

EITI Validation Germany 2023

[Coordinated position for the government stakeholder group on the EITI Standard Requirement No. 3.2 \(Production data\)](#)

I. Situation:

The presentation of natural resource data in Chapter 2 of the D-EITI Report results from the requirement of the EITI Standard in Section 3.2:

Implementing countries must disclose timely production data, including production volumes and values by commodity. This data **could be** further **disaggregated** by region, company or project, and include sources and the methods for calculating production volumes and values.

Furthermore, in preparation for the validation, we were asked by the D-EITI Secretariat to determine whether the information on extraction volumes in the extractive sector for the 5th report (reporting year 2020) can be presented for each federal state in the D-EITI interactive map (see <https://rohstofftransparenz.de/en/federal-production/>) within the scope of the legal requirements. The natural resource map to date has contained eight natural resources (oil, natural gas, lignite, hard coal, potash, rock salt & industrial brine, special clay). If this could not be done, it would have to be substantiated with respect to the International Secretariat as part of the validation in 2023 in accordance with the EITI Standard.

Some figures are available online via the statistics available for the coal mining industry (<https://kohlenstatistik.de/downloads/braunkohle/>). These are the saleable output volumes of the individual mining districts per year.

With regard to further data, the Federal Institute for Geosciences and Natural Resources (BGR) commented at a request from the BMWK (end of 2022) as follows: the BGR continues to receive individual data from the federal states for many, but not all, natural resources. However, since it is often an issue that affects individual extraction companies, an itemised publication or presentation is not allowed. For other natural resources, the BGR is only in possession of total nationwide data, so that the BGR generally speaking only publishes or is allowed to publish nationwide data.

According to the BGR, it should also be noted that the category "special clays" is no longer used in the data on natural resource extraction. This is because the previous "special clays" category had already been transferred to the fine ceramic clays category some years ago.

The BGR does not have data on GDP/gross value added disaggregated by federal state. The BGR has also not yet published data on the GDP of the federal states.

The BGR receives its data between March and mid-December of the respective following year. Experience has shown that most of the total data cannot be collected earlier than the respective autumn (beginning in September).

The BMWK also requested information from the federal states in 2023. In some cases, the data were submitted with the restriction that certain values should only be published in conjunction with other values. In cases where no data were submitted, reference was made to actual or legal obstacles, in particular:

- Sometimes there is only one or very few owners in the regions for certain natural resource deposits. In some cases, there is a single company only or very few companies that differ significantly in terms of size or output. This means that it would be possible to allocate the respective production volume to the companies concerned based solely on the information that is publicly available.

If the natural resource data were published, it would therefore be possible to draw direct conclusions about the company or the owner in individual cases. This would involve interference with constitutionally protected legal interests (including the right to informational self-determination of the data subjects, the right to carry on the business which it has established, freedom to exercise a trade or profession and the protection of trade secrets).

A special legal basis for the sharing disaggregated data by the state authorities to prepare the D-EITI commodity report, which would allow such interventions, does not exist. The EITI Standard is not legally binding.

- On the one hand, personal data may be affected in individual cases, insofar as individual owners are named, so that protection under the GDPR would intervene.
- Individual information on personal and factual circumstances provided for federal statistics is also subject to confidentiality requirements in accordance with Section 16 of the Federal Statistics Act. They are to be kept secret by public officials and persons with special public service obligations who are entrusted with the production of federal statistics. Production data may be such individual data.
- Furthermore, combining individual data from federal statistics or such individual data with other data for the purpose of establishing a link to persons, companies, businesses or workplaces outside the scope of this act or of a legal provision ordering federal statistics is prohibited (Section 21 of the Federal Statistics Act, there are corresponding Land provisions, e.g. Section 27 of the Thuringia Statistics Act), which is also punishable under criminal law (Section 22 of the Federal Statistics Act) cf. e.g. also Section 28 of the Thuringia Statistics Act). Accordingly, it is also considered inadmissible to publish information in a way that simplifies the establishment of the above-mentioned link.
- Publication of production volumes by authorities, which could be allocated to individual producers, must be seen against the background of entrepreneurial activity in a competitive environment, which is protected by fundamental rights. Provided the companies publish the volumes themselves, there is no problem. If this is not the case, it may be a case of a protected trade or business secret of the company concerned (cf. Section 2 of the Trade Secrets Protection Act). For this reason, simple retraceability is also to be avoided.

II. Assessment:

The disclosures in accordance with Subsection 3.2, sentence 1 of the EITI Standard are made in accordance with the Standard.

The requirements for the disaggregation of data by region, company or project in sentence 2, on the other hand, are merely optional. No assessment is made as part of the validation, even though the MSG's efforts in this respect must be documented (cf. EITI Standard, p. 10 *terminology*).

BMWK (IVB1) has requested information from the BGR and all the federal states concerned on the availability and publishability of the data. In the information returned, only a limited amount of data was transmitted in some cases or reference was made to legal obstacles.

The handling of the data produced in the federal states and the transmission to other agencies is the responsibility of the individual state authorities. They also carry out a legal assessment in individual cases and do not transmit the data in the event of legal obstacles. This is also the case with the BGR.

The publications in accordance with the EITI Standard must remain within the scope of the legal requirements and may not go beyond them. The statements made by the BGR and the federal states are therefore to be considered in this context.