

EITI International Secretariat response to D-EITI MSG request for clarification of requirement 6.1.b

Dear Boris,

Thank you for the letter on 1 October 2020 with the request from the German EITI Multi-Stakeholder Group regarding the content and scope of the new requirement under 6.1.b in the EITI standard. We appreciate that this is an important and challenging issue for the MSG in preparing the 3rd German D-EITI Report. The International Secretariat is not mandated to adjudicate, approve or “pre-validate” on such matters. However, we have some reflections based on experience in other countries and Board decisions on Validations under the 2019 Standard¹ that may be useful as the MSG continues to discuss this matter.

The 2019 EITI Standard does indeed include new language regarding environmental expenditures by extractive companies. This has two aspects: revising Requirement 6.1 to cover environmental payments by companies to governments; and (2) encouraging disclosures of contextual information related to environmental monitoring.² Requirement 6.1.b states: “Where material payments by companies to the government related to the environment are mandated by law, regulation or contract that governs the extractive investment, such payments must be disclosed”.³

In approving this change, the EITI Board noted that the EITI Standard already required disclosure of all “significant payments and material benefit to government” (Requirement 4.1)⁴. A review of EITI implementation at the time showed that 22 implementing countries had disclosed environmental payments made by extractives companies to the government or to dedicated funds. **As such, the new requirement at 6.1.b is best understood as a reiteration of Requirement 4.1.c. We would therefore encourage the German MSG to consider this matter as part of the wider, annual discussion regarding “which payments and revenues are material and therefore must be disclosed, including appropriate materiality definitions and thresholds”.** In this regard, the EITI Standard provides some flexibility so that the MSG can agree an approach that is proportionate and appropriate to national circumstances.

We take note of the arguments for and against the inclusion of these payments. We would note the following:

- In considering the scope of “Any other significant payments and material benefit to government”, MSGs typically focus on benefit streams “levied on the income, production or profits of companies”, and often exclude taxes that are “levied on consumption, such as value-added taxes, personal income taxes or sales taxes”.⁵ That said, some MSGs have included these benefit

¹ <https://eiti.org/validation-decisions-schedule>

² <https://eiti.org/board-decision/2019-25#environmental-reporting>

³ <https://eiti.org/document/eiti-standard-2019#r6-1>

⁴ Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the EITI Report.

⁵ https://eiti.org/files/documents/sourcebookmarch05_0.pdf

streams with a view to addressing the wider objective of the requirement, i.e., to provide the most complete account of the extractive industry's economic contribution.

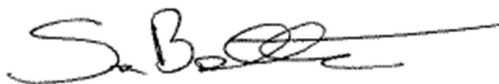
- Requirement 4.1 typically focuses on payments made directly from oil, gas and mining companies to governments. That said, some MSGs have included benefit streams that are made by companies and that pass through other entities, especially where there are taxes and levies that are intended to be passed through and/or influence the behaviour of extractive companies.
- We would advise against excluding payments on the grounds that they are not exclusively made by the extractive industries. Income taxes, for example, are levied on all types of businesses and often constitute one of the largest sources of government revenue from the oil gas and mining sector.
- We take note that taxes levied at the company and group level may present challenges where conglomerates are active in multiple industries and in downstream activities.

If the MSG takes the view that including these payments are material and important in understanding the extractive industry's impact and economic contribution, the reporting approach should take into account existing company and government disclosures. As the D-EITI has itself demonstrated⁶, one option would be to set different thresholds for different types of payments.

We would close by noting that the EITI Standard encourages MSG to “explore innovative approaches to extending EITI implementation to inform public debate about natural resource governance and encourage high standards of transparency and accountability in public life, government operations and in business”.⁷ The Validation process is also being reviewed to put a greater emphasis on recognising impactful EITI implementation.⁸ We hope the MSG is able to agree an approach to materiality definitions and thresholds that balances the technical considerations with the MSGs wider objectives for impactful EITI implementation.

We would be happy to provide additional advice and support if needed.

Sincerely,



Sam Bartlett

Technical Director

EITI International Secretariat

⁶ <https://eiti.org/board-decision/2018-31>

⁷ <https://eiti.org/document/eiti-standard-2019#r1-5>

⁸ https://eiti.org/files/documents/en_explainer_eiti_validation_model.pdf