC KazTransGas in 2017.

In the NSC's comments on the draft assessment, it noted that reporting of quasi-fiscal expenditures had been integrated into the EGSU e-reporting system, with information available online. However, the NSC also notes that Kazakhstan will conduct a full analysis of all expenditures of extractive SOEs and their subsidiaries to identify quasi-fiscal expenditures in accordance with the IMF's definition.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action on quasi-fiscal expenditures has been partly addressed and considers that Kazakhstan has made meaningful progress on Requirement 6.2. The 2017 EITI Report provides a list of quasi-fiscal expenditures undertaken by SOEs, although the report includes the IA's reservations over the classification of certain expenditures as quasi-fiscal. While there is evidence of the NSC's efforts to report on quasi-fiscal expenditures, more work is required to ensure that a comprehensive list of clearly categorised quasi-fiscal expenditures is publicly disclosed, including quasi-fiscal expenditures other than those related to social development and local infrastructure (e.g. subsidies).

In accordance with Requirement 6.2, Kazakhstan should undertake a comprehensive review of all expenditures undertaken by extractives SOEs (and their subsidiaries) that could be considered quasi-fiscal, with reference to the IMF's definition of quasi-fiscal expenditures. Kazakhstan 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.

[105] *Ibid..*, p.62.

3.10 Corrective action 10 – Outcomes and impact (#7.4)

In accordance with Requirement 7.4, the NSC should ensure that the next annual progress report includes an assessment of the impact of the implementation of the work plan and other EITI activities. In addition, the NSC should ensure that the production of the annual progress report is an opportunity for wider stakeholders to provide feedback and input to the EITI process in Kazakhstan.

Findings from the first Validation

The first Validation found that Kazakhstan had made meaningful progress in meeting this requirement. The NSC had produced annual progress reports that took stock of the activities conducted, the execution of the workplan, the follow up on the recommendations of the EITI report, and strengths and weaknesses of the EITI process. However, the APR lacked an assessment of impact of the implementation of work plan objective and activities. Also, the broader objective of using the APR as a tool for seeking stakeholder input and feedback on the impact of EITI implementation and opportunities for improvements, and let that feedback guide the strategic direction of EITI in Kazakhstan, did not appear to be fulfilled.

Progress since Validation

The Annual Progress Report (APR) covering EITI process in Kazakhstan in 2018 was approved by the NSC on 17 June 2019 and subsequently published on the Kazakhstan EITI website[106]. The APR is available in English, Kazakh and Russian. Additionally, an addendum to the 2017 EITI Report[107] was prepared in August 2019 and includes a section on the impact of EITI implementation in Kazakhstan.

The APR provides a summary of activities held in late 2017-2018 in section 1[108] and in 2018-2019 in section 2.[109]

With regards to the assessment of performance against EITI Requirements, the APR provides a table in section 3, assessing progress in meeting each EITI requirement.[110] Although the APR focuses on the seven general requirements of the EITI Standard and does not provide a detailed description of each sub-requirement, information about all relevant sub-requirements is covered in various sections of the APR. Moreover, while the table does not seem to include an analysis of encouraged aspects of EITI reporting, other sections of the APR and NSC meeting minutes confirm discussion of topics such as beneficial ownership, contract transparency, environmental payments disclosures and so forth.

The APR provides an overview of the NSC's progress in addressing the recommendations from the first Validation and its comments on the main recommendations of EITI Reports and of the NSC's working group on reconciliation in section 4.[111] Additionally, the IA's comments on the draft 2017 EITI Report in response to feedback from the MSG's working group and the International Secretariat are available on the national EITI website.[112] The APR lists each recommendation and the corresponding activities to follow up on each, but does not seem to clearly define the level of progress in implementing each recommendation. In some cases, the APR notes that the recommendation will be taken into account

[106] EITI Kazakhstan (2019), 2018 Annual Progress Report, accessed here on 19 September 2019.
[107] 2017 EITI Report and addendum to it, accessed here on 19 September 2019.
[108] EITI Kazakhstan (2019), 2018 Annual Progress Report, *op.cit.*, pp.2-3.
[109] Ibid, pp.9-10, 40-45.
[110] Ibid, pp. 50-54.
[111] *Ibid.*, pp.54-60.
[112] Comments of the Independent Administrator to the draft 2017 EITI Report, accessed here on 20 September 2019.

for the next EITI Report covering 2018, implying that no follow-up action has yet been taken on these recommendations.

The APR provides an assessment of progress with achieving workplan objectives in section 2.[113] The assessment is comprehensive, although it focuses on activities rather than their impact. At the same time, the 2017 EITI Report addendum provides a cursory overview of the NSC's assessment of the impact of EITI implementation in Kazakhstan[114]. The addendum highlights the EITI's diverse actual and potential outcomes and impacts, including establishing constructive relations between the constituencies, providing a good example to other countries and improving the effectiveness of social expenditures.

Section 5 of the APR[115] reflects strengths and weaknesses of the EITI process. For instance, the APR highlights strengths such as the development of relevant legislation, including on beneficial ownership, timeliness of reporting and availability of the revenue data online on the EGSU (Unified State System for Subsoil Use Management) platform. The APR also highlights the NSC's approved plans to transition to systematic disclosures. At the same time, funding constraints on CSOs' active engagement in EITI implementation and their efficient communication work are highlighted as main weaknesses. Capacity development needs on topics of SOEs and QFEs are also noted.

Section 6 of the APR provides total costs of implementation and notes that further information on sources of funding is available on the national EITI website.[116] Additionally, details of the NSC's membership during the period and media commentary on EITI are covered in the APR.

In preparation of the APR, there is evidence that all constituencies were asked for their input and encouraged to comment on the draft APR. Moreover, the APR invites feedback via the contact form on the EITI Kazakhstan website. While no clear information on the contents and outcomes of these consultations are mentioned in the APR, several stakeholders consulted confirmed that they provided comments to the draft APR which were subsequently included in the final version.

In the NSC's comments on the draft assessment, it agreed with the assessment of "satisfactory progress" on Requirement 7.4.

Secretariat's Assessment

<u>The International Secretariat's assessment is that the corrective action on outcomes and impact has been addressed and considers that Kazakhstan has made satisfactory progress on Requirement 7.4</u>. The 2018 annual progress report provides a comprehensive overview of activities conducted in 2018, an assessment of progress towards meeting each EITI Requirement, an overview of the NSC's feedback to the comments from the first Validation and EITI Reports as well as strengths and weaknesses of the EITI implementation. Additionally, the addendum to the 2017 EITI Report includes an assessment of impact and outcomes of the work plan implementation. It appears that all relevant stakeholders were given an opportunity to comment in preparing the draft annual progress report.

To strengthen implementation, Kazakhstan is encouraged to undertake a comprehensive overview of the impact of EITI implementation in Kazakhstan to date, with a view to agreeing ways of strengthening the EITI's impact and its support for broader extractive industries reform. Kazakhstan is

[113] EITI Kazakhstan (2019), 2018 Annual Progress Report, *op.cit.*, pp.3-50.
[114] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.3-4.
[115] EITI Kazakhstan (2019), 2018 Annual Progress Report, *op.cit.*, pp.60-62.
[116] Donor section on the national EITI website, accessed here on 20 September 2019.

encouraged to refine its assessment of progress towards meeting each sub-requirement of the EITI Standard in order to more clearly link its technical EITI work to broader reform priorities.

4. Assessments of requirements previously assessed as satisfactory in 1st Validation

In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as "satisfactory progress" in the 2017 Validation. In particular, the Secretariat reviewed possible back-sliding in the 2017 EITI Report on the requirements related to license allocations (Requirement 2.2). The Secretariat's view is that there is evidence to suggest progress has fallen below the required standard on Requirement 2.2 and warrant consideration by the EITI Board, for a downgrade to "meaningful progress".

In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review progress against Requirement 1.3 on civil society engagement and adherence to the civil society protocol, which had been assessed as "satisfactory progress" in the 2017 Validation. While this requirement has not been comprehensively assessed, in the Secretariat's view is that it has received no evidence to suggest progress has fallen below the required standard. The civil society constituency continues to be engaged in all aspects of EITI implementation despite broader constraints in civic space. This assessment was reviewed following a review of comments on the second Validation draft assessment from the NSC and other EITI stakeholders.

4.1 Assessment of Requirement #2.2 – License allocations

Findings from the first Validation

The first Validation found that Kazakhstan had made satisfactory progress in meeting this requirement. In accordance with Requirement 2.2, Kazakhstan had disclosed the required information related to the process for awarding contracts in 2015, as well as the technical and financial criteria used. The 2015 supplementary report disclosed further details on the process used for awarding the 76 new contracts signed in 2015, including confirming the use of financial criteria. The supplementary report also documented the process for transferring a subsoil use right as well as information about the transfers effectuated in 2015. It also disclosed list of applicants that took part in the auctions conducted. According to stakeholder consultations, there were no indications of deviations from the applicable legal and regulatory framework governing the award of these contracts. It was also notable that the report included other details on licenses and contracts, such as statistics on termination of contracts and contractual breaches.

Progress since Validation

Awards/transfers: In terms of *awards*, there is contradictory information across the 2017 EITI Report, its addendum published seven months later and online source of systematic disclosures. The 2017 EITI Report states that three subsoil exploration contracts and 42[117] subsoil production contracts were awarded in 2017, but does not clarify whether these covered mining, oil and gas, or both (p.50). In addition, the report confirms that six subsoil use rights for industrial innovation were awarded in 2017 and lists the 4 mining companies involved (p.50). For oil and gas, the 2017 report addendum lists 16 oil and gas contract awards, of which seven were marked with registration dates in 2017.[118] The 2017

[117] of which 25 contracts were awarded through direct negotiations, 15 through competitive tender and two as conversions of existing contracts.
[118] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.32-34.

report addendum however provides contradictory information as it references 13[119] oil and gas license awards and 42 mining license awards in 2017.[120] Online sources indicate different numbers again, with seven oil and gas licenses awards[121] and over 70 mining license awards[122] on the Geological Committee's website.

In terms of *transfers*, the report lists 149 mining license transfers, of which only 14 are dated 2017 (pp.51-68). The addendum maintains that there were 149 mining license transfers in 2017 however, providing the same list.[123] The report does not comment on the transfer of any oil and gas license in 2017, or any participating interest in a PSC. The 2017 report addendum lists 42 transfers of oil and gas subsoil use rights (licenses), of which 30 license transfers have a registration date marked as 2017.[124]

Award/transfer process: For *awards*, the 2017 EITI Report briefly describes the process for the state to grant subsoil use rights for exploration, mining, and combined exploration and mining operations related to industrial innovation (technological cycle) (p.50). A description of the general process for granting licenses and concluding contracts for uranium and oil and gas is included (pp.18,46-48). The link to the e-licensing web portal (p.46) provides some guidance on the application process both for mining and oil and gas licenses. The 2017 report addendum provides overviews of the process for awarding subsoil use rights (including exploration and production) under the old Subsoil and Subsoil Use Law and the new Code enforced since June 2018.[125]

The 2017 EITI Report provides a general description of the process for transferring licenses, which have to be reissued by the government, and contracts, through addenda between the two parties (p.21).

Technical and financial criteria: The 2017 EITI Report does not comment on the technical and financial criteria assessed in license awards and transfers either in mining or in oil and gas. The specific criteria assessed are not clear from the e-licensing portal (link) referenced in the report (p.46). However, the criteria for *awards* through competitive tenders are defined in Article 52 of the Subsoil and Subsoil Use Code, which sets only financial criteria for awards through bidding (signature bonus, social investment and local content spending). For awards through direct negotiations, Article 58 of the Subsoil and Subsoil Use Code defines the same financial criteria as for awards through bidding, alongside a set of technical criteria (such as evidence of the technical, managerial and organizational capabilities of the applicant, ecological expertise etc.). These procedures had been adequately described in previous EITI Reports and their addendums reviewed in the first Validation. For *transfers*, while the 2017 EITI Report and its addendum do not clarify the specific technical and financial criteria assessed, the 2015 supplementary EITI Report provided a comprehensive list of criteria assessed for transfers of subsoil rights.[126]

License awardee information: For *awards*, the 2017 report addendum (p.54) provides links to the website of the Committee of Geology and Subsoil Use, with pages listing all mining contracts[127] and oil

[119] including seven through competitive bidding and six through direct negotiations.
[120] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.54-55.
[121] Geological Committee website, Oil and gas licenses, accessed here in August 2019.
[122] Geological Committee website, Mining licenses, accessed here in August 2019.
[123] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.54-55.
[124] *Ibid.*, pp.34-36.
[125] *Ibid.*, pp.53-54.
[126] Kazakhstan EITI (June 2017), '2015 supplementary EITI Report', accessed here in September 2019, pp.13-14.
[127] Website of the Committee of Geology and Subsoil Use, 'Mining contracts as of 1 January 2018', accessed here in September 2019.

and gas contracts.[128] The names of companies holding contracts awarded in 2017 are provided on these webpages.

For *transfers*, the 2017 EITI Report lists 149 mining license transfers, of which only 14 are dated 2017 (pp.51-68), and includes the names of companies transferring and receiving the licenses. The 2017 report addendum lists 42 transfers of oil and gas subsoil use rights (licenses), of which 30 license transfers have a registration date marked as 2017, inclusive of names of companies transferring and receiving the licenses.[129]

Non-trivial deviations: The 2017 EITI Report does not comment on the existence of non-trivial deviations in the award and transfers of licenses in 2017, either in mining or oil and gas. The 2017 report addendum states that "any detection of illegal actions is carried out by the relevant authorized agencies"[130] and that "the conclusion of contracts and the issuance of licenses are carried out by the competent authorities in accordance with the legislation of the Republic of Kazakhstan (with no violations)."[131] However, in consultations, a civil society representative noted that the NSC had not explicitly discussed the existence of non-trivial deviations in license awards and transfers when preparing the 2017 EITI Report and its addendum. Several stakeholders consulted noted the lack of NSC discussion of the methodology or existence of non-trivial deviations from statutory procedures in awards and transfers of extractives licenses in preparing the 2017 EITI Report and its addendum.

Bidding process: The 2017 EITI Report refers to the award of oil and gas contracts through competitive tender in several places (pp.35,50). While the 2017 report addendum clarifies that the two biddable items in tenders for oil and gas are the value of the signature bonus and of committed social expenditures[132], neither the EITI Report nor its addendum provide a full list of bidders for each license awarded through competitive tender in 2017.

The 2017 EITI Report appears to confirm that mining (TPI) licenses are awarded on a non-competitive basis (p.18).

In the NSC's comments on the draft assessment, it argued that the assessment of Requirement 2.2 should be upgraded to "satisfactory progress" given its explanation that the list of awarded contracts cited in the 2017 EITI Report addendum reflected the situation at a given date based on company reporting, while the list published online is based on daily monitoring and more comprehensive. However, the NSC comments did not address other gaps highlighted in this assessment, such as some stakeholders' concerns about the methodology for assessing non-trivial deviations in license and contract awards and transfers and the lack of description of the statutory licensing procedures prior to the enactment of the new Subsoil Use Code in late 2017.

Secretariat's Assessment

The International Secretariat's assessment is that Kazakhstan has made meaningful progress on Requirement 2.2. While the 2017 EITI Report and its addendum provide an overview of the process for awarding and transferring extractives licenses, including technical and financial criteria considered, there are inconsistencies in the number of mining, oil and gas licenses awarded in 2017 across the two EITI documents. Although the report confirms several extractives license awards through competitive tender in 2017 and provides a view of bid criteria, neither the report nor its addendum provide a full list of bidders for each license awarded through tender in 2017. While the addendum notes the lack of non-trivial deviations from statutory procedures in the awards and

[128] Website of the Committee of Geology and Subsoil Use, 'Oil and gas contracts as of 1 January 2018', accessed here in September 2019.
[129] EITI Kazakhstan (August 2019), 'Addendum to the 2017 EITI Report', *op.cit.*, pp.34-36.
[130] *Ibid.*, p.36.
[131] *Ibid.*, p.54.
[132] *Ibid.*, p.55.

transfers of extractives licenses in 2017, stakeholder consultations confirmed the lack of NSC discussion of the methodology or existence of non-trivial deviations in preparing the 2017 EITI Report and its addendum.

In accordance with Requirement 2.2, Kazakhstan is required to disclose information related to the award or transfer of licenses pertaining to the companies covered in the EITI Report. This information should include the number of mining, oil and gas licenses awarded and transferred in the year covered by the Report, a description of the award and transfer procedures including specific technical and financial criteria assessed, and highlight any non-trivial deviations in practice. Kazakhstan should ensure that the bid criteria and list of bidders is publicly disclosed for every extractives license awarded through competitive tender. Kazakhstan is encouraged to use EITI reporting as an annual diagnostic of the efficiency of the current process for allocating and transferring extractives licenses.

5. Conclusion

Having reviewed the steps taken by Kazakhstan to address the ten corrective actions requested by the EITI Board as of the commencement of its second Validation (13 August 2019), it can be reasonably concluded that three of the ten corrective actions have been fully addressed. In addition, the International Secretariat's assessment is that there has been back-sliding in Requirement 2.2, on license allocations.

The International Secretariat's assessment is that Kazakhstan has made meaningful progress in implementing the EITI Standard, with *considerable improvements across several individual requirements*. The outstanding gaps relate to MSG oversight (Requirement 1.4), license allocations (Requirement 2.2), state participation (Requirement 2.6), production data (Requirement 3.2), barter arrangements (Requirement 4.3), transport revenues (Requirement 4.4), social expenditures (Requirement 6.1) and quasi-fiscal expenditures (Requirement 6.2).