

Validation of Country Kazakhstan
Final Validation Report
Adam Smith International Independent Validator
18/12/2017

1. EXECUTIVE SUMMARY

The Government of Kazakhstan announced its commitment to the EITI in 2005 and was accepted as an EITI Candidate in September 2007. In 2010, the EITI reporting requirements were embedded in the Law on Subsoil and Subsoil use, making it mandatory for all companies to report in accordance with the EITI. In October 2013, EITI Board declared Kazakhstan compliant with the 2011 EITI Rules.

On 24 October 2016, the Board agreed that Kazakhstan's Validation under the EITI Standard would commence on 1 July 2017. This draft validation report follows on from a quality assurance review of the International Secretariat's initial assessment. The Validator agrees with the International Secretariat's preliminary assessment that while the multi-stakeholder oversight of EITI implementation, EITI reporting and dissemination are working well in Kazakhstan, there are concerns related to certain gaps in reporting, in areas such as state-owned companies (#2.6), quasi-fiscal expenditures (#6.2), social expenditures (#6.1.), barter (#4.3) and transportation arrangements (#4.4).

2. BACKGROUND

Kazakhstan's extractive sector plays an important role in the country's development, with revenues constituting more than half of the state budget (2015 EITI Report, p.53). According to the 2017 BP Statistical Review of World Energy¹, Kazakhstan's total proven oil reserves were equal to 30 billion barrels at the end of 2016 and average oil production was equal to approximately 1.7 million barrels per day. Natural gas and coal reserves totalled 1 trillion cubic metres (m³) and 25 605 million tonnes respectively at the end of 2016. Kazakhstan also produces a diverse range of mineral commodities, including uranium, chromite, titanium sponge, magnesium metal and rhenium. These figures clearly demonstrate that Kazakhstan is one of the most resource rich countries in Eurasia region.

According to the Resource Governance Index² by the Natural Resource Governance Institute (NRGI), Kazakhstan scores 56 out of 100 points and ranks 25th among 89 countries that were assessed. Kazakhstan gets the second-best ranking among Eurasian countries but still shows weak resource governance scores compared to the global average. According to the index, Kazakhstan shows good results in taxation, state-owned enterprises, sovereign wealth funds, government effectiveness, regulatory quality, rule of law, political stability and absence of violence, and open data subcomponents. It has lower scores on the licensing, national budgeting, voice and accountability, and control of corruption subcomponents.

President Nursultan Nazarbayev first announced Kazakhstan's intention to implement the EITI at an international conference in Almaty on 14-16 June 2005. On 5 October 2005, a Memorandum of Understanding (MOU) was signed between the government and three other parties: parliamentarians, extractive companies, and civil society representatives. Kazakhstan obtained EITI candidate status at the EITI Board meeting in Oslo in September 2007, and gained EITI compliant status in October 2013 based on a Validation against the 2011 EITI Rules.

¹ BP statistical review 2017, <https://www.bp.com/content/dam/bp/en/corporate/pdf/energy-economics/statistical-review-2017/bp-statistical-review-of-world-energy-2017-full-report.pdf>

² NRGI (2017) Resource Governance Index: Kazakhstan, <http://resourcegovernanceindex.org/country-profiles/KAZ/oil-gas>

The government has publicly reaffirmed its commitment to the EITI on several occasions, most recently at the 8th National EITI Conference in Astana in October 2016. The Conference was opened with a welcome speech by Vice-minister on Investments and Development and Deputy Chair of NSC, Timur Toktabayev. Back to back with this conference, the EITI Chair, Fredrik Reinfeldt, met with the First deputy Prime-Minister, Askar Mamin, who also expressed support of the EITI implementation. The Government of Kazakhstan has also been represented on the EITI Board as alternates in the period 2013 until present.

EITI implementation in Kazakhstan is currently led by the MID with the national secretariat embedded in the Committee of Geology and Subsoil Use. Zhenis Kasymbek, Minister of Investments and Development, is the EITI Champion and Chair of the NSC since 30 September 2016. He succeeded Aset Ishekeshev as EITI Champion in the period August 2014-June 2016. Prior to that, Deputy Prime Minister Kairat Kelimbetov served as EITI Champion in the period 2012-2014, supported by Minister of Industry and New Technologies Albert Rau and Vice-Minister of Industry and New Technologies Nurlan Sauranbayev as NSC Chair and NSC deputy Chair respectively. Prior to that, the Ministry of Oil and Gas (later reorganised to the Ministry of Energy) was the agency hosting the EITI.

These changes in government leadership over the years do not appear to have affected the engagement of the government in implementation, nor the ability of the government to mobilise domestic resources for the EITI implementation. The government has always contributed financially to the implementation of the EITI. Although in the early days, implementation was co-funded by external partners like the World Bank, implementation is now fully funded by the government budget. While this means that the overall budget available for the EITI has decreased, the government has championed more cost-efficient ways of implementation, such as the move towards electronic reporting (see requirement 7.2) and integrating EITI staff costs into the overall costs of the line agency, Kazgeoinform, under the Committee of Geology and Subsoil Use. The decrease in resources does not appear to have prevented EITI Kazakhstan from taking on new issues. For example, the government initiated legal support to facilitate beneficial ownership disclosure and has committed to take part in the EITI mainstreaming pilot (see requirement 7.2). EITI reporting has continued to expand, to include new types of disclosures such as information on local content. In addition, the government has given political support to dissemination events in extractive regions, an annual EITI conference, and also financial support in conjunction with the EITI Board meeting in Astana in October 2016.

In line with 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”). Adam Smith International (ASI) was appointed as the independent Validator to evaluate whether the Secretariat’s work was carried out in accordance with the Validation Guide. ASI’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.

1. Work Performed by the Independent Validator

The Secretariat’s Initial Assessment was transmitted to ASI on October 2nd, 2017. Our Validation Team undertook this phase of the Validation process through: (1) In-depth review and marking up of the EITI Assessment by each team member; (2) Detailed review and comments by the Multi-Stakeholder Specialist of Requirements 1 and the Civil Society Protocol; (3) Detailed review and comments by the Financial Specialist of Requirements 4, 5 and 6; (4) Consolidation of reviews and the production of the draft Validation Report, sent to the International Secretariat on October 23rd, 2017; (5) Detailed review of the MSG comments and the production of the final Validation Report, sent to the International Secretariat on December 18th, 2017.

2. Comments on the Limitations of the Validation

The Validator carefully reviewed the Secretariat's Initial Assessment and at this stage has one comment on the limitation of the validation process. The EITI framework does not take a view on the adequacy and range of technical and financial criteria regarding the licensing process - it simply requires the disclosure of whatever licensing requirements are in place. The current legal framework governing license allocation in Kazakhstan lends itself to discretionary decision making regarding licensing, but is compliant with the requirement 2.2 on licence allocations.

3. 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. The data collection took place across three phases. Firstly, a desk review of the available documentation relating to the country's compliance with the EITI Standard, including but not limited to:

- The EITI work plan and other planning documents such as budgets and communication plans;
- The multi-stakeholder group's Terms of Reference, and minutes from multi-stakeholder group meetings;
- EITI Reports, and supplementary information such as summary reports and scoping studies;
- Communication materials;
- Annual progress reports; and
- Any other information of relevance to Validation.

A country visit took place on 15-25 August 2017. All meetings took place in Almaty and Astana, but included stakeholders based in other regions. The Secretariat met with the multi-stakeholder group and its members, the Independent Administrator and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the multi-stakeholder group. In addition to meeting with the MSG as a group, the Secretariat met with government, companies and civil society representatives either individually or in constituency groups, with appropriate protocols to ensure that stakeholders were able to freely express their views and that requests for confidentiality are respected.

Finally, the International Secretariat prepared a report making an initial assessment of progress against requirements in accordance with the Validation Guide. The initial assessment did not include an overall assessment of compliance. The report was submitted to the Validator, with the National Coordinator (NC) also receiving a copy.

3. GENERAL COMMENTS

• Progress in EITI Implementation

Kazakhstan has implemented the EITI for ten years. In the first phase leading up until 2013, implementation was largely driven and motivated by the desire to achieve compliance with the 2011 EITI Rules. During these years, efforts were undertaken to institutionalise EITI Reporting by embedding EITI reporting obligations and associated data quality assurance procedures into the Law on Subsoil and Subsoil Use. These efforts largely addressed challenges with comprehensiveness and reliability observed during the first few years of implementation. It also enshrined the practice of annual EITI Reports being released

within ten months of the end of the financial year, facilitated by the government decision to fund reporting from the republican budget. As priority was given to meeting the EITI minimum requirements, there was relatively limited discussion about how the EITI could contribute to address ongoing issues in the extractive sector. There were also few attempts to expand EITI reporting in order to disclose data of relevance to national debates but not covered by the EITI Standard.

- **Impact of EITI Implementation**

Apart from some disruptions in 2010 caused by re-organisation of the ministries overseeing the extractive sector as well as internal conflicts between members of the civil society constituency, multi-stakeholder oversight of EITI implementation has remained relatively stable. There is a strong sense of ownership within the ministry in charge of EITI implementation, and all stakeholders are contributing to the EITI process. Civil society remains engaged in the EITI, but the impact of their work and the strength of their voice is hampered by longstanding conflicts between the various NGOs and civil society coalitions that have an interest in the EITI. This conflict reflects differences of opinion on what strategy civil society should take to get their views across, splitting those who favour engagement and compromise from those that prefer what is sometimes perceived as more confrontational campaigning. It also reflects the diversity of civil society in terms of their priority issues, i.e. extractive sector governance vs environmental focus vs human rights focus. Moreover, personality conflicts, ethnicity and competition for access to financial resources have contributed to fuel the disagreements.








Finally, it is worth noting that although EITI implementation in Kazakhstan has significantly enhanced transparency in the extractive sector, there appears to be limited impact of this transparency on greater accountability and reform. Although Kazakhstan is meeting the minimum expectations of the EITI in terms of publication and dissemination of EITI data, more could be done to make use of EITI data for analytical purposes, including ensuring that it delivers recommendations pertinent to addressing challenges and reform needs in the extractive sector.

The Independent Validator's Assessment of Compliance








Figure 1 – Validator's assessment

EITI Requirements		LEVEL OF PROGRESS				
		No progress	Inadequate	Meaningful	Satisfactory	Beyond
Categories	Requirements					
MSG oversight	Government engagement (#1.1)				■	
	Industry engagement (#1.2)				■	
	Civil society engagement (#1.3)				■	
	MSG governance (#1.4)			■		
	Work plan (#1.5)				■	
Licenses and contracts	Legal framework (#2.1)					■
	License allocations (#2.2)				■	
	License register (#2.3)			■		
	Policy on contract disclosure (#2.4)				■	
	Beneficial ownership (#2.5)	■	■	■	■	■
	State participation (#2.6)			■		
Monitoring production	Exploration data (#3.1)					■
	Production data (#3.2)			■		
	Export data (#3.3)					■
Revenue collection	Comprehensiveness (#4.1)				■	
	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)				■	
	Data timeliness (#4.8)					■
	Data quality (#4.9)			■		
Revenue allocation	Distribution of revenues (#5.1)					■
	Subnational transfers (#5.2)	■	■	■	■	■
	Revenue management and expenditures (#5.3)	■	■	■	■	■
Socio-economic contribution	Social expenditures (#6.1)			■		
	SOE quasi-fiscal expenditures (#6.2)		■			
	Economic contribution (#6.3)				■	
Outcomes and impact	Public debate (#7.1)				■	
	Data accessibility (#7.2)	■	■	■	■	■
	Follow up on recommendations (#7.3)				■	
	Outcomes and impact of implementation (#7.4)			■		

Legend to the assessment card

-  **No progress.** All or nearly all aspects of the requirement remain outstanding and the broader objective of the requirement is not fulfilled.
-  **Inadequate progress.** Significant aspects of the requirement have not been implemented and the broader objective of the requirement is far from fulfilled.
-  **Meaningful progress.** Significant aspects of the requirement have been implemented and the broader objective of the requirement is being fulfilled.
-  **Satisfactory progress.** All aspects of the requirement have been implemented and the broader objective of the requirement has been fulfilled.
-  **Beyond.** The country has gone beyond the requirements.
-  This requirement is only encouraged or recommended and should not be taken into account in assessing compliance.
-  The MSG has demonstrated that this requirement is not applicable in the country.

Legend to the assessment card

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|---|--|
|  | The country has made no progress in addressing the requirement. The broader objective of the requirement is in no way fulfilled. |
|  | The country has made inadequate progress in meeting the requirement. Significant elements of the requirement are outstanding and the broader objective of the requirement is far from being fulfilled. |
|  | The country has made progress in meeting the requirement. Significant elements of the requirement are being implemented and the broader objective of the requirement is being fulfilled. |
|  | The country is compliant with the EITI requirement. |
|  | The country has gone beyond the requirement. |
|  | This requirement is only encouraged or recommended and should not be taken into account in assessing compliance. |
|  | The MSG has demonstrated that this requirement is not applicable in the country. |

4. DETAILED FINDINGS

The Validator agrees with the findings of the Initial Assessment. Therefore there are no detailed findings on disagreements to report.

However, with regard to 1.4, the Independent Validator would like to highlight that the assessment of ‘meaningful progress’ is primarily due to the fact that it has not been possible to assess the extent to which civil society has ensured adequate and appropriate systems for its own representation. While it is certainly clear that civil society is actively engaged in the EITI process (Requirement 1.3), what is not clear is the extent to which civil society has ensured that it is adequately represented, and ensured a nomination process that bears in mind “the desirability of pluralistic and diverse representation”. It also appears that civil society has not put in place a “process for changing group members that respects the principles set out in Requirement 1.4.a”, (in accordance with 1.4.b.vi), in particular “ensuring that the invitation to participate in the group is open and transparent”.

5. RECOMMENDATIONS

While the following report includes recommendations for specific improvements the MSG may wish to consider implementing, the following is a list of strategic recommendations that could help Kazakhstan make greater use of the EITI.

1. It is recommended that a more sustainable and transparent disclosure framework related to license and contract allocations is put in place, embedded in the relevant Ministries and SOEs that have rights to negotiate contracts. The transition to the new legal framework under the new Law on Subsoil would be a good opportunity to effectuate this change.
2. It is recommended that the government takes steps to ensure that the new draft Subsoil code provides a sound foundation for comprehensive reporting and publication of beneficial ownership data.
3. It is recommended that the NSC undertakes a comprehensive assessment of the public accessibility of information related to state-owned enterprises, including quasi-fiscal spending, and agree a plan for engaging with and requesting disclosures from SOEs for the data that is currently not yet disclosed. A more regular outreach and dialogue with SOEs engaged in oil, gas and mining would be beneficial.
4. In light of the substantial production pertaining to KazMunayGas, the NSC could consider joining the EITI’s targeted effort on increasing transparency in commodity trading.
5. It is recommended that the NSC develops its understanding of the oil and gas swap agreements with the Government of Russia, including the terms of the relevant agreements, the parties involved, the resources which have been pledged by the Government of Kazakhstan and SOEs involved in oil, gas and mining activities, the value of the balancing benefit stream provided by Russia, and the financial significance of these agreements.
6. It is recommended that the NSC strengthens 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, and ensure that remaining details on payments and volumes transported are disclosed.

7. The NSC is encouraged to explore opportunities for fully transitioning to mainstreamed implementation by implementing the recommendations from the mainstreaming feasibility study. Given that the disclosure of the EITI data is becoming more automated, the NSC could focus less on publication of data and more on analysing the data. This could help ensure that the EITI contributes more to public debate about policies and reforms in the extractive sector.
8. The NSC might wish to consider further opportunities for improving transparency related to the decision-making, management and spending of the National Fund.
9. The NSC should build on its efforts to improve transparency in social expenditures, notably by undertaking a comprehensive review of the types of mandatory social expenditures that exist, the governing instruments (contracts, MoUs), and ensure that all material social expenditures are disclosed.
10. The NSC could consider more extensive coverage of environmental payments, including potentially tracking the spending of payments levied for environmental remediation purposed in the extractive sector.
11. The NSC might wish to undertake regular impact assessments to inform the strategic direction of EITI implementation in the country. This could include conducting an annual strategic planning and review meeting to ensure that the process continues to address the relevant issues and challenges in the extractive sector in Kazakhstan. The NSC might also wish to ensure that the recommendations from the EITI process are more oriented towards legal, administrative and other reforms by changing the current approach to the development of recommendations. This could be done by engaging the constituencies of the NSC in the formulation of recommendations for consideration by the government.
12. A document listing government participation in the MSG over time - including MSG members' names, titles, representative ministry, length of MSG membership, replacement, and reason for change, should be provided in the next MSG Annual Progress Report.
