

Extractive Industries Transparency Initiative (EITI)

## **Second Validation of Tajikistan**

### **Assessment by the EITI International Secretariat**

11 September 2019

## Contents

<b>1. Summary</b> .....	<b>3</b>
<b>2. Background</b> .....	<b>3</b>
<b>3. Review of corrective actions</b> .....	<b>4</b>
3.1 Corrective action 1 (#1.2) .....	5
3.2 Corrective action 2 (#1.3) .....	8
3.3 Corrective action 3 (#2.2) .....	16
3.4 Corrective action 4 (#2.3) .....	18
3.5 Corrective action 5 (#2.4) .....	19
3.6 Corrective action 6 (#2.6) .....	21
3.7 Corrective action 7 (#3.2) .....	23
3.8 Corrective action 8 (#3.3) .....	25
3.9 Corrective action 9 (#4.1) .....	25
3.10 Corrective action 10 (#4.2) .....	29
3.11 Corrective action 11 (#4.3) .....	30
3.12 Corrective action 12 (#4.5) .....	31
3.13 Corrective action 13 (#4.9) .....	32
3.14 Corrective action 14 (#6.1) .....	35
3.15 Corrective action 15 (#6.2) .....	37
3.16 Corrective action 16 (#7.1) .....	39
3.17 Corrective action 17 (#7.4) .....	41
<b>4. Conclusion</b> .....	<b>43</b>
<b>Annex 1. Assessment of Requirement 1.3 according to the civil society protocol</b> .....	<b>44</b>

## 1. Summary

Tajikistan's second Validation commenced on 8 September 2018. The EITI International Secretariat assessed the progress made in addressing the seventeen corrective actions established by the EITI Board following Tajikistan's first Validation in 2016<sup>1</sup>. The seventeen corrective actions relate to:

1. Industry engagement (requirement 1.2);
2. Civil society engagement (requirement 1.3);
3. License allocations (requirement 2.2);
4. License register (requirement 2.3);
5. Policy on contract disclosure (requirement 2.4);
6. State participation (requirement 2.6);
7. Production data (requirement 3.2);
8. Export data (requirement 3.3);
9. Comprehensiveness (requirement 4.1);
10. In-kind revenues (requirement 4.2);
11. Barter agreements (requirement 4.3);
12. SOE transactions (requirement 4.5);
13. Data quality (requirement 4.9);
14. Mandatory social expenditures (requirement 6.1);
15. SOE quasi-fiscal expenditures (requirement 6.2);
16. Public debate (requirement 7.1);
17. Outcomes and impact of implementation (requirement 7.4).

**The International Secretariat's preliminary assessment is that Tajikistan has addressed fifteen of the 17 corrective actions and has made "meaningful progress" on the corresponding requirements.** This assessment is subject to review, based on feedback from the EITI Council. The draft assessment was sent to the Tajikistan's EITI Council on XXXXXXXX. On XXXXXXXXXX, the Tajikistan National Coordinator Khasan Sharipov advised the Secretariat that the EITI Council had reviewed the document, XXXXXXXXXXXXXXXX. The assessment was thus finalised for consideration by the EITI Board.

## 2. Background

Tajikistan was accepted as an EITI Candidate in February 2013. The country was suspended in April 2015 as it was unable to produce its first EITI Report in accordance with the reporting deadline of 26 February 2015. The 2014 EITI Report was published in November 2015. The first Validation of Tajikistan commenced on 1 July 2016. On 8 February 2017, the EITI Board suspended Tajikistan due to inadequate progress overall in implementing the 2016 EITI Standard. Seventeen corrective actions were identified by the Board, pertaining to the following requirements: industry engagement (#1.2), civil society engagement (#1.3), license allocations (#2.2), license register (#2.3), contract disclosure (#2.4), state participation (#2.6), production data (#3.2), export data (#3.3), comprehensiveness (#4.1), in-kind revenues (#4.2), infrastructure provisions and barter arrangements (#4.3), SOE transactions (#4.5), data quality and assurance (#4.9), mandatory social expenditures (#6.1), quasi-fiscal expenditures (#6.2), public debate (#7.1) and the outcomes and impact of EITI implementation (#7.4). The Board asked

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<sup>1</sup> Tajikistan's first Validation: <https://eiti.org/validation/tajikistan/2016>

Tajikistan to address these corrective actions to be assessed in a second Validation commencing on 8 September 2018.

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

- On 26 December 2016 the EITI Council approved an Open Data Policy paper.
- On 30 January 2017, the EITI Council approved the 2016 Scoping Study.
- On 30 January 2017, the EITI Council approved the ToRs for the 2015-2016 EITI Report and hired the Independent Administrator on 31 March 2017.
- In April 2017, the CSO Coalition “Transparency for Development”, with support from PWYP, developed an action plan to address the corrective action on civil society.
- In June 2017, EITI Tajikistan conducted a meeting with the company constituency, where the industry constituency action plan was developed and approved.
- On 16 June 2017, the EITI Council approved the 2016 Annual Progress Report.
- In February 2018, Tajikistan published its [second EITI Report](#), covering 2015-2016 fiscal years. The report was updated with supplementary information and shared with the EITI International Secretariat in August 2018.
- On 2 May, the EITI Council approved the 2018 EITI work plan.
- On 1 June 2018, the EITI Council approved the 2017 Annual Progress Report.
- In August 2018, the CSO MSG members prepared and published an assessment of the corrective actions.

In addition to addressing the corrective actions, the EITI Council conducted a number of studies, including on quasi-fiscal expenditures, legal review, government’s commitments on transparency and others.

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 EITI Standard. The assessment follows the guidance outlined in the Validation Guide<sup>2</sup>. 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 2016 Validation. While these requirements have not been comprehensively assessed, in the Secretariat’s view there is no evidence to suggest progress has fallen below the required standard and no additional issues that warrant consideration by the EITI Board.

### 3. Review of corrective actions

As set out in the Board decision on Tajikistan’s first Validation, the EITI Board agreed 17 corrective actions.<sup>3</sup> The International Secretariat undertook a mission to Tajikistan on 14-16 November 2018 to collect evidence and stakeholder views with regards to progress on corrective actions from Tajikistan’s first Validation, including on civil society participation in the EITI. The Secretariat’s assessment below discusses whether the corrective actions have been sufficiently addressed. The assessments are based on minutes of the Tajikistan’s EITI Council meetings from February 2017 to September 2018, the 2015-2016

<sup>2</sup> EITI Validation Guide: [https://eiti.org/sites/default/files/documents/validation-guide\\_0.pdf](https://eiti.org/sites/default/files/documents/validation-guide_0.pdf)

<sup>3</sup> Board decision on the Validation of Tajikistan: <https://eiti.org/validation/tajikistan/2016>

EITI Report updated in August 2018, the 2016 and 2017 Annual Progress Reports, various documents submitted by the EITI Council to the EITI International Secretariat, e-mail correspondences, and stakeholder consultations (in-person and via Skype).

### 3.1 Corrective action 1 (#1.2)

In accordance with Requirement 1.2.a, companies should demonstrate that they are fully, actively and effectively engaged in the EITI process. In accordance with requirement 8.3.c.i, the company constituency is requested to develop and disclose an action plan for addressing the deficiencies in company engagement documented in the initial assessment and validator's report within three months of the Board's decision, i.e. by 8 June 2017. It should confirm whether geographical constraints constitute an obstacle to company participation, and if so, take steps to address this and other possible obstacles and undertake outreach activities directed at companies that are not currently on or affiliated with the Council.

#### Findings from the first Validation

The first Validation concluded that Tajikistan had made meaningful progress in meeting this requirement. EITI Council meeting minutes showed that despite the lack of legal obstacles preventing company participation in the EITI, companies were not actively engaged in the design and implementation of the EITI process. Awareness of the EITI among company representatives was weak. None of the company representatives had joined the working group to draft contextual part of the 2014 EITI Report, nor the working group on assessment of the report and compilation of recommendations.

#### Progress since Validation

Since the first Validation in 2016, the company constituency has renewed its representation on the EITI Council. MSG representatives have actively participated in EITI Council meetings, outreach and dissemination, conferences, public hearings and other EITI events, agreed a work plan on corrective actions. They have not cited any obstacles for the regional representation.

29 companies participated in the 2015-2016 Report. There has been a shift in sentiment, from scepticism and disinterest in the EITI toward more active support.

On 1 June 2017, the company constituency met with Tajikistan EITI National Coordinator Bakhtiyor Zuhurov and technical specialist Jahongir Nigmatov<sup>4</sup>. At the meeting, five EITI Council (MSG) members and their alternates representing the industry constituency reviewed the findings of the first Validation related to industry engagement. Participants at the meeting further discussed the means for improving broader representation of companies on the MSG as well as easing constraints linked to the regional diversity of companies operating in Tajikistan. At the meeting, the industry constituency unanimously approved an action plan<sup>5</sup> focusing on addressing gaps and corrective actions from the first Validation related to industry engagement. The action plan addresses corrective action on company engagement by covering the following activities: practical workshop for reporting companies, invitation of new companies to the EITI Council, more active engagement of the company "Pakrut" in the MSG meetings, completion of a meeting with industry constituency on addressing corrective actions related to Requirement 1.2, trainings for companies, press tours to companies located in different regions, ensuring active industry engagement in the EITI Council's meetings.

<sup>4</sup> See company constituency meeting minutes #2 from 2 June 2017, accessed [here](#) on 8 October 2018.

<sup>5</sup> See action plan for the company constituency, accessed [here](#) on 8 October 2018.

Several company representatives consulted noted that while the action plan was mainly developed by the national secretariat, it was circulated to all relevant company representatives for input and some action points were additionally discussed at the EITI Council meetings. The implementation of the action plan was also largely facilitated by the national secretariat, which appears consistent with the Memorandum of Understanding (MoU) signed between all relevant stakeholders implementing EITI in Tajikistan<sup>6</sup>. The MoU notes that the national secretariat is responsible for consulting with government, industry, CSO, media, local administration representatives and other relevant stakeholders with the aim of clarifying the EITI Principles. It also clarifies that the national secretariat is responsible for organising day-to-day work and documentation for the EITI Council. In addition, several dissemination and outreach workshops with participation of the companies have been organised by the national secretariat and CSO Coalition in the capital and regions. For example, the 2017 annual progress report notes that two seminars for government and company representatives focusing on the preparation of the 2015-2016 EITI Report and social expenditures in particular were held in Dushanbe and Guliston (Sughd region) respectively in March and April 2018.<sup>7</sup> In addition, the CSO Coalition conducted several dissemination and outreach trainings for all relevant stakeholders, including company representatives, in 2017-2018.<sup>8</sup> At the same time, while extensive dissemination and outreach work has been done by the national secretariat and CSO Coalition, there is limited evidence of the EITI Council members consulting and engaging with the broader industry constituency, nor of active industry's participation in the design of the EITI process.

As of September 2018, six companies were members of the EITI Council. Although most of these companies are located in the regions outside the capital, stakeholder consultations confirmed that there are no major geographical constraints for companies' participation in the EITI process given that almost all mining companies have representative branches in Dushanbe. Moreover, a representative of the Fon-Yagnob mine in the Zeravshan Valley was presented to the MSG on 1 June 2017 and subsequently approved as a new MSG member at its 16 June 2017 meeting. Stakeholders consulted also noted that the discussion about creating a coalition of companies is ongoing. Civil society MSG members confirmed that companies sought advice from them on how to organise as a coalition.

There has also been consistent outreach to reporting companies ahead of data collection for the 2015-16 EITI Report. On 7 April 2017, a workshop for 15 company representatives dedicated to preparation of the 2015-2016 EITI Report was organized by the national secretariat and relevant CSO and government representatives.<sup>9</sup> During the workshop, representatives from the CSO Coalition, Tax Committee and the Independent Administrator for the 2015-2016 EITI Report<sup>10</sup> described EITI implementation process in Tajikistan, presented the 2014 EITI Report, discussed recommendations from the first report and reporting templates for the next EITI Report.

Overall, it was noted by several stakeholders from all constituencies that, while company representatives seem to be relatively less active during the EITI Council meetings compared to representatives of other constituencies, there has also been a significant improvement in industry engagement observed in the last year. In comparison to the first Validation in 2016, only one company representative attended the EITI Council meetings. During the meeting on 1 June 2017, the industry constituency also nominated a new company constituency coordinator, Bobokhon Bobokhonov, a representative of the gold company "Zeravshan". EITI Council meeting minutes show that companies consistently participate in meetings and

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<sup>6</sup> See Memorandum of Understanding and annexes to it, accessed [here](#) on 10 April 2019.

<sup>7</sup> 2017 Annual progress report, available [here](#), p.13.

<sup>8</sup> For example, "Public debate is a platform for discussing the mining sector in the context of the EITI" by ASIA-Plus, accessed [here](#) on 10 April 2019.

<sup>9</sup> See company constituency meeting minutes #1 from 8 April 2017, accessed [here](#) on 8 October 2018; and news item by ASIA-Plus published on 10 April 2017, accessed [here](#) on 7 December 2018.

<sup>10</sup> BDO was selected as an Independent Administrator for the 2015-2016 EITI Report.

express their opinions regarding agenda items, although the engagement varies from meeting to meeting. Several stakeholders noted that company representatives have provided comments on draft EITI Reports and other EITI documents, such as work plans, ToRs for IA, APRs, etc. It was confirmed by representatives of all constituencies that there are no legal or administrative barriers for company participation in the EITI process.

Based on the 2015-2016 scoping study's<sup>11</sup> recommendation, 39 companies were included in the scope of EITI reporting. However, during data collection, it was discovered that ten of the 39 companies were not directly engaged in the extractive industries and that four companies aside from the ten companies that were excluded from the list, officially refused to participate in reconciliation. As result, the 2015-2016 EITI Report covers information provided by 29 reporting companies, accounting for TJS 963m (USD 122m) or 87% of total tax and customs payments from the extractive industries in 2015-2016.<sup>12</sup> Revenues from 10 companies that were excluded from the scope of reporting and the four material companies that did not report amounted to TJS 115m (USD 14m) or 10,9% of total government extractives revenues in 2016. The change in the list of reporting companies after the start of reconciliation raises serious questions over the comprehensiveness of the scope of reconciliation (*see Requirement 4.1*). The report also notes that data submitted by the reporting companies have been assured by signatures and seals of the senior management of these companies<sup>13</sup> (*see Requirement 4.9*). By comparison, 14 companies were considered to be material in 2014 EITI Report, accounting for TJS 452m (USD 92m) or 87% of all government extractives revenues in that year<sup>14</sup>.

### Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on industry engagement has been addressed, and that progress in meeting Requirement 1.2 can be considered satisfactory. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. In 2017, the industry constituency's action plan for addressing weaknesses identified in Tajikistan's first Validation was developed by the national secretariat and approved by the EITI Council, rather than by the industry constituency itself. Nonetheless, industry membership on the EITI Council was renewed in 2017 and since then it has been fully, actively and effectively engaged in the EITI process. Given that most of the companies have local branches in Dushanbe, stakeholders consulted confirmed that there were no geographical constraints for companies to be actively engaged in EITI Council meetings and the EITI process more broadly. The geographical divide in company representation was also bridged by undertaking several outreach activities with the broader constituency in the capital and the regions and through ongoing communications through email.

To strengthen implementation, the industry constituency is encouraged to consider means of strengthening company engagement in all aspects of EITI implementation by leveraging on its constituency coordinator and may wish to consider constituency guidelines to formalise its coordination and representation on the EITI.

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<sup>11</sup> Tajikistan EITI Scoping study 2015-2016, available [here](#).

<sup>12</sup> The 2015-2016 EITI Report has been published in December 2017 and was updated with additional information in August 2018. The International Secretariat's initial assessment refers to the later document in Russian unless anything else specified. 2015-2016 EITI Report, p.131

<sup>13</sup> 2015-2016 EITI Report, p.142.

<sup>14</sup> See 2014 EITI Report, available [here](#).

## 3.2 Corrective action 2 (#1.3)

In accordance with Requirement 1.3 and the civil society protocol, the government must ensure an enabling environment for civil society participation. Specifically, in accordance with Requirement 1.3.e.i and 1.3.e.iv, civil society representatives substantively engaged in the EITI process must be able to speak freely on transparency and natural resource governance issues and express opinions about the EITI without restraint, coercion or reprisal. The Board noted that the government recently passed new regulations which may cause legal and regulatory barriers for civil society. The EITI Council is encouraged to undertake sustained outreach activities directed at CSOs that are not currently on or affiliated with the Council. This could include further dialogue on these challenges both within Tajikistan and externally with other EITI implementing countries.

### Findings from the first Validation

The first Validation concluded that Tajikistan had made meaningful progress in meeting this requirement. Civil society organisations represented by the CSO Coalition “Transparency for Development” were fully, actively and effectively engaged in the design, implementation, monitoring and evaluation of the EITI process. It was clear that civil society participated on an equal footing with other consistencies in EITI Council meetings and were able to influence and drive the EITI process forward.

In terms of the broader environment for civil society, the first Validation noted that some legislative amendments had the potential to restrictive environment for civil society. However, it was clear that in practice this legislation was not preventing or significantly affecting civil society operations. The main issue of concern was related to the ability of civil society to freely express opinions on natural resource governance without fear of repression. Even though several stakeholders noted that the environment for media and freedom of expression was not good, there was a perception that it was moving in the right direction and that the EITI was helping civil society in creating more space for public discussion of topics that had previously been considered “no-go topics”. Although there were few cases of journalists or other civil society representatives substantively engaged in the EITI facing pressure due to statements about natural resource governance, it seemed that this was caused by the relatively high degrees of self-censorship that was practiced among civil society. This raised concern as to what extent the EITI could ensure an open and free discussion of natural resource governance. It was argued that bold criticisms targeting government as seen in other countries would not be effective or lead to any achievements in Tajikistan. In this regard, the civil society sought to influence government decision making by initiating a comprehensive dialogue with evidence-based arguments pointing at recommendations on how to improve current weakness. It was noted that an interruption of the EITI process in Tajikistan could negatively affect civil society participation and ability to take part in decision making.

### Methodology

The Civil Society Protocol focuses on: (1) civil society representatives’, defined as: “civil society representatives who are substantively involved in the EITI process, including but not limited to members of the multi-stakeholder group” and (2) the ‘EITI process’, which is defined as: “activities related to preparing for EITI sign-up; MSG meetings; CSO constituency side-meetings on EITI, including interactions with MSG representatives; producing EITI Reports; producing materials or conducting analysis on EITI Reports; expressing views related to EITI activities; and expressing views related to natural resource governance”.

In the first Validation, the Secretariat identified issues related to expression and self-censorship. The previous assessment concluded that there was a clear linkage in term of CSO representatives



substantively engaged in the EITI process and issues that were directly linked to the EITI process, such as gold production data.

In accordance with 2.6 of the Protocol, “for contextual purposes, the EITI Board will review the broader environment in which the EITI operates for example by reference to indicators or other types of assessments”.

The assessment of self-censorship is particularly challenging. In some cases, stakeholders report self-censorship as part of stakeholder consultations. However, in environments where freedom of expression is a concern, civil society representatives may face barriers in openly discussing these issues. Speaking about self-censorship may expose civil society representatives to harassment and repercussions. When exploring these issues, the secretariat seeks to ensure that these issues are treated thoroughly, without contributing to or exacerbating potential risks to civil society representatives. In addition to meeting with the MSG as a group, the Secretariat meets with its constituent parts (government, companies and civil society) individually and in constituency groups. Requests for confidentiality are respected.

When considering whether self-censorship is a concern, wider concerns about self-censorship and freedom of expression are noted. However, in accordance with the civil society protocol, the focus is on identifying specific examples or instances where civil society representatives who are substantively involved in the EITI process face constraints in expressing themselves freely in relation to the EITI process. In cases where self-censorship is not identified by stakeholders directly, the Secretariat examines whether it is likely to be a significant factor. To do so, the Secretariat makes an assessment of the issues one would expect to see discussed in an environment where there is freedom of expression. Where there are gaps in expected engagement on issues related to EITI implementation, the Secretariat explores why this might be the case. This could be related to capacity constraints, to competing priorities, to self-censorship, or a combination of these factors.

### Progress since Validation

In the second Validation, the Secretariat has reviewed these issues. There is evidence to suggest that there have been improvements in terms of civil society engagement in EITI implementation. The first Validation noted self-censorship on issues of contracting and public procurement, corruption, beneficial ownership and “general criticism of the government”, and particular concerns regarding gold production data. Progress on these issues is highlighted below.

The Secretariat also recognises the cultural aspects. For instance, in comparison to some countries, where being critical openly is very common, in Tajikistan stakeholders emphasised that disagreement in open forums was not common.

The broader environment in which the EITI operates remains challenging. The Freedom House rates Tajikistan as not free<sup>15</sup> and Human Rights Watch reports restrictions to freedom of expression<sup>16</sup>. On the other hand, the International Center for Not-for-Profit Law (ICNL) reports that ‘the impact of civil society on Tajikistan has increased as the number, scope and reach of CSOs have grown steadily’.<sup>17</sup> With regards to the civil society activists engaged in the EITI activities, the Secretariat’s assessment is that engagement and freedom of expression has improved.

Civil society organisations engaged in the EITI process in Tajikistan are represented by the CSO Coalition “Transparency for Development”, hereinafter ‘the Coalition’.<sup>18</sup> To address the corrective action on

<sup>15</sup> Freedom House rating for 2019, Tajikistan, accessed [here](#) in June 2019.

<sup>16</sup> [Human Rights Watch](#) 2018 report, accessed in November 2018.

<sup>17</sup> Civic Freedom Monitor, the International Center for Not-for-Profit Law. June 2018, <http://www.icnl.org/research/monitor/tajikistan.html>

<sup>18</sup> CSO Coalition “Transparency for Development”, [website](#) available in Russian.

Requirement 1.3, the Coalition developed an action plan, approved in April 2017 and published on the Coalition's website.<sup>19</sup> In addition to this, Tajikistan EITI published a 2017 annual progress report monitoring progress in the implementation of the action plan on 1 June 2018. The Coalition conducted an assessment of the corrective actions on requirements 2-6 and published a progress report<sup>20</sup> in August 2018.

There are no indications of any new government constraints on civic space, nor any deterioration in the space for civil society to fully and actively engage in all aspects of implementation of the EITI. The International Center for Not-for-Profit Law (ICNL) reports that 'the impact of civil society in Tajikistan has increased as the number, scope and reach of CSOs have grown steadily'.<sup>21</sup> Many CSO coalitions and unions operate freely within their area of competence, including but not limited to the extractive industries, however some CSOs, such as human rights NGOs and anti-torture NGOs, experience challenges in carrying on their work. All stakeholders consulted shared the perception that civil society was actively engaged in the EITI Council and had used the EITI as a means of achieving its objectives. Many government representatives highlighted that civil society was a driving force for EITI implementation and that it had developed strong capacity and expertise in the extractive industries.

**Action Plan:** With support from PWYP International, the CSO Coalition "Transparency for Development" developed an action plan addressing gaps and corrective actions related to civil society engagement from Validation, approving it in April 2017 and submitting it to the EITI Council within three months of the Board decision on Tajikistan's Validation. The action plan includes three objectives. Under *Objective 1* on analytical activities related to following up on corrective actions and recommendations from Validation and EITI Report, the Coalition established several working groups on various aspects of EITI reporting to address the corrective actions, including monitoring for potential legal barriers to civil society's engagement in EITI. One of the working groups prepared an analysis on social payments and quasi-fiscal expenditures.<sup>22</sup> Under *Objective 2* related to preparation for Validation, the Coalition conducted a workshop for the EITI Council<sup>23</sup> and produced a self-assessment report on progress in addressing the corrective actions.<sup>24</sup> Under *Objective 3* related to promoting the EITI, engaging partners and ensuring freedom of expression, the Coalition conducted public hearings and a series of capacity-building workshops for the media and prepared an alternative report on the fourth monitoring round under the Istanbul Action Plan on fighting corruption.<sup>25</sup>

**Expression:** There do not appear to be any new constraints on freedom of expression since the first Validation. One of the objectives of the Coalition's action plan<sup>26</sup> was related to freedom of expression, with activities related to capacity-building for the media and increasing engagement with government and companies. There are numerous examples of CSO representatives speaking freely in public as part of the EITI process. For example, in 2018 the Coalition conducted four public hearings on legal amendments and EITI reporting in Ainy<sup>27</sup>, Dushanbe<sup>28</sup>, Khudzhand and Kulob. On 22 February 2018, civil society initiated a roundtable in Parliament on the main findings of the 2015-16 EITI Report. The Coalition conducted a series of workshops for journalists to build their capacity to analyse EITI Reports and use EITI

<sup>19</sup> The CSO action plan was developed with PWYP in April 2017, available on Coalition's [website](#), accessed in November 2018.

<sup>20</sup> CSO Coalition Transparency for Development, Report on assessing corrective actions, August 2018, available [here](#) (Russian).

<sup>21</sup> Civic Freedom Monitor, the International Center for Not-for-Profit Law. June 2018, <http://www.icnl.org/research/monitor/tajikistan.html>

<sup>22</sup> CSO study on social expenditures and QFEs available [here](#) in Russian, accessed in November 2018.

<sup>23</sup> [Workshop](#) for EITI Council, conducted by NGO Jahon on 26 June 2018, accessed in November 2018.

<sup>24</sup> CSO self-assessment report is available [here](#) in Russian, accessed in November 2018.

<sup>25</sup> The report is available in Russian [here](#), accessed in November 2018.

<sup>26</sup> [News item](#) on PWYP Coalition meeting in Dushanbe on 25-27 April 2017, accessed in November 2018.

<sup>27</sup> News item on a public hearing in Ainy, available [here](#) in Russian, accessed in November 2018.

<sup>28</sup> News item on a series of public hearings, available [here](#) in Russian, accessed in November 2018.

data in their reporting.<sup>29</sup> According to the Coalition's media monitoring, media coverage on the extractive industries has substantially increased in 2017-2018, with local media outlets publishing over 116 news items related to the extractive industries issues in Tajikistan, of which 23 news items directly used the EITI data.<sup>30</sup> There are examples of publications in Russian and Tajik<sup>31</sup> in online outlets and printed newspapers. In particular, Asia Plus – an independent media portal in Tajikistan that has participated in EITI trainings – often uses EITI data in its analytical (and often critical) articles on the extractive industries, including on gold production<sup>32</sup>, environmental issues related to mining<sup>33</sup>, Chinese extractives companies<sup>34</sup> and companies in which the state owns shares<sup>35</sup>, tax justice<sup>36</sup>, budgetary process<sup>37</sup>, contract transparency<sup>38</sup>, and EITI reporting.<sup>39</sup> The Coalition has also conducted Parliamentary hearings, presenting the outcomes of the 2015-2016 EITI Report to Members of Parliament. In July 2018, the Coalition members prepared an alternative civil society monitoring report<sup>40</sup> on Tajikistan's implementation of the Istanbul Anti-Corruption Action Plan<sup>41</sup>, expressing critical views on the government's performance and highlighting gaps in implementing OECD anti-corruption recommendations.

While noting the methodological challenge highlighted above regarding assessing self-censorship, all stakeholders consulted to date agreed that there were no barriers to freedom of expression by civil society representatives who are substantively involved in the EITI process in relation to the EITI process. CSO MSG members were able to freely express their views and propose any topic for the meetings' agenda. Many stakeholders acknowledged that civil society was driving the EITI process, encouraging other constituencies to be more engaged. Company representatives noted that civil society had always expressed opinions and statements during EITI Council meetings and that CSOs initiated multiple workshops and events related to EITI Reports' dissemination. Civil society EITI Council representatives confirmed that they did not feel restricted in expressing their views and in participating in EITI activities, nor were they restricted from liaising with their constituency. The Coalition regularly holds meetings in the regions and in Dushanbe and communicates via list-serve group and Facebook page. Many CSO representatives confirmed that the EITI provided access to information and a platform for informed public debate. Civil society organisations outside the Coalition did not seem to be restricted, although several civil society representatives considered that lawyers working on anti-torture and human rights cases could face insults and persecution for their professional activity. There was consensus among stakeholders consulted that there had not been any instances of censorship in relation to public expressions related to EITI, including in terms of articles and reports using EITI data, in the 2017-2019 period.

When asking about the existence of 'no go' topics and the extent of self-censorship on EITI-related issues, civil society expressed the following views. Most of CSOs consulted did not identify any 'no go' topics related to the extractive industries. However, some CSO representatives listed anti-corruption investigations and budgetary processes as topics that could trigger government retaliation. It was noted that all citizens would avoid criticising the President and his family as there was a decree against

<sup>29</sup> News item on journalists' workshop, available [here](#) in Russian, accessed in November 2018.

<sup>30</sup> The list of articles is available in the 2017 APR and the 2016-2017 EITI Report annexes, accessed in November 2018.

<sup>31</sup> News item on EITI in Tajikistan Times, available [here](#), accessed in November 2018.

<sup>32</sup> News item on gold production secrecy, available [here](#).

<sup>33</sup> News item on negative consequences of coal mining, available [here](#).

<sup>34</sup> News item on increased Chinese influence on gold mining market, available [here](#).

<sup>35</sup> News item on purchase of Zerafshan, available [here](#).

<sup>36</sup> News item that criticises tax regime in Tajikistan, available [here](#).

<sup>37</sup> News item on 2018 State Budget, available [here](#).

<sup>38</sup> News item on contract transparency in extractive industries, available [here](#).

<sup>39</sup> News item on outcomes of EITI implementation in Tajikistan, available [here](#).

<sup>40</sup> [Alternative civil society report](#) on Tajikistan's implementation of the Istanbul Anti-Corruption Action Plan

<sup>41</sup> Istanbul Anti-Corruption Action Plan is a sub-regional peer review programme launched in 2003 to support anti-corruption reforms through country reviews and continuous monitoring of implementation of recommendations, which promote the UNCAC and other international standards and best practice.

offending the President. This limitation, however, does not seem to have implications with regards to the extractive industries, given the view of CSOs consulted that it was possible to be critical of all issues covered by the EITI Standard without naming the President or his family. Representatives of the media consulted expressed differing views. For instance, representatives from state-owned news outlets noted that their news items were thoroughly edited for content, whereas representatives of independent news outlets said that they could receive calls from the government when they used inaccurate data, such as statistical figures. Despite the fact that gold production volumes were considered a state secret, it was noted that journalists could use data on gold production from EITI Reports without fear of reprisals. There were no reported instances where journalists that used EITI data on gold production were asked to remove it. Several CSOs consulted considered that the EITI had provided an effective cover for discussing sensitive topics of relevance to EITI, such as gold production. Some journalists noted that, in general, investigative journalism and critical articles were rare in Tajikistan and that most of the investigative journalists fled the country back in 2013-2014, when the environment for media worsened at the same time as people's disposable incomes and living conditions declined. Other journalists considered that the capacity of investigative journalists in Tajikistan was low and that this explained the limited high-quality analytical and investigative articles, with the few well-capacitated journalists commanding high honorariums.

Local journalists consulted explained that they could cover any aspects of the extractive industries and that the EITI had become a popular topic, appreciated by all stakeholders. Since 2012, the media's awareness of the EITI had visibly increased and the journalists more often referred to the EITI Reports for information. Some journalists highlighted that they had received a lot of information from the Ministry of Finance and the CSO Coalition, as a result of EITI implementation. A few journalists confirmed that Asia Plus – an independent online news outlet – published many critical news items with regards to coal and gold mining, environmental issues related to mining and budgetary processes. Also, Asia Plus covered the topic of gold and used data from the 2016 EITI Report in their articles. On the other hand, some journalists commented that Asia Plus was blocked by the government from time to time because of publishing controversial or critical news items, however not in relation to the EITI.

When asked about cases of media persecution, a few CSOs consulted mentioned Khayrullo Mirsaidov<sup>42</sup>, a human rights defender and independent journalist reporting for Deutsche Welle, Asia-Plus and the Fergana news outlets. Khayrullo Mirsaidov was detained in December 2017 because of reporting on a bribery case, although he was accused of embezzlement and incitement to inter-ethnic, national and religious hatred, before being released in August 2018 without charges. Representatives consulted from CSOs and the media could not name any other cases of prosecution of journalists and activists in Tajikistan in recent years.

Some development partners voiced concerns regarding the shrinking space for civil society and independent journalism more generally. Other development partners claimed that the current situation was improving over the situation prior to EITI implementation. For instance, the civil society activists increased their space to discuss the natural resources governance issues through public debates/hearings and media engagement, gained access to decision-making process in the extractive industries, increased collaboration with the government and companies, and gained access to extractives data and made it publicly available to citizens. Many civil society representatives confirmed that they did not encounter issues related to shrinking CSO space in Tajikistan.

**Operation:** With regards to civil society's operations in relation to EITI, all CSOs engaged directly and indirectly in EITI implementation appear duly registered and seem to operate freely in relation to EITI issues. There is evidence that CSOs have been able to access funds to support their participation in all

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<sup>42</sup> Frontline defender's dossier on Khayrullo Mirsaidov's case, accessed [here](#) in November 2018.

aspects of EITI implementation, with Coalition members receiving grants from Open Society Institute (OSI), GIZ and the UK's Department for International Development.

The government's Regulation on Humanitarian Aid requires CSOs to register foreign funding in the Registry of Humanitarian Aid and notify the Ministry of Justice about received foreign funding within 10 days<sup>43</sup>. No civil society organisations substantively engaged in the EITI have reported that these legal requirements have practically affected their work on EITI. There do not appear to be restrictions on access to funding for civil society organisations, restrictions on holding meetings or legal/administrative barriers to the dissemination of information. See Annex 1 for more details.

*Association:* Stakeholder consultations have highlighted that CSOs engaged in the EITI process are freely collaborating with each other as well as with other local CSOs not directly represented on the EITI Council and with international groups. The Coalition also uses its international affiliation with the Publish What You Pay global network for peer-learning with other coalitions in Eurasia region and for involving broader civil society to work on extractive industries transparency issues. None of the CSO representatives consulted expressed concern with regards to organising meetings and events in Dushanbe and regions. Many CSO representatives highlighted that the Ministry of Finance usually provided a letter of support for organising parliamentary and public hearings in the regions. During the first Validation, the civil society group had to receive government's permission to organise events. During the second Validation, it was confirmed that civil society no longer sought government's approval to conduct event. Some CSO representatives explained that the Ministry of Finance provided letters of support to the Coalition to engage local government and companies. As a result, some local authorities could provide a meeting venue for free.

Following the Board's recommendation to undertake sustained outreach activities directed at CSOs that are not currently in or affiliated with the Coalition. Under Objective 3 of the CSO Action Plan, the coalition undertook outreach activities to engage other organisations and partners and to enlarge the Coalition. The Coalition's 2017-2018 report on activities<sup>44</sup> provides an overview of its outreach activities, such as training, capacity building and media involvement. The report on activities points to a number of outreach activities in the regions including workshops with local communities, CSOs and activists in Ainy, Dushanbe, Khatlon, Khorugh, Khudzhand, Kulob, Kurgan Tyupe, Sugd, and Tursunzada and active involvement of journalists in publicity and capacity building events as a means of engaging with wider civil society. Coalition outreach activities resulted in expanded membership of NGOs from extractive regions, such as Sughd province, and the League of Women Lawyers that works on defending human rights and providing free legal services to women and disadvantaged communities.<sup>45</sup> The Coalition's membership was enlarged from 21 to 33 CSOs. Some civil society representatives commented that it was sometimes difficult to attract new CSOs to the Coalition. The EITI was considered a highly-specific theme of interest to a narrow constituency, with CSOs considering it interesting but also challenging to implement because of the technical expertise required. New Coalition members from the regions confirmed that the Coalition Coordinator kept the members well-informed and sought their feedback on aspects of EITI implementation, such as work plan objectives, scope of reporting and follow-up on recommendations.

With support from PWYP, the Coalition renewed its statutory governance documents, such as its ToR and MoU, to enable nominations of EITI Council members and the enrolment of new Coalition members.<sup>46</sup> In addition to EITI implementation, the Coalition added anti-corruption and environmental issues as its new objectives.

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<sup>43</sup> Civic Freedom Monitor, the International Center for Not-for-Profit Law, accessed [here](#) in June 2018.

<sup>44</sup> 2017-2018 Report on activities, CSO Coalition, available [here](#) in Russian.

<sup>45</sup> The list of coalition members is available [here](#) in Russian, accessed in November 2018.

<sup>46</sup> Memorandum of Understanding between the Coalition members and its ToRs are available [here](#) in Russian, accessed in November 2018.

**Engagement:** The Coalition has been the most active constituency on the MSG. CSO members are actively involved in the design, implementation, monitoring and evaluation of the EITI through participation in the EITI Council meetings<sup>47</sup>, CSO forums<sup>48</sup>, workshops<sup>49</sup>, outreach and dissemination events<sup>50</sup>. The 2017 annual progress report<sup>51</sup> and the 2017-2018 Coalition activities report confirm comprehensive input from civil society to the EITI work plan, the reporting process, the self-assessment of the corrective actions, preparations for Validation, and efforts to address recommendations from EITI reports and the Validation. There is substantial evidence that civil society regularly participates in EITI Council meetings, ad-hoc working groups and other EITI events, and that their views are documented in the EITI Council minutes<sup>52</sup>, press releases<sup>53</sup>, news items and other publications. In July-October 2017 the Coalition conducted five outreach and dissemination events<sup>54</sup> in Dushanbe, Khudzhand, Khorugh, Sugd and Qurghonteppa. The activities were used as a platform for engaging broader civil society constituency into the EITI process. Feedback from civil society outside the coalition was taken into consideration for the Coalition's work plan, future activities<sup>55</sup> and recommendations to the EITI Council.

In 2017-2018, the Coalition members conducted and took part in 38 activities<sup>56</sup> related to EITI implementation in Tajikistan. The Coalition also developed a popular version of the EITI Report<sup>57</sup> and a brochure on the EITI implementation process<sup>58</sup> for local communities. The Coalition regularly updates its website.<sup>59</sup>

With respect to their capacity, representatives from other constituencies and development partners generally agreed that the CSO Coalition had the technical capacity to participate in the EITI process. Several CSO representatives highlighted the importance of preparing the anti-corruption report to assess progress with implementing Tajikistan's commitments from the OECD's Istanbul agreement.

**Access to public decision-making:** There are no legal barriers limiting the ability of CSOs to engage in advocacy or public policy activities. All forms of public associations may participate in advocacy and lobbying activities. Civil society is able to use the EITI process to promote public debate through public events, conferences, round tables, public hearings, workshops and regional outreach events, organised by or with participation of civil society to inform about the EITI process. Civil society has also conducted analysis, used EITI data and communicated findings of the EITI report to citizens and the media, and organised advocacy and knowledge sharing campaigns. Examples of this include the data visualisation version of the EITI Report produced by the Coalition, pre-validation assessment and analytical paper on quasi-fiscal and social expenditures in Tajikistan.

According to Article 24 of the Law on Public Associations, civil society has the right to "participate in policy-making by government and regulatory authorities in the manner and within the scope established by this Law and other laws".<sup>60</sup> In practice, civil society representatives in the EITI Council took active part in proposing amendments to the draft Law on Subsoil Use in 2016. In other instances, CSO MSG members

<sup>47</sup> Ministry of Finance [website](#), press release on MSG meeting of 2 May 2018, accessed in November 2018.

<sup>48</sup> PWYP Eurasia Regional [meeting](#), conducted on 26-28 September 2017 in Aktau.

<sup>49</sup> Capacity building [workshop](#) for the media, conducted on 29 August 2018

<sup>50</sup> In July-October 2017 the Coalition conducted 5 [outreach and dissemination events](#) in the regions.

<sup>51</sup> 2017 EITI Annual Progress Report, available [here](#) in Russian, accessed in November 2018.

<sup>52</sup> EITI Council meeting minutes, available [here](#) in Russian, accessed in November 2018

<sup>53</sup> Press releases by the Ministry of Finance, available [here](#), accessed in November 2018.

<sup>54</sup> In July-October 2017 the Coalition conducted 5 [outreach and dissemination events](#) in the regions.

<sup>55</sup> Section 14 on plans and strategy of the 2017-2018 Report on activities, CSO Coalition, available [here](#) in Russian, accessed in November 2018.

<sup>56</sup> List of Coalition activities in 2011-2018, available [here](#) in Russian, accessed in November 2018.

<sup>57</sup> CSO Coalition Brochure on the EITI implementation process, available [here](#) in Russian, accessed in December 2018.

<sup>58</sup> Available at the EITI International Secretariat and at coalition of CSOs "Transparency for development".

<sup>59</sup> Transparency for development Coalition website [www.tfd.tj](http://www.tfd.tj).

<sup>60</sup> Civic Freedom Monitor, the International Center for Not-for-Profit Law, accessed [here](#) in June 2018.

met with the Parliamentary Committee on Energy, Industry, Construction and Communications<sup>61</sup> to discuss outcomes of the EITI Report and legislative changes on subsoil use.

### Secretariat's Assessment

The previous assessment concluded that there was a clear linkage in terms of CSO representatives substantively engaged in the EITI process ability to freely express themselves on issues linked to the EITI process. The Secretariat has consulted widely on this topic, noting the challenges related to identify and discussing instances of self-censorship. There is evidence to suggest that there have been improvements in terms of civil society representatives' engagement and expression. There are several examples where previously taboo topics are now being discussed more openly (gold production, beneficial ownership and licence allocation), and no obvious gaps in engagement on issues related to EITI implementation where the most likely explanation is self-censorship. Rather, there is considerable evidence that the EITI platform is working as intended to open up more space for debate.

On civil society's engagement in the EITI process, there is ample evidence to suggest that civil society representatives are sufficiently engaged in design, implementation and monitoring of the EITI process in Tajikistan. Documentation of EITI Council meetings and activities, as well as stakeholder views would attest to the Coalition's active participation in providing direction to the EITI process, in prioritizing recommendations for reforms, in coordinating with their own networks to engage key officials in government, in leading outreach activities and organizing their own, in coordinating with their wider constituency, in increasing use of data through media capacity building, and in stimulating and shaping public debate. With respect to civic space, independent reports and stakeholder consultations agree that certain restrictions exist with regards to freedom of expression, with regards to anti-corruption investigations and budgetary processes, and that fear of reprisal is still prevalent among civil society and the media. It is difficult to prove to which extent these restrictions have affected EITI implementation, given that the civil society group plays the driving role, being able to express their views without any restrictions whether during EITI Council meetings or at EITI events. On balance, the EITI has opened space for media coverage of gold production data, despite gold production values still being considered a state secret. There is also nothing to suggest that the civil society constituency is constrained from liaising with one another. There is evidence to suggest that the EITI is playing a role in widening the civic space in relation to the extractive industries, as reflected in the increased media coverage of EITI data, numerous outreach activities that have become platforms for discussion of extractive sector issues at the subnational level and the EITI's support for broader anti-corruption work, such as monitoring implementation of the OECD's Istanbul agreement.

There is a judgment call to be made whether this progress is sufficient. On balance, the International Secretariat's preliminary assessment is that the corrective action has been addressed, and that progress in meeting Requirement 1.3 can be considered satisfactory. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered.

Irrespective of the Board's final assessment of this provision, it is clear that maintaining strong civil society engagement is essential to ensuring that the EITI is credible and effective, and that further efforts are needed to ensure the civil society organisations are adequately resourced and capacitated, and that any emerging barriers to effective civil society engagement and expressed are addressed.

<sup>61</sup> 2017-2018 Report on activities, CSO Coalition, available [here](#) in Russian, p.9, accessed in November 2018.

### 3.3 Corrective action 3 (#2.2)

In accordance with requirement 2.2.a, Tajikistan must disclose the technical and financial criteria used in awarding or transferring a license, including any non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards. It is required that the information is disclosed for all license awards and transfers taking place during the accounting year covered by the EITI Report, including license allocations pertaining to companies that are not included in the EITI Report, i.e. where their payments fall below the agreed materiality threshold. Any significant legal or practical barriers preventing such comprehensive disclosure should be documented and explained in the EITI Report, including an account of government plans for seeking to overcome such barriers and the anticipated timescale for achieving them.

#### Findings from the first Validation

The first Validation concluded that Tajikistan had made inadequate progress in meeting this requirement. The 2014 EITI Report disclosed information about the process for awarding licenses and contracts. According to the Supplementary 2014 EITI Report, two new licenses were awarded, and three licenses renewed in 2014, all through direct negotiations. The report did not describe the technical and financial criteria underpinning these awards and renewals, nor did the report disclose any deviations from the applicable licensing procedures. The process for transfers of contracts and licenses was not described.

#### Progress since Validation

**Awards and transfers:** According to the updated 2015-2016 EITI Report<sup>62</sup>, all mining licenses awarded in 2015-2016 – four for exploration and 15 for production – were awarded through direct negotiations, and no licenses were transferred or sold during this period.

The report also mentions that 80 contracts determining signature bonuses were signed in 2015 and 64 contracts in 2016.<sup>63</sup> In addition to this, two investment agreements were ratified in 2015 and one concession agreement was signed in 2016. During stakeholder consultations, it was noted that there was a time lag between the award of a mining license and the signature of the associated contract. This explains the difference between information in the EITI Report on the number of licenses issued and number of contracts signed. At the same time however, the list of companies that signed contracts or any other type of agreement in 2015 and 2016 remains unclear.

**Awards and transfers process:** The updated 2015-2016 EITI Report lists the laws and regulations related to the license allocation process<sup>64</sup> and describes the license allocation process through bidding and direct negotiations.<sup>65</sup> It notes that, according to government regulations<sup>66</sup>, the direct negotiation procedure applies if there is only one bidder for the license.<sup>67</sup> The report also clarifies that transfers of extractive licenses are prohibited.<sup>68</sup> In addition, while the 2015-2016 EITI Report notes some reforms planned for the upcoming years<sup>69</sup>, the “Assessment of addressing corrective actions” prepared by the representatives of the CSO coalition notes that the 2016-2017 work plan’s action point related to development of

<sup>62</sup> The 2015-2016 EITI Report has been published in December 2017 and was updated with additional information in August 2018. The International Secretariat’s initial assessment refers to the later document in Russian unless otherwise specified.

<sup>63</sup> 2015-2016 EITI Report, p.45.

<sup>64</sup> Laws “On subsoil” and “On licensing certain types of activities” as well as Government decrees #172 “On licensing certain types of activities” and #89 “On tender procedures for obtaining subsoil use rights”. See pp.35, 38-39.

<sup>65</sup> 2015-2016 EITI Report, pp.35-42.

<sup>66</sup> Government Decree #89 entitled “On tender procedures for obtaining subsoil use rights”.

<sup>67</sup> 2015-2016 EITI Report, p.39.

<sup>68</sup> According to the Law entitled “On licensing of certain types of activities”.

<sup>69</sup> 2015-2016 EITI Report, pp.33, 40.



recommendations for improvement of the legal background for licensing has not been implemented yet.<sup>70</sup>

*Technical and financial criteria:* Technical and financial criteria assessed in mining license awards are described in the report<sup>71</sup>, although the report does not clarify whether these criteria apply for both bidding process and direct negotiations, or only the former. The “Assessment of addressing corrective actions” prepared by the representatives of the CSO Coalition notes that there is no specific bylaw regulating direct negotiations in Tajikistan.<sup>72</sup> This was confirmed in stakeholder consultations.

*Identity of awardees and transferees:* Comprehensive information about recipients and duration of licences, including for those held by non-material companies, is provided in Annexes 2-4 of the EITI Report as well published on the EITI Tajikistan and the Ministry of Finance (MoF) websites<sup>73</sup>.

*Non-trivial deviations:* The main deviation from the applicable legal and regulatory framework remains the fact that, instead of bidding in line the legislation, all licences in 2015-2016 were awarded through direct negotiations. The report notes that, in recent years, licenses for the subsoil use right were mainly awarded through direct negotiations due to the ongoing amendments to the licensing legislation and in order to enforce the ban on transfers of licenses to third parties.<sup>74</sup> However, the report does not provide an assessment of such deviations. At the same time, the Government Decree 110 “On the list of subsoil areas for the mining tender”<sup>75</sup> notes two subsoil areas – Chore and Turkparida – were opened for tender in 2015. It is not clear whether the tender process was completed for these two subsoil areas and they do not seem to be included in the license register available at the EITI Tajikistan website.<sup>76</sup> No similar decrees were found for the licenses awarded in 2015-2016. Moreover, the “Analysis of legislation of the Republic of Tajikistan for compliance with EITI standards” prepared by the representatives of the CSO coalition, notes that Tajikistani legislation and the procedures for holding tenders for obtaining subsoil use rights do not include any provisions on disclosing the list of bidders.<sup>77</sup>

During stakeholder consultations, it was confirmed that, in 2015 and 2016, all licenses were awarded through direct negotiations. It was noted that while there were no criteria set for awarding licenses through direct negotiations, in many cases the same technical and financial criteria as for bidding process – technical and financial proposal, the amount of the signature bonus and social-economic investment proposal – were applied. Several stakeholders noted that direct negotiations could be used not only in cases when there was only one bidder applying for a license but also in order to ensure that experienced and well-qualified companies received licenses. Some stakeholders noted that non-trivial deviations from statutory licensing procedures were likely and considered that the current approach to licensing procedures was opaque, cumbersome and did not contribute to attracting quality foreign investment.

### Secretariat’s Assessment

The International Secretariat’s preliminary assessment is that the corrective action on license allocations has been partly addressed, and that progress in meeting Requirement 2.2 can be considered meaningful. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. The 2015-2016 EITI Report provides more detailed

<sup>70</sup> “Assessment of addressing corrective actions” (2018) prepared by the representatives of the CSO coalition, available [here](#), pp.12-13.

<sup>71</sup> Ibid, pp.38-39.

<sup>72</sup> See “Assessment of addressing corrective actions”, p.12, accessed on 23 October 2018 [here](#).

<sup>73</sup> See Unified register of licenses of companies entitled to mining in the Republic of Tajikistan and General register of licenses, accessed [here](#) and [here](#) on 23 October 2018.

<sup>74</sup> See 2015-2016 EITI Report, p.40.

<sup>75</sup> Government Decree 110 “On the list of subsoil areas for the mining tender”, accessed [here](#) on 10 April 2019.

<sup>76</sup> EITI Tajikistan website – publications section available [here](#).

<sup>77</sup> “Analysis of regulatory legal acts of the Republic of Tajikistan for compliance with EITI standards” (2014) prepared by T. Azizova and G. Ashurbekova, available [here](#), p.25, accessed in November 2018.

information on the licensing process, including on technical and financial criteria assessed in awarding licenses through bidding, and a description of the ban on transferring licenses. However, while the report highlights the main deviation that licenses in 2015-2016 were awarded through direct negotiations rather than the statutory bidding, it does not include the MSG's assessment of any other non-trivial deviations from statutory procedures in the award of licenses in 2015-2016. For example, the report does not clarify the specific technical and financial criteria assessed in the award of licenses in 2015-2016 through direct negotiations, despite these remaining unclear in the regulations.

In accordance with Requirement 2.2, Tajikistan should ensure that the statutory procedures for awarding and transferring licenses through direct negotiations, including technical and financial criteria assessed, are clearly described and publicly-available. Tajikistan should ensure that the specific licenses awarded and transferred, and the identity of license-holders be publicly accessible, alongside an assessment of any non-trivial deviations from statutory procedures for awarding and transferring licenses. To strengthen implementation, Tajikistan is encouraged to use EITI reporting as a means of commenting on the efficiency of the current licensing system.

### 3.4 Corrective action 4 (#2.3)

In accordance with Requirement 2.3.b, the EITI Council should ensure that the publicly available register or cadastre includes information about the license holder, duration of the license, coordinates of the license area and the date of application for the license. Where coordinates are not collated, the government is required to ensure that the size and location of the license area are disclosed in the license register and that the coordinates are publicly available from the relevant government agency without unreasonable fees and restrictions. The EITI Report should include guidance on how to access the coordinates and the cost, if any, of accessing the data. The EITI Report should also document plans and timelines for making this information freely and electronically available through the license register.

#### Findings from the first Validation

The first Validation concluded that Tajikistan had made meaningful progress in meeting this requirement. The 2014 EITI Report contained a list of all active extractive industries licenses, including licenses pertaining to companies that were not considered material for the purpose of EITI reconciliation. Most of the information required to be disclosed under Requirement 2.3 had been provided, except for coordinates of the license area and the date of application for the license. It was not possible to easily obtain this information from government agencies.

#### Progress since Validation

The 2015-2016 EITI Report<sup>78</sup> and Annexes 5-7 provide information on the name of license holders, dates of award, duration of the licenses and commodity produced. The information is provided for all extractive companies operating in Tajikistan and covers licenses issued before the fiscal years covered in the 2015-2016 EITI Report. This information is collected by the IA and published on the national EITI website as well websites of several government entities, such as the Ministry of Finance<sup>79</sup> and the Main Geology Department. Dates of application and coordinates of licenses are not disclosed in this register.

At the same time, the report notes that the Main Department of Geology is currently developing a mining cadastre that will include information on legal ownership of licences, date of application and award,

<sup>78</sup> See 2015-2016 EITI Report, pp.40-42, accessed on 23 October.

<sup>79</sup> Ministry of Finance website section on the EITI, accessed on 23 October [here](#).

duration of license, coordinates, commodities being produced, etc. It also highlights that, according to Article 16 provision 15 of the Law entitled “On state secrets”, disclosing information on the coordinates is currently not possible as it is considered a state secret.<sup>80</sup>

Stakeholder consultations confirmed that the development of the mining cadastre was in progress, supported by the World Bank. Delayed from 2018, the cadastre is expected to be publicly launched in 2019. A representative of the Main Department of Geology confirmed that all information for the cadastre as per Requirement 2.3.b, including the license coordinates, had already been collected and would be published as soon as the cadastre was fully developed and the new Law “On Subsoil” was adopted.

### Secretariat’s Assessment

The International Secretariat’s preliminary assessment is that the corrective action on license register(s) has not been addressed, and that progress in meeting Requirement 2.3 remains meaningful *without improvements*. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. The 2015-2016 EITI Report provides all information listed under Requirement 2.3.b for all active mining licenses in Tajikistan other than dates of application and license coordinates.

In accordance with Requirement 2.3.b, Tajikistan should maintain a publicly available register or any other cadastre system with information on all active extractives licenses, including dates of application and license coordinates. Given that the Department of Geology is currently working on the establishment of Tajikistan’s extractives cadastre system, Tajikistan EITI is encouraged to start disclosing information through this cadastre system rather than through publication of open data files (excel) on the government websites. EITI reporting could be used to provide an annual diagnostic of license data in the cadastre.

## 3.5 Corrective action 5 (#2.4)

In accordance with requirement 2.4.b, the EITI Council is required to document the government’s policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals through the EITI Report. This should include relevant legal provisions, and any reforms that are planned or underway.

### Findings from the first Validation

The first Validation concluded that Tajikistan had made meaningful progress in meeting this requirement. The Supplementary 2014 EITI Report described Production Sharing Agreements (PSA), investment agreements and concession agreements. While the 2014 EITI Report noted that contract disclosure was not practiced in Tajikistan, there was no reference to a government policy or to any legal provisions related to contract disclosure, nor any commentary on reforms underway.

### Progress since Validation

The 2015-2016 EITI Report describes types of contacts applicable in Tajikistan, together with the relevant legal background.<sup>81</sup> It notes that all subsoil users that have been granted subsoil use rights are required to sign a contract with the Main Department of Geology in Tajikistan. The rules and procedures for obtaining such contracts are detailed in the report (*see Requirement 2.2*).

<sup>80</sup> 2015-2016 EITI Report, p.44.

<sup>81</sup> Ibid, pp.45-48.

The report does not seem to clearly describe the government's policy on contract disclosure, however notes that currently there is no publicly accessible register of contracts. Only one contract (PSA) from 2008 was found to be available online.<sup>82</sup> Several stakeholders mentioned that investment agreements were publicly available, however, no specific links were provided, and the International Secretariat could not find any evidence of them being available online.

In 2017, the State Committee on investment and state property created a working group on improving the licensing system, including access to contracts.<sup>83</sup> The aim of this group is to conduct an analysis of existing legislative framework and prepare amendments which, among other issues, will cover issues of contract transparency.

During stakeholder consultations, several EITI Council's members explained that all subsoil users who hold licenses are obliged to sign an agreement. However, the license agreement includes limited information mainly covering the amount of the signature bonus and certain tax payments. At the same time, it was noted that more elaborate information and any special arrangements are usually covered in investment agreements. Stakeholders also showed different understandings of whether investment agreements included information on social obligations. While some stakeholders noted that investment agreements provided information on either the amount or share of expenses to be paid for social needs, other stakeholders noted that such agreements did not include any specific reference to social obligations.

In 2015, the report notes that contracts worth over TJS 97bn<sup>84</sup> (USD 10bn) were signed with 80 companies, with 64 companies signed in 2016. In addition to this, two concession agreements, three PSAs and three investment agreements were signed in Tajikistan by the end of 2016, of which only two investment agreements were ratified in 2015 and one concession agreement was signed in 2016<sup>85</sup>. It is also noted that one concession agreement between the government and HOS Powertech International SDN BHD was signed in 2016 through direct negotiations. Such agreements are regulated by the Law entitled "On concessions"<sup>86</sup>. In addition, the report notes that a Law entitled "On product sharing agreements"<sup>87</sup> sets the legal framework for exploration and production. The report notes that no PSAs were signed in 2015-2016 and provides a list of PSAs signed prior to 2015. The report further elaborates on number of investment agreements signed during 2015-2016.

### Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on contract disclosure has not been addressed, and that progress in meeting Requirement 2.4 remains meaningful *without improvements*. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. The updated 2015-2016 EITI Report describes the main types of agreements, notes that contracts are not currently disclosed in practise and mentions reforms that are currently underway. However, the report does not clarify the government's policy or any legal provisions related to contract disclosure.

In accordance with Requirement 2.4.b, Tajikistan is required to publicly document the government's policy on disclosure of licenses and contracts that govern the exploration and exploitation of oil, gas and minerals. This should include relevant legal provisions, and any reforms that are planned or underway. To

<sup>82</sup> Resource Contracts website, accessed [here](#) on 11 April 2019.

<sup>83</sup> 2015-2016 EITI Report, p.46.

<sup>84</sup> This amount covers signature bonuses, commercial discovery bonuses and royalties.

<sup>85</sup> 2015-2016 EITI Report, pp.46-48.

<sup>86</sup> Law "On concessions", available [here](#).

<sup>87</sup> Law "On product sharing agreements", available [here](#).

strengthen implementation, Tajikistan is also encouraged to publicly clarify the differences in contractual obligations across different contracts and investment agreements.

### 3.6 Corrective action 6 (#2.6)

In accordance with Requirement 2.6.a, the EITI Council must disclose an explanation of the prevailing rules and practices regarding the financial relationship between the government and state-owned enterprises (SOEs) and any SOE subsidiaries operating in the extractive sector. In accordance with Requirement 2.6.b, the EITI Council should ensure disclosures from the government and SOE(s) of their level of ownership in mining, oil and gas companies operating within the country's oil, gas and mining sector, including those held by SOE subsidiaries and joint ventures, and any changes in the level of ownership during the reporting period. The government should also disclose any loans provided by the state or SOEs to oil, gas and mining companies operating in the country.

#### Findings from the first Validation

The first Validation concluded that Tajikistan had made inadequate progress in meeting this requirement. While the 2014 EITI Report considered state participation in the extractive industries, it did not disclose all information provided under Requirement 2.6. It listed 15 companies with state participation noting the government's equity stake. At the same time, the Supplementary 2014 EITI Report noted that 21 companies were considered state-owned. No further explanation on this was provided about the terms attached to the government's share or any changes in ownership. It appeared that state-owned enterprises in Tajikistan were subject to the same rules and practices as other extractive companies, except companies with full government ownership pay 10% in dividends to the State budget. The Supplementary 2014 Report provided a generalized description of some financial practices between the government and SOEs according to the Law on State Enterprises. It had however not been possible to ascertain the extent to which state-owned companies received financial support from the government.

#### Progress since Validation

**Materiality:** According to the scoping study, all companies, including SOEs, with total payments of at least TJS 1m (USD 0.1m) made to the state budget were considered to be material. Additionally, the EITI Council agreed to include SOE "Naftu Gaz" to the reconciliation exercise. In total, according to the 2015-2016 EITI Report, nine out of 23 state-owned companies<sup>88</sup> were considered to be material. The report also notes that the share of state-owned enterprises in total production volumes was of 36% in 2015 and 21% – in 2016.<sup>89</sup>

**Financial relations:** The report states that all property, profit and any financial resources of SOEs belong to the state and that SOEs do not collect revenues on behalf of the government. In addition, the report notes that the government does not apply special rules for the financial relation for the SOEs<sup>90</sup>. This implies that SOEs in Tajikistan are subject the same rules as privately-owned companies.

The report lists three types of financial relations between SOEs and the government:

- SOEs' taxes and other payments to the budget and receipt of funds from the budget;
- SOEs and state off-budget funds;
- SOEs and State Committee for State Property and Investment Management of Tajikistan.

<sup>88</sup> Aprelevka, Fon-Yagnob, Naftu gaz, Nazar-Aylok, Petroleum Sugd, Sementi Tochik, Talko Resurs, Tilloy Tochik, Zeravshan.

<sup>89</sup> 2015-2016 EITI Report, p.107.

<sup>90</sup> Ibid, p.107.

According to Tajik legislation<sup>91</sup> and as noted in the 2015-2016 EITI Report, wholly state-owned companies are required to pay 10% in dividends to the state and local budgets. In addition, the report notes that all joint-stock companies with a state share of 100% or less should agree on the payment of dividends at least once a year<sup>92</sup>. In practice, the report notes that most of the companies had no or low profit and, therefore, the payment on net profit was insignificant<sup>93</sup>. The report does not provide information about the dividends of specific SOEs, disaggregated by company.

Funding related to the implementation of production targets and enterprise development plan is made from the revenues of the sale of products. In addition, the report notes that a particular amount of government funding for SOEs is allocated through the annual budgetary process<sup>94</sup>. In particular, TJS 91.5m (USD 0.1m) was allocated from the republican budget to three SOEs for the development of the extractive sector in 2015 and TJS 91.3 (USD 0.1m) – in 2016. In addition, subsidies provided to SOEs engaged in geological exploration are listed in Table 28.<sup>95</sup>

The report does not comprehensively describe the prevailing rules regarding the financial relationship between the government and state-owned enterprises, except for explaining regulations on reinvestment by SOEs. At the same time, the report comments on the existing practises and notes that the government did not withhold earnings from state enterprises, SOEs were not engaged in third-party financing and no reinvestment practises were observed during the reporting period.<sup>96</sup>

**Government ownership:** The EITI Council has discussed the definition of state-owned enterprises (SOEs) in August 2017<sup>97</sup> and agreed to consider all enterprises with state share 50% +1 as SOEs. The report explains the types of SOEs<sup>98</sup>, according to the national legislation, and provides an overview of the state's equity share in 26 SOEs that work in the extractive industries, in 23 of which the government holds majority of shares.<sup>99</sup> Twenty-two of 23 SOEs are 100% state-owned and only one – Ltd "Aprelevka" – has 51% of state equity.

The report does not comment on the terms attached to the equity stake of "Aprelevka" (51%). During stakeholder consultations, it was clarified that the net profit is distributed according to participating share – 51% government and 49% private investors. The main decision-making body is the board of directors that decides on reinvestment and net profit distribution.

The report lists only one SOE – "Angishti Tochik" – that has subsidiaries. The updated version of the report notes that the company owns five wholly-owned subsidiaries while the first version of the report noted only two subsidiaries.<sup>100</sup> During stakeholder consultations, it was noted that this difference was due to the fact that there is no publicly available information about subsidiaries and that several government officials shared comments after the first version of the report was shared. The report does not describe financial relationship between the parent company and its subsidiaries, nor the terms associated with SOE equity in each.

**Ownership changes:** The report notes that, according to the Economic court, there was a change of ownership in OJSC "Adrasman" (mining company) in 2016, whereby the government received 100% of

<sup>91</sup> See Law #197 "On other obligatory payments to the budget".

<sup>92</sup> See Law "On joint-stock companies".

<sup>93</sup> 2015-2016 EITI Report, p.111.

<sup>94</sup> Ibid, p.108.

<sup>95</sup> Ibid, p.109.

<sup>96</sup> Ibid, pp.109-110.

<sup>97</sup> MSG meeting minutes from 10 August 2017, accessed [here](#) on 11 December 2018.

<sup>98</sup> 2015-2016 EITI Report, pp.97-111.

<sup>99</sup> Ibid, pp.98-99.

<sup>100</sup> Ibid, p.103.

shares.<sup>101</sup> While the report provides only limited information on this case, it was confirmed during stakeholder consultations that no consideration was paid in the change in ownership. It was also noted that the failure to implement investment agreement because of bankruptcy of the company could have been a reason for this change of ownership, although this was not clear in the report.

Loans and guarantees: The report notes that no guarantees or loans were provided from the government to the SOEs during the reporting period. The report also mentions the state policy on providing grants in natural form, however it is unclear whether any grants in natural form were provided during the reporting period. In addition, the report provides an overview of tax and customs exemptions for investors and notes several examples of companies that were exempted of tax and customs payments.<sup>102</sup> The report does not comment on the existence of any loans or guarantees from the SOEs to extractive companies. However, as noted above most of the companies were not profitable or had low profit in 2015-2016 and, therefore, it is unlikely that SOEs have provided such loans.

### Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on state participation has been partly addressed, and that progress in meeting Requirement 2.6 can be considered meaningful with considerable improvements. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. The 2015-2016 EITI Report describes prevailing practices regarding the financial relationship between the government and state-owned enterprises (SOEs) in the extractive industries. However, the report does not comprehensively describe the statutory financial relations between SOEs and the government, aside from the rules governing SOEs' reinvestments. The report provides information on the government's level of ownership in mining, oil and gas companies operating in Tajikistan, including on changes in the level of ownership in OJSC "Adrasman" during the reporting period, although the comprehensiveness of these disclosures is unclear. The report includes an assessment of loans and guarantees from the government to SOEs, but not from SOEs (nor government) to companies operating in the mining, oil and gas sector.

In accordance with Requirement 2.6.a, Tajikistan must disclose an explanation of the prevailing rules regarding the financial relationship between the government and state-owned enterprises (SOEs) and any SOE subsidiaries operating in the extractive sector. In accordance with Requirement 2.6.b, Tajikistan should ensure that the terms attached to the state (and any SOE's) equity stake in mining, oil and gas companies is publicly disclosed, including their level of responsibility to cover expenses at various phases of the project cycle, e.g., full-paid equity, free equity, carried interest, are disclosed. Where there have been changes in the level of government and SOE(s) ownership during the EITI reporting period, the government and SOE(s) are expected to disclose the terms of the transaction, including details regarding valuation and revenues. Where the government and SOE(s) have provided loans or loan guarantees to mining, oil and gas companies operating within the country, details on these transactions should be disclosed.

## 3.7 Corrective action 7 (#3.2)

In accordance with requirement 3.2, Tajikistan must disclose production data for all commodities produces during the fiscal year covered by the EITI Report, including total production volumes and the value of production by commodity and region.

<sup>101</sup> 2015-2016 EITI Report, p.99.

<sup>102</sup> Ibid, p.110.

## Findings from the first Validation

The first Validation concluded that Tajikistan had made inadequate progress in meeting this requirement. Requirement #3.2 stipulates that implementing countries must disclose production values and volumes by commodity. The 2014 EITI Report provided production volumes for oil, gas, gold, silver and coal, but not for other metals and minerals. Given that the State Statistics Agency collects production data on all commodities produced on a monthly basis, Validation could not confirm why the data was not disclosed. The Supplementary 2014 EITI Report showed production value by region without defining commodities being produced and their value.

## Progress since Validation

The 2015-2016 EITI Report includes information on the volumes and values of production for coal, oil, gas, gold, silver, lead, zinc, antimony, copper and non-energy materials for 2015 and 2016.<sup>103</sup> Information on oil, gas, coal as well as non-energy materials is disaggregated by region. The report also notes that most of gold is produced in the north of the country. The report does not comment on the main regions of production for silver, lead, zinc, antimony, copper. The production data included in the report has been provided by the Agency of Statistics under the Office of the Presidency and by the Ministry of Industry. The general description of regional production distribution of these minerals and precious can be found in the directory of companies<sup>104</sup> prepared by the CSO coalition and in other online sources<sup>105</sup>.

The first version of the 2015-2016 EITI Report did not include information on production of silver and gold given that, according to the existing legislation, it was considered to be a state secret. However, on 17 March 2018 Presidential Decree 1040 “On declassifying information on the production, export and import of precious metals and stones for 2015-2016” was adopted, allowing for disclosure of production and export data for gold and silver. In August 2018, the 2015-2016 EITI Report was updated with the missing data on gold and silver production volume and value and republished online, clearly highlighting the new data. The report provides production data for coal, oil, gas and non-energy materials (e.g. sand, salt, etc.) disaggregated by region, and notes that gold is mainly produced in the north. However, production data on ores (lead, zinc, antimony, copper) and silver is not disaggregated by region.

## Secretariat’s Assessment

The International Secretariat’s preliminary assessment is that the corrective action on production data has been addressed, and that progress in meeting Requirement 3.2 can be considered satisfactory. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. The updated 2015-2016 EITI Report discloses total production volumes and the values for 2015 and 2016 by commodity. Given that the location of production is provided for most minerals and information on the production of ores and silver by region can be accessed online, the Secretariat considers that most of the mineral production in 2015-2016 was disaggregated by region.

To strengthen implementation, Tajikistan is strongly encouraged to publicly disclose total production volumes and the value of production for each commodity produced, disaggregated by region of production. Tajikistan may wish to use EITI reporting as an annual diagnostic of the frequency and reliability of official extractives production data with a view to informing public debate.

<sup>103</sup> 2015-2016 EITI Report, pp.88-92.

<sup>104</sup> Directory of companies is available [here](#) (currently unavailable) and [here](#).

<sup>105</sup> Statistics on production volume and value for mineral, available [here](#) and [here](#), accessed in April 2019.



### 3.8 Corrective action 8 (#3.3)

In accordance with requirement 3.3, Tajikistan must disclose export data for all commodities exported during the fiscal year covered by the EITI Report, including total export volumes and the value of exports by commodity and by region of origin.

#### Findings from the first Validation

The first Validation concluded that Tajikistan had made inadequate progress in meeting this requirement. Requirement #3.3 stipulates that implementing countries must disclose export values and volumes by commodity. The 2014 EITI Report did not provide value of mineral resources export by commodity, however it estimated total export value. Export volume was disclosed partially, covering only gold, zinc, natural sands, lead and antimony.

#### Progress since Validation

The 2015-16 EITI Report includes export volumes and values for coal, gold, silver, precious stones, lead, zinc, antimony, copper for 2015-2016<sup>106</sup>. As noted above (*see Requirement 3.2*), the information on gold and silver exports was added to the updated report when the Presidential Decree on declassifying information on the production, export and import of precious metals and stones for 2015-2016 was adopted. In 2016, export value of gold was equal to over USD 98m and silver – over USD 1m. The report also includes general information on the main destination of exports, but does not disaggregate information by region of origin, except for providing the description of the key companies producing lead, zinc, antimony for export.

#### Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on export data has been partially addressed, and that progress in meeting Requirement 3.3 can be considered meaningful progress with considerable improvements. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. The updated 2015-2016 EITI Report discloses total export volumes and values by commodity, including gold and silver, during the two fiscal years covered by the report. However, the report neither provides export data by region of origin, nor links to where this information can be found.

In accordance with requirement 3.3, Tajikistan must disclose export data for the fiscal year covered by the EITI Report by state/region of origin.

### 3.9 Corrective action 9 (#4.1)

In accordance with Requirement 4.1, the EITI Council should ensure adherence to the standard TORs for Independent Administrators. Specifically, the EITI Council should:

- a) Undertake further scoping work in order to better define the material revenue streams and reporting entities ahead of the 2015 EITI Report. Ensure that future reporting templates are developed in consultation with the Independent Administrator.
- b) In accordance with Requirement 4.1.c and the standard TOR for Independent Administrators, provide a comprehensive reconciliation of government revenues and company payments including ensuring that all companies making material payments and all government entities receiving material revenues comprehensively disclose these payments and revenues. The EITI

<sup>106</sup> 2015-2016 EITI Report, pp.93-96.

- Council should also ensure that the Independent Administrator identifies any discrepancies (including offsetting discrepancies) in accordance with the agreed scope and clarifies the causes of any significant discrepancies or other gaps in the reported data.
- c) In accordance with the standard TOR for Independent Administrators, ensure that the Independent Administrator provides an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested information. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, including naming any entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on the comprehensiveness of the report.
  - d) In accordance with the standard TOR for Independent Administrators, ensure that the Independent Administrator undertakes a review of the prevailing auditing and assurance practices among companies and government entities is undertaken prior to commencing data collection, and provide an assessment on the comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided.
  - e) Where previous EITI Reports have recommended corrective actions and reforms, the Independent Administrator should comment on the progress in implementing those measures.

### Findings from the first Validation

The first Validation concluded that Tajikistan made meaningful progress in meeting this requirement. The 2014 EITI Report included a materiality threshold for payments and identifies 14 companies, selected for reconciliation. Although neither the report nor minutes of the EITI Council meetings provided a clear rationale behind the selected materiality threshold, revenue streams and scope of extractive companies requested to report, it appeared from stakeholder consultations that the key revenue streams and reporting entities had been included in the report. The report contained a description of some, but not all revenue streams.

More broadly, the EITI Report identified that a key challenge was that it was not clear which government entities keep records of non-tax and non-customs payments. This resulted in a number of revenue streams not being reconciled. It also highlighted a need for wider government reform in terms of record keeping of receipts from the extractive sector. There was no clear assessment of the comprehensiveness of EITI reporting by the Independent Administrator, and full government disclosure of all revenues, including revenues from companies below the materiality threshold, had not been provided.

### Progress since Validation

Tajikistan EITI published the 2015-2016 EITI Report in December 2017 and published an updated version in August 2018 including updated production and export data on precious metals. In December 2016, the scoping study was approved, covering thresholds, reporting companies and revenue streams.

Materiality threshold for revenue streams: The 2016 Scoping Study states that the EITI Council suggested to include all tax and non-tax payments, with a materiality threshold of zero. The 2015-2016 EITI Report lists 41 material revenue streams.<sup>107</sup> The report explains that the revenue streams list includes all tax and non-tax payments (25 payments) in accordance with national codes on tax and custom, other significant payments from the extractive industries, that are recorded in the State Budget (13 payments), and

<sup>107</sup> See 2015-2016 EITI Report, pp. 133-134, available [here](#) in Russian.

additional expenses of companies, such as support of education, social infrastructure and quasi-fiscal expenditures (3 payments).

**Descriptions of material revenue streams:** A list of 41 revenue streams is provided in the EITI Report.<sup>108</sup> The report provides definitions for all tax payments and excise duty<sup>109</sup>, but not for other significant payments and additional payments of companies (16 other revenues). Stakeholder consultations and the IA's comments in the report confirm that the EITI Council decided not to exclude any revenues streams.

**Materiality threshold for companies:** Based on the 2016 EITI Scoping Study<sup>110</sup>, conducted in December 2016, the EITI Council agreed on a threshold for selecting companies of TJS 1m in total payments per company in 2015-16, resulting in a list of 39 companies. The 2015-2016 EITI Report confirms the EITI Council's approval of the materiality threshold of TJS 1m<sup>111</sup>. The report explains that, together with the IA, the EITI Council reviewed the scope of reporting companies, removed 14 companies from the list and added four gold mining companies (Co-operative "Artel Odina", Talco Resource, Baraklati Istiklol and Guli Murod) that had not previously been included into the scope<sup>112</sup>. Minutes of the EITI Council's meeting on 10 August 2017<sup>113</sup> clarify that the EITI Council members identified 10 companies as those that had main activities in sectors other than extractives and four companies that officially refused to participate in the reporting<sup>114</sup>. The final list of 29 reporting companies is provided in the EITI Report<sup>115</sup>. The report also provides unilateral government's disclosure of the revenues of from 14 companies<sup>116</sup> that were excluded from the scope, amounting at TJS 115 m (USD 14 m) or 10,9% of total extractive industries revenues.

**Material companies:** The report states that the scoping study undertaken in 2016 identified 39 material companies (TJS 1 m threshold). Based on this recommendation, 39 companies were included into the scope of EITI reporting. However, during data collecting, it was discovered that 10 companies out of 39 were not directly engaged in the extractive industries and four companies officially refused to participate in reconciliation. For instance, one of the companies was operating a local airport and held an old extracting license for rubble. Other companies appeared to be in mid-stream production, rather than upstream extraction. On 10 August 2017, the EITI Council reviewed the cases of 14 companies and decided to exclude them from the list. The IA recommended adding four gold-producing companies, that had not been previously included in the scope, to the reporting list, in particular Co-operative "Artel Odina", Talco Resource, Baraklati Istiklol and Guli Murod. The EITI Council's discussion and decision are documented in the meeting minutes<sup>117</sup>. The final list of 29 reporting companies is provided in the EITI Report<sup>118</sup>. The report also provides unilateral government's disclosure of the revenues of from 14 companies<sup>119</sup> that were excluded from the scope, amounting at TJS 115 m (USD 14 m) or 10,9% of total extractive industries revenues. The target reconciliation coverage in light of materiality decisions was 87% of total government extractives revenues in 2015-16.<sup>120</sup>

During stakeholder consultations, the EITI Council confirmed their decision to remove 14 companies and to add four companies that had not been considered previously. The Independent Administrator

<sup>108</sup> 2015-2016 EITI Report, pp. 136-137.

<sup>109</sup> Ibid, pp.28-29

<sup>110</sup> 2016 EITI Scoping Study, available here in Russian

<sup>111</sup> Ibid, p. 129.

<sup>112</sup> Ibid, p.131

<sup>113</sup> EITI Council meeting minutes, 10 August 2017, available [here](#) in Russian.

<sup>114</sup> See 2015-2016 EITI Report, pp. 155-156, available [here](#) in Russian.

<sup>115</sup> Ibid, pp. 130-131.

<sup>116</sup> Ibid, pp. 156-157.

<sup>117</sup> EITI Council meeting minutes, 10 August 2017, available [here](#) in Russian.

<sup>118</sup> See 2015-2016 EITI Report, pp. 130-131.

<sup>119</sup> Ibid, pp. 156-157.

<sup>120</sup> Ibid, p. 129.

explained that during the data collection phase, they discovered that 10 companies from 39 identified during the scoping phase by another consultant, had their primary activities in other than extractives sectors, however held licenses for extraction of construction materials. The IA noted that adding four gold mining companies was their recommendation and that it was unclear why these four companies were not included into the reporting scope. The 2016 Scoping Study provides a list of 222 extractive companies that hold a participating interest in an exploration or production oil, gas or mining license or contract, however the list does not include the four companies, suggested by the IA.

Material company reporting: Of the 29 material companies, two companies did not report. However, the report provides government's unilateral disclosure of revenues for these two companies<sup>121</sup>. The IA provides explanations for the discrepancies, but does not comment on comprehensiveness of disclosures.

Material government entities: According to the 2016 EITI Scoping Study<sup>122</sup>, there are four government entities that collect revenues from the extractive industries.

Government reporting: The full government disclosure is provided. The 2015-2016 EITI Report confirms that four government entities reported<sup>123</sup>. The report provides disaggregation by revenue stream and by company, but not by individual government entity.

Discrepancies: The IA investigated discrepancies and presented explanations for discrepancies where applicable. According to the report, discrepancies in 2015 and 2016 amounted at 11,88% and 1,02% accordingly. The report concludes that, while the nature of discrepancies varied, they did not raise concerns on the comprehensiveness of the reconciliation. The most common reasons were that some companies provided aggregated data on certain revenues such as fines as government payments, had difference in accounting systems between government and companies and the lack of data from non-reporting companies.

Full government disclosure: The 2015-2016 EITI Report presents full unilateral government disclosure for all revenue streams, including from non-material companies, disaggregated by material revenue stream.

### Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action related to comprehensiveness of reporting has been partly addressed, and that progress in meeting Requirement 4.1 can be considered meaningful *without considerable improvements*. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. The report provides descriptions for some, but not all, material revenue streams. While the decisions related to the materiality of companies and revenue streams are clearly set out and documented, the adjustments in reporting companies after the start of data collection raises serious questions over the comprehensiveness of the reconciliation, as well as of broader government record-keeping systems. The report provides disaggregation by revenue stream, although not explicitly by individual government entity. The IA provides explanations for discrepancies, but does not comment on the comprehensiveness of disclosures or materiality of omissions of payments from non-reporting companies.

In accordance with Requirement 4.1, Tajikistan should ensure that the scoping study is based on a comprehensive list of all extractive companies operating in the extractive industries in Tajikistan. Tajikistan should ensure that the materiality threshold for selecting companies ensures that all material

<sup>121</sup> 2015-2016 EITI Report, pp. 156-157.

<sup>122</sup> See 2016 EITI Scoping Study, p. 14.

<sup>123</sup> See 2015-2016 EITI Report, p. 134, available [here](#) in Russian.

companies that could affect the comprehensiveness of EITI reporting be included in the scope of reconciliation, and ensure that all material companies participate in EITI reporting. Tajikistan should ensure that the report provides an assessment of the materiality of payments from non-reporting companies and their impact on the comprehensiveness of the reconciliation. Tajikistan may wish to consider revisiting its materiality threshold for selecting extracting companies to strike a balance between the comprehensiveness of disclosures and the quality of reporting (*see Requirement 4.9*).

### 3.10 Corrective action 10 (#4.2)

In accordance with Requirement 4.2, Tajikistan is required to disclose the revenues collected in-kind through disclosing the volumes sold and revenues received. Specifically, this should include any gold production by SOEs, transfer of gold to the Central Bank and revenues from gold sales, if any.

#### Findings from the first Validation

The first Validation concluded that Tajikistan had no progress in meeting this requirement. The 2014 EITI Report stated that there were no in-kind payments made. The stakeholder consultation could not identify other in-kind payments except for the state-owned unitary enterprise “Tilloy Tochik” that produced gold. There was no evidence that the MSG has discussed this issue, and the EITI Report wrongly recorded that there were no in-kind payments.

#### Progress since Validation

The updated 2015-2016 EITI Report explains that the Ministry of Finance collects gold in kind from the SOE Tilloy Tochik as government revenues<sup>124</sup>. According to the report, the state enterprise Tilloy Tochik produces gold and transfers it in-kind to the State Treasury, under the oversight of the Ministry of Finance. The report discloses the volumes of gold produced by Tilloy Tochik in 2015 (452,1 kg) and 2016 (492,4 kg) and its production value in 2015 (USD 15.5m) and in 2016 (USD 20.2m). The report states that the gold from Tilloy Tochik was not sold in 2015-2016<sup>125</sup>. The report notes that the government fully funds the SOE, in particular in 2015 the company received USD 11.1m (TJS 75.2m) and in 2016 USD 9.5m (TJS 75m).<sup>126</sup> The report does not explain whether the government undertakes other transactions with the collected gold. During stakeholder consultations, EITI Council representatives confirmed that they explored the issue of in-kind payments with the Ministry of Finance and that the EITI Report provided all available information on the issue. Government representatives confirmed that Tilloy Tochik produced gold for the State Treasury to increase its gold reserves. Representative of the Ministry of Finance confirmed that the company was fully state-funded and did not receive income from its gold production, which was entirely transferred to the Treasury. No other payments, aside of in-kind gold contributions, were made by Tilloy Tochik. The Ministry of Finance also confirmed that there were no other state-owned enterprises that submitted in-kind payments to the government. Civil society representatives confirmed that they were satisfied with the EITI findings under Requirement 4.2.

#### Secretariat’s Assessment

The International Secretariat’s preliminary assessment is that the corrective action related to disclosure of the revenues collected in-kind has been addressed, and that Requirement 4.2 is considered not applicable to Tajikistan. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. The 2015-2016 EITI Report clarified that the government collects gold in-kind from Tilloy Tochik for the State treasury depository, but that the

<sup>124</sup> 2015-2016 EITI Report, p.108

<sup>125</sup> Ibid, p.104

<sup>126</sup> Ibid. p. 103.

Treasury holds this gold rather than selling it to a third party. There are thus no proceeds from the sale of the gold collected in-kind. Nonetheless, volumes of transfers of gold and their value based on market prices are disclosed for the reporting period.

### 3.11 Corrective action 11 (#4.3)

In accordance with Requirement 4.3, the EITI Council and the Independent Administrator are required to consider whether there are any agreements or sets of agreements involving the provisions of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities. To be able to do so, the EITI Council and the Independent Administrator need to gain a full understanding of the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state, the value of the balancing benefit stream, and the materiality of these agreements relative to the conventional contracts. Where the multi-stakeholder group concludes that these agreements are material, the multi-stakeholder group and the Independent Administrator are required to ensure that the EITI Report addresses these agreements, providing a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams.

#### Findings from the first Validation

The first Validation concluded that Tajikistan had made inadequate progress in meeting this requirement. Infrastructure expenditures were part of “payments for social spending” required by law or under contract provisions and can be done in “in exchange for exploration and production of oil, gas, or participation in the mining industry”. These payments were included in the revenues stream line 40 on “supporting social infrastructure”. The 2014 EITI Report concluded that infrastructure expenditures were not substantial in 2014 and noted that there was no responsible public entity that had information on these payments.

The EITI Council meetings minutes did not provide evidence on discussion around materiality of infrastructure provisions and barter arrangements. The nature of these infrastructure provisions, the amounts and parties involved were unclear. The Board considered that there was a need for the EITI Council to undertake further work before ascertaining whether barter arrangements existed would be possible.

#### Progress since Validation

The updated 2015-2016 EITI Report confirms that there were no barter agreements concluded during the reporting period. A revenue stream related to “supporting social infrastructure” is included into the 2015-2016 EITI Report as a voluntary social expenditure that amounted at TJS 6m (USD 777k) in 2016. The report explains that the government can enter into barter agreement with foreign investors. The report notes that there are three investment agreements related to extractive industries, in particular with ‘Tajik-China gornopromyshlennaya kompaniya’ LLC, ‘Chungtsai Mokhir Tsement’ LLC and ‘Tajikistan-China’ gas pipeline. According to the agreements, the above-mentioned companies were exempted from paying VAT and custom payment for imported goods, listed in their respective investment agreements.<sup>127</sup> The EITI Council meeting minutes from 29 June 2017<sup>128</sup> confirm that the members discussed the corrective action related to infrastructure and barter agreements in consultation with representatives from the Ministry of Finance, Ministry of Energy and State Committee on Investment. The government representatives explained that infrastructure and barter agreements in the extractive industries are not mandated by law,

<sup>127</sup> 2015-2016 EITI Report, p. 109.

<sup>128</sup> EITI Council meeting minutes, available [here](#) in Russian, accessed in November 2018.

neither reflected in investment agreements. The representative from the Main Geology Department explained that license agreements do not include provisions on infrastructure, barter and social payments. During stakeholder consultations, some company representatives considered that their contracts did not include provisions on infrastructure, barter and social payments. Government representatives confirmed that license contracts did not include the above-mentioned provisions.

### Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action related to infrastructure and barter agreements has been addressed, and that Requirement 4.3 can be considered not applicable to Tajikistan. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. The EITI Council comprehensively reviewed the legal framework and practice on infrastructure provisions and barter agreements in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities in Tajikistan. The government and extractive companies shared the terms of the relevant investment agreements, disproving that infrastructure and barter agreements in the extractive industries were in force in Tajikistan.

To strengthen implementation, Tajikistan is encouraged to revisit its assessment of the existence and materiality of barter arrangements and infrastructure provisions covering such types of transactions.

## 3.12 Corrective action 12 (#4.5)

In accordance with Requirement 4.5, the EITI Council must ensure that the reporting process comprehensively addresses the role of state-owned enterprises (SOEs), including material payments to SOEs from oil, gas and mining companies, and transfers between SOEs and other government agencies.

### Findings from the first Validation

The first Validation concluded that Tajikistan had made inadequate progress in meeting this requirement. The 2014 EITI Report did not clearly describe the role of state-owned enterprises beyond noting that SOEs were subject to the same rules and practices as any other company. SOEs with 100% stake paid 10% of their income in dividends to the State's budget. The 2014 EITI Report did not cover all SOEs. Only three SOEs (Ltd. Joint Venture Zarafshan, STK LLC Aprelevekka and JV Petroleum Sughd) were included in the scope of the report. It was unclear why the other SOEs were not included in the scope. It was not possible to ascertain whether all financial transfers between government and SOEs have been disclosed.

### Progress since Validation

The updated 2015-2016 EITI Report lists 23 SOEs<sup>129</sup> that operate in the extractive industries in Tajikistan (see Requirement 2.6). The report clarifies that SOEs do not collect revenues from other extractive companies on behalf of the government. It notes that SOEs pay dividends to the government. The report notes that SOEs fully-owned by the government are required to pay 10% of net profits annually as dividends to government. The IA comments that according to the data on revenue payments received from the Tax Committee, wholly state-owned enterprises had small revenues and thus the EITI Council agreed that the 10% net profit pay was insignificant<sup>130</sup>. According to the reconciliation, the total value of dividends paid by the 7 SOEs (Tilloy Tojik, Fon-Yagnob, Nazar-Ailok, Naftu Gas, Sementi Tochik OJSC and Aprelevka LLC), above TJS 1m materiality threshold, was TJS 15,9m in 2015 (USD 2m) and TJS 11,1m in

<sup>129</sup> See 2015-2016 EITI Report, pp. 101-102, available [here](#).

<sup>130</sup> Ibid, p.111

2016 (USD 1,18m), which constitutes for 11,9% and 8,9% respectively of total government revenues from the extractives<sup>131</sup>.

The report provides figures for the state budget funding to two SOEs (Tilloy Tojik and Nafta Gaz) in 2015 and 2016<sup>132</sup> for exploration and geological work. Table 25 (p.112) lists subsidies to SOEs engaged in exploration activities under the Main Department of Geology. The report explains<sup>133</sup> that no guarantees or loans were provided during the reporting period. The report states that according to the information provided by the Ministry of Finance, SOEs did not hold re-investment operations in 2015-2016.

### Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action related to SOE transactions has been partly addressed, and that progress in meeting Requirement 4.5 can be considered meaningful with considerable improvements. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. The 2015-2016 EITI Report confirms that SOEs do not collect revenues from other extractive companies on behalf of the government. The report discloses details of dividends paid by 7 material SOEs operating in the extractive industries. The 10% net profit pay was below EITI Council's materiality threshold and thus was not disclosed.

In accordance with Requirement 4.5, Tajikistan must ensure that the reporting process comprehensively addresses transfers between SOEs and other government agencies, in particular 10% net profit pay and Treasury transfers to SOEs, including comprehensively reconciling such transfers where material. The MSG should review the materiality of net profit pay and document its decision.

### 3.13 Corrective action 13 (#4.9)

In accordance with Requirement 4.9.b.iii and the standard Terms of Reference and the 'agreed upon procedure for EITI Report' endorsed by the EITI Board, the EITI Council should:

- a) examine the audit and assurance procedures in companies and government entities participating in the EITI reporting process, and based on this examination, agree what information participating companies and government entities are required to provide to the Independent Administrator in order to assure the credibility of the data in accordance with Requirement 4.9. The Independent Administrator should exercise judgement and apply appropriate international professional standards in developing a procedure that provide a sufficient basis for a comprehensive and reliable EITI Report. The Independent Administrator should employ his /her professional judgement to determine the extent to which reliance can be placed on the existing controls and audit frameworks of the companies and governments. The Independent Administrator's inception report should document the options considered and the rationale for the assurances to be provided.
- b) Ensure that the Independent Administrator provides an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested assurances. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, including naming any entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on the comprehensiveness of the report.

<sup>131</sup> 2015-2016 EITI Report, pp.164-165

<sup>132</sup> Ibid, pp.101-109

<sup>133</sup> Ibid, p.113



- c) The EITI Council should make sure that future reporting exercises set an adequate timeframe for reporting entities to understand and provide the necessary data, and for the IA to complete its work.

### Findings from the first Validation

The first Validation concluded that Tajikistan made meaningful progress in meeting this requirement. The EITI Council had agreed ToRs for the IA for the 2014 EITI Report that were consistent with the standard ToRs for IA issued by the EITI Board, and appointed an IA, BDO. Although it was the Tender Commission of the MoF that had the formal mandate to appoint the IA, the EITI Council was consulted. The minutes of the EITI Council meetings did not contain any discussion on the reporting templates. However, the Validation understood that the templates were approved by the Council prior to data collection.

The report outlined the procedures for assurances such as signatures and seals of a senior official or top manager, that seemed to be followed by all reporting companies and state bodies. However, the 2014 EITI Report did not indicate the level of compliance with these procedures from reporting government entities and companies. In addition, it did not seem that quality assurances were based on a review of existing auditing requirements and practices among companies and government entities. The final report resulted in several discrepancies that were not feasible to resolve.

Finally, although the EITI Council agreed to appoint a working group to prepare the contextual information, there was a potential conflict of interest in that some of the working group members who were also EITI Council members received payments for their contributions to the working group. Validation considered that such practices and potential conflict of interests ought to be addressed in the future.

### Progress since Validation

*Terms of Reference and procurement of the Independent Administrator:* The EITI Council approved the ToRs for the IA for the 2015-16 EITI Report on 30 January 2017<sup>134</sup>. The ToRs are in accordance with the standard ToRs approved by the EITI Board. The IA's ToRs, evaluation of bids and selection of the winning bid were all submitted to the World Bank for no-objection approval. The procurement for the IA was undertaken in accordance with the World Bank's procedures. The successful bidder was BDO and after discussing on 31 March 2017 the EITI Council approved BDO as the next IA. The decision is documented in MSG meeting minutes.<sup>135</sup> The EITI Council conducted a workshop on EITI reporting process for stakeholders, in particular extractive companies, where the reporting templates were discussed and recommendation for improvement collected.<sup>136</sup> The EITI Council meeting minutes confirm that the IA consulted with the members regarding reporting templates and included their recommendations.<sup>137</sup>

*Review of audit practices:* The report provides a summary of the IA's review of audit practices of material government entities and for companies.<sup>138</sup> The government entities are audited by the Chamber of Accounts. The MoF is responsible for conducting internal audit for the government entities and SOEs under its supervision, although the report does not list the specific government entities that are audited by the MoF. The IA notes that the government's audited financial statements for 2015-2016 are not publicly accessible, however their summaries can be accessed on the website of MoF<sup>139</sup>. The report

<sup>134</sup> EITI Council meeting minutes, 30 January 2017, available [here](#) in Russian, accessed in November 2018.

<sup>135</sup> EITI Council meeting minutes, 31 March 2017, available [here](#) in Russian, accessed in November 2018.

<sup>136</sup> EITI Council workshop summary, 7 April 2017, available [here](#) in Russian, accessed in December 2018.

<sup>137</sup> EITI Council meeting minutes, 14 June 2017, available [here](#) in Russian, accessed in December 2018.

<sup>138</sup> See updated 2015-2016 EITI Report, pp. 142-143, accessed [here](#) in November 2018.

<sup>139</sup> Website of the Ministry of Finance of Tajikistan, accessed [here](#) in November 2018.

explains that companies are not mandated to undertake external audit, and Section 3.4 of the report provides an overview of whether the companies undertook financial audit for the years under review. The IA confirms that the companies were asked to notify whether they undertook external audit and share links to financial statements if available. According to the table (pp.186-187), only one company ('Talko Resurs' LLC) had its external financial audit in 2015, and one company (Tilloy Tochik) in 2016, with neither set of financial statements publicly-accessible.<sup>140</sup> However, under the report's recommendations, the IA stresses the need for reforms regarding external financial audits of companies, to bring them in line with international standards.

**Assurance methodology:** Based on the 2016 EITI Scoping Study's review of audit and assurance and its recommendations, the EITI Council agreed to require assurance for the reporting templates, including a sign-off letter from senior government officials and company management.<sup>141</sup> The report describes the methodology for the reconciliation of company payments and government revenues, and demonstrates the application of international professional standard<sup>142</sup>.

**Confidentiality:** The 2015-2016 EITI Report refers to the IA's work being conducted on the basis of ISRS 4400 on engagements to perform agreed upon procedures regarding financial information, which implies that adequate confidentiality provisions were put in place although this is not explicitly stated in the report.

**Reconciliation coverage:** The reconciliation covered 87% of government extractives revenues in 2015-16 given the materiality decisions and omissions from non-reporting companies. However, the report does not provide sufficient data on the final reconciliation coverage in light of reporting omissions.

**Assurance omissions:** The 2015-2016 EITI Report confirms that sign-off letters were submitted by all four government entities and by all companies that submitted reporting templates.<sup>143</sup> During stakeholder consultations, the IA confirmed that all reporting entities provided reporting template signed by senior managers/officials.

**Data reliability assessment:** The report describes some of the causes of discrepancies but does not provide an assessment from the IA on the comprehensiveness and reliability of the financial data presented. The report includes a summary of the work performed by the IA and the limitations of the assessment provided. Total discrepancies amount to 11.88% in 2015 and 1.2% in 2016.<sup>144</sup>

**Sourcing of information:** All data appears to be consistently sourced throughout the 2015-2016 EITI Report. The IA, BDO, is the author of the contextual information.

**Summary tables:** The IA prepared summary data tables for the 2015-2016 EITI Report produced in line with provisions of the IA's ToRs, available on the Tajikistan page of the global EITI website<sup>145</sup>.

**Recommendations:** The report provides recommendations for strengthening the reporting process in future, including a recommendation regarding audit practices and reforms needed to bring them in line with international standards. The IA comments on extractive sector reforms related to strengthening the impact of implementation of the EITI on natural resource governance<sup>146</sup>. The report comments on the progress in implementing recommendations from the previous report.

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<sup>140</sup> 2015-2016 EITI Report, pp. 186-187, available [here](#).

<sup>141</sup> Ibid. p.145

<sup>142</sup> Ibid. pp.129-135

<sup>143</sup> Ibid. p.146

<sup>144</sup> Ibid, pp. 143-144.

<sup>145</sup> EITI Tajikistan country page, available [here](#).

<sup>146</sup> 2015-16 EITI Report, pp. 188-192.

## Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action related to data reliability has been partly addressed, and that progress in meeting Requirement 4.9 can be considered meaningful with considerable improvements. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. In accordance with Requirement 4.9, the reconciliation of payments and revenues has been undertaken by an IA, appointed by the EITI Council, and applying international professional standards. The IA and the EITI Council agreed ToRs for the production of the 2015-16 EITI Report consistent with the standard ToRs and agreed upon procedures issued by the EITI Board, and applied this ToRs and procedures in practice. The report provides a summary of the IA's review of audit practices of material government entities and for companies. The IA confirmed that all companies and government entities within the agreed scope of the EITI reporting process provided the requested assurances. However, the report does not provide a final reconciliation coverage in light of reporting omissions, nor the IA's clear assessment of the comprehensiveness and reliability of reconciled financial data.

In accordance with Requirement 4.9 and the standard Terms of Reference for IAs, Tajikistan should ensure that the IA provides a clear assessment of the comprehensiveness and reliability of reconciled financial data, as well as a final reconciliation coverage in light of reporting omissions. Tajikistan is encouraged to use EITI reporting as an annual diagnostic of public and private sector audit practices as a means of supporting broader public finance management reforms.

### 3.14 Corrective action 14 (#6.1)

In accordance with Requirement 6.1(a), the EITI Council should clarify whether mandatory social expenditures exist, including distinguishing between voluntary and mandatory social expenditures. Any mandatory social expenditures must be disclosed and, where possible, reconciled. Where such benefits are provided in-kind, the EITI Council should ensure that the nature and the deemed value of the in-kind transactions are disclosed. Where the beneficiary of the mandated social expenditure is a third party, i.e. not a government agency, it is required that the name and function of the beneficiary be disclosed.

#### Findings from the first Validation

The first Validation concluded that Tajikistan made inadequate progress in meeting this requirement. The disclosures on social expenditures were not considered comprehensive, with a lack of information about:

- The name and function of the beneficiary of the social expenditure (where not a government agency).
- The nature and deemed value of any in-kind expenditures.
- The report includes aggregate amounts of social expenditures per company for eight companies (Supplementary 2014 Report, p.53). Although the Supplementary 2014 Report noted that “in 2014 not all audited companies carried out social spending” (Supplementary 2014 Report, p.53) it was not clear whether that was true for all of the remaining six companies.

It was not clear whether social expenditures were voluntary or mandatory. However, according to stakeholders, companies offered to pay additional payments as a part of bid criteria. In this regard, the Validation assumed that social expenditures were regulated by contracts and were thus mandatory.

#### Progress since Validation

The updated 2015-2016 EITI Report explains that there are no legal provisions requiring companies to undertake social expenditures<sup>147</sup>. Indeed, Charter XI, Chapter 37<sup>148</sup> on subsoil contracts of the Tax Code stipulate that licensing contracts are limited to defined tax regime. However, Government Resolution 89 of 2 March 2013 on "The Procedure for Conducting Competitions for the Right to Use Subsoil" stipulates an expectation that bidders should commit to expenditures on the socio-economic development of the region hosting operations and to develop infrastructure and train personnel<sup>149</sup>. The resolution does not define the value or nature of these social expenditures, accountability mechanisms, nor the government entities to execute control. This ambiguous provision leads to an issue of interpretation with an expectation of companies undertaking social expenditures. It appears that, in practice, the provision is not being implemented and companies follow it voluntarily. According to consultation with company representatives, they consider this provision as voluntary because it is up to them to decide on the value and nature of social payments. The report does not provide clear explanation of how the Resolution is being implemented in practice.

According to stakeholders from all constituencies consulted, it was difficult to find evidence that the bidding commitments of companies were anyhow followed in practice. During stakeholder consultations, the IA commented that there was no mechanism for recording companies' payments for the socio-economic development of regions. During the EITI Council meeting on 29 June 2017<sup>150</sup>, the relevant government entities confirmed that social expenditures were not mandated by law or contracts. Some government representatives expressed views that investment agreements could contain provisions on social expenditures, but it seemed that the three existing investment agreements related the extractive industries did not have concrete provisions defining the amount that companies should spend on social infrastructure. During stakeholder consultation, a government representative confirmed that license agreements contained information on signature bonus and tax payments, but that they did not contain provisions on mandatory social payments. Company representatives could not confirm whether their agreements contained provisions on social expenditures as some of them seemed to have non-binding agreements with local governments regarding social support to local communities. All companies consulted confirmed that local governments would ask them to undertake ad hoc social expenditures in instances such as liquidation of natural disasters, support to pour and celebration of national holidays.

The EITI Council discussed this issue and recommended that the government issue a regulation on reporting mechanisms and define the responsible government entities for monitoring social payments. The recommendation was included into a draft Law on Subsoil that is currently under the government's review. However, it does not seem that the EITI Council has formed a clear view on whether social expeditors are mandated by law/resolution/contract in Tajikistan.

The EITI Report refers to the EITI Council's decision from 10 August 2017 to collect data on voluntary social payments unilaterally from the extractive companies<sup>151</sup>. Table 30<sup>152</sup> provides voluntary social expenditures reported by 13 extractive companies. The table shows two types of social payments, namely support of education and support of social infrastructure. In addition to this, the report provides descriptions for voluntary social infrastructure projects and provides estimated values for five projects out of the six listed.<sup>153</sup> Overall amount of social expenditures in 2015 is TJS 6,3m (USD 1m) and in 2016 is TJS

<sup>147</sup> 2015-2016 EITI Report, pp. 116-117.

<sup>148</sup> Tax Code of Tajikistan, Charter XI, Chapter 37 available [here](#) in Russian, accessed in April 2019.

<sup>149</sup> See updated 2015-2016 EITI Report, p. 114.

<sup>150</sup> EITI Council and government meeting of 29 June 2017, available [here](#) in Russian, accessed in December 2018.

<sup>151</sup> See 2015-2016 EITI Report, p.113

<sup>152</sup> Ibid, p.114

<sup>153</sup> Ibid, pp. 117-118.

7,6m (USD 975k). The beneficiaries of social infrastructure projects are not clearly disclosed, nor are their responsibilities.

### Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action related to mandatory social expenditures has been partially addressed, and that progress in meeting Requirement 6.1 can be considered meaningful. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. The EITI Council explored the issue of mandatory vs voluntary social expenditures and confirmed that Government Resolution 89 imposes an expectation for companies to undertake social expenditures, however the companies consider this provision as voluntary and do not seem to have contractual obligations to follow up on the expectation. These mandatory social commitments should be confirmed in the contracts, however in practice they do not seem to be confirmed. The EITI Report does not provide clear explanation of how the Resolution is being implemented in practice.

Stakeholders have highlighted that there may be compulsory social payments involving investment and/or community agreements. The Secretariat concludes lack of clarity on the legal regime for mandatory social expenditures in Tajikistan. Therefore, the EITI Council should make further work to demonstrate the applicability of the requirement.

According to requirement 6.1, the EITI Council should review and agree whether mandatory social expenditures mandated by law or the contract with the government (including local governments) that governs the extractive investment exist and where these provisions are stipulated. Tajikistan must disclose and, where possible, reconcile the mandatory social expenditures. Where such benefits are provided in kind, it is required that implementing countries disclose the nature and the deemed value of the in kind transaction. Where the beneficiary of the mandated social expenditure is a third party, i.e. not a government agency, it is required that the name and function of the beneficiary be disclosed. Where reconciliation is not feasible, countries should provide unilateral company and/or government disclosures of these transactions.

To strengthen implementation, the EITI Council could review and agree whether discretionary social expenditures and transfers are material and develop a reporting process with a view to achieving transparency commensurate with the disclosure of other payments and revenue streams to government entities. Additionally, to address the issue of interpretation of the government expectation, the government and EITI Council should work together to establish a credible reporting system to record social infrastructure and other social expenditures committed by companies during bidding process.

### 3.15 Corrective action 15 (#6.2)

In accordance with the Requirement 6.2, "*...implementing countries must include disclosures from SOEs on their quasi-fiscal expenditures. Quasi-fiscal expenditures include arrangements whereby SOEs undertake public social expenditure such as payments for social services, public infrastructure, fuel subsidies and national debt servicing, etc. outside of national budgetary process.*" Accordingly, the EITI Council is required to assess what types of quasi-fiscal expenditures are made by SOEs and whether these are material. If material, the EITI Council should ensure that quasi-fiscal expenditures are disclosed.

### Findings from the first Validation

The first Validation concluded that Tajikistan made no progress in meeting this requirement. The 2014 EITI Report did not address the issue of quasi-fiscal expenditures.

## Progress since Validation

To address the corrective action, the EITI Council explored the issue of quasi-fiscal expenditures in Tajikistan by producing a report commissioned from private consultants Ingilab Ahmedov and Azer Mehtiyev (in 2017), while the CSO Coalition produced another report on the issue (in 2018). Both reports highlighted that the issue of quasi-fiscal expenditures had not been properly studied in Tajikistan previously. The CSO Coalition report lists the following quasi-fiscal expenditures in Tajikistan: provision of goods and services at below-market prices and provision of non-commercial services (social services and infrastructure).

On 29 June 2017, the EITI Council initiated a meeting with relevant government entities to discuss the definition of quasi-fiscal expenditures. The EITI Council reviewed the outcomes of the civil society report on quasi-fiscal expenditures in Tajikistan and concluded that SOEs mostly provided non-commercial services, such as financial contributions to charitable support and provision of goods or services, including infrastructure, on more favourable terms. The members of the EITI Council agreed that the estimation of the above-listed quasi fiscal expenditures was relatively straightforward and could be retrieved from accounting records. Based on the available accounting records, the EITI Council agreed to include state unitary enterprises and SOEs with full government ownership<sup>154</sup>, namely Tilloy Tochik, Angishi Tochik, Nazar Ailok, Naftugaz, Semeni Tochik and Aprelevka. The EITI Council agreed to cover non-commercial services (social and infrastructure services) that were not recorded in the state budget as quasi fiscal expenditures in EITI reporting<sup>155</sup>. However, the definition agreed for quasi-fiscal expenditures appears narrow compared to the definition in Requirement 6.2 and the IMF's Fiscal Transparency Manual, with reporting from only six of the 23 SOEs (and their five subsidiaries). Also, the EITI Report does not explain whether SOEs carried out other quasi-fiscal expenditures such as charging less than commercial prices in the years under the review.

The updated 2015-2016 EITI Report draws on conclusions of the 2017 study on quasi-fiscal expenditures<sup>156</sup> that quasi-fiscal expenditures are recorded by the MoF's Directorate of monitoring of financial and economic activities of large state enterprises. However, the accounting records of SOEs are not publicly accessible and it is not possible to confirm whether other SOEs undertook any other quasi-fiscal expenditures.

According to the IA, three SOEs in 2015 and two in 2016 reported quasi-fiscal expenditures based on the EITI Council's definition. The data disclosed by SOEs included details on services provided and estimated monetary amounts. Total amount in 2015 is TJS 982156 (USD 104k) and in 2016 is TJS 1624007 (USD 172k).<sup>157</sup> The report notes, that SOEs that report to the Main Geology Department, spent from off budget revenues TJS 130k (USD 13k)<sup>158</sup> on quasi-fiscal expenditures (mainly social services) in 2015-2016. The identity of beneficiaries of these quasi-fiscal expenditures are unclear from the report.

During stakeholder consultation, the EITI Council explained that the Ministry of Finance collects annual reports from SOEs on other expenditures, such as social payments and charitable support. According to the MoF, these payments are insignificant. However, the report does not provide the value of these expenditures in the years under review.

## Secretariat's Assessment

<sup>154</sup> EITI Council and government meeting of 29 June 2017, available [here](#) in Russian, accessed in December 2018.

<sup>155</sup> See 2015-2016 EITI Report, p. 110.

<sup>156</sup> Ibid, p.113.

<sup>157</sup> See 2015-2016 EITI Report, p. 111.

<sup>158</sup> Ibid, p. 111.

The International Secretariat’s preliminary assessment is that the corrective action related to quasi-fiscal expenditures has been partly addressed, and that progress in meeting Requirement 6.2 can be considered meaningful. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. As was recommended by the Board, the EITI Council explored the issue of quasi-fiscal expenditures in consultation with relevant government entities and agreed on its definition. However, the definition of quasi-fiscal expenditures agreed for EITI reporting is narrower than that provided in Requirement 6.2 and the IMF’s Fiscal Transparency Manual and is applied to only six of the 23 SOEs, and their five subsidiaries. The EITI Report provides figures for quasi-fiscal expenditures of SOEs reporting to the Ministry of Finance and the Main Department of Geology, although the identity of beneficiaries of these quasi-fiscal expenditures is unclear from the report.

In accordance with Requirement 6.2, Tajikistan should review its definition of quasi-fiscal expenditures for EITI reporting purposes to ensure it is aligned with the definition provided in the EITI Standard and the IMF’s Fiscal Transparency Manual. Tajikistan should ensure a level of transparency in quasi-fiscal expenditures commensurate with other payments and revenue streams and should include SOE subsidiaries and joint ventures.

### 3.16 Corrective action 16 (#7.1)

In accordance with Requirement 7.1, the EITI Council must ensure that the EITI Report is comprehensible, actively promoted, publicly accessible and contributes to public debate. Key audiences should include government, parliamentarians, civil society, companies and the media. In accordance with Requirement 7.1(e), the EITI Council should also ensure that outreach events, whether organised by government, civil society or companies, are undertaken to spread awareness of and facilitate dialogue about the EITI Report across country. The EITI Council should discuss the role the EITI could play in achieving national priorities and how it can generate public debate around natural resource use. It is encouraging that the EITI Council is currently drafting a communications strategy. The EITI Council is encouraged to provide more EITI data in open data formats.

#### Findings from the first Validation

The first Validation concluded that Tajikistan had made meaningful progress in meeting this requirement. The EITI Council did not seem to have been substantively engaged in dissemination activities. The EITI Council meetings minutes did not confirm any discussions on addressing Requirement #7.1, nor did the Annual Progress Report assess the progress of implementing requirement #7.1. The national EITI secretariat held some communication activities that targeted limited groups of citizens, such as the national EITI Conference. However, the major bulk of dissemination work had been carried out by the civil society constituency only. Validation found that some good work had been done to make the EITI Report accessible. The 2014 EITI Report was published in three languages (Tajik, Russian and English) and could also be accessed online. The national secretariat had also produced paper copies of the report, although it did not seem they were widely distributed. Civil society had produced a useful short version of the EITI Report which had enabled broader public consumption. Tajikistan had only issued one EITI Report before the first Validation, and due to lack of funding there was a shortage of dissemination activities following the publication of the report. Nonetheless, civil society had played a crucial role in spreading and discussing the findings of the EITI Report in the regions and to some extent in the media. While Validation considered it premature to conclude that the EITI had contributed to wide public debate about natural resource governance, it considered that there was progress in the right direction.

#### Progress since Validation

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To address corrective actions from the Validation, EITI Tajikistan produced the 2015-2016 EITI Report in December 2017, with an updated report published in August 2018.

***Comprehensibility:*** Both 2014 and 2015-2016 EITI Reports are accessible in Russian, Tajik and English on the national EITI and the Ministry of Finance websites and have been published in hard copies. The CSO Coalition also prepared a shorter summary version of the 2015-2016 EITI Report with visualisations in Russian available online on the Coalition's website.<sup>159</sup>

***Promotion:*** Civil society, with support from the government and company constituencies, has led the process of promoting EITI information through outreach and dissemination activities in Dushanbe and extractive regions, analytical notes, brochures, workshops, seminars, public hearings and numerous media publications. Members of the EITI Council from the government and company constituencies participated in most of these events as speakers and attendees. According to the list of civil society activities provided<sup>160</sup>, the Coalition undertook over 35 activities related to EITI implementation and over 10 workshops and public debates in Dushanbe and extractive regions in 2017-2018.<sup>161</sup> There were four public hearings on legal amendments and EITI reporting in Ainy, Dushanbe, Khudzhand and Kulob. On 22 February 2018, civil society initiated a round table on the main findings of the 2015-16 EITI Report in the Parliament. Moreover, several events were organised for company and government constituencies separately. During stakeholder consultations, representatives of the EITI Council noted that a shorter version of the report with relevant sections was prepared for some events in the regions. Furthermore, EITI Council meeting minutes show that some of the materials have been used during the EITI Council's meetings and workshops. In addition, on 16 October 2018, a regional conference took place in Dushanbe, where the second EITI Report was launched<sup>162</sup>. The conference was attended by various relevant stakeholders from Tajikistan as well as from Armenia, Kazakhstan, Kyrgyz Republic and Ukraine.

***Public accessibility:*** EITI Tajikistan has been active in ensuring the public accessibility of EITI information both through online channels, such as the websites of the national EITI, the Ministry of Finance<sup>163</sup>, relevant Facebook page<sup>164</sup> and the CSO Coalition<sup>165</sup>, and in hard-copy through disseminations and outreach events. The national secretariat has regularly updated the national EITI website<sup>166</sup>, covering relevant reports and studies, meeting minutes, EITI events, announcements and recent news. The CSO Coalition also has its own website where information about the recent events, legislation and various relevant documents is available<sup>167</sup>.

***Open data:*** The EITI Council agreed Tajikistan's EITI Open Data Policy<sup>168</sup> in December 2016. The policy refers to enabling public access to data in machine-readable format. The policy highlights the Law on State Secrets as a potential obstacle in accessing information but does not clearly identify ways of overcoming this potential barrier. In practise, the EITI reports are used as tool to overcome such barriers as state secrets. In particular, the EITI Council with the Ministry of Finance have been working on disclosing information about precious metals' production and export data that has been disclosed in the

<sup>159</sup> Visualised short version of the 2015-2016 EITI Report, available [here](#).

<sup>160</sup> Civil society's activity list, available [here](#) in Russian.

<sup>161</sup> See, for example, [here](#) and [here](#).

<sup>162</sup> "Regional Conference dedicated to the launch of the 2<sup>nd</sup> EITI Report took place in Dushanbe" (2018) by CSO Coalition, accessed [here](#) on 29 November 2018.

<sup>163</sup> Ministry of Finance website, available [here](#).

<sup>164</sup> EITI Facebook page, available [here](#).

<sup>165</sup> CSO Coalition website, available [here](#).

<sup>166</sup> EITI Tajikistan website, available [here](#).

<sup>167</sup> CSO Coalition website, available [here](#).

<sup>168</sup> Open data policy – Tajikistan, available [here](#).



updated 2015-2016 EITI Report. Summary data files covering government disclosures for 2015 and 2016 fiscal years have been submitted to the EITI International Secretariat in time and subsequently updated with new information on gold and silver<sup>169</sup>.

***Contribution to public debate:*** Press coverage of EITI Tajikistan activities has been extensive. Civil society was the main driving force to generate public debates on extractive industries. In 2017-2018 there has been media use of EITI data in analytical and critical articles on the extractive industries, including on gold production, environmental issues related to mining, Chinese extractive companies and companies with state shares, tax justice, budgetary process, contract transparency, and EITI reporting. Annex 11 of the 2015-16 EITI Report lists 195 media publications with links related to the extractive industries. Moreover, an extensive list of publications in the media was shared with the EITI International Secretariat. Over 35 publications about the mining sector, including on the EITI related topics, were published in 2018 before the commencement of Validation. In addition, during stakeholder consultations, it was noted that the EITI reports and relevant information on EITI implementation in Tajikistan are used in the universities, for example, for economy of natural resources course.

### Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on public debate has been addressed, and that progress in meeting Requirement 7.1 can be considered satisfactory. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. The EITI Report was published in three languages – English, Russian and Tajik – and was officially launched at the regional conference as well as made publicly available through different relevant websites. While the civil society constituency led the dissemination activities and communication with media, there is a sufficient evidence of government and company engagement and support in the outreach process, such as Parliament roundtable as well as workshops and public hearings in the extractive regions.

To strengthen the EITI implementation, the EITI Council is encouraged to make sure that the upcoming EITI Report covering government and company disclosures is available in open data format (xlsx or csv) and publicise its availability. Additionally, the EITI Council might consider updating and following its open data policy in order to ensure that it defines modalities for use and reuse of EITI data.

### 3.17 Corrective action 17 (#7.4)

In accordance with Requirement 7.4iv-v, the EITI Council should ensure that future annual progress reports include an assessment of progress with achieving the objectives set out in the work plan including the impact and outcomes of the stated objectives, as well as a narrative account of efforts to strengthen the impact of EITI implementation on natural resource governance. This should include an overview of the multi-stakeholder group's responses to and progress made in addressing the recommendations from reconciliation and Validation in accordance with Requirement 7.3.

#### Findings from the first Validation

The first Validation concluded that Tajikistan had made meaningful progress in meeting the requirement. The EITI Council had reviewed progress and outcomes of implementation on a regular basis, including by publishing annual progress reports over the past three years. Although these reports provided a useful snapshot of last year's activities, they lacked an assessment of the impact and outcomes of the objectives. Even though the EITI Council had started to address the recommendations from the 2014 EITI Report, the

<sup>169</sup> EITI summary data – Tajikistan, available [here](#).

2015 annual progress report did not reflect this work, nor did it assess the impact of addressing the recommendations.

### Progress since Validation

The annual progress report covering 2017 was shared with the EITI International Secretariat in June 2018 and subsequently published on the national EITI website.<sup>170</sup> A draft annual progress report was discussed and conditionally approved at the EITI Council's meeting on 1 June 2018<sup>171</sup>, subject to the incorporation of additional edits following the meeting.

The final annual progress report provides a brief overview of the activities undertaken in 2017, including publication of the 2015-2016 EITI Report, follow-up on corrective actions from Validation, steps taken by civil society, legal amendments, etc.<sup>172</sup> The annual progress report also provides information on strengths and weaknesses of EITI implementation in Tajikistan, activities related to disclosure of beneficial ownership information, total implementation costs and information on the EITI Council membership.

The annual progress report includes an assessment of addressing some of the EITI Requirements and progress in addressing recommendations from the first Validation in sections 3 and 4 as well as in Attachment 2. The attachment was prepared by the civil society representatives and provides a thorough overview of requirements 2, 3, 5, 6. However, this assessment does not seem to cover requirements 1, 4, 7.

While the progress with addressing recommendation from the 2014 EITI Report is covered in Section 3.5.1 of the 2015-2016 EITI Report, the 2017 annual progress report does not provide or comment on EITI Council's follow-up on recommendations from the 2014 EITI Report and the level of progress in implementing each recommendation.

An assessment of progress with achieving the objectives set out in its work plan is provided in section 2 of the annual progress report.<sup>173</sup> This section lists the main aims and tasks defined in the work plan covering 2016-2017, the outcomes of the stated activities and progress in meeting the aims. The description of the impact of the activities set out in the work plan is rather limited and could have been further elaborated.

At the same time, impact is partially documented in the list of media publications shared with the EITI International Secretariat as well as highlighted in the CSO Coalition's workplan. Several EITI Council members consulted noted that the main impact of the EITI is that the information about the extractive sector was collected from various ministries and systematically disclosed in the EITI reports and publicly available. It was also noted that, in 2018, information about production and export of gold, silver and other precious metals has been disclosed and provided in both EITI Report and summary data file. Additionally, several stakeholders representing CSO coalition noted that a lot of communication and promotion work has been done in the last year and there was a demand for disclosing EITI information on a regional level, for example in Sughd. While stakeholder consultations highlighted several important outcomes of the EITI implementation in Tajikistan, impact assessment has not been systematically conducted by the EITI Council and documented in the annual progress reports.

### Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on review the outcomes and impact of EITI implementation has been partly addressed, and that progress in meeting

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<sup>170</sup> Annual progress report 2017, accessed [here](#) on 7 November 2018.

<sup>171</sup> EITI Council meeting minutes from 1 June 2018, accessed [here](#) on 10 April 2019.

<sup>172</sup> Ibid, p.3.

<sup>173</sup> Annual progress report 2017, pp.3-8.

Requirement 7.4 can be considered meaningful *with considerable improvements*. However, the preliminary assessment is subject to any further relevant information and representations that stakeholders may wish to have considered. In 2017, the annual progress report was prepared and approved by the EITI Council in a timely manner. Although the report provides a useful overview of the last year's activities and outcomes, analysis of addressing the corrective actions prepared by the civil society group as well as strengths and weaknesses of the EITI implementation, it still lacks a thorough assessment of the impact of EITI implementation, of progress in meeting the objectives set out in the work plan and of efforts to address recommendations from past EITI Reports.

In accordance with Requirement 7.4iv-v, the EITI Council should ensure that future annual progress reports include an assessment of progress with achieving the objectives set out in the work plan including the impact and outcomes of the stated objectives, as well as a narrative account of efforts to strengthen the impact of EITI implementation on natural resource governance. This should include an overview of the multi-stakeholder group's responses to and progress made in addressing the recommendations from reconciliation and Validation in accordance with Requirement 7.3.

## 4. Conclusion

Having reviewed the steps taken by Tajikistan to address the seventeen corrective actions requested by the EITI Board, the Secretariat's assessment is that Tajikistan has addressed fully or partially 15 corrective actions, has shown satisfactory progress on four requirements, meaningful progress *with considerable improvements* on five requirements and has maintained meaningful progress on three requirements. It has been also confirmed that Requirement 4.2 on in-kind revenues and Requirement 4.3 on infrastructure provisions and barter arrangements are not applicable in Tajikistan. The outstanding gaps relate to licence allocations (Requirement 2.2), license register (Requirement 2.3), policy on contract disclosure (Requirement 2.4), state participation (Requirement 2.6), export data (Requirement 3.3), comprehensiveness (4.1), SOE transactions (Requirement 4.5), data quality (Requirement 4.9), mandatory social expenditures (Requirement 6.1), SOE quasi-fiscal expenditures (Requirement 6.2) and outcomes and impact of implementation (Requirement 7.4).

## Annex 1. Assessment of Requirement 1.3 according to the civil society protocol

### Progress since Validation

In the second Validation, the Secretariat has reviewed these issues. There is evidence to suggest that there have been improvements in terms of civil society engagement in EITI implementation. The first Validation noted self-censorship on issues of contracting and public procurement, corruption, beneficial ownership and “general criticism of the government”, and particular concerns regarding gold production data. Progress on these issues is highlighted below.

The Secretariat also recognises the cultural aspects. For instance, in comparison to some countries, where being critical openly is very common, in Tajikistan stakeholders emphasised that disagreement in open forums was not common.

The broader environment in which the EITI operates remains challenging. The Freedom House rates Tajikistan as not free<sup>174</sup> and Human Right Watch reports restrictions to freedom of expression<sup>175</sup>. On the other hand, the International Center for Not-for-Profit Law (ICNL) reports that ‘the impact of civil society on Tajikistan has increased as the number, scope and reach of CSOs have grown steadily’.<sup>176</sup> With regards to the civil society activists engaged in the EITI activities, the Secretariat’s assessment is that engagement and freedom of expression has improved.

Civil society organisations engaged in the EITI process in Tajikistan are represented by the CSO Coalition “Transparency for Development”, hereinafter ‘the Coalition’.<sup>177</sup> To address the corrective action on Requirement 1.3, the Coalition developed an action plan, approved in April 2017 and published on the Coalition’s website.<sup>178</sup> In addition to this, Tajikistan EITI published a 2017 annual progress report monitoring progress in the implementation of the action plan on 1 June 2018. The Coalition conducted an assessment of the corrective actions on requirements 2-6 and published a progress report<sup>179</sup> in August 2018.

There are no indications of any new government constraints on civic space, nor any deterioration in the space for civil society to fully and actively engage in all aspects of implementation of the EITI. The International Center for Not-for-Profit Law (ICNL) reports that ‘the impact of civil society in Tajikistan has increased as the number, scope and reach of CSOs have grown steadily’.<sup>180</sup> Many CSO coalitions and unions operate freely within their area of competence, including but not limited to the extractive industries, however others, such as human rights NGOs and anti-torture NGOs experience challenges in carrying on their work.

**Operation:** Public associations need to register with the Ministry of Justice, whereas other NGOs, such as foundations and institutes are registered with the local tax authorities. Although, registration procedures for public associations tend to be bureaucratic, there is no evidence of restrictions on registration of CSOs involved in the EITI process. Registration with the local tax authorities is both simpler and subject to less discretion than registration with the Ministry of Justice.

The government’s Regulation on Humanitarian Aid requires CSOs to register foreign funding in the Registry of Humanitarian Aid and notify the Ministry of Justice about received foreign funding within 10

<sup>174</sup> Freedom House rating for 2019, Tajikistan, accessed [here](#) in June 2019.

<sup>175</sup> [Human Rights Watch](#) 2018 report, accessed in November 2018.

<sup>176</sup> Civic Freedom Monitor, the International Center for Not-for-Profit Law. June 2018, <http://www.icnl.org/research/monitor/tajikistan.html>

<sup>177</sup> CSO Coalition “Transparency for Development”, [website](#) available in Russian.

<sup>178</sup> The CSO action plan was developed with PWYP in April 2017, available on Coalition’s [website](#), accessed in November 2018.

<sup>179</sup> CSO Coalition Transparency for Development, Report on assessing corrective actions, August 2018, available [here](#) (Russian).

<sup>180</sup> Civic Freedom Monitor, the International Center for Not-for-Profit Law. June 2018, <http://www.icnl.org/research/monitor/tajikistan.html>

days<sup>181</sup>. No civil society organisations substantively engaged in the EITI have reported that these legal requirements have practically affected their work on EITI. There do not appear to be restrictions on access to funding for civil society organisations, restrictions on holding meetings or legal/administrative barriers to the dissemination of information.

There is no evidence suggesting that civil society representatives have been restricted in their operations related to EITI implementation. With regards to civil society's operations in relation to EITI, all CSOs engaged directly and indirectly in EITI implementation appear duly registered and seem to operate freely in relation to EITI issues. There is evidence that CSOs have been able to access funds to support their participation in all aspects of EITI implementation, with Coalition members receiving grants from Open Society Institute (OSI), GIZ and the UK's Department for International Development.

CSO representatives confirmed that there were no obstacles to register an NGO and a coalition and there were no obstacles to access the funding. The Coalition was registered as well as all its members.

**Association:** Stakeholder consultations have highlighted that CSOs engaged in the EITI process are freely collaborating with each other as well as with other local CSOs not directly represented on the EITI Council and with international groups. The Coalition has been affiliated with the Publish What You Pay global network since December 2013. The Coalition is governed by the Council consisting of six members that hold meetings at least four times a year. The 2017-2018 Report on activities<sup>182</sup> of the Coalition provides an overview of its activities, projects, training and capacity building, media involvement and membership. The Report on activities points to a number of outreach activities in the regions including workshops with local communities, CSOs and activists in Ainy, Dushanbe, Khatlon, Khorugh, Khudzhand, Kulob, Kurgan Tyupe, Sugd, and Tursunzada and active involvement of journalists in publicity and capacity building events as a means of engaging with wider civil society. The Coalition has recently expanded its membership by including more NGOs from extractive regions, such as Sughd province, and the League of Women Lawyers that works on defending human rights and providing free legal services to women and disadvantaged communities.<sup>183</sup> With recommendation from PWYP, the Coalition also renewed its statutory papers, such as ToRs and MoU.<sup>184</sup>

CSO representatives highlighted that the Coalition with support of PWYP reviewed its ToRs to nominate EITI Council members and accepted new Coalition members. In addition to EITI implementation, the Coalition added anti-corruption and environmental issues as its new objectives. None of the CSO representatives expressed concern with regards to organising meetings and events in Dushanbe and regions. Many CSO representatives highlighted that the Ministry of Finance usually provided a letter of support for organising parliamentary and public hearings in the regions. They explained that support from the government was helpful when engaging local government and companies. As a result, some local authorities could provide a meeting venue for free.

**Engagement:** The Coalition has been the most active constituency on the MSG over the 2017-18 period, both in terms of attendance and in the proactiveness of civil society's role in discussions. CSO members are actively involved in the design, implementation, monitoring and evaluation of the EITI through participation in the EITI Council meetings<sup>185</sup>, CSO forums<sup>186</sup>, workshops<sup>187</sup>, outreach and dissemination

<sup>181</sup> Civic Freedom Monitor, the International Center for Not-for-Profit Law. June 2018, <http://www.icnl.org/research/monitor/tajikistan.html>

<sup>182</sup> 2017-2018 Report on activities, CSO Coalition, available [here](#) in Russian.

<sup>183</sup> The list of coalition members is available [here](#) in Russian, accessed in November 2018.

<sup>184</sup> Memorandum of Understanding between the Coalition members and its ToRs are available [here](#) in Russian, accessed in November 2018.

<sup>185</sup> Ministry of Finance [website](#), press release on MSG meeting of 2 May 2018, accessed in November 2018.

<sup>186</sup> PWYP Eurasia Regional [meeting](#), conducted on 26-28 September 2017 in Aktau.

<sup>187</sup> Capacity building [workshop](#) for the media, conducted on 29 August 2018

events<sup>188</sup>. The 2017 annual progress report<sup>189</sup> and the 2017-2018 Coalition activities report confirm comprehensive input from civil society to the EITI work plan, the reporting process, the self-assessment of the corrective actions, preparations for Validation, and efforts to address recommendations from EITI reports and the Validation. There is substantial evidence that civil society regularly participates in EITI Council meetings, ad-hoc working groups and other EITI events, and their views are documented in the EITI Council minutes<sup>190</sup>, press releases<sup>191</sup>, news items and other publications. In July-October 2017 the Coalition conducted five outreach and dissemination events<sup>192</sup> in Dushanbe, Khudzhand, Khorugh and Qurghonteppa. In 2017-2018, the Coalition members conducted and took part in 38 activities<sup>193</sup> related to EITI implementation in Tajikistan.

The Coalition also developed a popular version of the EITI Report<sup>194</sup> and a brochure on the EITI implementation process<sup>195</sup> for local communities.

With respect to their capacity, other constituencies and development partners generally agreed that the CSO Coalition had the technical capacity to participate in the EITI process. Several CSO representatives highlighted the importance of preparing the anti-corruption report to assess the progress with implementing Tajikistan's commitments from the Istanbul agreement, initiated by OECD.

*Access to public decision-making:* There are no legal barriers limiting the ability of CSOs to engage in advocacy or public policy activities. All forms of public associations may participate in advocacy and lobbying activities. Members of the Coalition are able to participate in other policy-making forums or consultations beyond the EITI such as human rights legislation, in particular a law against torture.

Civil society is able to use the EITI process to promote public debate through public events, conferences, round tables, public hearings, workshops and regional outreach events, organised by or with participation of civil society to inform about the EITI process. Civil society has also conducted analysis, used EITI data and communicated findings of the EITI report to citizens and the media, and organised advocacy and knowledge sharing campaigns. Examples of this include the data visualisation version of the EITI Report produced by the Coalition, pre-validation assessment and analytical paper on quasi-fiscal and social expenditures in Tajikistan. The Coalition regularly updates its website [www.tfd.tj](http://www.tfd.tj).

According to Article 24 of the Law on Public Associations, civil society has the right to “participate in policy-making by government and regulatory authorities in the manner and within the scope established by this Law and other laws”.<sup>196</sup> In practice, civil society representatives in the EITI Council took active part in proposing amendments to the draft Law on Subsoil Use. In other instances, CSO MSG members met with the Parliamentary Committee on Energy, Industry, Construction and Communications<sup>197</sup> to discuss outcomes of the EITI Report and legislative changes on subsoil use.

A few members of the Coalition commented that they were able to participate in other policy-making forums or consultations beyond the EITI such as human rights legislation, in particular a law against torture. One of the Coalition members was also a member of the Public Council for the Promotion of Civil Society, established by the President and that the membership gave opportunities to voice various issues on a high level.

<sup>188</sup> In July-October 2017 the Coalition conducted 5 [outreach and dissemination events](#) in the regions.

<sup>189</sup> 2017 EITI Annual Progress Report, available [here](#) in Russian.

<sup>190</sup> EITI Council meeting minutes, available [here](#) in Russian.

<sup>191</sup> Press releases by the Ministry of Finance, available [here](#), accessed in November 2018.

<sup>192</sup> In July-October 2017 the Coalition conducted 5 [outreach and dissemination events](#) in the regions.

<sup>193</sup> List of Coalition activities in 2011-2018, available [here](#) in Russian, accessed in November 2018.

<sup>194</sup> Summary version of the 2016 EITI Report, prepared by the CSO Coalition, available [here](#) in Russian.

<sup>195</sup> Available at the EITI International Secretariat and at coalition of CSOs “Transparency for development”.

<sup>196</sup> Civic Freedom Monitor, the International Center for Not-for-Profit Law. June 2018, <http://www.icnl.org/research/monitor/tajikistan.html>

<sup>197</sup> 2017-2018 Report on activities, CSO Coalition, available [here](#) in Russian, p.9

Some journalists also noted that the President initiated a decree that all government entities should have at least one press conference every six months to inform citizens and the media.