

Validation of TAJIKISTAN

Validation Report

Sustainable Development Strategies Group (SDSG), Independent Validator

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1. BACKGROUND

Tajikistan became an EITI candidate country in 2013, having formally begun EITI implementation the prior year through Presidential Decree 449 on *Accession of Tajikistan to the EITI* and the formation of their multi-stakeholder group (MSG), the EITI Council. Due to funding constraints and implementation delays, the country failed to produce its first EITI Report within two years and was consequently suspended. It was reinstated following its completion in late 2015 of its 2014 EITI Report. The EITI Board then agreed in June 2016 that Tajikistan's Validation against the 2016 EITI Standard should commence on 1 July 2016. Pursuant to the Validation Guide, the International Secretariat carried out the first phase of validation – initial data collection, stakeholder consultations, and preparation of their initial evaluation of progress against the EITI requirements (the "Initial Assessment"). SDSG was appointed as the independent Validator to evaluate whether the Secretariat's work was carried out in accordance with the Validation Guide. SDSG's principal responsibilities as Validator are to review and amend the Initial Assessment, as needed, and to summarize its independent review in this Validation Report for submission to the Board through the Validation Committee.

• Work Performed by the Independent Validator

The Secretariat's Initial Assessment was transmitted to SDSG on 06 October 2016. Our Validation Team undertook this phase of the Validation process through: (1) In-depth review and marking up of the EITI Assessment by the team; (2) Detailed review and comments by the Multi-Stakeholder Specialist of Requirements 1 and 7; (3) Detailed review and comments by the Financial Specialist of Requirements 2 through 6; and (4) Overall review and drafting coordination by the Team Leader.

• Comments on the Limitations of the Validation

The most significant challenge for the Validation Team has been the compressed time frame within which to undertake the review of EITI implementation in Tajikistan. The EITI Council provided detailed comments, contesting a fair number of the Secretariat's factual findings and assessments. The factual findings questioned appear to be readily verifiable upon further stakeholder outreach, however, this has not been practicable given time and logistical constraints. Detailed review of documentation beyond the Initial Assessment is also necessarily limited. It should be noted, that the Independent Validator is not expected to duplicate data collection and consultation work completed by the Secretariat. Neither is it permitted to consider activities after 1 July 2016, per express directive of the Board.

Notwithstanding these limitations, the Validation Team has carefully reviewed the Secretariat's Initial Assessment, the EITI Council's comments, and applicable references to determine Tajikistan's level of progress against the requirements of the 2016 Standard.

- **Comments on the International Secretariat's Initial Assessment**

The initial data collection, stakeholder consultations, and drafting of the Initial Assessment were generally undertaken by the International Secretariat in accordance with the 2016 Validation Guide. This entailed a desk review of relevant documents from 1 July to 12 August 2016, a country visit by a three-person team from the Secretariat that conducted stakeholder consultations in the capital of Dushanbe from 15–19 August 2016, and the production of the Initial Assessment. The Secretariat's team was identified by name, though it would be helpful to also indicate each member's level of familiarity or engagement with EITI in Tajikistan to confirm the appropriate balance in perspectives and experience.

Despite the relatively short country visit, it appears that the International Secretariat's team was able to conduct meetings with different members of the EITI Council. On the whole, the entire process appears to have been transparently undertaken and stakeholders consulted were given opportunities to provide comments. However, the Secretariat noted that its assessment covers views of key stakeholders engaged in the EITI process and of other key actors representing wider stakeholders, thus, there does not appear to be evidence of wider outreach to, and consultations with, stakeholders not involved in the EITI process or beyond Dushanbe. This would have been ideal given stakeholder feedback that some companies may not be aware of or engaged in EITI due to their distance from the capital. It would also have been helpful to have the time to consult more civil society organizations (CSOs) that are not involved in EITI, especially given the concerns around limitations to free speech and its possible ramifications for CSO members of the EITI Council.

The Initial Assessment is structured in accordance with the Validation Guide. It thoroughly discusses the requirements and evaluates Tajikistan's level of progress. Supporting documents and stakeholder input are cited, where appropriate and available. As previously noted, the MSG comments dispute several factual assertions that do not, however, disturb our substantive assessment findings. Likely due to the compressed time frame for review, minor factual errors may have resulted, and there is also a considerable degree of typographical errors, formatting inconsistencies, and verbatim repetition that could be further summarized or rephrased. A consistent approach to the use of acronyms and to the format of footnotes will help improve the Initial Assessment.

2. GENERAL COMMENTS

- **Progress in EITI Implementation**

We concur with the International Secretariat that Tajikistan has satisfactorily implemented eight provisions of the EITI Standard: government engagement (1.1), legal framework (2.1), exploration data (3.1), disaggregation (4.7), data timeliness (4.8), revenue management and expenditures (5.1), economic contribution (6.3), and follow up on recommendations (7.3). We disagree, however, with their assessment that the country has made satisfactory progress on MSG governance (1.4) and the work plan (1.5), and find that its progress has been meaningful.

Other areas where we find progress has been meaningful are industry engagement (1.2), CSO engagement (1.3), license registers (2.3), data quality (4.9), public debate (7.1) and outcomes and impact (7.4). We find that the country has made inadequate progress on license allocations (2.2), contract disclosures (2.4), state participation (2.6), production data (3.2), export data (3.3), comprehensiveness (4.1), barter agreements (4.3), SOE transactions (4.5), and mandatory social expenditures (6.1). We agree with the Secretariat's assessment that Tajikistan has made no progress on in-kind revenues (4.2) and SOE quasi-fiscal expenditures (6.2).

Fundamental concerns around EITI implementation include the lack of company engagement and participation in the MSG, and questions of sustainability. EITI implementation in Tajikistan has been entirely dependent on international grants, which when delayed, have negatively affected implementation or completion of EITI activities. The national secretariat has a multitude of logistical and substantive responsibilities, and both their resources and capacity merit strengthening. Other concerns, as noted above, are related to disclosure and reporting requirements, including transparency in license allocations and state participation.

While Tajikistan has satisfactorily implemented only about a third of the requirements of the EITI Standard, it is important to consider that this initiative is relatively new in the country, with just over three years since its candidacy and with only one EITI Report completed. It has, however, successfully established its multi-stakeholder EITI Council by governmental decree, providing it with a significant measure of legal certainty and credibility. It has taken meaningful steps to advance implementation, such as participation in the EITI beneficial ownership pilot and proposed legislation to require online availability of exploration licenses. The requisite stakeholder groups are generally represented on the MSG; the participation of government agencies has been sustained and consistent, and CSO members remain actively engaged despite reported constraints on free speech of civil society in general. The importance and value of maintaining a credible multi-stakeholder platform such as the EITI Council in such an environment cannot be overstated.

- **Impact of EITI Implementation**

One of Tajikistan's main objectives in implementing EITI is to attract foreign direct investments in the extractive sector. While there is currently no clear evidence that this has been achieved, the EITI in Tajikistan has been impactful in uncovering issues that deter investments. These issues include: the lack of transparency in license allocation; lack of information regarding geological data; lack of publicly available data on licenses and contracts; cumbersome licensing procedures; and uncertainty in the fiscal regime. Legislation has been proposed to address some of these data gaps and uncertainties.

The extent to which the EITI in Tajikistan has contributed to public debate on the extractive sector remains uncertain. What appears clear is that CSOs involved in EITI are organized and actively engaged in the EITI process. The role of information dissemination appears to have fallen *de facto* on civil society, which has responded by holding public events even in areas outside Dushanbe. In this regard, the strengthened capacity of CSOs to undertake these events, and their expanded networks within and outside Tajikistan, have been significant impacts of EITI.

As previously noted, another major impact of EITI has been the institutionalization of the multi-stakeholder forum through the EITI Council, of which CSOs are co-equal and active members. This is especially significant self-censorship reported by some CSOs, and given the broader, constrained environment around them. With respect to industry, EITI appears to have limited impact, however, there is increasing awareness of the need to actively reach out and engage more companies.

- The Independent Validator's Assessment of Compliance

Figure 1 – Validator's assessment

EITI Requirements		LEVEL OF PROGRESS					Note
		No Progress	Inadequate	Meaningful	Satisfactory	Beyond	
Categories	Requirements						
1MSG oversight	Government engagement (#1.1)						
	Industry engagement (#1.2)						
	Civil society engagement (#1.3)						
	MSG governance (#1.4)				←		1
	Work plan (#1.5)				←		2
Licenses and contracts	Legal framework (#2.1)						
	License allocations (#2.2)						
	License register (#2.3)						
	Policy on contract disclosure (#2.4)			←			3
	Beneficial ownership (#2.5)						
Monitoring production	State participation (#2.6)						
	Exploration data (#3.1)						
	Production data (#3.2)						
Revenue collection	Export data (#3.3)						
	Comprehensiveness (#4.1)			←			4
	In-kind revenues (#4.2)						
	Barter agreements (#4.3)						
	Transportation revenues (#4.4)						
	SOE transactions (#4.5)						
	Direct subnational payments (#4.6)						
	Disaggregation (#4.7)						
Revenue allocation	Data timeliness (#4.8)						
	Data quality (#4.9)						
	Revenue management & expenditures (#5.1)						
Socio-economic contribution	Subnational transfers (#5.2)						
	Distribution of revenues (#5.3)						
	Mandatory social expenditures (#6.1.a)						
	Discretionary social expenditures (#6.1.b)						
Outcomes and impact	SOE quasi-fiscal expenditures (#6.2)						
	Economic contribution (#6.3)						
	Public debate (#7.1)						
	Data accessibility (#7.2)						
Outcomes and impact	Follow up on recommendations (#7.3)						
	Outcomes & impact of implementation (#7.4)						

1-4: Please see Detailed Findings

3. DETAILED FINDINGS

1.1 **Government engagement.** We generally agree that Tajikistan has made **SATISFACTORY** progress, however, the reliance on external grants and changes in political or administrative leadership have caused implementation delays. To strengthen its effectiveness, the government is strongly encouraged to, in its leadership role within the MSG: explore internal and alternative sources of funding for EITI implementation; and explore mechanisms to insulate the process from governmental changes so that these do not unduly delay the implementation of EITI activities.

1.2 **Company engagement.** Tajikistan's progress in implementing this provision is nearly inadequate given the lack of, and uncertainty around, company engagement. However, given that there is awareness within the EITI Council of this issue and some efforts have been taken to address it, we agree that Tajikistan may be deemed to have made **MEANINGFUL** progress. The government should confirm whether geographical constraints, as expressed by some stakeholders, constitute an obstacle to the participation of some companies, and if so, take steps to address this and other possible obstacles. It is recommended that the EITI Council explore further strategies and options for increasing company engagement, including recommendations for legislation, regulations, and training activities.

1.3 **Civil society engagement.** We agree that Tajikistan has made **MEANINGFUL** progress. This section takes a thorough and detailed approach to this requirement, however, some parts of the assessment need to be further clarified or revised, as noted in our marked-up version of the Initial Assessment. In terms of process, sustained outreach to CSOs that are not on or affiliated with the EITI Council would contribute further to public debate.

CSOs involved in EITI are clearly and commendably engaged, despite constraints experienced by civil society on a broader scale. The challenge of maintaining independence and exercising free speech within the extractives sector, while the political environment at large is or is seen to be antagonistic to these values, needs to be carefully examined and traversed. Further dialogue on these challenges both within Tajikistan and externally with other EITI countries would be helpful in supporting CSOs and the multi-stakeholder process there and elsewhere.

1.4 **MSG Governance.** We disagree with the International Secretariat's finding that Tajikistan has made satisfactory progress, and instead find that its progress has been **MEANINGFUL**. Tajikistan has not implemented all aspects of this requirement. Company representation and participation in the EITI Council is inadequate, reliance of external funding is a serious issue that has impacted EITI implementation in multiple respects but has not been thoroughly discussed nor adequately addressed by the Council. The same applies to the conflicts of interest involving members of the Council who are paid to produce information for the EITI Report that they are then tasked to later review and evaluate.

1.5 **Work Plan.** We disagree that Tajikistan's progress is satisfactory as it has not implemented all the aspects of this requirement, thus, it has made **MEANINGFUL** progress. While the work plan appears to reflect national priorities, it would be helpful for the Initial Assessment to further discuss what these are and where they may be found. Moreover: links between work plan activities and work plan objectives are inadequate; activities to achieve these objectives are not sufficiently identified; domestic funding sources are lacking; the time frame for some work plan activities is not clear, thus, not all activities are time bound; and it is not clear how some activities are or will be measured. The evidence is also insufficient to demonstrate

consultations with key stakeholders – the input and views of companies are not discussed and they do not appear to have been meaningfully engaged in the planning process.

- 2.1 **Legal Framework and Fiscal Regime.** We agree that Tajikistan has made **SATISFACTORY** progress in meeting this requirement.
- 2.2 **License Allocations.** We agree with the finding of the International Secretariat that Tajikistan's progress has been **INADEQUATE** in meeting this requirement. Among others, the EITI Report does not adequately document the legal and practical barriers that are preventing comprehensive disclosure, nor any government plans to overcome these. We also note the serious lack of transparency in awarding licenses when done by direct and confidential negotiations, contrary to the broader objectives of this requirement and EITI principles.
- 2.3 **Register of Licenses.** We agree with the International Secretariat's finding that Tajikistan has made **MEANINGFUL** progress in meeting this requirement.
- 2.4 **Contract Disclosures.** While we agree with the analysis of the International Secretariat, we disagree with its finding that Tajikistan has made meaningful progress in meeting this requirement. There is insufficient documentation on the government's policy on contract disclosure, nor is there any discussion regarding any relevant legal provisions, reforms, or disclosure practices. In view of the foregoing, we find that Tajikistan's progress has been **INADEQUATE**.
- 2.5 **Beneficial Ownership.** Disclosure under this provision is **NOT YET APPLICABLE**. While progress on this provision does not yet have implications for a country's EITI status, Tajikistan's work in advancing compliance under this requirement is commendable.
- 2.6 **State Participation in EI.** We agree with the finding of the International Secretariat that Tajikistan's progress in implementing this provision is **INADEQUATE**.
- 3.1 **Exploration.** We agree that Tajikistan has made **SATISFACTORY** progress.
- 3.2 **Production Data.** We agree with the International Secretariat that Tajikistan's progress in meeting this requirement is **INADEQUATE**.
- 3.3 **Export Data.** We agree that Tajikistan's progress has been **INADEQUATE** in implementing this provision.
- 4.1 **Comprehensiveness.** We disagree with the International Secretariat's Initial Assessment that Tajikistan's progress is meaningful and instead find that it is **INADEQUATE**. The stated reporting threshold was ignored. There is no documentation of options considered in, or the rationale for, establishing the materiality criteria or reporting thresholds that were used in the EITI Report. The descriptions of the payment and revenue streams included in the report are incomplete. Just over 80% of the overall payments are reported. There are large, unexplained discrepancies exposed by the reconciliation. Only 26 of the 42 revenue streams are reconciled. Neither all of the reporting companies nor all of the applicable government entities participated, and there is no overall statement as to the comprehensiveness of the data reported.
- 4.2 **In-Kind Revenues.** We agree that Tajikistan has made **NO PROGRESS** toward satisfying this provision.

- 4.3 **Infrastructure Provisions and Barter Arrangements.** We agree that Tajikistan's progress has been **INADEQUATE**.
- 4.4 **Transportation Revenues.** We agree and find that this provision is **NOT APPLICABLE**.
- 4.5 **Transactions Related to SOEs.** We agree that Tajikistan's progress has been **INADEQUATE**.
- 4.6 **Subnational Payments.** We agree that this provision is **NOT APPLICABLE** to Tajikistan for the applicable reporting period.
- 4.7 **Level of Disaggregation.** We agree that Tajikistan's progress has been **SATISFACTORY**.
- 4.8 **Data timeliness.** We agree that Tajikistan's progress has been **SATISFACTORY**, however, we note with caution that funding constraints that have negatively impacted timeliness in the past persist.
- 4.9 **Data Quality and Assurance.** We agree that Tajikistan's progress in implementing this provision has been **MEANINGFUL**.
- 5.1 **Distribution of Extractive Industry Revenues.** We agree that Tajikistan has made **SATISFACTORY** progress in meeting this requirement.
- 5.2 **Subnational Transfers.** We agree with the International Secretariat's finding that this provision is **NOT APPLICABLE** to Tajikistan for the applicable reporting period.
- 5.3 **Revenue management and expenditures.** Disclosure under this requirement is encouraged and is thus not taken into account in the overall assessment of compliance.
- 6.1 **Social Expenditures by Extractive Companies.** We agree that Tajikistan's progress in implementing this provision has been **INADEQUATE**.
- 6.2 **Quasi-fiscal expenditures.** We agree that Tajikistan has made **NO PROGRESS** toward meeting this requirement.
- 6.3 **Contribution of the Extractive Sector to the Economy.** We agree that Tajikistan's progress in implementing this provision has been **SATISFACTORY**.
- 7.1 **Public Debate.** We agree that Tajikistan's progress has been **MEANINGFUL**.
- 7.2 **Data Accessibility.** Disclosure under this requirement is encouraged and is thus not taken into account in the overall assessment of compliance.
- 7.3 **Discrepancies and Recommendations from EITI Reports.** We agree that Tajikistan has made **SATISFACTORY** progress in complying with this requirement.
- 7.4 **Outcomes and Impact of EITI Implementation on NR governance.** We agree that Tajikistan's progress has been **MEANINGFUL**.

4. RECOMMENDATIONS

Following are the Secretariat's overarching recommendations for improving EITI implementation in Tajikistan, with the Validation Team's modifications and supplements in italics.

- 4.1 *The government should, in its leadership role within the EITI Council, explore domestic and alternative sources of funding for EITI implementation.*
- 4.2 *The EITI Council is strongly encouraged to explore mechanisms to insulate EITI processes from governmental or administrative changes so that these do not unduly delay the implementation of EITI activities.*
- 4.3 The EITI Council should consider establishing closer links between implementation of technical aspects of EITI reporting and the overarching national objectives of EITI implementation as set out in the workplan in order to increase opportunities for the EITI to have an impact on attracting investment and ensuring greater awareness and public participation in decision making related to the extractive sector. As part of this work, the EITI Council should pay particular attention to following up the recommendations from EITI reporting and Validation.
- 4.4 The government should ensure full, active, and effective engagement of companies in the EITI process. *It should confirm whether geographical constraints constitute an obstacle to company participation, and if so, take steps to address this and other possible obstacles.* It is recommended that the government initiates an outreach and awareness raising campaign targeted at industry representatives. *It is further recommended that the EITI Council explore strategies and options for increasing company engagement, including recommendations for legislation, regulations, and training activities.*
- 4.5 The government should ensure that civil society is able to speak freely on transparency and natural resource governance, and be able to operate freely and express opinions about the EITI without restraint, coercion or reprisal. *The EITI Council is strongly encouraged to examine the potential challenges for CSOs involved in the EITI in maintaining independence and exercising free speech while the broader political environment for CSOs remains constrained. This could include further dialogue on these challenges both within Tajikistan and externally with other EITI countries.*
- 4.6 *The EITI Council is strongly encouraged to undertake sustained outreach activities directed at CSOs and companies that are not currently on or affiliated with the Council.*
- 4.7 *The EITI Council should establish clear and firm rules to avoid conflicts of interest involving members who are paid to work on EITI matters that they may later be tasked to review and evaluate.*
- 4.8 *The EITI Council should ensure that all stakeholder groups are meaningfully consulted in the development of the work plan. It should strengthen the links between work plan activities and work plan objectives, and clearly structure the time frame, funding source, and measurability of work plan activities.*
- 4.9 The initial assessment highlighted concerns regarding licence allocation. The government should revisit the current policy on license allocations and implement measures to ensure that the process for awarding licenses is transparent. It is required that the government establishes an open public register of all exploration and production licenses.

- 4.10 *The EITI Council should ensure that the EITI Report documents the government's policy on contract disclosure and any relevant legal provisions, reforms, or disclosure practices.*
- 4.11 The government is encouraged to continue its work on embedding beneficial ownership transparency in legislation. The production of the EITI roadmap on beneficial ownership transparency is an important opportunity for designing a plan for the legal and institutional reforms that are required to ensure full beneficial ownership transparency by 2020.
- 4.12 The EITI Council should pay particular attention to ensuring transparency in the operations of SOEs. This should include clarifying the financial relationship between the state and SOEs including any changes in government ownership in SOEs or their subsidiaries during the year under review, and providing a comprehensive account of any loans or loan guarantees extended by the state or SOEs to mining, oil, and gas companies. The EITI Council should consider the existence of subsidies in the mining sector and quasi-fiscal expenditures undertaken by SOEs in the extractive industries.
- 4.13 In preparing the next EITI Report, the EITI Council should ensure that production and export volumes and values are disclosed in accordance with the EITI Standard.
- 4.14 The government and the EITI Council are encouraged to continue discussing possibilities for full or partial disclosure of license agreements, investment agreements, and product sharing agreements
- 4.15 *The EITI Council should ensure the comprehensiveness of the EITI Report by, among others, clearly documenting the options discussed regarding materiality criteria and reporting thresholds as well as their rationale. Descriptions of payment and revenue streams should be complete and there should be an overall statement as to the comprehensiveness of the data reported.*
- 4.16 The government and the EITI Council should clarify the existence of any barter and infrastructure transactions. Where these exist and are material, the EITI Council should design and implement an appropriate disclosure framework.
- 4.17 The government and the EITI Council should clarify the current arrangements regarding social expenditures, including the extent to which these are mandatory by agreement with the government. Where mandatory and material, the EITI Council should design and implement an appropriate disclosure framework.
- 4.18 The EITI Council should intensify its communications and data analysis efforts with a view to increasing the EITI's contribution to public debate.
- 4.19 The government and the EITI Council are encouraged to explore opportunities for increasing the impact of the EITI by focusing on issues that stakeholders have identified as relevant to Tajikistan. This could include revenue management, environmental issues, artisanal and small scale mining, analysis of the current policy on signature bonuses, and applying the EITI methodology to the hydropower sector.
