

## **Implementation of the EITI in a federal country – experience gained and lessons learned**

### ***Implementation of the Extractive Industries Transparency Initiative (EITI) in a federal country – experience gained and lessons learned in the course of the preparations for Germany's candidature***

*The Extractive Industries Transparency Initiative is a global standard to promote open and accountable management of natural resources. Its aims are to disclose financial flows between governments and companies, and to contribute to informed public debate about the extractive sector. The EITI is implemented voluntarily by 51 countries across the globe.*

*The EITI Standard contains the set of requirements that provide the basis for implementation at national level in each country in accordance with national priorities and specific characteristics of the extractive sector. Countries with a federal system of government therefore face particular challenges, both in designing the multi-stakeholder process and in disclosing financial flows.*

*In this context, this paper summarises experience gained in the course preparing Germany's candidature and generalises the experience in the form of lessons learned.*

### **Background**

Constitutionally, the Federal Republic of Germany is a federation with 16 federal states (Bundesländer or Länder). Both the Länder and the state as a whole have their own public authority. The Länder are states with their own state constitutions, parliaments and administrative structures. The exercise of public authority is divided between the federation (Bund) and the Länder in accordance with Germany's Basic Law. In the fields of legislation, administration and the dispensation of justice, the federation has powers of its own only when these are expressly assigned to it in the Basic Law or interpretation of the constitution gives rise to unwritten competence for the federation. In practice, this system of cooperative federalism often means that the central state passes laws and the Länder execute them.

From the EITI's perspective it is particularly important in this context that responsibility for enforcing tax laws to a very wide extent (with the exception of excise duties) lies with the Länder, which have their own finance authorities for this purpose. In Germany, supervising mining and enforcing the Federal Mining Act are also tasks for

the Länder, which have set up state mining authorities to this end at the level of each Land.

Local authorities (11,200 cities, towns and municipalities and 295 rural districts) are part of the Länder and therefore not a separate ‘third level’ in the federal state structure. Nevertheless they have a constitutionally guaranteed right to govern themselves, and in trade tax they have their own source of revenue, which may also be relevant to the EITI.

In July 2014, the German Federal Government issued an unequivocal public statement of its intention to implement the EITI in Germany (D-EITI); Uwe Beckmeyer, Parliamentary State Secretary at the Federal Ministry for Economic Affairs and Energy (BMWi), was appointed as EITI Champion. In accordance with the requirements of the EITI Standard, the relevant stakeholders from the private sector, the public sector and civil society were subsequently informed, and were asked to constitute themselves and nominate representatives for the multi-stakeholder group (MSG). The MSG was established on 10 March 2015, and at four sessions during 2015 it prepared the content of Germany’s candidature and agreed on common goals and a workplan for the implementation process.

The German Government submitted the EITI Candidature Application to the EITI Board on 22 December 2015.

## **Experience gained and lessons learned in preparing the candidature**

Before a country can submit an EITI Candidature Application, it must complete four steps in accordance with the EITI Standard. Germany’s experience in implementing these steps is described in the following and is used to derive more general lessons learned for implementation in a federal country.

### **1 & 2. Unequivocal public statement by the government and appointment of a senior individual to lead on the implementation of the EITI**

The first two mandatory steps which need to be undertaken before applying to become an EITI Candidate are an unequivocal public statement by the government that it intends to implement the EITI and the appointment of a senior individual to lead on the implementation of the EITI (cf. EITI Standard 2013 p. 11).

In the final communiqué at the G8 summit in Lough Erne on 17-18 June 2013, the German Government declared that it would implement an EITI pilot. In an exploratory process the responsible ministry, the Federal Ministry for Economic Affairs and Energy, then determined the political will to fully implement the EITI in Germany, produced a feasibility study and established the responsibilities within the German Government for the candidature and a possible implementation process. The external feasibility study clearly showed that it is essential for the governments and admin-

istrations of the Länder to participate in EITI implementation in order to meet the mandatory requirements of the EITI Standard. Accordingly, representatives of the Länder were questioned about the EITI in in-depth interviews as part of the feasibility study, in addition to further stakeholders.

Early on, once this exploratory process was completed, the Länder governments were informed at the highest political level in the form of a letter from the Head of the Federal Chancellery to the Heads of the State Chancelleries in the Länder. At the technical level the Länder were also subsequently informed through the Federation-Länder Mining Committee.

On 2 July 2014 the German Cabinet publicly announced that it was initiating Germany's candidature for the EITI and appointed Uwe Beckmeyer, Parliamentary State Secretary at the Federal Ministry for Economic Affairs and Energy, as EITI Champion. The Länder issued official statements welcoming this step. It was promised that support would be provided for further implementation and that contact persons would be appointed.

### **Lessons learned**

- When the announcement of EITI implementation is being examined/prepared (for example within the framework of a feasibility study/context analysis/stakeholder survey), the potential role of the federal and, if applicable, municipal level in EITI implementation should be included in the assessment. This should investigate, for example, which bodies and institutions might potentially be affected by implementation of the EITI Standard's requirements on reporting (Requirements 3 and 4).
- Public statement of the intention to implement the EITI and appointment of the EITI Champion are the responsibility of central government. However, early involvement and notification of the federal level at the level of political decision-makers is important in order to facilitate future cooperation and coordination.
- The EITI Standard requires that the government makes a public statement on its intention to implement the EITI in order to secure future political support for the EITI process. A politically independent federal level is not affected by this. If possible, therefore, similar declarations/statements by the state governments should be prepared in connection with the public statement by the government.

### **3. Government commitment to work with civil society and companies, and to establish a multi-stakeholder group**

The third mandatory step for candidature is the establishment of a multi-stakeholder group involving the government, companies and civil society to oversee the implementation of the EITI (cf. EITI Standard 2013 p. 11).

The EITI Standard requires that an open and transparent invitation to participate in the multi-stakeholder group be sent to all relevant stakeholders (cf. EITI Standard 2013 Requirement 1.3.f). In order to ensure that this was the case, the BMWi organised open round table events for the stakeholders from the private sector and civil society respectively. The aim was to provide information about the EITI and its planned implementation in Germany and to support the constitution of EITI-related stakeholder groups. These groups were to decide which five representatives or their deputies from the respective stakeholder group would be appointed to the MSG, within which the stakeholders must be adequately represented.

As the feasibility study had shown the important role that the Länder have to play in implementation of the EITI, a Federation-Länder coordination meeting was held to notify the Länder about the introduction of the EITI and to integrate them into the MSG process. As well as the responsible ministries at national level (Economic Affairs and Finance), the representatives nominated by the Länder governments from the ministries responsible for the mining authorities also took part, as did representatives of the ministries responsible for financial administration at subsequent meetings. The format was formally constituted as a Federation-Länder Working Group on EITI. In joint rules of procedure it was agreed to harmonise the negotiating framework in future for the representatives of the government in the MSG in the Working Group. In this context the government and the Länder agreed to cooperate on an equal basis in the MSG. Furthermore, a decision by the Conference of Economics Ministers of the Länder granted the Working Group the formal mandate to designate and second representatives of the Länder to the MSG. Between the government and the Länder it was then agreed to second three representatives of the Länder to the MSG (one representative each from the economics ministries, the finance ministries and the mining authorities or the Federation-Länder Mining Committee) in addition to two representatives of the government from the Federal Ministry of Economic Affairs and the Federal Ministry of Finance. The larger number of seats for the Länder is founded on the idea of integrating the authorities affected by EITI reporting into the work of the MSG.

In the course of the MSG's further work in preparing the candidature it became apparent that involving the Länder was essential. The Federation-Länder Working Group regularly prepares the MSG meetings and is an important forum for coordination and dialogue.

## Lessons learned

- If the federal level is affected by implementation of the EITI, for example within the framework of reporting, as a key stakeholder it should be integrated into the establishment of the MSG and if possible have a permanent representation there. This ensures that relevant technical knowledge and information will be incorporated directly into the MSG discussion process and the interests of the affected administrations will be taken into account in the implementation of the EITI.
- It is a best practice of EITI implementation that the private sector and civil society stakeholder groups set up coordination bodies to designate the representatives for the MSG, harmonise the negotiating framework in the MSG and feed information from MSG back to the stakeholder groups. If several mutually independent institutions are involved on the government side with the central government and the governments at federal level, in this case too it is necessary/ advisable to set up a coordination body.
- Harmonisation and coordination between the government and the federal level in establishing the MSG requires a relatively long lead time and should therefore start at an early stage. The respective responsibilities must be clarified at the federal level in order to appoint representatives. It may also be necessary to come to an agreement on a formal framework for cooperation between the national and the federal level.
- The MSG process and implementing the EITI require the national and federal levels to cooperate on an equal basis. Rules of procedure based on the MSG rules of procedure have proved to be highly efficient and conducive to cooperation.
- The choice of representatives for the MSG should be guided by their responsibilities for the relevant thematic areas and should include the federal units on whose territory significant extractive activities take place. These are by their very nature more closely concerned with resource extraction and furthermore are affected by the EITI reporting obligations.

## **4. Maintenance of a current workplan**

The fourth mandatory step is for the MSG to maintain a current workplan, fully costed and aligned with the reporting and Validation deadlines established by the EITI Board (cf. EITI Standard 2013 p. 11).

Between March and November 2015, the workplan and the D-EITI Candidature Application were drawn up, harmonised and decided upon in four MSG meetings and further working group meetings. Far-reaching agreements on the scope of the EITI in Germany and the design of the reporting system were already reached during this process. In some cases highly technical questions were discussed, which required comprehensive expert knowledge. Although the relevant legal foundation (Federal Mining Act, tax law, Federal Nature Conservation Act) is almost entirely set at the level of national law, execution is taken care of by independent institutions in the

Länder, in some cases with differences in practical implementation. A large proportion of the technical questions therefore related to the competence of the mining authorities and financial administrations at federal state level. Against this backdrop, the three representatives of the Länder in the MSG made a substantial contribution to an informed and factually oriented debate in the MSG. The negotiations on the workplan were prepared and agreed upon within the Federation-Länder Working Group.

This coordination was necessary because in some cases there are conflicts of interest between the national and the federal level with regard to the implementation of the D-EITI. One of the reasons for this is that a large proportion of the reporting from the government side has to be carried out by the federal level, but political interest in the D-EITI tends rather to be located on the national level. However, the close integration described above led to political interest in the initiative rising in the Länder. As the majority of conflicts in connection with resource extraction are pursued at the federal level, depending on the relevant competences, the federal level benefits accordingly from dialogue initiated by EITI implementation.

### Lessons learned

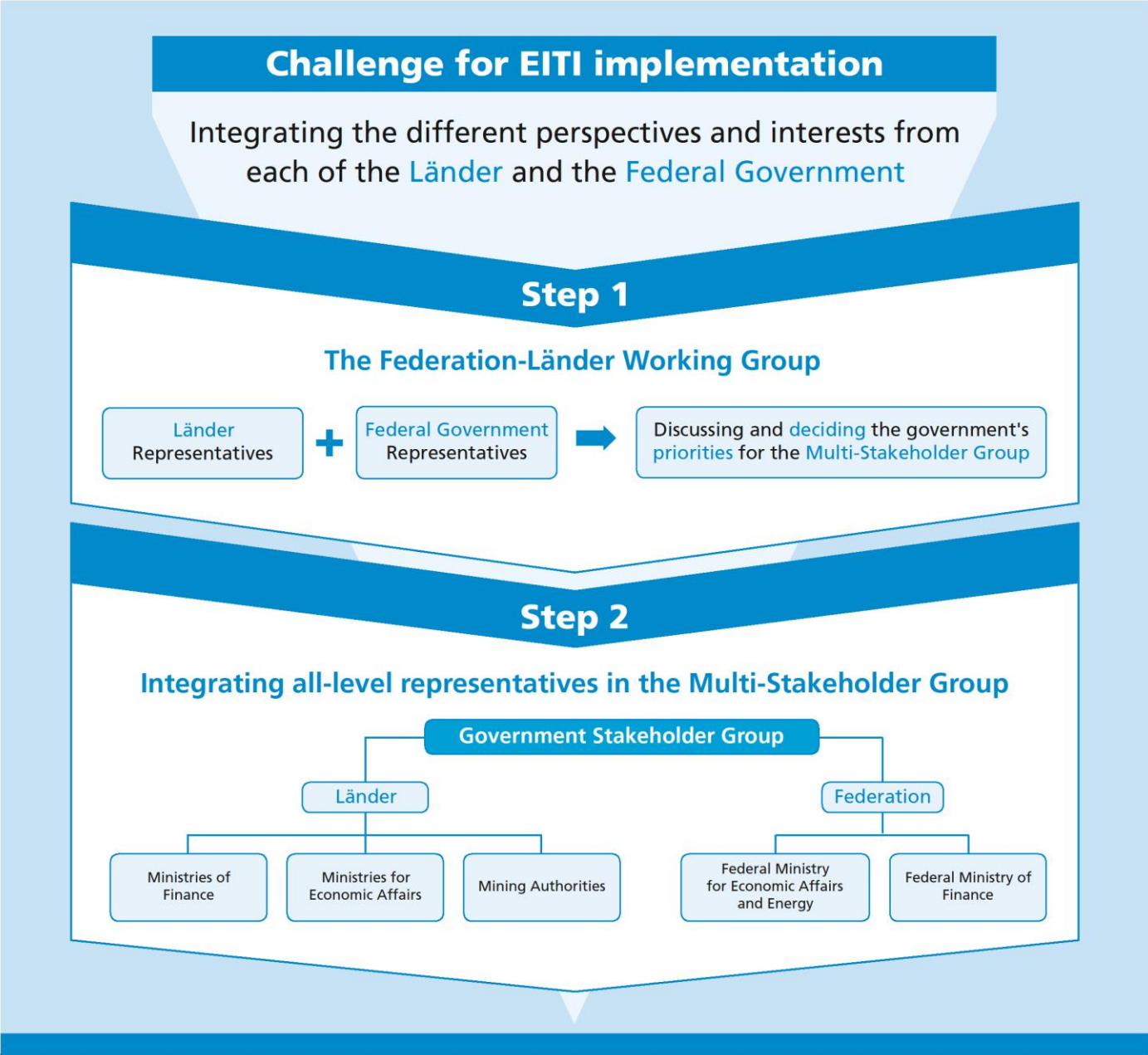
- Cooperation and dialogue in the Federation-Länder Working Group, the coordination body for the government's stakeholder group, were crucial for drafting and adopting the workplan successfully and on time.
- Cooperation in the Federation-Länder Working Group led to a new form of dialogue and exchange from which both sides benefited in the MSG's work and beyond.
- The fact that representatives of the responsible specialist units at the level of the federal state governments were involved in the MSG enabled a large number of technical questions to be clarified directly and immediately.
- As a result of the federal level being involved on an equal basis, successful implementation of the EITI in Germany became a joint project. In light of this, the federal level participated very actively and supported the project. Obtaining such support through formal channels without integrating the federal level on an equal basis would have led to substantial delays to the process at this stage.

### Conclusions and outlook

Implementation of the EITI in Germany would be impossible without the involvement of the Länder, in view of their responsibilities for tax administration and mining supervision. The preparations for candidature in Germany showed that they should become involved as early as possible. Furthermore, the multi-stakeholder process used to implement and steer the EITI requires that all relevant stakeholders become involved: on the government side this applies primarily to the administrative level that will be required to contribute to reporting under the EITI in future. The multi-stakeholder process also requires flexible and direct cooperation between the na-

tional level and the federal level, which cannot take place within the framework of the existing formal agreement between the federation and the Länder. It is therefore essential to create a separate body to ensure successful work in the multi-stakeholder group. Coordination between the national level and the federal level requires additional resources and if necessary an adjustment to the time frame. The discussion and dialogue initiated in this way also creates further added value beyond the EITI.

Following the submission of the candidature application, the MSG’s work focuses on implementation of the workplan and preparation of the first D-EITI report. One specific challenge in this context is the preparation for reporting by the administrative bodies at the federal level. This is likely to require close communication with the responsible administrative bodies because it cannot take place within the framework of established procedures. In practice, this communication has to be carried out separately in each of the affected Länder and ties up resources accordingly.



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