



STATE OIL FUND OF THE REPUBLIC OF AZERBAIJAN

Nº: chyf/EITI-234

“03.” March 20.17

To: EITI Board members

CC: EITI International Secretariat

Dear Board members,

I would like to bring to your kind attention information on the progress achieved with regards to fulfilment of corrective actions by the government of Azerbaijan after the latest Board meeting held in Astana and official response of the Commission on EITI to the International Secretariat's assessment of progress with corrective actions 1(I-III).

I would kindly ask EITI International Secretariat to ensure that this letter is received by all EITI Board members. I would also appreciate Secretariat's facilitation in translation of this letter, including its attachment into French and Russian for francophone and Russian speaking Board members.

Attachment: 9 pages

Yours sincerely,

Shahmar Movsumov

Chairman of the Commission

Progress on fulfilment of the Corrective Actions by the Azerbaijan

As a result of the Validation held on January, 2015 the EITI International Board decided to downgrade Azerbaijan from the “Compliant” to the “Candidate” (April 14-15, 2015 at the EITI Board meeting held in Brazzaville, Congo) and assigned the corrective actions for Azerbaijan.

The execution of the activities on corrective actions set out for Azerbaijan at the EITI Board meeting in Congo was assessed in the following Validation which were held in July, 2016. As a result of huge efforts that were undertaken by the government during the “corrections period” Azerbaijan achieved noticeable progress in solution of all vital issues flagged by the EITI Coalition. Thus, screening of Coalition members at border checkpoints has been stopped, 17 NGOs – members of Coalition which were waiting for state registration have been filed in the registry, tax penalties applied to the Coalition members were lifted, bank accounts were unblocked and grant contracts were registered. Each Coalition member who previously faced problems, obtained extract from the State Registry. Arrests of personal bank accounts of Coalition members had been lifted. At the same time, documents and property of NGOs confiscated by law-enforcements agencies during investigation were returned to owners.

As a result, according to the decision of the EITI International Board at its latest meeting (on October 25-26, 2016 held in Astana, Kazakhstan) Azerbaijan maintained its “Candidate” status. The Board agreed that Azerbaijan had made meaningful progress in implementing the 2016 EITI Standard, and with considerable improvements across several individual requirements compared to the first Validation in 2015. The Board proposed number of new corrective actions which will be evaluated in accordance with the EITI Standard at the next EITI Board meeting in Bogota, Colombia March 8-9, 2017. Those corrective actions imply that the government should take further steps to ensure satisfactory progress with the requirements related to civil society engagement 1.3.b-d. Specifically, the government should in accordance with 2.2 of the civil society protocol, ensure that there is an enabling legal and operational environment for civil society substantively involved in the EITI process. Specifically, this should include legal and

regulatory amendments eliminating the need for civil society to obtain an extract every two years confirming their registration, the need for civil society to register grants with the Ministry of Justice and the need for foreign donors to register individual grants with the authorities, and obtain an opinion on the purposefulness of the grant.

The Board also set out other corrective actions to be assessed in the next Validation process to be commenced on July 26, 2017.

The government took several important steps to ensure enabling legal and operational environment for civil society substantively involved in the EITI process. The Decree signed by the President of the Republic of Azerbaijan dated 21 October 2016 (ahead of Astana meeting) on the Application of “One-Stop-Shop” Principle in the Procedure of Provision of Grants by Foreign Donors on the Territory of Republic of Azerbaijan was a starting point of important steps in this regard. For the purposes of supporting the activities of civil society institutions in Azerbaijan, facilitating the issuance of grants by foreign donors on the territory of Republic of Azerbaijan, and ensuring the transparency in this field and effectual direction of allocated funds it was decided by the Decree that starting from January 1, 2017 the “One-Stop-Shop” principle is to be applied to the procedure for issuance of grants by the foreign donors to the NGOs in Azerbaijan.

The Decree was followed by another important step which eases grant registration process - Decision of the Cabinet of Ministers of the Republic of Azerbaijan dated 11 January 2017, On amendments of the “Rules on Registration of Grant Agreements (Decisions)” approved by the decision number 216 of the Cabinet of Ministers of the Republic of Azerbaijan dated 5 June 2015.

Moreover, on 24 January 2017 the Cabinet of Ministers of the Republic of Azerbaijan adopted the Decision on amendments of the “Rules on Obtaining the right to provide grants in the territory of Azerbaijan by foreign donors” approved by the decision number 339 of the Cabinet of Ministers of the Republic of Azerbaijan dated 22 October 2015.

Amendments made by the Cabinet of Ministers has noticeably simplified the registration process of grants by foreign donors. The main changes are illustrated below:

- By the respective amendments, the requirement on involvement of foreign donors in the registration processes is eliminated.
- Prior to the changes, without getting the right to give grants the recipient was not allowed to sign the agreement with the donor. Now, lack of right to give grants is not an obstacle to sign the agreement with donor and have the grant registered.
- One of the important amendments eliminates the requirement on application of foreign donors to Ministry of Finance for obtaining opinion on purposefulness of the grant. According to new “One-Stop-Shop” principle, either donor or recipient gets in contact only with Ministry of Justice and submits all needed documents to this Ministry.
- Previously, there was a requirement to obtain an opinion on purposefulness of the grant from other relevant government agencies, new amendments to the rules have also eliminated this requirement.
- The bases for rejection from giving an opinion by the Ministry of Finance are significantly reduced.
- Many bureaucratic requirements which could create artificial obstacles and delay the registration process of grant agreements are eliminated. It is not required to notarize the translation (into Azerbaijani) of documents composed in a foreign language and submit additional papers on project program, budget and so on. Other than that, additional checks whether resident donor was involved in financing terrorism or any money laundering are eliminated.
- Deadline for submission of documents for registration of agreement (decision) from signing day is prolonged from 15 to 30 days at the request of NGOs.
- Before amendments, foreign donors (recipients) had to submit documents proving their legal status such as charter of legal entity and extract from registry. Now the documents that prove legal status of legal entities are not required.
- Before amendments, foreign donors (recipients) had to submit copy of document approving the right to give the grant in the territory of the Republic of Azerbaijan to the Ministry of Justice. Additionally, NGOs and foreign NGOs’ branches had to present the proving document on regular submission of financial reports to the Ministry of Finance of the Republic of Azerbaijan. Now, the Ministry of Finance of the Republic of Azerbaijan submits copy of document which approves the right to give the grant in the Republic of Azerbaijan to the Ministry of Justice.

Moreover, NGOs and foreign NGOs' branches do not have to present the proving document on submission of financial reports to the Ministry of Finance, it will be checked by the Ministry of Justice of the Republic of Azerbaijan.

- Registration procedure is simplified, volume of information to be submitted in documents is reduced.

Government believes that although the Secretariat acknowledges recent regulatory changes to the process of registration of grants in Azerbaijan, unfortunately the conclusions reached by the assessment are inaccurate. The responses of the government to the assessment of each corrective action are provided below.

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

International Secretariat's assessment:

According to the information available to the Secretariat, Azerbaijan has not undertaken "legal and regulatory amendments eliminating the need for civil society to obtain an extract every two years confirming their registration" (corrective action 1(i)).

Our response:

The conclusion is incorrect. The legislation of Azerbaijan does not require any regular reregistration, as well as obtaining an extract every two years confirming the registration. As that, the government cannot make any amendments to the provisions which do not exist in legislation.

At the same time article 9.1.¹ clearly requests NGOs to register (with submission of official proving documents) with the Ministry of Justice in case there are further amendments to their charter as well as changes to the registry data (such as change in the membership, members of the governing

¹ Law of the Republic of Azerbaijan On state registration and state registry of legal entities

body and/or other initial data of the extract) which does not mean that it happens every two years. Changes to the registry data are made in order to maintain the registry up to date and thus they are done only when the entries are amended by NGOs.

International Secretariat's assessment:

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

Our response:

As stated in the conclusion the one of the recent amendments to the 2015 Procedure for Registration of Grant Agreements eliminated the necessity of submission of extract from registry. As shown above the legislation does not require from NGOs to obtain extract from registry until there are amendments to their charter (which is the authority of NGOs) as well as changes to the registry data.

According to article 15.3.² legal entity must be provided with the extract from the state registry about the registered changes/amendments by default within 3 days after the registration of changes/amendments.

In addition, in accordance with the article 15.7.³ any third party is provided with extracts about legal entities (including NGOs) from MoJ upon request. Therefore, it is very important that the information in the registry is up to date and that's why, registration of changes with the MoJ has such an importance. This is quite common registration principle which keeps data bases updated.

² Law of the Republic of Azerbaijan On state registration and state registry of legal entities

³ Ibid

Our assessment:

Taking into consideration all above mentioned and particularly that the necessity of submission of extract from registry for registration of grants is eliminated we conclude that the corrective action has been completed.

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

International Secretariat's assessment:

Although the amendments to the 2015 Rules on Registration of Grant Agreements do not eliminate the need for NGOs to register grant agreements, they simplify registration procedures and may reduce the administrative burden for civil society and donors. Also, the internal procedures between the MoF and the MoJ with regards to ascertaining the financial-economic expediency of grant agreements should now be more coordinated.

Our response:

Yes, correct.

International Secretariat's assessment:

However, the double registration procedure is still retained, requiring both donors and the NGO to register grants.

Our response:

The conclusion is incorrect. The legislation of Azerbaijan does not imply double registration of grants. The grant is registered once on the basis of a single application by a recipient. As to "One-Stop-Shop" principle recipients submit all relevant documents (which were significantly reduced) only to the

MoJ. Afterwards all necessary documentation and procedures are coordinated internally among relevant government agencies. The recipients are not required to be involved in that process at all. In case all the documents are in place, complete and correct the MoJ must revert to recipients within maximum of 23 days with final decision on registration. According to new amendments to the rules neither donors nor recipients are required to obtain opinion on expediency of grants.

International Secretariat's assessment:

There is no assurance that if the grant is considered financially and economically expedient by the MoF and subsequently registered by the MoJ, that the recipient NGO will be granted the registration of the grant.

Our response:

Regarding the above mentioned statement we want to highlight that it is inaccurate, as once the grant is registered by the MoJ, it means that the recipient is granted the registration of the grant.

International Secretariat's assessment:

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

Our response:

We can not agree with such a conclusion. The need to register grants is not unique to Azerbaijan. It exists in majority of countries. It is worth to note that the legislation on grants do not apply merely to NGOs. Recipients can also be commercial and non-commercial institutions, states, individuals and so on. The only intention of registration of grants is to maintain transparency and accountability through the registration of grant relations between recipients and donors. The corrective action requiring to eliminate the need

to register grant agreements was set out on the basis of complaints from NGO representatives on long lasting and sometimes ineffective registration process of grants. The requirement on registration itself was always there before and after amendments to the legislation. The government of Azerbaijan made significant changes to regulations to eliminate all barriers that hinder or delay the registration process. Thus, the basis for complaints is annulled.

As above mentioned significant amendments were made in the main documents regulating grant relations in order to simplify grant registration procedures. So, with two recent decisions of the Cabinet of Ministers on the rules regulating grant registration amendments to 33 clauses were made, where 13 clauses was totally removed, 12 changed, 8 new added.

Our assessment:

As a result of recent amendments streamlined registration process with a maximum duration of 23 days is fully implemented and based on this we conclude that the corrective action has been completed.

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

International Secretariat's assessment:

Although there have been amendments to the Rules on Obtaining the right to provide grants in the territory of Azerbaijan by foreign donors, the Rules still require donors to obtain an opinion on the financial-economic expediency of the grant (Art. 4.1) and requires donors to register individual grants, sub-grants, additional contracts related to the grants and any amendments to the grant documents (Art.1.3). The International Secretariat's assessment is therefore that the corrective action is not addressed.

Our response:

It seems there is a misinterpretation of rules of Cabinet of Ministers. As mentioned above, the grant is registered once on the basis of a single application by a recipient. As to “One-Stop-Shop” principle recipients submit all relevant documents (number of which were significantly reduced) only to the MoJ. Afterwards all necessary documentation and procedures are coordinated internally among relevant government agencies. The donors are not required to be involved in that process at all. The MoJ must revert to recipients within maximum of 23 days with final decision on registration. According to new amendments to the rules neither donors nor recipients are required to obtain opinion on expediency of grants.

Our assessment:

Taking into consideration that according to recent amendments neither donors nor recipients are required to obtain opinion on expediency of grants we conclude that the corrective action has been completed.

Taking into consideration the huge amount of amendments made to the regulating documents recently and little time to evaluate the new rules in practice we conclude that it is inappropriate to assess that rules based solely on legal documents. Therefore we deem that the new rules shall be assessed in practice that can be realized during the next Validation in July 2016 (as actually was decided by the EITI Board at its 35th meeting in Astana).

Azerbaijan is continuing to show its commitment to EITI and will move ahead to comply with the EITI Standard. The government of Azerbaijan considers that it has fulfilled the corrective actions and created much more enabling environment for participation of CSOs in the EITI. The government stands ready to discuss all the potential actions that can make the environment even more enabling.