

MAP – EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

REPORT

International Workshop

**“EITI IMPLEMENTATION ON THE LOCAL LEVEL:
GERMAN AND UKRAINIAN EXPERIENCE”**

 September 19-20, 2019

 Hotel “Ukraine”

Kyiv

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● Workshop 1

The first workshop day started with greetings and presentation of MAP project by its team.

Then Florian Zerzawy delivered a presentation «Input OKF/GBG on CSO set-up in DEITI» followed by Olena Pavlenko’s presentation «Input Dixigroup on CSO set-up in UA EITI».



Next, moderator Oksana Ruda started facilitating group work to identify three main areas of possible cooperation between NGOs on EITI related issues in Ukraine and Germany respectively.

These areas are as follows:



Communication strategy



Ecology



Cooperation on the local level (local communities' engagement into EITI)

Communication strategy

During the workshop, participants identified that the Energy Transparency Association should focus on the following areas for EITI to work at the local level:

- ▶ holding workshops for all stakeholders;
- ▶ developing infographics for all stakeholders;
- ▶ assistance in finding compromises in local conflicts (involvement of third parties, lobbying for legislative initiatives).

Ways to achieve this:

- ▶ Creation of Working Groups;
- ▶ Creation of an expert database;
- ▶ The Association will act as a platform for resolving various issues related to the EITI promotion in Ukraine.

The participants elaborated possible directions for further Ukrainian-German cooperation in communications:

- ▶ Exchange of experience on decision-making processes (Ukraine and Germany have different approaches);
- ▶ Involvement of third parties, stakeholders;
- ▶ Involvement of legislatures, international partners.

Ecology

Identified problems:

- ▶ The environmental tax is not split by license;
- ▶ Weak requirements for mining companies regarding waste management;
- ▶ Data from companies and third parties do not match;
- ▶ Taxes do not go to reclamation;
- ▶ Weak liability for environmental damage;
- ▶ Lack of independent environmental expertise.

Ways to solve the problems:

- ▶ Promote mechanisms for implementation of the law «environmental impact assessment» at the community level (creating dialogue, not confrontation);
- ▶ Assess the potential environmental impact;
- ▶ Informing the community, local government;
- ▶ Educational work, dialogue;
- ▶ Legal support of communities (in courts).

The participants elaborated possible directions for further Ukrainian-German cooperation in ecology:

- ▶ Joint study of environmental tax and permit systems;
- ▶ Forming common systemic responses to energy challenges;
- ▶ Involvement of German expert organizations into Ukrainian-German field analysis.





Local communities' involvement into EITI process

Identified problems:	Ways to solve problems:
Lack of awareness of their own authority and legal requirements for companies;	Informing the communities and local governments;
Lack of powers of local governments;	Legislative amendments;
Local and community involvement and awareness tools for EITI (regarding German colleagues);	Workshops, trainings;
Low level of public trust in the government;	Legislative changes aimed at widening of access to information;
The opacity of social partnership agreements and the lack of tools to monitor the implementation of agreements (regarding German colleagues);	Public pressure from civil society institutions;
Problems of institutional development of NGOs;	Workshops for NGOs;
Absence of published information on the EITI reporting and rent spending.	Annuity payments should address mining issues.

Workshop 2

The second workshop was aimed at identifying the main problems of NGOs in Ukraine and Germany and their solutions. Participants were split into groups and worked collectively to define possible mechanisms of reinforcing the capacity of local NGOs in both Ukraine and Germany.

Identified problems:	Ways to solve problems:
1. Lack of specialized nongovernmental organizations. Lack of networks to local initiatives (actual for Germany).	1. Intensify the involvement of NGOs through their support, strengthen institutional communication, draw up a map of interests.
2. Lack of capacity, resources, knowledge.	2. Conduct trainings for the development of soft skills in local NGOs.
3. Authorities in cooperation with companies can weaken NGO initiatives.	3. Develop and implement effective involvement procedures for NGOs.

KEY TOPICS FOR NATIONAL MSGS: DISCUSSIONS

The second Workshop day started with two presentations of **Oliana Valigura** (*Regional Manager of the International EITI Secretariat*) “EITI Standard – Overview of key changes” and “Sub-national level of EITI”:

● EITI Standard: Overview of key changes. Why changes are needed? (Main points)

- ▶ to take into account stakeholders’ feedback and eliminate misunderstanding in interpretations;
- ▶ to reflect best practices of EITI implementing countries;
- ▶ to make implementation less difficult by introducing flexibility;
- ▶ to encourage countries to increase disclosure where relevant and in line with national priorities;
- ▶ countries and governments implementing EITIs are increasingly releasing information through regular government and corporate reporting;
- ▶ regular disclosure will ensure more timely, reliable and regular disclosure.
- ▶ the changes mean acknowledgment of the transition to regular disclosure and the key role of multilateral stakeholder groups (MSGs) in ensuring of such disclosure being made by the EITI Standard;
- ▶ Increase of acknowledgment that payment and revenue data require disaggregation for better understanding what state receives from each individual mining project;
- ▶ new rules regarding mandatory disclosure require project-level reporting;
- ▶ EITI Board of Directors in 2017 agreed on the disaggregation requirement for disclosed revenues concerning projects to be included in the EITI Report 2018 and further;
- ▶ Contracts are a key factor in understanding the financial conditions of a project and the revenues the state collects;
- ▶ more than 30 EITI implementing countries are already disclosing at least part of the contracts;
- ▶ 18 large mining companies maintain contract transparency;
- ▶ State-owned enterprises (SOEs) often play an important role in managing the state’s natural resources;
- ▶ The validation demonstrated the current problems as well as the lack of clarity of the relevant EITI Requirements;
- ▶ SOEs are increasingly “integrating” data disclosure and releasing the information on different websites or in annual financial reports;
- ▶ The participation of women and marginalized groups in the management of natural resources is a key factor in the sustainable management of the sector;
- ▶ the changes are aimed at better representation of women and marginalized groups in the MSGs, the data should be gender-analyzed and access to data for women and marginalized groups should be improved;
- ▶ environmental challenges are an important part of the natural resources management;
- ▶ at least 28 countries included information on payments for environmental activities or monitoring of environmental impact in EITI’s reporting;
- ▶ consultations with the stakeholders demonstrated that annual progress reports on activities do not always serve the purpose of impact analysis, and this happens quite often;
- ▶ in many countries, there are different tools for the impact and results analyses of implementation (e.g. impact studies, EITI reports, MSG meetings, stakeholder events, or other reporting).

● EITI Standard - Overview of key changes (Main points)

What will be changed according to EITI 2019:

- ▶ the requirements emphasize on the disclosure of complete and credible information by reporting entities, rather than focusing only on EITI reports (4.1);
- ▶ companies are expected to disclose annual financial reports (4.1.e)
- ▶ for MSGs open the possibility of considering other procedures for ensuring the reliability of data besides reconciliation, pending approval by the Board (4.9);
- ▶ a project is defined as operational activities that are governed by a single contract, license, lease, concession or similar legal agreement, and form the basis for payment liabilities with a government. (4.7);
- ▶ publication of contracts that have been concluded, signed or amended since 1 January 2021 is required (2.4.a);
- ▶ MSGs are expected to include opening contracts intentions in its working plans for 2020 (2.4.b);
- ▶ EITI reporting should describe existing contracts (2.1), as well as government policy and actual practice (2.4.c);
- ▶ the description of financial relations between the state and SOEs should also cover joint ventures and subsidiaries (2.6.a.i);
- ▶ information on loans to be disclosed should include the repayment schedule and the interest rate (2.6.a.ii);
- ▶ SOEs are expected to release their audited financial statements (2.6.b);
- ▶ MSGs may consider applying the term «quasi-fiscal expenditures» formulated by the IMF (6.2);
- ▶ countries implementing EITI, SOEs and third parties selling on behalf of the government are included in the coverage (4.2.a);
- ▶ volume and value of products sold should be differentiated by sales contracts (not by buyers);
- ▶ the disclosure of customer selection process and sales contracts is encouraged (4.2.b);
- ▶ purchasing companies are advised to disclose their payments to the state for purchases of raw commodities (4.2.c);
- ▶ MSGs are required to take gender balance into account (1.4);
- ▶ EITI reporting should provide employment indicators for projects, roles, and gender based on the availability of such data (6.3);
- ▶ MSGs should take into account the difficulty in access to information of gender and subgroup (7.1);
- ▶ the MSGs are recommended to document their efforts to improve gender equality and social inclusion (7.4);
- ▶ it is required to disclose substantial payments to the state for environmental purposes (6.1);
- ▶ disclosure of information on environmental impact and its monitoring is encouraged (6.4);
- ▶ MSGs can choose how to conduct an annual analysis of the results and impact of the implementation of the EITI (7.4). Countries are no longer required to release such analyzes until July 1.

While presenting sub-national level of EITI, O.Valigura has shared some practical examples of EITI instruments available in implementing countries, namely:

Sub-national level of EITI (Mongolia):

- ▶ Strong CSO Coalition with representatives from local communities;
- ▶ EITI process encouraged multi-stakeholder dialogue at the subnational level to debate the use of extractive revenues and led to creation of sub-national MSGs;
- ▶ EITI reporting is also building trust amongst local stakeholders, disseminating detailed data about subnational revenues and encouraging reporting of revenue allocation.

Sub-national level of EITI (Kyrgyzstan):

- ▶ 13 years of EITI implementation;
- ▶ CSO Coalition created a network of public receptions in the extractive regions;
- ▶ Strong focus on environmental aspects of extraction.

Sub-national level of EITI (Phillipines)

- ▶ Annual roadshows. Roadshows have improved awareness from local governments, enabling them to debate the issue of subnational transfers through multi-stakeholder dialogue;
- ▶ Launched subnational units in extractive provinces of Compostela Vallez and T'boli; local communities and governments are consulted by the companies;
- ▶ Where there are potentially adverse environment impacts of mining, local governments and civil society groups have collaborated to withhold their consent on mining projects or issue a moratorium.

Sub-national level of EITI (Ghana)

- ▶ EITI reporting checked whether local communities affected by mining were indeed benefitting from extractive activities through disbursements and the adequate use of funds by local authorities;
- ▶ EITI reporting improved the guidelines put in place to earmark shares of mining revenues to investments benefitting local communities, while empowering the later to ask questions to their local representatives.

Next two presentations of German experts **Florian Zeraswy** (Green Budget, Germany) and **Walter Palmethofer** (Open Knowledge Foundation Germany) on environmental aspects of EITI in Germany and Open Data.

First German EITI Report

- ▶ covers financial year 2016;
- ▶ published in summer 2017 (updated version in October 2018);
- ▶ 2018: Validation on basis of first report.

First German EITI Report. Environmental reporting

- ▶ Dealing with human intervention in nature;
- ▶ State subsidies and taxes;
- ▶ Renewable energy.

Dealing with interventions in nature

- ▶ Federal Nature Conservation Act (BNatSchG): legal environmental framework

- ▶ for mining (and other business) activities;
- ▶ obligation to rehabilitate (re-naturate) site after closure of mine;
- ▶ compensatory measures on external surfaces (e.g. reforestation) are necessary if certain landscape or biotope structures cannot be restored or if specific measures are necessary for reasons of species protection;
- ▶ compensation payments;
- ▶ recipient of compensation payment is local nature conservation agency, which has to use it for compensation measures.

Environmental payments: follow-up costs for rehabilitation of sites

- ▶ companies are obliged to create and maintain long-term accounting provisions ('financing provisions') for rehabilitation of the sites;
- ▶ provisions made by companies which must publish their annual financial statements are shown transparently at <http://www.bundesanzeiger.de>;
- ▶ authorities can ask for other implementation securities (i.e. cash, payment to a fund etc.) to ensure that rehabilitation costs are covered even in case of
- ▶ insolvency, but they rarely do. This is especially important for lignite extraction
- ▶ (coal-phase out in Germany by 2038).

Environmental payments: royalties

- ▶ only for free-to-mine natural resources: resources that do not belong to anyone and the states grants the right to exploit the natural resource (e.g. fossil fuels,
- ▶ metals, NOT: Gravel, sand, natural rocks);
- ▶ if the extracted free-to-mine natural resources can be used for financial gain, the permit holder must pay extraction royalties. The standard rate for extraction royalties is 10% of the market value;
- ▶ lands may stipulate different regulations in their legislation for the calculation of royalties under certain conditions.

Result: Royalties vary greatly between German lands and mining activities. High rates on oil and gas in Lower Saxony and Schleswig-Holstein, no royalties for lignite and hard coal. Total volume of royalty payments is low: 2016 approx. 232 mil. Euro (0.02% of total federal state income).

Environmental payments: water fees

- ▶ most federal states levy consumption-related fees for the use of ground and surface water, but the fee level is rather low and several exemptions for extractive (and other) water users;
- ▶ German Federal Environment Agency provides an overview of the relevant fee levy rates in the natural resources sector (based on MSG initiative);
- ▶ publicly-accessible source of information on the amount of revenue from water abstraction fees paid by the natural resources sector does not exist.

Environmental harmful subsidies

- ▶ hard coal mining has been subsidized over decades in Germany, because it was not competitive. At the end of 2018, the last hard coal mine was shut down;
- ▶ adaptation payments (payments to employees that lost their job due to closure of mines) will continue until

2027;

- ▶ energy subsidies are relevant for extractive sector, e.g. tax relief for fossil fuels and (fossil-dominated) electricity used in the sector;
- ▶ Member States of the European Union have an obligation to annually publish comprehensive information on the granting of state aid on a detailed aid website; this applies to tax concessions from July 1, 2016 (detailed data not yet included in the first report).

Renewable energies

- ▶ renewable energies make a large and growing contribution to Germany's energy supply;
- ▶ the contribution to the electricity sector is particularly high; more than 30 % of the gross electricity consumption is covered by renewable sources;
- ▶ the expansion of renewable energies helps to avoid greenhouse gas emissions and reduces the use of fossil energy sources which are mainly imported.

CSOs' views on environmental reporting in first EITI report

- ▶ information on legal framework;
- ▶ comprehensive information on water fees;
- ▶ comprehensive information on status quo of subsidies in the sector;
- ▶ information that energy transition contributes to climate change mitigation and to phase out fossil fuels.

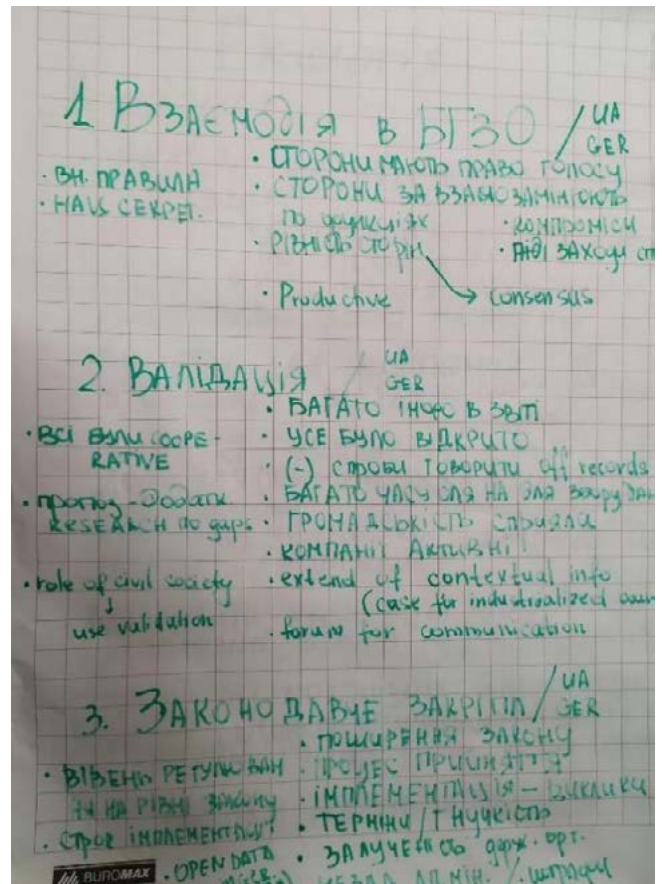
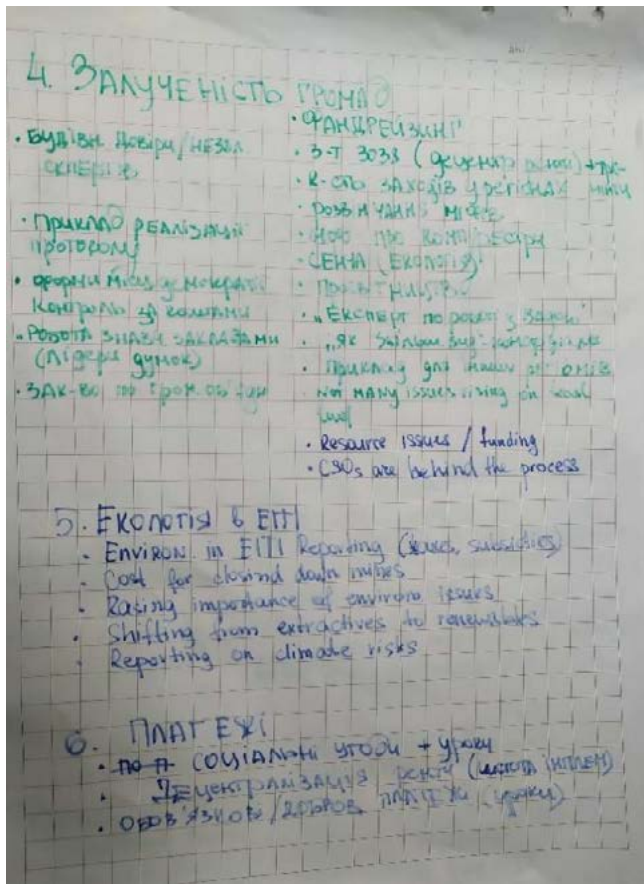
● What can be still improved

- ▶ lack of transparency and problems with law enforcement are addressed;
- ▶ no information on compensation payments;
- ▶ no information on amount of provisions and implementation securities of the mining companies;
- ▶ payments for water not part of disclosure by companies and reconciliation;
- ▶ no specific data regarding subsidies for the extractive industries (except for hard coal);
- ▶ no information on climate impact of fossil fuels.

Conclusion: Germany is working on improvements regarding environmental reporting, for the second report and also with regard to new requirements of EITI standard. But it is not easy as the other stakeholder groups are reluctant to go beyond the information in the first report.

GROUP WORK

Workshop participants worked fruitfully in groups on developing ideas and solutions:



● Ideas that could be implemented

- ▶ creation of EITI platform, implementation of communication strategies in regions, experience of the other IT platforms;
- ▶ pilot campaigns on renewable energy sources in EITI reports;
- ▶ pollution monitoring by branch/levels/regions;
- ▶ creation of integrated reporting system;
- ▶ integration of national databases with the foreign ones;
- ▶ detailed reporting on state aid.
- ▶ on environmental tax accounting within EITI, social issues, environmental impacts;
- ▶ on recovering of deposits (by mine closure);
- ▶ on integration of databases, reporting standardization.

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1. EITI on-line platform (камунікацыйна стратэгія в рэгіонах) → расвіць існуючыя пільгі дорады
2. Пашырэнне кампарты по ВКЕ для раскрыцця у Звiтi EITI
3. Моніторынг рывка задруды мнiе по камунах/этапах по рэгіонах (on-line карта)

legistati

- 1) законна абавязан з мнiм аб'ектам аднаго пераходу з мнiм і пiльгі т.д. / соцiальнай пiльгі, экан. пiльгі
- 2) вiдповiдальна база даних рэсурсаў (при раскрытi мнiм), экан. вiдповiдальна
- 3) інтэгураваны ба дадзiк спiлчэнацiя цiя праграмаў зiмiнацiя

● Open data to open civic space – ideal picture

- ▶ beneficiary owners register / data verification;
- ▶ open resources for data verification – Prozzoro, bots, Open Budget can be used;
- ▶ geology information (wells register, work program, interactive geological maps);
- ▶ recommendation on platforms: it should be by default, minimum tool, more languages.

OPEN DATA TO OPEN CIVIC SPACE

- РЕГИСТР БЕНЕФАРИИ ВЛАСТИ (верификация данных) / OFF
- Индексные ресурсы (API, open budget, bots) prozorro, prozorro data
- ГЕОЛОГ. информация (ресурсы, скважины, карты, карты, карты)
- ПЛАТФОРМЫ
- RECOMMENDS ON PLATFORMS / It should be by default
- MINIMUM TOOL / MORE LANGUAGES
- Afghanistan case

- Створэння інтэграванай базы даних зiмiнацiя
- Інтэграцыя баз даних зiмiнацiя Іноземнымі
- Дэтальнае зiмiнацiя по дэталі зiмiнацiя

DELIVERABLES FROM THE WORKSHOP

1. Lessons learnt for Ukraine

1. Research and present to MSG proposals on including of environmental component of UA EITI Report:

- ▶ what information on environmental issues might be useful for local communities and regional NGOs?
- ▶ where are problems and where legislation is violated on the regional level.
- ▶ monitoring of air pollution in extractive regions.

2. Significant gap in legal support of communities. Local communities do need help to sue company for violation of environmental legislation and on other connected with EITI issues).

3. Ukraine will hold an information campaigns for local communities during autumn regional workshops and will research needs of local communities:

- ▶ on rights of local communities, where they can get information about companies/fields/licenses;
- ▶ what competences of local communities are lacking, what should be fixed in the legislation;
- ▶ improvement of legislation on local communities/decentralization/open data.

4. It is reasonable to **widen discussion with national NGOs to more general issues** and to strengthen their capacity as follows:

- ▶ how to keep local NGOs strong (fundraising, project management trainings - for soft skills);
- ▶ how to defend their rights;
- ▶ how to fix high level engagement of NGOs to the decision-making process (further development of the legislation - on decentralization, on open data etc.);
- ▶ legislation on NGOs to be improved.

2. Further Ukrainian-German cooperation

- ▶ Ukraine and Germany intend to prepare Researches in their respective countries on environmental impact assessment/waste disposal, which will include legal component, communication, stakeholder map and gap analyses. The German Research, subject to available funding, will namely include detailed information on environmental taxes, including legislative background at the national and local level. Three NGOs from Ukraine are encouraged to take part in Ukrainian Research preparation. "Energotransparency" Association will find costs for the Research in Ukraine.
- ▶ Ukraine and Germany to use each other's experience in connecting global issues like EITI with local problems. Germany to further analyse how local NGOs can be involved into German EITI – one idea is a pilot phase with local stakeholders from coal mining regions near Berlin. GBG will discuss this idea with the other CSO MSG members.
- ▶ The instrument of social partnership agreements (infrastructure development, roads, schools etc.) should be a good practice of sustainable cooperation between local communities and companies. If Germany has experience how to better design such agreements and monitor their implementation, it would be good to implement it.

- ▶ Ukraine and Germany will exchange the experience on decision making process in MSG and communications with other stakeholders.
- ▶ Ukraine could German practices on development of integrated data systems, possibility to get access to companies between different companies. Open data to open civic space - minimum tools, more languages.
- ▶ Ukraine is also interested in gaining German experience in state aid issues. Namely practices of state aid policies implementation and monitoring especially in cases of phasing out of coal mines.

3. How other countries can benefit from

- ▶ Ukraine and Germany will develop **Position Papers with success stories** for implementing EITI countries;
- ▶ Ukrainian Position Document will focus on legislative component – namely EITI Law good practice;
- ▶ German Position Document will share positive experience in environmental issues in EITI reporting.