



Fredrik Reinfeldt,  
Chair of the EITI International Board  
EITI International Secretariat  
Skippergata 22,  
0154 Oslo  
Norway

**Dr. Winfried Horstmann**

Director General for Industrial Policy

TEL +49 30 18615 74 80

FAX +49 30 18615 54 21

E-MAIL [winfried.horstmann@bmwi.bund.de](mailto:winfried.horstmann@bmwi.bund.de)

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## Request for clarification on requirements 4.1 and 4.6

Dear Mr Reinfeldt,

Please allow me to address you on behalf of the German EITI multi-stakeholder group on a matter of paramount importance for the German EITI (D-EITI).

Germany was admitted as an EITI candidate in February 2016. In August 2017, Germany published its first D-EITI report with data for 2016. The report includes several topics that go beyond the EITI-Standard<sup>1</sup> boosting its importance on a national and international level. These include information on renewable energies<sup>2</sup>, subsidies for the extractive sector and a reflection on human intervention in nature. For its second report the MSG has already decided to include a chapter on recycling of extracted resources and social standards. We are happy to learn that our innovative approach has inspired other MSGs discussing the inclusion of further topics with importance for their national context. Moreover, some of our topics like the chapter on environmental protection and mining have influenced national debates in several EITI countries.

Germany has further introduced a bilingual data platform ([www.rohstofftransparenz.de](http://www.rohstofftransparenz.de)) where all information requested by the EITI-Standard and relevant for the German extractive sector is displayed for the wider public. All data of the German EITI is available in open data format.

<sup>1</sup> <http://www.rohstofftransparenz.de/en/rohstoffgewinnung/>

<sup>2</sup> [http://www.rohstofftransparenz.de/en/rohstoffgewinnung/erneuerbare\\_energien/](http://www.rohstofftransparenz.de/en/rohstoffgewinnung/erneuerbare_energien/)

Page 2 / 4 Additionally, Germany has changed its mining law to adhere to EITI requirements. Since July 21, 2017 detailed information on granted and maintained mining rights can be viewed upon application to the mining authorities without the evidence of a legitimate interest, which was a precondition previously<sup>3</sup>. We consider this an important step towards mainstreaming the EITI in our country.

Currently, Germany is working on an update of the first report. This is due to the decision of the MSG to align D-EITI reporting deadlines with those of the German transposition of the EU-Accounting Directive<sup>4</sup>. The MSG decided to include a reconciliation of the local German business tax in the updated report with an elevated threshold of two million Euro. The MSG considers the local business tax a material payment, yet a reconciliation on the basis of a materiality of 100,000 Euro (that is used in D-EITI for other payments) is not feasible. The MSG considers a materiality threshold of 2,000,000 Euro as sufficient for the aim of national EITI reporting.

The MSG kindly asks for the Board's clarification on whether a materiality threshold for the local business tax of 2,000,000 Euro is in line with the EITI requirements 4.1 and 4.6. The MSG's decision is based on the following considerations:

Disclosure of payments is already mainstreamed under German transposition of the EU directive

- Local business tax is disclosed by companies as part of their reporting in accordance with the EU-Accounting Directive and publicly available here.

Practical burden

- The large number of municipalities: There are 11,192 communities in Germany. Local business tax is paid to any community (or communities for a shared area) in which an extractive company runs an operating facility (e.g. a mining site or a drill hole). A comprehensive reconciliation of the local business tax reported by companies for the D-EITI "Report for 2016" would involve more than 240 communities in the reporting process according to the findings of the Independent Administrator.
- The political independence of municipalities: Communities in Germany are - to a large extent - politically independent. Thus, each community can decide for itself whether to participate voluntarily in the EITI reporting or not. The Independent Administrator reported in addition that there is no way to contact the (relevant) communities as a group, but that individual contact, information and communication by the Independent Administrator is required per reporting request.
- The German tax secrecy law: Municipalities cannot publish or release data on tax payments to the Independent Administrator. Each company has to waive the tax secrecy law for each of the community/state entities individually that is asked to report/confirm payments made by that company.

<sup>3</sup> Compare § 76(3) of the BBergG

<sup>4</sup> [https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&start=//%255B@attr\\_id=%27bgbl115s1245.pdf%27%255D#\\_\\_bgbl\\_\\_%2F%2F%5B%40attr\\_id%3D%27bgbl115s1245.pdf%27%5D\\_\\_1524140507565](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//%255B@attr_id=%27bgbl115s1245.pdf%27%255D#__bgbl__%2F%2F%5B%40attr_id%3D%27bgbl115s1245.pdf%27%5D__1524140507565)



### Disproportionate costs

- The cost for the reconciliation process of the local business tax would exceed more than 220,000 EURO. This is considered as disproportionate, especially in addition to already existing costs of the Independent Administrator.

### No discrepancies found so far

- The Independent Administrator did not find any discrepancies after reconciling payments from the German extractive industry, including one pilot company reconciling local tax payments to four municipalities (see D-EITI report for 2016, p. 104/105).

### Not a sector specific payment

- The business tax covers all company activities and does not focus on activities in the extractive sector; the payment is not necessarily exclusively related to the upstream extractive sector.

The MSG discussed the topic of the local business tax during the preparations for candidature. There was agreement among all stakeholders, that the business tax is material as a payment stream, but that a full reconciliation would most probably lead to a demanding and cost intensive reporting process on the side of the administration/communities due to the general arguments highlighted above. The MSG concluded that more information was needed to come to an informed decision about the local business tax and therefore decided to task the Independent Administrator to gather further information and to include a reconciliation pilot in the first report. For this purpose the Esco- european salt company GmbH & Co.KG, Hannover, a company of the K+S Group, was willing to represent this exemplary business tax payments reconciliation with the result of no discrepancies for an amount of 3,766,118.87 Euro (see D-EITI report for 2016, p.104).

The general framework, the findings of the D-EITI "Report for 2016" with no discrepancies for all reconciled payments (see D-EITI report for 2016, p.94 – 105) and the feedback from the Independent Administrator on the business tax reconciliation pilot all confirmed the assumption of the MSG that a full reconciliation at a threshold of 100,000 Euro would incur extensive additional reporting costs with no additional benefits for the EITI implementation.

The MSG agreed that additional cost for full reconciliation would be disproportionate in relation to the expected outcome and the already high overall budget, let alone the reporting costs for the local administrations. Additionally, the civil society representatives in the MSG stated that they would prefer activities with more relevance to the public, creating more impact over an expensive full reconciliation of the business tax with the expectation of no discrepancies/ no benefit to the process at all, given that all local business tax payments are already reported by extractive companies by law.

Raising the materiality to two million Euro would imply a reconciliation of 51% of local business tax paid by the companies reporting under EITI (calculation based on actual figures from 2016 EITI report) while significantly reducing reporting costs.

Again, we would like to highlight that 100% of local tax payments from all extractive companies will be published unilaterally. The MSG strongly believes that this approach, alongside with the solid audit mechanisms in place to check on company data (see D-EITI report for 2016, p.89), will provide a comprehensive and reliable overview of payments at the sub-national level, holding up the EITI-Principles that a public understanding of government revenues helps to foster a public debate about the resource sectors in EITI member countries. Additionally, we would like to draw the Board's attention to the strong auditing mechanisms that are applied for municipalities (see D-EITI report for 2016, p.89f). These checks and balances guarantee good quality data from state entities. The strict organizational separation between the area of determination and collection on the one hand and the area of custody and enforcement on the other provide for low risk of embezzlement. In addition, municipalities have risk management systems that systematically detect and eliminate weak points in the administrative tax allocation.

The MSG discussed the possibility of a random sample for local tax reconciliation. It discarded the idea on the ground that the probability of not capturing the most material payments would be too high. The MSG considers a materiality of two million Euro the best method to capture the most material payments and to ensure a reasonable coverage of reconciled local taxes.

As a matter of course and part of the general annual evaluation and assessment processes of the D-EITI also the framework conditions and parameters outlined in this request will be reviewed.

In the event that the Board considers the MSG's proposal as not in accordance with the EITI Standard, we would request that the Board consider this approach as an adapted implementation request vis-à-vis requirements 4.1 and 4.6.

Finally, the MSG kindly asks the Board to convey an answer to this request as soon as possible. The German EITI is considering an early validation on the ground of the updated report. The MSG believes that the announcement of a German validation could increase incentives for EU and OECD countries to join the EITI significantly. Yet, for an early validation to be possible, a fast answer to this request is of utmost importance.

Kind regards



Dr. Winfried Horstmann

Chair of the D-EITI Multi-Stakeholder-Group