

PRACTICAL ASPECTS OF IMPLEMENTATION OF THE EITI STANDARD AND **RECOMMENDATIONS** FOR NEW EITI MEMBERS REGARDING DISCLOSURE OF CONTRACTS

Experience of the Republic of Azerbaijan,
the Republic of Kazakhstan,
the Kyrgyz Republic and Ukraine.



INTRODUCTION

Throughout 2022, as part of the project “Strengthening conditions for opening contracts in the extractive sectors in Eurasia through enhancing cooperation between CSOs in the region”, supported by the international coalition “Publish What You Pay”, the civil society organizations of the Republic of Azerbaijan, the Republic of Kazakhstan, the Kyrgyz Republic and Ukraine exchanged experience and conducted advocacy campaigns in their countries aimed at disclosure of as much as possible range of information about extractive contracts in accordance with the EITI Standard.

The experience in this area and lessons learned from the Republic of Azerbaijan, the Republic of Kazakhstan, the Kyrgyz Republic and Ukraine are very different, however, this is the main guarantee of success and joint efforts.

By the end of the project, civil society organizations of the Republic of Azerbaijan, the Republic of Kazakhstan, the Kyrgyz Republic and Ukraine shared their experience and prepared recommendations for new EITI members who are just beginning to implement the EITI Standard, in particular regarding disclosure of extractive contracts, which are collected in this brochure.



dixigroup ANALYTICS ON DUTY

Dixi Group, think tank, Ukraine



Public Union of Democratic Development and Economic Cooperation, the Republic of Azerbaijan



ECHO Public Association, the Republic of Kazakhstan



NGO Consortium for promotion EITI in Kyrgyzstan

Abbreviations

JVA – joint venture agreement;

EITI – Extractive Industries Transparency Initiative;

MSG – the EITI multi-stakeholder group;

PSA – production sharing agreement.

IMPLEMENTATION OF THE EITI STANDARD IN THE REPUBLIC OF AZERBAIJAN, THE REPUBLIC OF KAZAKHSTAN, THE KYRGYZ REPUBLIC AND UKRAINE. **THE STATE OF PLAY.**



THE REPUBLIC OF AZERBAIJAN

Previously, this country was a “champion” in the disclosure of information within the framework of the EITI. However, in 2017, a decision was made to terminate membership of the Republic of Azerbaijan in the EITI. However, certain efforts to increase the transparency of the extractive industry are continuing to be made. Annual reports on transparency in the extractive industry are published according to the Decree of the President of the country dated July 28, 2020, the Resolution of the Cabinet of Ministers dated August 10, 2020, and the Resolution of the State Statistics Committee dated February 25, 2021. This Resolution contains a list of statistical indicators on transparency in the extractive industry.

In 2020, the State Statistics Committee of the Republic of Azerbaijan launched a special portal where annual reports on transparency in the extractive industry are presented. These reports contain statistical information on the companies:

1. about the number of enterprises of the extractive industry by branches,
2. about production volumes,
3. about export,
4. about infrastructure indicators,
5. about payments of companies in the form of transferred crude oil, natural and associated gas, gold and other payments,
6. about operational, social and other expenses of the companies,
7. about long- and short-term assets of the companies by various types,
8. about investments of the companies,
9. about employment and wages.

The published annual reports on the extractive industry transparency provide also information on the country’s energy balance, crude oil and natural gas balances, as well as macroeconomic data for the country.



There is no special legislation requiring the disclosure of contracts in the Republic of Azerbaijan, but the majority of extractive contracts (12 PSAs) for the production of oil and gas, as well as gold (1 PSA) are available on the aforementioned portal of the State Statistics Committee:

- Agreement on exploration, development and production sharing of three blocks, including South-Western Gobustan field;
- Agreement on restoration, development and production sharing of the block, including Kurovdag oil field in the Republic of Azerbaijan;
- Agreement on restoration, exploration, development and production sharing of the block, including Muradkhanli, Jafarli and Zardob oil fields;
- Agreement on restoration, exploration, development and production sharing of the block, including Zig and Govsan oil fields;
- Agreement on discovery, development and share of production of the promising gold fields Gedabek, Gosha, Ordubad group (Piazbashi, Agyurd, Shakardara, Kiliyaki), Soyudlu, Kyzilbulag and Vejnali;
- Agreement on exploration, development and production sharing of the Absheron sea block in the Azerbaijani sector of the Caspian Sea;
- Agreement on exploration, development and production sharing of shallow water zone around the Absheron peninsula in the Azerbaijani sector of the Caspian Sea;
- Agreement on joint development and production sharing of Azeri, Chirag and Gunashli deep sections in the Azerbaijani sector of the Caspian Sea;
- Agreement on joint development and oil production sharing of Azeri, Chirag and Gunashli fields in the Azerbaijani sector of the Caspian Sea;
- Agreement on discovery, development and production share of the promising exploration block D230 in the Azerbaijani sector of the Caspian Sea;
- Agreement on exploration, development and production sharing of Ashrafi-Dan Ulduzu-Aipara field in the Azerbaijani sector of the Caspian Sea;
- Agreement on exploration, development and production sharing of the promising area Shah-Deniz in the Azerbaijani sector of the Caspian Sea;
- Agreement on exploration, development and production sharing of the Shafaq-Asiman offshore block in the Azerbaijani sector of the Caspian Sea.



THE REPUBLIC OF KAZAKHSTAN

According to Article 77 of the Code on Subsoil and Subsoil Use of the Republic of Kazakhstan, the public authority granting the right to subsoil use should provide an open access to information about:

- contents of issued licenses and concluded contracts for subsoil use,
- persons and organizations controlling the subsoil user;
- total amount of expenses spent by the subsoil user by years;
- paid amounts of fees for the use of land plots;
- total amount of expenses for training of Kazakhstan specialists, research, scientific, technical and experimental design works in the territory of the Republic of Kazakhstan, for social and economic development of the region and development of its infrastructure, social and economic support of local population, etc.

Geological information is restricted and can be disclosed by authorized subsoil research body after five consecutive years upon receipt thereof from the subsoil user. The Republic of Kazakhstan has approved and published standard contracts for exploration and production of hydrocarbons and uranium production.

Also, the Order of the Minister of Energy of the Republic of Kazakhstan No. 122, dated April 12, 2018, provides for keeping a register of concluded contracts. According to this order, the list of valid contracts of the Republic of Kazakhstan for development and production of solid minerals is published on the website of the Ministry of Industry and Infrastructure Development (it includes 533 contracts), however texts or, at least, essential contents of the extractive contracts have not been published.

The Ministry of Energy of the Republic of Kazakhstan, which supervises the production of hydrocarbons and uranium ores, reported on its website that as of 08.07.2021, the number of valid contracts is 285, including 263 contracts for exploration and production of hydrocarbon and 22 for uranium production.

On November 30, the Ministry published restricted data on 147 contracts, including name of the subsoil user, contract territories, term of the contract, as well as financial obligations of the subsoil users to finance training of local personnel, infrastructural development of the regions, and scientific, research and technical and (or) experimental design works.



The Ministry of Industry and Infrastructure Development of Kazakhstan regularly updates on its website the register of issued licenses, which contains information about terms, territory, beneficial owners, as well as the list of valid contracts, which contains only name of the field, name of the company and date of the contract (as of January 2023 – 1,895 licenses and 465 contracts for solid minerals). Published registers do not include information on the contents of contracts and licenses.

The national 2019 EITI Report contains brief information about 11 PSAs of the Republic of Kazakhstan in the field of development of hydrocarbon fields, which includes data on subsoil users, country of registration of investment companies, name of the subsoil section, type of minerals, term of contracts and share of PSA participants.

Only 8 documents of the extractive industry of the Republic of Kazakhstan, among which 5 license agreements and 2 concession agreements of the oil and gas industry, are publicly available on the website ResourceContracts.org. Despite the fact that many international companies having assets in the Republic of Kazakhstan declare their readiness to publish contracts at the international level, they do not actively support the campaign to disclose contracts at the national level in the Republic of Kazakhstan.





THE KYRGYZ REPUBLIC

According to paragraph 6 of Article 41 of the Law of the Kyrgyz Republic “On Subsoil”, all licenses and license agreements certifying rights to subsoil use, previously granted through tenders or auctions, are posted on the official website of public authority on subsoil use within 6 months as from the date of entry into force of the said Law.

Despite the presence of legislative requirements, public authorities of the Kyrgyz Republic did not publish license agreements or other contracts with extractive companies, including concession agreements and all related documents under project “Kumtor” for 2009-2042 between the Canadian mining company and the Kyrgyz government, according to which 15-17 tons of gold is mined on an annually basis.

In general, the situation with publication of data in the Kyrgyz Republic is quite difficult. Over the past three years, the structure of the Government of the Kyrgyz Republic has changed several times. The responsibility for subsoil use and the extractive industry was borne by the State Committee of Industry, Energy and Subsoil Use of the Kyrgyz Republic which changed to the State Agency of Geology and Subsoil Use at the Ministry of Energy and Industry of the Kyrgyz Republic, which in turn was replaced by the Ministry of Natural Resources, Ecology and Technical Supervision of the Kyrgyz Republic.

On the website of current authorized body (the Ministry of Natural Resources, Ecology and Technical Supervision of the Kyrgyz Republic) there is no information on the issued licenses, although this data is published on the website of the body that no longer exists (the State Agency of Geology and Subsoil Use at the Ministry of Energy and Industry of the Kyrgyz Republic). The list includes more than 2,600 licensees and contains information about the subsoil user, location of the subsoil use facility, license registration data, type of minerals and type of subsoil use, size of production/exploration area, budget.

There is currently no a single online source of information about the extractive industry.

It is still difficult for the civil society of the Kyrgyz Republic to conduct a dialogue with the government and extractive companies on the disclosure of license agreements and contracts of the extractive sector. The Ministry of Natural Resources, Ecology and Technical Supervision of the Kyrgyz Republic is considering the possibility of gradual disclosure of an access to existing license agreements and contracts through expansion and improvement of the website of the relevant public authority.



UKRAINE

Ukraine has joined the EITI in 2013. The disclosure of the extractive contracts has always been a difficult issue for Ukraine, any discussions regarding this matter even at the beginning of the EITI implementation faced resistance from both private business and state-owned extractive enterprises.

In September 2018, due to an active advocacy campaign held by civil society representatives in the EITI multi-stakeholder group, the Law of Ukraine “On Ensuring Transparency in the Extractive Industries” was adopted. This Law creates the legal framework for the EITI implementation in Ukraine and inter alia defines the obligation to disclose information about essential conditions (or key clauses) of contracts (agreements) on the subsoil use (partial disclosure of extractive contracts).

Despite relevant legislative requirements, the mentioned information about extractive contracts for a long time remained closed. Only after persistent reminders and letters from civil society representatives, in particular, DIXI Group think tank, the Ministry of Energy of Ukraine published on its website information about key clauses of 9 PSAs signed on December 31, 2020 and January 14, 2021.

The current status of disclosing all PSAs concluded in Ukraine:

PSA plot	Disclosure status
Prykerchenska	No
Complex of Black Sea fields (Abikha, Kavkazka, Mayachna, Subbotina structure)	No
Oleska	No
Yuzivska	No
Balagleiska	Key clauses
Berestianska	Key clauses
Buzivska	Key clauses
Ivankivska	Key clauses
Sofiivska	Key clauses
Uhnivska	Key clauses
Zinkivska	Key clauses
Varvynska	No
Okhtyrska	Key clauses
Hrunivska	Key clauses



DiXi Group experts analyzed published information about key clauses of 7 out of 9 PSAs, as well as international experience in this matter, and came to the conclusion on insufficient and heterogeneous level of the disclosure. In particular, it contained references to the closed agreement sections and annexes.

The information on the other types of extractive contracts such as JVAs, concession agreements in the extractive area wasn't published yet. As an exception can be considered two additional agreements to JVAs concluded by PJSC "Ukrnafta" in 2002, and are publicly available on the website ResourceContracts.org. Other JSAs are not published, and there is no information on its total number. It is only known that according to the 2020 EITI Report, in 2020 in Ukraine accounted 14 JVAs, where one of the parts was is state-owned enterprise or enterprise with 50% share of the state capital.

Before the war in Ukraine, the following information was disclosed:

- Register of the special permits for the use of subsoil, which contained texts of all existing special permits (licenses). Their borders could also be viewed on the online maps – Public Cadastral Map of Ukraine and State Geological Portal.

During martial law, an access to these resources was temporarily restricted. Separate information related to subsoil use is available to registered users in the information system "E-cabinet of the Subsoil User", which functions on the basis of State Geological Portal.

- Since 2016, the website of the State Geologic and Subsoil Survey of Ukraine (UGS) also started to publish information on issued special permits with relevant agreements on the conditions of the subsoil use (integral annex to special permit).

As of the beginning of 2022, such publications continued on the UGS website. In May 2022, this section of the website was closed due to martial law.

In December 2021, the Ukrainian Parliament adopted amendments to the Law of Ukraine "On Ensuring Transparency in the Extractive Industries", stating **all contracts on extractive activities to which the state is a party, concluded after these amendments came into force, must be published in full**. A month later, these amendments entered into force. Thus, as from January 2022, the issue of full contract disclosure in the extractive sector of Ukraine is regulated at the legislative level. However, this rule will apply only to contracts concluded after this date. Previously concluded agreements should still be disclosed at the level of their key clauses. Since no new agreement has been concluded yet due to Ukraine's martial law, the actual status of Ukraine's disclosure of the extractive contracts has remained unchanged. Agreements on the conditions of subsoil use (as integral annexes to relevant special permits) issued after February 24, 2022 can be considered as an exception. The access to them is, however, closed due to martial law.

Thus, before the start of a full-scale war, the **requirement 2.4 of the EITI Standard was fulfilled by Ukraine only in terms of disclosure of special permits for the subsoil use, as well as essential conditions and excerpts from a limited number of concluded PSAs**. However, after the end of martial law, access resumption to the state online services, and conclusion of new agreements, Ukraine will be able to demonstrate greater progress in fulfilling requirement 2.4 of the EITI Standard, since the requirement to disclose extractive contracts is fixed by law.

CONTRACT DISCLOSURE MATRIX AS OF THE END OF 2022

Country	Legislative requirement to disclosure of contracts	Disclosure of contracts
The Republic of Azerbaijan	—	<p style="text-align: center;">+</p> <p>(14 agreements on the website of the State Statistics Committee; 15 agreements on the website ResourceContracts.org)</p>
The Republic of Kazakhstan	+	<p style="text-align: center;">PARTIALLY</p> <p>(a list of concluded agreements and information about some of them – in the EITI Report and on the website of public authorities, standard contracts for exploration and production of hydrocarbon and uranium production).</p>
The Kyrgyz Republic	+	—
Ukraine	<p style="text-align: center;">+</p> <p>(before January 2022 essential conditions / after January 2022 full disclosure of contracts)</p>	<p style="text-align: center;">PARTIALLY</p> <p>(before January 2022, essential conditions of 9 of 14 PSAs and 2 agreements on the website ResourceContracts.org / after January 2022, nothing has been published additionally)</p>

RECOMMENDATIONS FOR NEW EITI MEMBERS REGARDING DISCLOSURE OF CONTRACTS



THE REPUBLIC OF KAZAKHSTAN

- ✓ **Build effective interaction with the National Secretariat.**

The Secretariat is the key process moderator in the country, and much depends on the interest and competence of its employees. Civil society often helps the Secretariat personnel to improve their skills. Proper interaction with the Secretariat helps to achieve a better proceeding without official lengthy bureaucratic procedures. Involve the Secretariat in public events related to the EITI and transparency in general.
- ✓ **Interact with the parties more broadly than at the MSG level only.**

You may find unexpected supporters among decision-makers not directly involved in the EITI. However, they can contribute to your campaign. So, for example, members of the Parliament can make inquiries on the topic proposed by you. You can give them an idea that they can use in their activities, by earning advantages among voters. To reach it, it is necessary to provide members of the Parliament with the details on your topic and why it is important and beneficial for the country. In addition to members of the Parliament, these may also be public authorities that are not represented in the MSG, but are interested in corruption fighting, governance improving, and developing regions.
- ✓ **The experience of other countries can be a clue to solving problems in your country.**

The requirements of the EITI Standard are quite general and allow each country to choose different ways to achieve its goals, taking into account local features, history, legislation and other factors. You can contact the EITI International Secretariat to get advised on how other countries achieve compliance with different requirements. This may be a country very far from you, but with a similar economy and legislation. On the website www.eiti.org, on each country's page there is a link to its EITI Reports, which are usually available at least in English.

Keep contact with civil society in other countries. Activists will share with you their experience in organizing advocacy campaigns.



THE KYRGYZ REPUBLIC

- ✓ **It is very important to create and support a single online platform for information about all licenses and license agreements certifying the right to use the subsoil.**

In the Kyrgyz Republic, as a result of frequent changes in the structure of public authorities, powers regarding implementation and formation of subsoil use policy were transferred to various bodies. Each of mentioned published information on subsoil use and the extractive industry on its website. Nowadays, there are three different websites, that misleads many people and does not allow to assess qualitatively the disclosure level of the extractive industry of the Kyrgyz Republic. To preserve the institutional memory, it is very important to support a single and complete information resource on extractive industries, regardless of the body responsible for this policy.

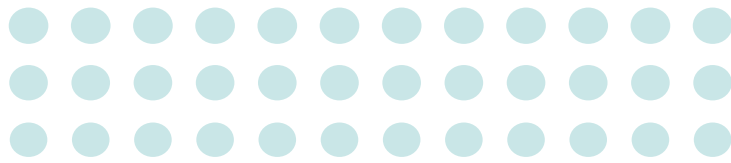
- ✓ **It is important to get support of the main political forces for the disclosure of contracts and licenses,** for example, members of the country's Parliament, especially relevant committee at the Parliament, since the political will in such matters is the key obstacle to implement and resolve the issue.

- ✓ **When adopting new legislation, it is absolutely necessary to develop the provision on contract disclosure and license agreements, and make this provision as extensive and precise as possible.**

The Kyrgyz Republic's MSG members recommend to start with the publication of license agreements of 13 major mining companies and in future to supplement them before the start of validation in April 2023.

- ✓ **It is necessary to consider different channels of data disclosure, for example, through stock exchange channels** (all companies registered on national or international exchanges should disclose data) or through regulatory and legal acts. Thus, it is possible to achieve a higher transparency level of the extractive industry without making changes in basic documents of the extractive industry.





UKRAINE

- ✓ **The Ukrainian experience demonstrates that to implement the requirements of the EITI Standard on contract disclosure interventions at the legislative level are needed.**

Although the EITI Standard allows for various options, it is traditionally important for the Ukrainian society to fix such requirements precisely in laws. Only obligations supported by legal provisions are considered as obligatory. The voluntary initiatives seem not to be in a priority for all EITI implementation stakeholders. For example, extractive companies claimed that information contained in the contracts is a subject of the trade secret. Therefore, recommendation, which is based on the experience of Ukraine, is to establish extractive contract disclosure at the law level first.

- ✓ **In order to advocate the adoption of legislation, it is important to develop a constructive dialogue with all participants of the process and systematically explain the role and importance of the EITI, as well as the specifics of practical implementation of the EITI Standard.**

Each stakeholder, the Parliament, the Government, different ministries and agencies, extractive companies, international donors, plays its role in coordination, discussion and adoption of legislation. Miscommunications with them can delay the implementation of the EITI Standard for several months (and possibly years).

In case of Ukraine, civil society performed unbelievable work with all institutions and companies involved in the EITI implementation, which helped to form the sustainable knowledge and beliefs necessary for the successful adoption of legislation on the contract disclosure in the extractive industries. And public support of international organizations and other donors created necessary social pressure for the implementation of the Standard yet in 2018, when framework legislation was adopted.



✓ **The head of the EITI Secretariat must be equidistant from all stakeholders.**

This is distinctly important for the organization of impartial discussions within the framework of a multilateral dialogue and for the discussion of legislation. Although the practice of EITI countries shows that in most cases, the national secretariat is created at the body appointed by the government to lead the EITI implementation. EITI practice also recognizes that this approach faces certain difficulties in balancing interests within the MSG framework and representing interests of all stakeholders impartially.

Sometimes, despite the joint decision, the stakeholders within the MSG framework may have different views regarding the way to implement this or that decision. The national coordinator or the secretariat, which is primarily accountable to the government, may face difficulties in resolving this situation, especially if it is connected with a subordinate relationship with one of the stakeholders of the national EITI process.

The EITI practice knows different solutions. In some cases, for example, in Nigeria, the EITI Secretariat is a separate state institution. In Germany the terms of reference describe the national secretariat as an “impartial service provider for MSG” that works equally in the interests of all three stakeholder groups that make up the MSG. In case of Ukraine, the head of the national secretariat was an independent expert, whose work was financed by different donor organizations at different times, and thus none of stakeholders could influence the actions of the Secretariat within the framework of organizing discussions regarding legislation on the contract disclosure.

✓ **As the persuasive argument, a “pilot project tactics” can be recommended.**

This can be either partial disclosure of contracts (as Ukraine did, by disclosing key clauses thereof first), or the approval of model PSA/concession agreement, or publication of contracts of a “pilot” extractive company supporting the transparency standards (for example, a state-owned company or one of private companies).

It is important to create a precedent that will demonstrate that contract disclosure does not harm interests of the extractive industry. In case of Ukraine, this had a positive effect, and it was already much easier to conduct further advocacy activities on contract disclosure.





AZERBAIJAN

Unfortunately, Azerbaijan withdrew from the EITI in 2017, and it has created many difficulties for civil society in achieving transparency in the extractive industry. Although, in past, Azerbaijan was one of the first “pilot” EITI countries and one of the first countries reporting under EITI and having particular achievements.

Therefore, Azerbaijan’s recommendations are based on the country’s experience and are addressed not only to new EITI members, but also to the International EITI Secretariat as well as civil society of Azerbaijan itself.

Based on the experience of Azerbaijan, in order to achieve transparency of the extractive industry in the country, including contract disclosure, it is **necessary**:

- ✓ to ensure close and active cooperation of civil society activists, well-known experts in this area, independent mass media;
- ✓ to organize as many interviews and programs about transparency and contract disclosure as possible, using the opportunities of independent mass media;
- ✓ to make efforts on establishing of the direct ties and relationships with companies in the extractive industry (although in non-free and unaccountable societies the companies are often under the direct influence of the state);
- ✓ to establish an experience exchange between institutions of civil society in the countries of Eurasian and other regions, both striving to meet the EITI standard and having advanced achievements in this area. Bilateral and multilateral joint activities related to the EITI and the contract disclosure should be conducted, and such cooperation should be coordinated and stimulated by the International Secretariat;
- ✓ to consistently conduct advocacy activities and public campaigns in order to ensure return of the country (Azerbaijan, in our example) to the EITI, including adoption of laws on contract disclosure and beneficial ownership.
- ✓ it is important for the EITI International Secretariat **not to break ties with independent institutions of civil society in the countries that have left or are not the EITI members, as a result of the activities of national governments**. It is important to look for the tools to establish effective interaction with independent institutions of civil society in these countries and encourage them even more than before.

E-copy of brochure is here:



