

What use is the (D-)EITI? The Extractive Industries Transparency Initiative in Germany under scrutiny

Do you know about the EITI? If not, that's not surprising, because the international Extractive Industries Transparency Initiative and its implementation in Germany have as yet aroused little public interest. Among German NGOs, too, there is little awareness of the D-EITI and its reports. Rightly so? Is the D-EITI just another multi-stakeholder initiative with which the private sector and the government can do some virtue signalling without really delivering any added value? Or does it actually reveal relevant information about domestic resource extraction that has not previously been available?

By
Josephine Koch
(German NGO Forum on
Environment and Development)
and
Florian Zerzawy
(Green Budget Germany)

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1 Preface

In this paper we summarise the structure and functioning of the EITI, describe how it is implemented in Germany and assess the content of existing EITI reports from a civil-society perspective. In Section 4 we outline opportunities for improvement that would make the D-EITI reports more useful to civil society organisations and to the debate on resource policy in Germany. These suggestions are based partly on our evaluation of the content of the two D-EITI reports that have been produced so far (2017 and 2019) and partly on a workshop and other discussions with representatives of civil society in autumn 2020. During this stakeholder dialogue with members of the German civil society network on raw materials (AK Rohstoffe) and representatives of the civil society networks on coal and gas, the contents of the D-EITI reports were presented and compared with stakeholders' needs. The results provide us with a roadmap for future work on the EITI.

2 What is the EITI?

Seventy-five percent of the world's poor live in the resource-rich countries of the Global South. Because of corruption, bribery, and tax avoidance and evasion, the revenue from the resource sector often fails to benefit society. At the same time, the extraction of resources is frequently accompanied by serious human rights abuses, environmental degradation and climate damage without companies and governments accounting for what they are doing to tackle these things.

The voluntary, global Extractive Industries Transparency Initiative (EITI) has been promoting transparent governance of resources in the oil, gas and mining sectors since 2003. Countries participating in the EITI publish **key information** on the resource sector in their country in **annual reports**. The process and contents are governed by the **EITI Standard**. This requires all EITI member countries to disclose all material payment flows – such as tax payments,

mining royalties and environmental payments – between the resource industry and the state, and also to report in an objective and easily understood way on licences, contracts, production data, approval procedures, beneficial owners and other contextual details. The aim is to enable the general public to monitor what payments for resource extraction are passing between companies and government agencies. Through the EITI, ordinary people should also be able to understand how the resource sector in a particular country works and what economic, social and environmental costs and benefits are associated with it. This serves to prevent corruption and also to make industry and the state more accountable. It further provides a factual basis that can underpin discussion of national and international resource consumption.

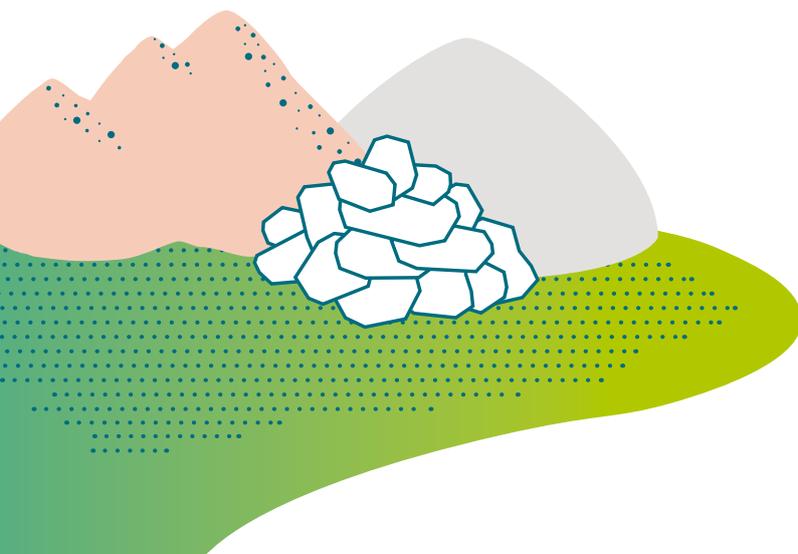
In addition, the EITI requires each country that implements the EITI to set up a **multi-stakeholder group (MSG)**, consisting of representatives from government, companies and civil society, with adequate representation being given to each constituency. It is then the task of the MSG to reach a consensus on the design of the EITI process and the specific content of the reports. The national MSGs are monitored by the international EITI Board, supported by the international EITI Secretariat.

EITI reports consist of two sections: **payment reconciliation and contextual information**.

For the **payment reconciliation** section the voluntarily participating companies report on the material tax payments mentioned above and other fees relating to resource extraction that they have to make to the state. The government agencies, for their part, report on the tax payments and fees received from the companies. The information is collected, checked, reconciled and incorporated into the report by an independent auditor (known as an independent administrator). This enables discrepancies in the payment flows to be identified; they can thus already be followed up during preparation of the report. The MSG has wide-ranging responsibilities in this context: although the EITI Standard sets out important rules, the MSG decides which resources, payments and companies are material at national level and should be included in the payment reconciliation. It therefore defines a materiality threshold for the payment flows. This means that payments – e.g. for mining licences – must be included in the report once they reach the annual total determined by the MSG.

The **contextual part** of the report contains further details of the country's resource sector in order to inform the public about the structure of the sector and the conditions that shape the operational environment. The EITI Standard requires disclosure of the following information:

- **The legal and institutional framework:** How are licences and contracts awarded and where are they recorded? Who are the beneficial owners? What fiscal and legal agreements are in place?



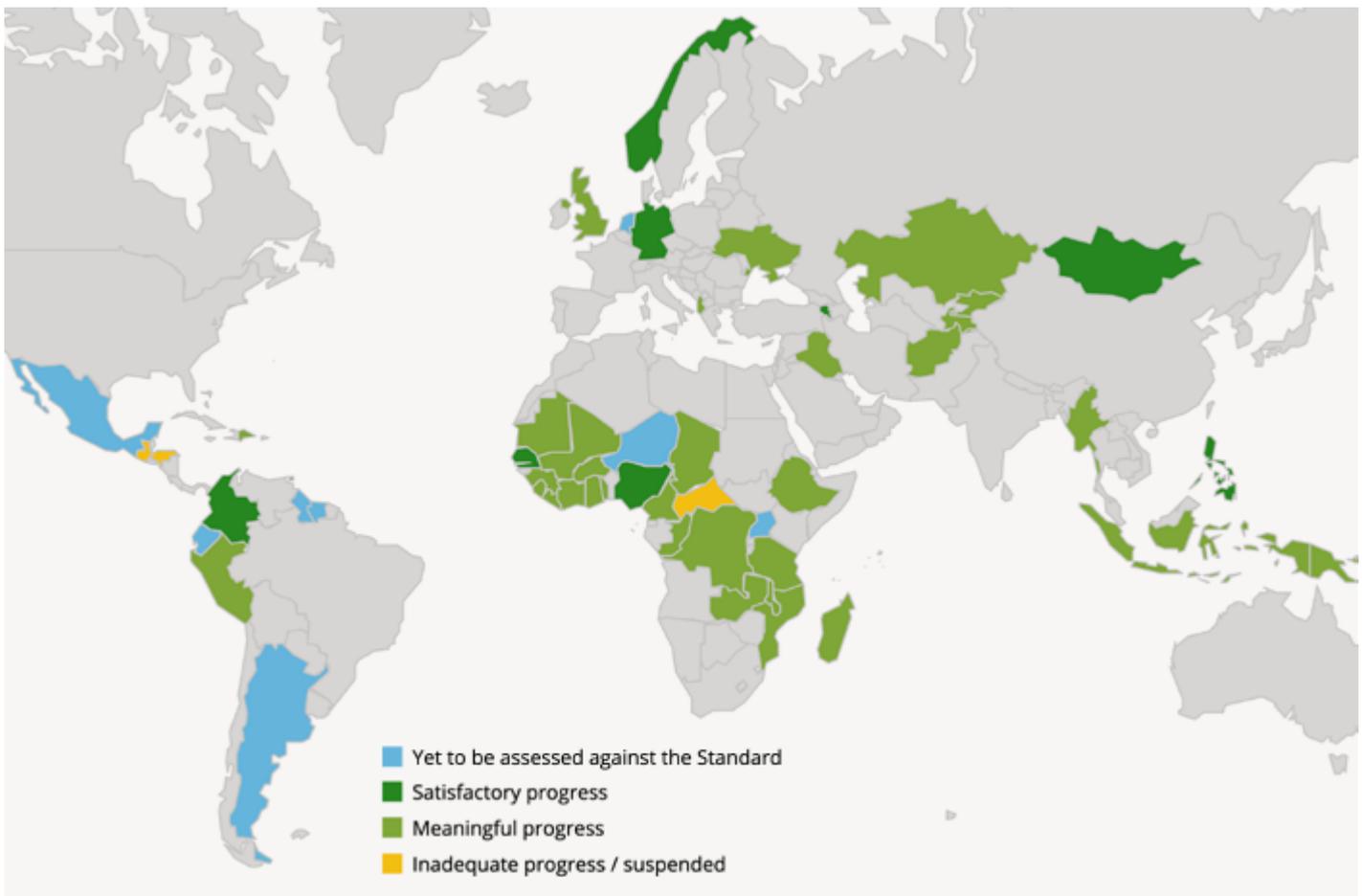


Figure 1: Participating EITI countries, source: www.eiti.org

- **Production:** What resources are mined? What quantities are being extracted?
- **Revenue generation:** How much is being paid (e.g., taxes, fees)?
- **Revenue distribution:** Where does the revenue go?
- **Social and economic contribution:** What is the impact of the extractive sector on the economy and on employment?

The reports must be objective and largely valuefree. Evaluation and categorisation should generally be avoided – partly because the German EITI’s multi-stakeholder group cannot be expected to reach a consensus on the relevant issues and partly because the EITI focuses primarily on preventing corruption and promoting accountability through the pure disclosure of facts and figures.

The EITI currently has **54 participating countries**, the majority of which are in Africa (Figure 1). It has not yet been possible to persuade the major players in the extractive industry – such as China, Russia, the USA and many oil-producing countries in the Middle East – to join the initiative.

3 Implementation of the EITI in Germany

The German MSG was established in 2015, when implementation of the EITI in Germany began. It consists of five representatives (and five alternates) from each of the three stakeholder groups: the **federal government** and some state (Land) governments; companies (and corporate groups) and associations in the **private sector**; and **civil society** organisations involved with the environment, development, anti-corruption and open data. The civil society constituency also includes the Foundation for Labour and Environment of the German trade union for the mining, chemicals and energy industries (IGBCE). The members of the MSG are appointed for a minimum of two years by the chair of the MSG, the D-EITI Special Representative.¹ Lead responsibility lies with the Federal Ministry of Economic Affairs and Energy (BMWi). Following Germany’s successful EITI candidature in 2016, the first German EITI report (reporting year 2016) was published a year later; the second report (reporting

¹ The present D-EITI Special Representative, who has been in post since December 2019, is Elisabeth Winkelmeier-Becker, Parliamentary State Secretary to the Federal Minister of Economic Affairs and Energy Peter Altmaier.

year 2017) came out in 2019.² Publication of the third report (reporting year 2018) is planned for the end of February 2021. Also in 2019, the D-EITI was validated by a team of experts from the international EITI Secretariat and Board: the team confirmed that Germany largely conformed to the EITI Standard. Germany is thus one of seven countries to be classed as full EITI members.³

The German MSG has largely agreed on the following **objectives** that implementation of the EITI in Germany is intended to pursue:

1. The D-EITI should be an international role model for transparency and accountability, thereby strengthening the initiative as a global standard.
2. The D-EITI should deliver added value by comparison with existing reporting obligations (such as BilRUG).
3. The D-EITI should contribute to a German debate on resource policy that includes aspects of environmental, social and economic sustainability.

3.1 Payment reconciliation

What companies and resources?

The payment reconciliation under the D-EITI is based on the criteria for reporting obligations in the Accounting Directive Implementation Act (see box). The same criteria for company size are used. As a result, **49 companies** were approached in connection with the second report; **17 of these** submitted **data reports** for 2017.

Despite the small number of participating companies, especially in the quarried natural resources sector, **good coverage** of all the sectors involved in resource extraction in Germany has been **achieved**, when this is considered in terms of the quantities extracted:

- Crude oil (97.0%)
- Lignite (99.7%)⁴
- Potash and potash salt products (96.6%)
- Boiled salt (99.9%)

With regard to quarried natural resources and rock salt, the report does not quote the coverage, despite the fact that the quarried natural resources sector is the most important sector in terms of quantity. However, this is a sector with many SMEs, for whom reporting of this sort would be too complex.

WHAT IS BILRUG?

The German Accounting Directive Implementation Act (BilRUG) of 23 July 2015 transposes into German law the specific provisions of the EU Accounting Directive 2013/34/EU for companies, including those in the extractive industry. They are required to produce annual payment reports in which they disclose payments to government agencies in connection with resource extraction. The first mandatory reports apply to 2016. The provisions can be found in Section 341q-y of the German Commercial Code (HGB). These reporting obligations in the HGB cover all “large” limited companies and limited liability partnerships (see Section 341q HGB) that are involved in the extractive industries or undertake logging in primary forests. Companies are classed as large if they exceed two of the following three thresholds:

- Total assets of €20 million
- Net sales revenue of €40 million
- Annual average of 250 employees

Capital-market oriented companies within the meaning of Section 264d HGB, regardless of their size, must also submit BilRUG-compliant reports. Furthermore, in corporate group structures, subsidiaries are also subject to the reporting obligations if they in combination with their parent company meet the size criteria. Companies must disclose all payments of the types listed in Section 341r(3) HRB made to government agencies, above a “materiality threshold” of €100,000 per government agency, where these payments are made for one of the reasons listed in Section 341r(3). The reasons for payment include not only taxation but also licences and concessions and other contractual relationships related to the extraction of natural resources. The information must be allocated to individual projects if more than one project is pursued in the year under review. The payment reports in fulfilment of the statutory reporting requirements can be viewed (in German) at <https://www.bundesanzeiger.de>.

What are the differences between BilRUG and the EITI?

Unlike the provisions in the German Commercial Code, the EITI calls for mutual disclosure of payment flows via the payment reconciliation process. This means that not only companies but also bodies on the state side must allow access to information on their revenue from the resource sector. On the other hand, reporting under the EITI is voluntary – there are no sanctions for companies that do not participate. Under BilRUG, companies can be fined for failing to disclose the required information (see Section 341y HGB), although there are no systematic checks of the submitted data. In addition, the data disclosed in the Federal Gazette, as required by BilRUG, is usually in the form of complex, “naked” data sets, while the D-EITI attempts to present the information in a compact, comprehensible and contextualised way.

Source: <https://rohstofftransparenz.de/en/rohstoffgewinnung/public-reports/>

² As part of the open data policy, all the data in the D-EITI reports are also presented online at <https://rohstofftransparenz.de/en/>.

³ The other countries are Norway, the Philippines, Mongolia, Colombia, Senegal and Nigeria. Other European countries that are committed to implementing the EITI include the UK and the Netherlands: the UK has as yet made only “meaningful progress” and the Netherlands have not yet been validated. See Figure 1.

⁴ Because mining of hard coal ended in 2018, hard coal was not included.

PARTICIPATING COMPANIES

- *BEB Erdgas und Erdöl GmbH & Co. KG, Hanover, crude oil and natural gas*
- *DEA Deutsche Erdoel AG, Hamburg (now: Wintershall DEA Deutschland GmbH), crude oil and natural gas*
- *Dyckerhoff-Gruppe, Wiesbaden, quarried natural resources*
- *ExxonMobil Central Europe Holding GmbH, Hamburg, crude oil and natural gas*
- *Heidelberger Sand und Kies GmbH, Heidelberg, quarried natural resources*
- *Holcim (Deutschland) GmbH, Hamburg, quarried natural resources*
- *JTSD-Braunkohlebergbau GmbH, Zeitz, lignite*
- *K+S – Gruppe (esco – european salt company GmbH & Co. KG, Hannover, potash and salts & K+S Kali GmbH, Kassel), potash and salts*
- *Lausitz Energie Bergbau AG, Cottbus, lignite*
- *Neptune Energy Deutschland GmbH, Lingen (Ems), crude oil and natural gas*
- *Quarzwerte GmbH, Frechen, quarried natural resources*
- *RWE – Gruppe (Rheinische Baustoffwerke GmbH, Bergheim, quarried natural resources & RWE Power AG, Essen), lignite*
- *Sibelco Deutschland GmbH, Ransbach-Baumbach, quarried natural resources*
- *Südwestdeutsche Salzwerke AG, Heilbronn, potash and salts*
- *Vermilion Energy Germany GmbH & Co. KG, Schönefeld, crude oil and natural gas*
- *Wacker Chemie AG, München, potash and salts*
- *Wintershall GmbH (now: Wintershall DEA Deutschland GmbH), crude oil and natural gas*

In all, payments of approx. €397 million were investigated. However, no attempt was made to reconcile lease payments and infrastructure payments with the revenue of government agencies. In the case of trade tax, reconciliation was only undertaken if the payments exceeded €2 million (per municipality); this was in order to reduce the burden on government agencies. The result was that the independent administrator found no discrepancies between the information reported by companies and the revenues of government agencies in connection with minesite and extraction royalties, corporation taxes and trade tax payments in excess of €2 million.⁵ However, fiscal inter-company relationships⁶ make the results difficult to interpret: it cannot automatically be concluded that this is **the companies' contribution to government revenue** (and thus indirectly for the common good) in return for their **resource-related activities**.

Although the payment reconciliation is a core aspect of the EITI, because it enables corruption to be identified, it is of virtually no importance in Germany. This is not because there is no corruption in Germany, but because corruption takes place at levels that cannot be captured via the payment reconciliation.⁷ The fact that the effort is nevertheless being made in Germany sends out a strong signal to countries in which corruption is more widespread. For the German debate it is, however, more important to create **transparency with regard to payment flows**, for which there has until now not even been publicly accessible data on Germany at aggregated level. This applies, for example to **energy and electricity taxes**, which are not differentiated according to sector in the statistics of the German Federal Statistical Office.

3.2 Contextual information

As already mentioned, the D-EITI reports contain not only the payment reconciliation but also contextual information that informs the general public about the resource sector in Germany. As well as covering the issues required by the EITI Standard, the German reports also deal with the **environmental and social aspects** of resource extraction, which are included at the initiative of civil society:

- Corporation tax
- Minesite and extraction royalties
- Lease payments / infrastructure payments (no reconciliation)
- Trade tax (reconciliation by way of example only)
- Dealing with interventions in nature, including compensatory measures, abstraction of water, and financing the follow-up costs of sites after closure
- Subsidies and tax concessions
- Renewable energy

What payments?

With regard to the payment flows included, the D-EITI again uses the materiality threshold of >€100,000 per payment per year that BiRUG uses. The following payments were included in the present, second report published in 2019:

5 The raising of the materiality threshold for trade tax is in our view an appropriate compromise: it prevents administrative labour that would have resulted in very little additional benefit, because no significant differences are to be expected, as the first report has already shown.

6 Because of fiscal inter-company relationships, subsidiaries operating in the resource sector are not themselves classed as liable for tax; instead, the tax on their profits is paid by the parent company. However, these parent companies are often not active in the resource sector themselves. At the level of the parent company, it is not possible to allocate its tax payments to the individual companies in the group. This is why RWE, for example, does not mention any payments of corporation tax or trade tax.

7 The EITI Standard requires disclosure of all relevant payment flows between companies and governments but does not necessarily require reconciliation of these payments if the secure and verifiable receipt of the payment flows by the intended agencies can be demonstrated by other means (see EITI Standard 2019, Requirement 4.1). For its third EITI report (2020), and at the suggestion of the international EITI Board, the German MSG is therefore taking part in a pilot project that replaces the payment reconciliation with a comprehensive description of the German audit mechanism, including presentation and evaluation of the results of the actual audits of public funds. This does not affect the disclosure of company payments in the D-EITI report. The aim of this trial is to identify the strengths and possible weaknesses of the German audit system.

- Recycling
- Social issues and employment

Structure and legal framework of the German resource sector

The authorisation procedure for mining projects in Germany varies according to the type of resource and the applicable legal principles. The report provides a good summary of this complex issue and includes information on the responsible government agencies in the federal states (*Länder*) and on approval procedures and requirements, such as environmental impact assessments. It is interesting, for example, to note that mining rights that were granted before the current Federal Mining Act (BBergG) of 1982 came into force are still valid. These “old rights”, as they are called, were granted mainly for hard coal and lignite mining in the Rhenish mining region. In contrast to rights under the BBergG, old rights **are not time-limited and neither extraction nor minesite royalties have to be paid.**⁸ The same applies to deposits on the territory of the former GDR explored up to and including 1990.⁹ This means that there are many mining projects in Germany for which extraction and minesite royalties have not had to be paid and are still not required, unless the federal states levy their own rates.

A success in terms of transparency is the fact that, following implementation of the D-EITI, public inspection of the **licence registers** is now possible upon application to the mining authorities. The registers contain details of all mining rights and permits/authorisations for mining exploration.¹⁰ More and more federal states are also publishing online licence cadastres. In addition, the D-EITI report points out that there is a transparency register that lists the **beneficial owners** of companies, including extraction companies. This is in principle a good idea, because the complex intertwining of companies means that actual responsibility and accountability are often difficult to determine, including in cases of corruption. However, access to the register is not entirely unconditional, the information is not always linked to the data from existing registers, and the quality of the information in the register is not yet fully assured.

The economic importance of the German resource sector

The D-EITI report brings together some important information on this subject that people would otherwise have to research laboriously themselves. Particularly in the context of the debate about the economic and social benefits of resource extraction by comparison with the environmental and social costs, it is interesting to note how high the **gross value added** and the turnover of the extractive industry actually are. The former amounted in 2017 to almost €3.3 billion, which is equivalent to **just 0.1% of GDP**. The latter, the **total turnover** of the sector, amounted to around **€9.4 billion**, €5 billion of which was attributable to quarried natural resources. **Lignite**, by contrast, contributed just **€2.3 billion** to the total. The Rhenish lignite region is, incidentally, the largest in Europe and **Germany is the world's largest producer and consumer of lignite.**¹¹ Moreover, the region is the largest “CO2 catapult” in Europe: just the **five big power plants** in the region are responsible for **13% of all German CO2 emissions**, because lignite has a more damaging effect on the climate than almost any other fuel. Does this mean that lignite companies at least make large payments to the state that benefit the community? Extractive companies pay the **general business taxes**, such as corporation tax, trade tax, income tax and the solidarity surcharge, plus the **minesite and extraction royalties that are specific to the sector**. According to the D-EITI report, these revenues from the extractive industry amounted in total to **around €555 million** in 2017. This corresponds to **0.04% of the total revenue of the federal German government.**¹² The **lignite sector** contributes only **about €67 million of this.**¹³ One reason for these low revenues is the fact that, for example, the lignite-mining state of North Rhine-Westphalia (NRW) has decided not to levy any minesite and extraction royalties on lignite mining. As a result, the total minesite and extraction royalties in NRW amount to only €683,000. The same applies to the Lausitz and Central German lignite regions.¹⁴ By contrast, the federal state of Lower Saxony raised €181 million from minesite and extraction royalties.¹⁵ There are also other **concessions and exemptions** in connection with the levying of consumption taxes such as electricity and energy taxes and water abstraction charges.

8 The mining of hard coal in Germany was stopped at the end of 2018 because it was insufficiently profitable; all hard coal is now imported.

9 See the second D-EITI report, p. 28f.

10 A summary of all mining permits can be found at <https://www.rohstofftransparenz.de/en/downloads/>. For further information see the second D-EITI report, p.32

11 D-EITI report (2019); p. 17.

12 D-EITI report (2019); p.52.

13 See the details of payments by lignite companies, listed in the D-EITI report (2019); p.116. However, the overall total is likely to be somewhat higher, since the two RWE groups should have paid corporation tax and trade tax but these were paid as totals and not specifically for the coal mining sector.

14 See D-EITI report (2019); p. 116-117.

15 D-EITI report (2019); p.54.

Compensatory measures for interventions in nature

The Federal Nature Conservation Act (BNatSchG) stipulates that significant unavoidable interventions in nature must be offset by the perpetrator through measures such as **renaturation, reclamation or near-natural design of the affected area**. The D-EITI report provides a clear description of the legal framework and its application to resource extraction. Although BNatSchG states that avoidance of significant environmental damage is the primary goal, it is clear that **economic considerations in relation to resource extraction nevertheless take precedence** over protection of the environment. The report also makes clear that the **nature conservation authorities of the federal states** play a **subordinate role** in the approval procedure for mining projects, because the compensatory measures to



be taken are examined by the responsible mining authorities, who can accept simple rehabilitation of the mining area as possible compensation. When a mining project is being approved, the nature conservation authorities can merely make non-binding recommendations. Because the federal states have in some cases introduced additional rules and the **design of the**

compensatory measures often varies widely and lacks transparency, the D-EITI report provides an **overview of the compensation directories that must be produced by the federal states**. This shows whether the directories apply centrally to the whole federal state, whether they contain comprehensive information on the intervention area and possible compensatory payments (if compensation “in natura” is not possible), and whether and where they can be viewed by the public. Environmental organisations are critical of the fact that compensatory measures for interventions in nature are **in general often not implemented or are implemented only unsatisfactorily**. Baden-Wuerttemberg is cited as an example of a federal state with a transparent compensation directory, and the report describes how compensatory payments are assessed in North Rhine-Westphalia. However, it is also clear that the federal states have **no standard, transparent procedures** for assessing and auditing compensatory measures and payments.

Follow-up costs of closed mining sites: provisions and implementation securities

In accordance with the “polluter pays” principle, the **follow-up costs of closed mining sites** (especially reclamation measures, rehabilitation, compensation for environmental damage) must be borne by the operators. **Provisions** are set aside for these financial obligations under accounting rules. In addition, **implementation securities** enable the authorities to meet the follow-up costs if a company should fail or refuse to carry out the agreed measures, so that no additional costs have to be paid by the general public. The D-EITI reports contain a **description of the legal rules** that apply to provisions and implementation securities (e.g. the discretionary powers of mining authorities) and point out that provisions can be **viewed** in the annual financial statements of those companies that are required to publish their statements in the Federal Gazette.

Subsidies for electricity and energy taxes and water abstraction charges

Companies in the resource sector require large quantities of electricity and energy for resource extraction. However, they pay tax on only some of the kilowatt-hours used, because they benefit from a number of exemptions. The most important **exemptions**, which also apply to other production industry companies, are described in the D-EITI reports. The reports also note that the electricity and energy taxes have been revised as part of the ecological tax reform and that they are the federal government’s third-largest source of revenue, after VAT and income tax. With regard to water abstraction charges, readers are referred to an **overview of the fees and concessions** on a website of the Federal Environment Agency.¹⁶ The second D-EITI also presents and contextualises data on the levels of water extraction in the natural resources sector by federal state.

Renewable energies

The D-EITI also reports on the expansion of renewable energies. Companies in the renewable energy sector are not actually part of German EITI implementation (unlike, for example, the USA, where renewable energy is considered as a renewable resource), but the German report nevertheless addresses the expansion of renewables as a contribution to avoiding greenhouse gas emissions and **replacing fossil fuels** (status quo, jobs, etc.). The **demand for natural resources and the socio-economic significance** of renewables are also considered. A special report on this issue that was commissioned¹⁷ further highlights

¹⁶ https://www.umweltbundesamt.de/sites/default/files/medien/2875/dokumente/tabelle_wasserentnahmeentgelte_der_laender_stand_2018_reinfassung.pdf.

¹⁷ <https://d-eiti.de/wp-content/uploads/2020/02/Rohstoffbedarf-im-Bereich-der-erneuerbaren-Energien.Langfassung.pdf>.

the **environmental and social problems** associated with the **mining of raw earths** and other metals and mineral resources.

Recycling/re-use of raw materials

In addressing the re-use of raw materials, the D-EITI attaches particular importance to the **circular economy as an important source of raw materials in the future** and to the economical use of primary resources. This sends out a **clear political signal** for both national and international resource policy. As well as describing the existing **legal base**, including the Circular Economy Act (KrWG), the section provides an overview of **waste volumes** and **general recycling data**. The **recycling and usage rates of recycling material** achieved for steel, aluminium, copper, paper and glass are also quoted. The report at least recognises the **deficiencies** in connection with plastic recycling, the inadequate recycling of rare earths and the export of electronic waste and describes the efforts being made to remedy these problems. However, it lacks a transparent description and explanation of **how the various rates arise** and what they actually mean. **Usage rates often appear high**, because they

are based on the quantities delivered to recovery facilities rather than the amounts actually recovered. This ignores the amount that is not recovered, and of course the amount that does not reach the recovery facility in the first place. Similar

arguments apply to the recycling rates. For example, the **plastic recycling rate** is often the subject of particular criticism among the general public because it merely describes the quantity of plastic waste delivered to a recycling facility and not the actually recycled output, and the losses in the recycling process are not subtracted from the official rate. Furthermore, the German recycling rate includes exported plastic waste. The **adjusted recycling rate** that uses the total quantity of used plastic products as a basis for calculating the recycling rate is only about **15.6%**,¹⁸ rather than the 46% quoted in the D-EITI report.



Employment and social affairs

The report devotes a separate section to employment figures, collective bargaining agreements, income levels and equality of opportunity within the sector. At the end of 2017 almost **67,000 people** were employed in the **extractive industry**. This corresponds to around **0.2% of all employees in Germany who are subject to social insurance contributions**. More than half of these employees worked in the quarried natural resources and other mining products sector; only around 13,700 were employed in the hard coal and lignite sector.¹⁹ The report also describes the arrangements for a socially acceptable **phasing out of coal**; this and the Coal Phase-Out Act will be considered in more detail in the forthcoming third report (2021). **Health and safety at work** and **social and health safeguards for employees** are also covered – this could be particularly useful to (EITI) civil societies in countries with fewer employee rights, helping them to strengthen their demands in the field of social policy and human rights. The general public in this country and people affected by mining in the Global South are also likely to be interested in how Germany has handled resettlement as a result of the extensive opencast mining in North Rhine-Westphalia. In this connection the report states that **120,000 people** have been resettled since lignite mining began, that villages are still being affected by resettlement and that owners are compensated by the companies for **expropriation** – although it does not explain what legal conditions apply, what standards are used for **compensation** or how people who do not want to move are dealt with. Companies do not like talking about this, but attention to these issues in subsequent reports would be useful. On a positive note, the section also addresses **corporate responsibility** in connection with mining and in global supply chains. However, this part of the document has a particular tendency to sound like an unqualified success story, because it does not **mention the shortcomings** of the National Action Plan (NAP) on Implementation of the Guiding Principles on Business and Human Rights, the Conflict Minerals Regulation and CSR reporting obligations.²⁰



18 Heinrich-Böll-Stiftung and BUND: https://www.boell.de/sites/default/files/2020-01/Plastic%20Atlas%202019%202nd%20Edition.pdf?dimension1=ds_plastikatlas.

19 This number has now fallen further with the ending of hard coal mining in 2018. Additional figures in the D-EITI report (2019): p.85ff.

20 Corporate Social Responsibility (CSR) describes companies' social responsibility and the voluntary contribution of business and industry to sustainable development

4 Potential for improving the D-EITI

Our evaluation of the content of the D-EITI reports to date and discussions with representatives of environmental and development organisations that work on natural resources yield suggestions at four main levels. **Firstly**, the D-EITI should add to the impact of existing statutory reporting requirements by involving more companies and by including additional payment flows in the reporting of participating companies, and by providing more context. **Secondly**, the D-EITI should increase the transparency of environmental payments (and concessions and exemptions) that are of particular relevance in view of the numerous problematic environmental consequences of resource mining. **Thirdly**, the D-EITI should focus more strongly on the connection between the extraction and use of raw materials and climate change. And **fourthly**, the D-EITI should create transparency with regard to whether and how Germany is fulfilling its international responsibility in the context of its resource policy.

4.1 Add to the impact of existing transparency legislation (BiRUG)

At present, the mandatory payment reports under BiRUG²¹ cover more payments than the voluntary reporting via the D-EITI, since they include:

- Usage charges (especially water abstraction fees)
- Payments to government agencies in other countries (where the reporting company mines resources abroad)

In addition, the reports are available to the general public via the Federal Gazette significantly earlier, because BiRUG specifies publication within a year. Under the D-EITI, by contrast, the deadline is two years. This means that the new, third D-EITI report of 2020 contains data relating to 2018, while the BiRUG reports relate to 2019. However, a drawback of the statutory reports is that no payment reconciliation takes place: the companies' figures are not compared with revenues of government agencies and no systematic checks are performed. In addition, most BiRUG reports contain little or no explanation of the figures. The greatest additional benefit of the D-EITI reporting system is therefore the contextual information. This ensures that **payment flows are categorised**, with information about the resource sector. While the BiRUG system is based on EU directives, Germany's involvement in the EITI is intended to promote it as a fixed global standard for transparency and accountability in

the resource sector. Implementation of the initiative in OECD and EU countries (at present the UK, Norway, the Netherlands and Mexico in addition to Germany) aims to encourage resource-rich newly industrialising countries to join the EITI too, thus helping to harmonise international competition conditions and create a **level playing field**.

For transparency reasons, it would be **desirable** for the D-EITI report to not only quote the **number of companies that were approached and the names of those that actually reported** but also provide the **list of all the companies** approached. However, companies see this as "naming and shaming" and fear that those that do not participate will be disadvantaged. There has therefore been no consensus in the MSG on this issue, although publication of the companies approached is usual in many other EITI countries.

4.2 Increase transparency and disclosure of environmental payments

At present, important information about many **environmental payments** (energy and electricity taxes, water abstraction charges, payments for compensatory measures and compensatory payments, and provisions and implementation securities) is not publicly accessible. The D-EITI could remedy transparency deficiencies and thus provide valuable data for an informed public debate on the costs and benefits of resource extraction.

In the past the D-EITI reports have not contained information **on the actual level of the concessions received or the balance of the energy and electricity tax payments made by companies**.²² Companies would have to be asked to provide this information. This information would be a major **additional benefit**, because there are at present no publicly available figures at sector level. The electricity and energy tax statistics of the German Federal Statistical Office show the total revenue from the two taxes and the volume of the ex-emptions from each, but no figures are published specifically for the resource sector. The reports also contain no data on the consumption of electricity and energy in the resource sector which would enable the figures to be put in perspective.

Data on **water abstraction charges**, too, are not systematically re-requested, although they are actually included in the statutory payment reports (under BiRUG). As with the energy and electricity taxes, the resource sector benefits from numerous concessions which, however, vary in different federal states. In 2011, for example, the Social Democrat/

²¹ The German Accounting Directive Implementation Act – see info box in Section 3.

²² However, since the second report, aggregated data on the electricity and energy tax concessions reported in the EU state aid database have been included; these provide an approximation, because companies are only required to report concessions above a threshold of €500,000 per concession.

Green state government in North Rhine-Westphalia withdrew the lignite industry's exemption from water abstraction charges.

The EITI report from the UK shows what a transparent description of environmental payments could look like (Table 1). It lists all relevant environmental payments and their trend over time.

It would also be desirable for the federal states to list in future D-EITI reports, on a project-by-project basis, both the type and the **cost of compensatory measures** that are required for mining-related interventions in nature, including any compensatory payments for measures that cannot be performed "in natura". This would help the general public obtain a better overview of the compensatory measures being put in place for particular mining interventions and would clarify the costs associated with resource extraction that need to be offset against the benefits.

The reports to date also lack **details of the level of provisions for recultivation/rehabilitation** or the **appropriateness of provisions** as identified in existing reports (e.g. for lignite projects by RWE and LEAG). Similarly, the report does not disclose what **implementation securities have (and have not) been provided by extraction companies**.

Securing coverage for the follow-up costs that arise from **opencast lignite mining** is particularly important. In this

respect there is still a **lack of clarity** with regard to the extent to which the money paid to EPH by Vattenfall in connection with the sale of its lignite division is available for recultivation²³ and thus the extent to which the opencast mining operator (LEAG Bergbau) has **sufficient funds for it**, since the economic situation is likely to deteriorate further in the next few years – even without the coal phase-out.²⁴ Under **precautionary agreements**²⁵ between LEAG and the federal states of Brandenburg and Saxony, special-purpose entities have been set up to safeguard LEAG's security deposits for recultivation in the event of insolvency. However here, too, **the basis on which the necessary level of the special-purpose entities' special assets will be calculated** remains unclear. In Brandenburg the mining authorities have clearly not carried out any calculations or checks of their own on the level of the potential additional costs arising from LEAG's opencast lignite mining activities.²⁶ Furthermore, with the exception of a basic deposit, the amount channelled into the special fund depends on the level of LEAG's current profits – which means that, if profits fall or fail entirely, less or nothing is paid into the special fund.

As a result of the coal phase-out, **LEAG** is due to receive **€1.75 billion in compensation**, which will be paid directly into the special-purpose entities. It is impossible for the general public to work out how this sum has been arrived at; a **report** on the level of consequential costs in the Lausitz

£ million	2013	2014	2015	2016	2017	2018	2019
Government revenue from energy taxes (incl. EU ETS)	251	243	227	178	242	<i>nya</i>	<i>nya</i>
Government revenue from transport taxes	65	49	56	51	52	<i>nya</i>	<i>nya</i>
Government revenue from pollution and resource taxes	286	345	357	408	389	<i>nya</i>	<i>nya</i>
<i>of which Aggregates Levy</i>	<i>282</i>	<i>342</i>	<i>354</i>	<i>405</i>	<i>375</i>	<i>366</i>	<i>390</i>
Total Government revenue from environmental taxes	603	637	641	637	684	<i>nya</i>	<i>nya</i>

Table 1: Environmental taxes paid by the UK extractives sector, source: <https://www.uketi.org/sector-data>

23 <https://www.greenpeace.de/sites/www.greenpeace.de/files/publications/2018-09-07stellungnahme-leag.pdf>.

24 <https://foes.de/pdf/2019-11-FOES-Braunkohle-Folgekosten-Finanzierung.pdf>.

25 <https://lbgr.brandenburg.de/cms/detail.php/bb1.c.637241.de>, <https://www.oba.sachsen.de/1693.htm>.

26 <https://www.bund-brandenburg.de/service/presse/pressemitteilungen/news/land-hat-offenbar-keine-eigenen-zahlen-zu-braunkohle-folgekosten/>.

mining region commissioned by the Federal Ministry of Economics has still **not been released**. The possibility therefore cannot be excluded that the consequential costs in the precautionary agreements were set too low and that the difference must now be paid by the public on the grounds of the coal phase-out, even though there is no objective connection.²⁷

A possible approach to reporting on future payment flows in connection with recultivation and demolition commitments is **project-based breakdown of future payment obligations**. This was suggested by the independent administrator in his recommendations on the second D-EITI report.²⁸ These payments do not necessarily go to government agencies, but they arise as a result of relevant (statutory) provisions. There is also a topical connection with, inter alia, the lignite and crude oil sectors. It has not been possible to implement the suggestion for the third report of 2021, because the private sector and the government have so far viewed it very sceptically. No decision on future D-EITI reports has yet been taken in the MSG.

4.3 Disclose the connection between resource extraction and climate change

A stronger focus on the **energy transition** in the EITI is currently being discussed internationally – because countries in which government revenue depends to a significant extent on revenue from the extraction of fossil fuels will face falling income in the coming decades and will lose the opportunity to profit from new prospecting. In other countries, too, this raises the issue of a **socially acceptable phase-out of fossil fuels and financing of the recultivation** of former mining areas. Germany could inject valuable stimuli into the EITI by profiling the various aspects of the coal phase-out. There has already been some attempt at this: the second D-EITI report (2019) contains a section on the status of renewable energies in Germany and a study of the associated resource requirements (see Section 3.2), and the next report (2020) will include information on the legal framework of the coal phase-out and structural assistance for the coal-mining regions. **Nevertheless, the account does not go far enough**, because the link between the energy transition on the one hand and **decarbonisation** and **fossil fuels** on the other is not described in sufficient detail.

Back in 2015 a broad coalition of NGOs called for **climate risks** to be included in the EITI reporting system.²⁹ Members of the public want to know that governments and mining companies are being held to account with regard to whether

fossil fuel extraction projects can continue in harmony with the goals of the Paris Climate Agreement and what financial risks to the mining projects and government revenue arise from this.

In addition, reporting by the research network of Correctiv and Fridays for Future has recently raised the question of the extent to which some German **municipalities** still have **shares in companies involved in coal mining and coal-fired electricity generation**, thus earning money from climate-killing coal. The research, combined with surveys of almost 400 municipalities in North Rhine-Westphalia, has revealed that at least one in five municipalities in NRW alone is still investing in coal and could thus be embroiled in a **conflict of interest** with regard to **systematic climate change mitigation**. While the holdings are relatively small in some municipalities, others have holdings on a significant scale, either directly or indirectly via subsidiaries. There is little awareness of this among the general public. Furthermore, it is very difficult for the public to access the information, because the municipal investment reports are sometimes out of date and the interrelationships are obscure. The German civil society constituency in the D-EITI has therefore already raised this problem in the MSG so that it can be discussed for inclusion in future D-EITI reports.

4.4 Address the international responsibility of German resource policy

Germany is to a very large extent dependent on imports of resources from other countries. This applies in particular to metals and mineral resources but – following the end of coal mining in Germany in 2018 – hard coal is also increasingly being imported.

This means that Germany is shifting the social and environmental problems associated with mining to other countries. An honest cost-benefit analysis of our resource mining and use must include facing up to our **responsibilities beyond the horizon of domestic mining**. Development-policy stakeholders representing civil society therefore regard the focus of the German EITI reports on resource extraction in Germany as too narrow; they claim that the importing of raw materials must also be addressed and that steps must be taken, using verifiable criteria, to show how **due diligence obligations** with regard to human rights issues and environmental concerns in the



²⁷ <https://www.de.clientearth.org/braunkohle-ausstieg-bundesregierung-macht-sich-erpressbar/>.

²⁸ https://d-eiti.de/wp-content/uploads/2020/02/Protokoll_16_MSG_Sitzung.pdf.

²⁹ https://eiti.org/files/documents/eiti_d-final_en_15_10_12.pdf.

supply chain are being met. Simply referring to the National Action Plan (NAP), the Conflict Minerals Regulation and CSR reporting obligations, they say, is not enough. As a first step, basic information could be provided: What resources does Germany obtain from what foreign mines? What quantities are involved and at what prices? In addition, the activities of **German mining companies abroad** are of particular interest. Here, too, it is a question of stating which companies are involved in which mining projects and what fees they pay in the country concerned. In addition, the companies should demonstrate the extent to which they comply with the same social and environmental standards abroad as they do in Germany. According to environmental and development organisations, information on the involvement of the German government in mining and prospecting projects abroad is also of interest. A resource transparency report should include information on where the German government employs **tax revenues for mining projects** in other countries, e.g. in the context of **guarantees for untied loans**. For example, the German government is the guarantor for some large international banks that have given the Guinea Bauxite Company (Compagnie des Bauxites de Guinée, CBG) a loan of €722 million for expansion of a bauxite mine in the West African country. Local people are protesting about it, because internationally applicable environmental and social standards are not being adhered to and their land is being destroyed and expropriated. Germany's activities in connection with the planned **mining of manganese nodules and precious metals** in the **deep sea** provide another example of a situation in which there is little transparency. Germany has acquired licence areas in the Central Pacific and is spending considerable sums on research into the possibility of future deep-sea mining – which is being extensively criticised by local and international NGOs involved in environmental issues. The MSG has not yet reached a consensus on the inclusion of this issue in the D-EITI.

5 Conclusion and outlook

It is clear that a report compiled jointly by the government, companies and civil society cannot present only the civil society point of view. However, the MSG's consensus principle usually means that there is agreement on the report contents at the level of the lowest common denominator – in connection with both the disclosure of figures and the contextual information. Often this involves information that is largely reported in a value-free manner but has already been published elsewhere. A brief description of the differing positions of the stakeholders would be of far more interest for a multi-sided debate on many resource-related issues. In terms of transparency, that alone would create added value for the general public.

In the MSG, the civil society constituency has already been able to ensure the inclusion of important issues in the EITI: the sections on compensatory measures, follow-up costs, subsidies, renewable energies, recycling, and employment and social affairs are all there as a result of civil society initiative. They played a decisive part in the positive evaluation of the report by the international EITI bodies. By contrast, the reports have as yet added little of value to the debate on resource policy in Germany: data on resource mining – and especially on environmental payments – that have not previously been publicly accessible are still missing from the D-EITI. The report still pays insufficient attention to the link between resource extraction and climate change, and to the climate responsibilities of mining companies. And the D-EITI has not yet given any space to the discussion of Germany's international responsibility in the face of its large-scale importing and consumption of resources.

As the civil society constituency in the MSG, we are therefore planning to broaden our collaboration with civil society groups in other EITI countries (especially Mexico, Armenia, Ukraine) on social, environmental and human rights issues related to resources. Our aim is to learn from each other through the mutual exchange of experience and jointly to develop ideas for incorporating these issues more strongly into national processes via the international EITI.

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ABOUT THE AUTHOR

Josephine Koch is responsible for D-EITI and resource policy at the German NGO Forum on Environment and Development (FUE) and alternate member of the German EITI's multi-stakeholder group.

Florian Zerzawy works as a senior researcher for energy policy at Green Budget Germany (FÖS). He is an alternate member of the German EITI's multi-stakeholder group.

