Armenian EITI MSG’s Feedback on Draft Validation Report and Initial Assessment

14 May, 2020
Yerevan
Approved by the MSG

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Introduction

This document presents the Armenian EITI Multi Stakeholders Group’s feedback on the Validation Draft Report and Initial Assessment of Armenia’s progress against the 2016 EITI Standard.

Validation Draft Report and Initial Assessment were reviewed by all members of the Armenian EITI MSG and we consider it necessary to note that the EITI International Secretariat’s assessment of the collected data and the received consultations is appropriately qualified and detailed.

The result of MSG review and elaborated comments are presented below.

General comments
Our general comments are presented by sectors, sub-sectors, titles, and pages as below:

1. Section “Introduction”, sub-section “History of EITI Reporting”, page 12:
   In the 2nd paragraph the words “the mining and quarrying sector” should be replaced by the words “metal mining sector”.

2. Section “Introduction”, sub-section “Key features of the extractive industry”, page 13:
   The 2nd paragraph should be edited as “The metal mining sector accounted for 4.4% and 7.1% of total state revenues in 2016 and 2017 respectively”.

3. Section “Industry engagement in the EITI process (#1.2)”, sub-section “Stakeholder views”, page 18:
   In the last paragraph the words “namely Agarak, Kapan, Lori and Syunik” should be replaced by the words “Vanadzor in Lori Marz, Kapan and Agarak in Syunik Marz and Vardenis in Gegharkunik Marz”.

4. Section “License registers (#2.3)”, sub-section “Documentation of progress”, page 39:
   The reference to the license (permit) register currently is available online on the Ministry of Territorial Administration and Infrastructure (MTAI) website at the following link: http://www.mtad.am/hy/mtad27.12/

5. Section “Contract disclosures (#2.4), sub-section “Documentation of progress”, page 40:
All subsoil use contracts for metal mining extraction, including their amendments and annexes, currently are available online on the MTAI website at the following link: http://www.mtad.am/hy/mtad26.12.4/

Part I – MSG Oversight

Civil society engagement in the EITI process (#1.3)

MSG comments

The draft initial assessment report states that “Before 24 November 2019, the Armenia EITI MSG included four civil society members representing both local and international non-governmental organizations as well as a representative from the research community. All civil society representatives on the MSG have either a mining or environmental background. Since 24 November 2019, the MSG includes four civil society members and two alternates.”

We would like to inform that since 24 November, 2019 the Civil society constituency of the MSG has 5 members and 2 alternative members. Only one out of five civil society constituency members is representing an environmental CSO, namely Armenian Forests NGO, three others are specialized in anti-corruption, law and community development matters, however within the scope of their activities Civil Society constituency members also deal with environmental and/or mining related issues, and one member represents academic institutions, namely Yerevan State University.

MSG governance and functioning (#1.4)

Section “Contract disclosures (#2.4), sub-section “Documentation of progress- National secretariat”, last paragraph, page 28:

MSG comments

We would like to inform that as of 21 February, 2020, the national secretariat consists of three employees – head of the secretariat and two EITI expert – who are funded from the state budget and report to the Office of the Prime Minister.
Part II – EITI Disclosures

2. Award of contracts and licenses

Beneficial ownership disclosure (#2.5)

MSG comments

On 26 March, 2020 Government of the Republic of Armenia adopted the Government Decision "On Defining the List of Information Included in the Declaration of Beneficial Owners Subject to Publication"1. According to the Decision, the information on beneficial owners included in the declarations submitted by the legal entities possessing permits for extraction of metal minerals and permits for mining exploration of the metal mineral resources for the purpose of extracting minerals to the State Register of the Legal Entities of the Ministry of Justice of the Republic of Armenia shall be published on the State Register's website www.e-register.am with the exception of identification document data, including public services number, as well as information on registration and residence addresses of natural persons.

The first declarations have been submitted by the companies in a paper form which are published on company webpages of e-register.am2. The BO declarations’ submission and open data format data publication software is envisaged to be developed in upcoming months. Currently, MSG and BO working group is working on analysis of published BO data and preparing legal recommendations to strengthen BO disclosure procedures and address gaps and weaknesses of existing regulations. The working group also actively cooperates with the team of experts representing OpenOwnership Global Register.

5. Revenue management and distribution

Subnational transfers (#5.2)

The International Secretariat’s initial assessment is that Armenia has made inadequate progress towards meeting this requirement.

The International Secretariat identified the following corrective action:

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2 Links to PDF format published BO declarations of the extractive companies https://www.eiti.am/ru/%D4%BB%D5%8D-%D5%B0%D5%A1%D5%B5%D5%BF%D5%A1%D6%80%D5%A1%D6%80%D5%A1%D5%A3%D5%A5%D6%80/?tab=88
In accordance with Requirement 5.2, Armenia is required to disclose the revenue-sharing formula and any discrepancies between the formula and actual transfers to communities. Armenia should disclose:

1. the basis for calculating the total amount of environmental payments by metal mining companies to be redistributed to communities,
2. the resulting amount in the year under review,
3. the proportions reserved for each affected community,
4. the total amount assigned for each community,
5. the actual transfers, and
6. any discrepancies between the values to be made available according to the revenue-sharing formula, the values actually made available to each community and the values actually transferred to each community. The responsible government agencies may wish to comment on the reasons behind possible discrepancies.

To strengthen systematic disclosures, the Ministry of Environment is encouraged to proactively publicly disclose the proportions assigned to each community and the basis of calculation. The MSG is encouraged to consider additional disclosures related to the design and execution of health and environmental projects in communities.

MSG comments

(1) the basis for calculating the total amount of environmental payments by metal mining companies to be redistributed to communities

The procedure for calculating environmental fees paid by subsoil users for 2016-2017 was defined by the RA Law on “On Nature Protection and Nature Use Payments”3, detailed information on the procedure is presented in 2016-2017 EITI report, pp 105-106. Since 2018, environmental taxes have been regulated by the Tax Code. Detailed description of the regulations is provided in the 2018 EITI draft Report, which is presented in Annex 1 and is available on EITI website at the following link: https://www.eiti.am/en/environmental-programs/

(2) the resulting amount in the year under review

The amounts of environmental tax paid by companies (environmental payments before 2018) are mutually disclosed by the companies and the State Revenue Committee, provided by the EITI

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reporting, which are available in pdf and open data xls formats and, and by using report generation tool on reports.eiti.am EITI online reporting platform.

After the start of the validation, EITI Armenia has published additional information\(^4\), which is described in the "Additional actions taken following commencement of Validation" sub-section.

**(3) the proportions reserved for each affected community**

The distributed proportions of the environmental payments of metal mining companies had been presented in the 2016-2017 EITI Report.

After the start of the validation, EITI Armenia has published additional information, which is described in the "Additional actions taken following commencement of Validation" sub-section.

**4) the total amount assigned for each community**

**5) the actual transfers**

**6) any discrepancies between the values to be made available according to the revenue-sharing formula, the values actually made available to each community and the values actually transferred to each community**

It is presented in the 2016-2017 EITI Report, that according to the RA Law “On Targeted Use of Environmental Payments Made by Companies”\(^5\), contributions to administrative and fund budgets of the communities deriving from environmental payments are considered as special-purpose resources and shall be used solely for implementation of environmental projects within the territory of given communities. The project shall be developed by the head of the community in compliance with the procedure defined by the law and based on the approved documents on development (social-economic development) plans of the given community or region (marz) or local action-plans for environmental protection or other project- or strategy-level documents.

The environmental projects are elaborated according to the RA Government Decree "On Approving the Procedure for Developing (Drafting) Environmental Projects"\(^6\).

According to the same Decree, the cost of the project is estimated by means of calculating the estimate price of the project. Cost estimates are calculated on the basis of the standards set by the Government of the Republic of Armenia and, in cases of absence of the abovementioned normatives the project estimate prices are calculated in compliance with methodological instructions for drafting and submitting sectoral applications in the scopes of the State budget

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\(^4\) [https://www.eiti.am/en/annual-reports/2018/](https://www.eiti.am/en/annual-reports/2018/)


development activities approved by the Republic of Armenia Ministry of Finance for calculation of budget expenditures for the given year.

According to the Law of the Republic of Armenia “On Targeted Use of Environmental Payments Made by Companies”, the project is published by the head of the community. Each community publishes the relevant project on its website, which is publicly available.

After the start of the validation, following the recommendation of the EITI MSG of Armenia, additional information was published on the websites of the municipalities, which is described in the "Additional actions taken following commencement of Validation" sub-section.

The project includes actions aimed at the protection of the environment and at addressing environmental issues in the land, water and air conditioned by the activities of companies operating within administrative boundaries of the community, actions aimed at preserving the health of the population of the community conditioned by the activities of companies and priorities of implementation of programmatic activities and proportions of their financing.

The submitted project should comply with the methodical guidelines for development of RA draft State budget for the given year and also include the issues of the activities to be implemented, their objectives and necessity of implementation, compliance with the requirements of the legislation, the implementation stages (timetable), costs necessary for implementation and expected results.

As per the procedure set forth under the budgeting legislation of the Republic of Armenia, the authorized State body of the Government of the Republic of Armenia in the field of the management of State finances, taking into consideration the total amount of contributions designated for financing projects under the State budget during the upcoming year, develops the draft list of the communities to receive proportional contributions from the state budget for financing of projects during the upcoming budgetary year.

The projects are approved by the Ministry of Environment or the Ministry of Health, after which they are approved in the State budget as a subvention given to the community.

The RA Law on the State Budget of the Republic of Armenia and State Budget Annexes are available on the website of the RA Ministry of Finance at the following links:

The information on the adjusted budgets for the communities receiving subventions for the projects and their actual implementation within the framework of the program "Providing Subventions to the Communities of the Republic of Armenia" for the implementation of environmental projects from the State budget of the Republic of Armenia is presented in the annual reports of the State budget.

The reports are available on the website of the RA Ministry of Finance at the following links:


In order to increase data accessibility, the links to the website of the Ministry of Finance of the Republic of Armenia, as well as the relevant annexes of the State Budget of the Republic of Armenia have been presented and uploaded on the website of the EITI Armenia at the following link: [https://www.eiti.am/en/environmental-programs/](https://www.eiti.am/en/environmental-programs/)

2018 EITI draft Report prepared by the Independent Administrator states that, in particular, the amount to be allocated to the communities envisaged by the RA budget in 2018 exceeds the total amount actually allocated to the communities by 13,129,000 AM drams. According to the Ministry of Environment, the main reasons for savings in 2018 and also in the previous years were the low prices of works and procurements resulting by the tenders. The small difference between the volumes of works carried out and procurements, and the planned volumes contributed to the savings, although not significantly.

**Description of the process of approving environmental programs/projects and providing subventions**

The activities and measures to be taken by the authorized bodies within the framework of the process of providing subventions for the implementation of environmental programs to the affected communities and the terms of their implementation are defined in the annex to the RA Prime Minister's decision (adopted annually) on starting the budgeting process for the respective year.

According to the decision:

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In the established period the Ministry of Environment submits to the Ministry of Finance (for the budget planning), the Ministry of Territorial Administration and Infrastructure, the regional administrations of the RA the list of communities affected by the activities of the companies mentioned in the Article 1 of the RA Law “On Targeted Use of Environmental Tax (payments) Made by Companies” (in case of the number of affected communities is more than one, the proportions of distribution of the environmental tax paid by the companies among the communities and the principles of their calculation are also submitted).

The State Revenue Committee submits to the Ministry of Finance (for the budget planning), the Ministry of Territorial Administration and Infrastructure and the Ministry of Environment information on amounts of environmental tax paid by the companies mentioned in the Article 1 of the Law.

In the time established by the decision of the RA Prime Minister on the commencement of the relevant year budgetary process, the heads of the communities included into the scope of the Law, submit through the Territorial Administration Bodies to the Ministry of Environment the environmental programs agreed with the Ministry of Environment and Ministry of Health and approved by the the Council of Elders, as well as applications for receiving subventions from the state budget for the year envisaged for project implementation.

The Ministry of Environment and the Ministry of Health in the time established by the Government Decision N 15448 dated 26.09.2002 inform the relevant communities which had presented the environmental programs about the specifics of the implementation of the activities envisaged by the environmental programs submitted to the Ministry of Environment and the Ministry of Health by the relevant communities and their positions on the proportions of their financing.

Additional actions taken following commencement of Validation

(2) the resulting amount in the year under review

The Ministry of Environment provided data on the amount of contributions (deductions) available for each community for the implementation of environmental and health programs for 2016-2019, which has been uploaded on the EITI website in open data format. The data are published by community and by company, presenting the proportions of distribution according to the specific purpose for water, air pollution and waste disposal. (Annex 2, https://www.eiti.am/en/environmental-programs/):

According to Article 1 of the law “On Targeted Use of Environmental Tax Made by Companies”, the amount of contributions (deductions) for the implementation of environmental and health programs for each community is calculated as a sum of actually paid amount of the environmental tax by the respective companies for the second, third and fourth years preceding the current budget year, reducing it by the amount of actual contributions(deductions) to the respective communities for the first two years prior to the budget year.

(3) the proportions reserved for each affected community

The Ministry of Environment has provided data on the proportions of the amount to be allocated to each affected community for 2016-2019 in relation to environmental tax charged for discharge of hazardous wastes and compounds into environment (water basin), for discharge of hazardous wastes into environment (air), for disposal of environmentally hazardous production and consumption wastes in compliance with the defined order. The data has been uploaded on the EITI website in open data format (Annex 3, https://www.eiti.am/en/environmental-programs/).

The data is disaggregated by communities and companies. The methodology for defining proportions is also presented, according to which the calculation of the proportions of distribution among the communities affected by the activities of each of the companies set forth in Article 1 of the RA Law “On Targeted Use of Environmental Tax Made by Companies” is carried out according to the following principles:

- The proportions of the distribution of the amount of environmental tax among the communities in relation to the emission of harmful substances into the atmospheric air (% of the total) are determined on the basis of the preliminary results of the territorial norms on pollution. The proportions are distributed among the affected communities, based on the amount of pollution and the population of the communities (in the case of large communities, affected settlements);

- The proportions of the distribution of the amount of environmental tax among the communities in relation to the emission of harmful substances into the environment (water basin), for disposal of environmentally hazardous production and consumption wastes in compliance with the defined order are determined based on the population of the respective communities (in the case of enlarged communities, affected settlements) and the volume of water resources pollution in their administrative territory;

- The proportions of the distribution of the amount of environmental tax among the communities are defined on the basis of the enlargement of a number of communities stipulated by the RA Law “On Making Amendments and Addenda to the RA Law on Administrative-Territorial Division of the Republic of Armenia”.
(4) the total amount assigned for each community

(5) the actual transfers

(6) any discrepancies between the values to be made available according to the revenue-sharing formula, the values actually made available to each community and the values actually transferred to each community

As presented, the projects/programs are approved by the Ministry of Environment or the Ministry of Health, after which they are approved in the State budget as a subsidy given to the community.

The RA Law on the State Budget of the Republic of Armenia, the Budget Annexes, the information on the adjusted budgets of the communities receiving subsidies within the framework of the "Providing Subventions to the Communities of the Republic of Armenia" program and the actual implementations of the projects are available on the website of the RA Ministry of Finance. However, in addition to the links to publications on the website of the Ministry of Finance, the 2016-2019 data on budgets (planned) and actual amounts for the implementation of environmental projects within the framework of the program "Providing Subventions to the Communities of the Republic of Armenia" of the State budget has been published on the EITI website in open data format. The published data clearly shows the amounts approved by the budget for the projects/programs and the amounts of their actual implementation.

After the start of the Validation, following the recommendation of the EITI MSG of Armenia, approved environmental and health projects/programs for 2016-2018 have been published on the websites of the affected communities.

Links to programs published on the websites of affected communities, 2016-2018

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| **Syunik marz**                     |                  |

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9 Subsidies provided by communities from the RA state budget for implementation of environmental and health projects/programs [https://www.eiti.am/en/environmental-programs/?tab=89](https://www.eiti.am/en/environmental-programs/?tab=89)
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| t.Tsaghkadzor                      | [http://212.34.229.98/Pages/Misc/Announces/view.aspx?recID=356#.XrRc8mgzZPZ](http://212.34.229.98/Pages/Misc/Announces/view.aspx?recID=356#.XrRc8mgzZPZ) |
The legislative initiative of the Government of the Republic of Armenia to eliminate legal inconsistencies and gaps

Pursuant to the current regulations among the list of companies defined by Article 1 of the Law of the Republic of Armenia “On Targeted Use of Environmental Tax Made by Companies”, deductions are made from the environmental tax paid by only 5 metal ore mining companies, namely “Agarak CMC” CJSC, “Aktala Mining and Processing Enterprise” CJSC, “Geopromining Gold” LLC, “Kapan Mining and Processing Company” CJSC (currently Chaarat Kapan CJSC), “Zangezur Copper-Molybdenum Combine” CJSC, to implement environmental and health programs in the affected communities of these companies.

According to the 2016-2017 EITI Report disclosures and during the meetings with the stakeholders in the scope of Validation Mission in Yerevan, a number of regulatory gaps have been registered. The Ministry of Territorial Administration and Infrastructure had developed a draft law on making amendments and additions to the Law to address those gaps which was approved by the Government on 27 February, 2020, and at the first reading has been adopted by the National Assembly on 6 May, 2020. The (draft) Law stipulates that:

- Starting from 2021, deductions from the environmental tax paid by all mining companies possessing permits for extraction of metal minerals will be made for the implementation of projects in the communities the territories of which are adversely affected as a result of the operations carried out by the companies.

- In order to increase the efficiency of Local Self-government Bodies, to improve performance quality and accountability, and to ensure transparency, approved community programs shall be published each year on the municipality's website and / or on the website of the relevant regional administration.

- The Head of the Community shall prepare a report on the implemented program. The implementation report approved by the Council of the Elders shall be published on the websites of the municipality and / or the relevant regional administration by 1th March of the following year of the reporting year. The report form shall be approved by the Ministry of Territorial Administration and Infrastructure.
• The procedure for calculating the amount of deductions to the affected communities or settlements shall be adopted by the Government of the Republic of Armenia within six months.

The draft legal acts to be developed in the coming months, particularly the program implementation report forms and the procedure for calculating the amount of deductions to the affected communities or settlements will be presented to the MSG for consideration by the bodies developing the draft legal acts.

MSG Conclusion

The MSG finds that the overall progress of 5.2 requirement fulfillment taking into account the information published in the 2016-2017 EITI Report of Armenia, 2018 EITI draft report, additional data published on the websites of the authorized state bodies and communities and the draft Law approved by the Government of Armenia and submitted to the National Assembly should be assessed as “Satisfactory”.

6. Social and economic spending

Social expenditures (#6.1)

The International Secretariat’s initial assessment is that Armenia has made meaningful progress towards meeting this requirement.

The International Secretariat identified the following corrective action:

In accordance with Requirement 6.1, Armenia is required to disclose information about the nature of extractives companies’ mandatory in-kind social expenditures, as well as possible third-party beneficiaries of mandatory social payments. Armenia should ensure that its EITI reporting and/or the online portal provides an overview of total mandatory social expenditure by companies, both in cash and in-kind. For upcoming EITI reporting, Armenia is encouraged to document its assessment of the materiality of mandatory social payments.

MSG comments
According to the public EITI reports submitted by the metal mining companies on the online reporting platform\(^{10}\) of EITI Armenia, the companies in the section "Social-economic contribution of the mining company to the community" present the name of the obligation (contribution) related to social-economic development of communities defined by the mining contract, the amount of contribution if it is a financial contribution, the value assessment of the contribution if it is non-financial (in-kind) contribution, as well as the community name to which the contribution is addressed. According to the public EITI reports provided by the heads of the communities and submitted by the Ministry of Territorial Administration and Infrastructure, in the section "Social-economic contribution of the mining company to the community" in case of financial contributions, are presented the amounts paid to the community, the payment date (for each payment), the document certifying the payment, and in case of non-financial (in-kind) contributions, the communities present the name of commodity or service and the community name to which the contribution is addressed.

Within the scope of the Validation process of EITI Armenia gaps have been registered related to the disclosure of financial and non-financial obligations aimed at the socio-economic development of the communities stipulated in the mining contracts, particularly, the descriptions of the commodity or service in case of non-financial investment are filled-in incompletely, in some cases, there is no information about the specific beneficiaries of financial and non-financial contributions.

**Additional actions taken following commencement of Validation**

Following the recommendations of the MSG and in accordance with the request letter sent to the companies by the Ministry of Territorial Administration and Infrastructure, the companies provided additional information on financial and non-financial contributions in relation with the obligations in the field of socio-economic development of communities defined in Annex 3 of the mining contracts. The information is available at [https://www.eiti.am/en/socio-economic-contributions/](https://www.eiti.am/en/socio-economic-contributions/).

As a result of additional data, the description of each mandatory non-financial contribution (commodity, service, project) for 2016-2018 has become more complete, the existing gaps have been filled, the names of the specific beneficiaries of each financial and non-financial mandatory (contractual) contribution made in the communities in 2016-2018 have been presented, for example, a local government body (municipality), a third party with a clear indication of its name (Annex 4). The authorized body has requested information from the relevant communities on some of the differences between the data presented in the reports submitted by the companies and the communities.

\(^{10}\)[https://reports.eiti.am/hy/report/search/company-pdf/]
At present, communities cannot provide a description of non-financial contributions (commodities, services, projects) if those have been provided to a third party, as the companies do not submit the documents to the municipalities.

Mandatory financial and non-financial contributions made by companies in 2016-2018, which present the amount of the contributions in case of financial contributions, and the descriptions of the contributions (commodity, service, project) in case of non-financial contributions, the purpose and the beneficiaries of the corresponding contributions are available on EITI Armenia website at the following link: https://www.eiti.am/en/socio-economic-contributions/?tab=91. The published data table also shows the total amount of financial contributions actually made during the reporting years, and in the case of non-financial contributions, the value assessments presented by the companies.

For the scope of the 2019 EITI Report MSG decides that the revenue flows whose equity stake in the total revenue flows from the extractive industries comprises 1% and more will be considered as material and will be reconciled. In the list of those financial flows the obligations connected to the socio-economic development of the communities specified by the mining contract should also be considered. The reconciliation cannot be made in case of in-kind (non-financial) obligations, as their cost assessment (cost price) is presented only by the companies. However, if the cost assessment submitted by the company exceeds the established threshold, the Independent Administrator shall, if necessary, obtain additional information on the non-financial (in-kind) contribution (product and / or service) from the community that had received the contribution in order to include it in the Report.

**MSG Conclusion**

The MSG finds that the overall progress of 6.1 requirement fulfillment should be assessed as “Satisfactory” taking into account the information for 2016-2018 additionally collected from the mining companies on implemented social-economic financial and in-kind contributions pursuant to the mandatory obligations set forth in the mining contracts and additional data published on the EITI national website.
7. Outcomes and Impact

Data Accessibility (#7.2)

According to the draft Validation Report “To strengthen implementation of Requirement 7.2, Armenia is encouraged to focus on capacity-building efforts to develop stakeholders’ capabilities to analyse financial data, which could involve collaboration with economic research institutions such as universities.”

MSG comments

In order to raise Stakeholders’ interest or capacity in analysing the financial data disclosed through the EITI with the support of German Development Cooperation via Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) a training on “The Mining Industry’s Fiscal Regime in Armenia and EITI Requirements of Financial Flows’ Transparency” took place on March 6-8.11 The training was designed for the MSG members and responsible staff-persons of the mining sector’s relevant state agencies and organizations. The training was conducted by the consulting companies "Z Consulting" CJSC and "Avenue Consulting Group " LLC consultants and was attended by 28 representatives of the RA Audit Chamber, State Revenue Committee, Ministry of Environment, Ministry of Territorial Administration and Infrastructure, Ministry of Finance, Inspectorate for Nature Protection and Mineral Resources, MSG. The main topics of the training were:

- Presentation of mining financial flows published through the EITI;
- Mechanisms of financial flows’ formation;
- Factors affecting the profitability of the sector;
- Methodology of calculation the amount of subsidies from the environmental taxes on targeted use and selection of affected communities and environmental, healthcare projects;
- Factors affecting growth of state revenues from the sector;
- Transfer pricing new regulations.

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