

# 9

## DISCLOSED PAYMENT FLOWS AND PAYMENT RECONCILIATION



## a. Which cash flows are reported?

### i. Selection of sectors

The EITI standard requires that all the important cash flows of a country's extractive sector are considered. During various meetings, the MSG discussed which sectors of the natural resources extraction industry should be included in the first D-EITI report.

The following individual sectors were addressed:

- Lignite
- Crude oil and natural gas
- Potash and potash salt products
- Quarried natural resources

The mining of hard coal in Germany will be phased out at the end of 2018, so this sector is not considered in the framework of the payment reconciliation (see the general remarks on the mining of hard coal in Germany and on state grants for the hard coal sector in Chapter 2.a.iii and in Chapter 7).

### ii. Selection of companies

The EITI standard does not contain any direct guidelines for the process of selecting companies for inclusion in the reporting; on the contrary, the selection of the companies should be oriented on the objective of the EITI initiative (analogue with the selection of the sectors) to make the revenues of a country's extractive industry transparent and to disclose all the significant cash flows between companies and government agencies in this respect. Pursuant to EITI requirement 4.1(a), payments and revenues are deemed to be significant if their non-consideration or misrepresentation could significantly affect the completeness of the EITI report.

With regard to the selection of companies, the MSG has resolved to comply with the requirements of EU Accounting Directive 2013/34 of June 26, 2013. The stated objectives of the EITI initiative and of the cash flows specified by the EITI are also largely congruent with the provisions of the EU Accounting Directive.

Recital 44 and 45 of the Directive even explicitly state that

- the new regulations are intended to help governments in the implementation of the EITI principles and criteria and
- that payments should be recorded which are comparable to those of the EITI.

The EU Directive was implemented into German law by the German Accounting Directive Implementation Act (BilRUG) of July 23, 2015; pursuant to §§ 341q et seq. of the HGB, this directive obliges extractive industry companies to create (consolidated group) payment reports under certain conditions (registered office, legal form, size, activity), cf. the explanations in Chapter 4.

During several meetings, the MSG agreed to carry out the further content-related development formulation of the D-EITI process in accordance with the new provisions of §§ 341q et. seq. of the HGB. This particularly affects:

- the criteria for the identification of the companies that are eligible for reporting,
- the relevant period of reporting
- and the establishment of materiality thresholds for the cash flows which are to be reported.

The link to the statutory provisions of the HGB is intended to create the prerequisites for the widest possible participation of the companies; possible double burdens (for the participating companies), which could result from differences between the legal requirements for the (consolidated group) payment report and the reporting requirements for the EITI should also be avoided (see also Chapter 4.d.ii.).

Pursuant to § 267(3) of the HGB, the criteria for 'large' companies were therefore used as an initial basis for the identification of the companies. In this case, two of the following three criteria for classification as a 'large' company must be fulfilled on at least two successive two successive closing dates:

- Balance sheet total of €20 million
- Sales of more than €40 million
- an annual average of more than 250 employees

With regard to the question whether or not an ‘activity’ exists in the extractive industry, reference was made

to Regulation 1893/2006/EC of December 20, 2006, which regulates the details of the statistical classification of economic activities. Section B of Annex I of this Regulation is divided into sub-sections 05 to 08 as follows:

**Table 9:** Statistical classification of economic activities

Subsection	WZ 2008 Code	WZ 2008 – description	ISIC Rev. 4
	B	<b>SECTION B – MINING AND QUARRYING</b>	
05		Coal mining	
	05.1	Hard coal mining	
	05.10	Hard coal mining	0510
	05.2	Lignite mining	
	05.20	Lignite mining	0520
06		Extraction of crude oil and natural gas	
	06.1	Extraction of crude oil	
	06.10	Extraction of crude oil	0610
	06.2	Extraction of natural gas	
	06.20	Extraction of natural gas	0620
	06.20.0	Extraction of natural gas	
07		Ore mining	
	07.1	Iron ore mining	
	07.10	Iron ore mining	0710
	07.2	Non-ferrous metal mining	
	07.21	Uranium and thorium ore mining	0721

Subsection	WZ 2008 Code	WZ 2008 – description	ISIC Rev. 4
	07.21.0	Uranium and thorium ore mining	
	07.29	Other non-ferrous metal mining	0729
08		Quarried natural resources, other mining products	
	08.1	Extraction of natural stone, gravel, sand, clay and kaolin	
	08.11	Extraction of ashlar and natural stone, limestone and gypsum, chalk and slate	0810*
	08.12	Extraction of gravel, sand, clay and kaolin	0810*
	08.9	Other mining and quarrying activities not elsewhere specified	
	08.91	Extraction of chemical and fertilizer minerals	0891
	08.92	Peat extraction	0892
	08.93	Extraction of salt	0893
	08.99	Quarrying, other products not elsewhere specified	0899

\* Part of

For the purpose of identifying possible companies, companies assigned to one of the sub-sections 05 to 08 are considered to be primarily ‘active’ in the extractive industry. In addition to the statutory duty to draw up payment reports for ‘large’ companies, there is also an obligation for parent companies to prepare group (consolidated) financial statements if at least one subsidiary is active in the extractive industry. The size of this ‘active’ subsidiary is not relevant here (a ‘consolidated tax group infection’), so that even companies which are themselves not classified as being ‘large’ can trigger a reporting obligation simply through being combined with a ‘large’ parent company.

The approach to ‘consolidated tax group infection’ was also addressed for the purpose of identifying extractive industry companies; and the number of

such companies increased accordingly. As a result, the selection is made using a combination of size and activity criteria (cf. the explanations in Chapter 9.b.i.).

In addition to the size of the companies and the economic classification, the MSG also used a substantial coverage of the sectors as a criterion for the selection of companies.

Depending on the natural resource in question, there are significant differences in the number of companies and active employees in the various sectors in Germany’s extractive industry. The coal mining and crude oil and gas production sectors are dominated by a few, large companies, for instance. The quarried natural resources sector, on the other hand, is characterised by a structural mix of few large suppliers and a high

proportion of small and medium-sized enterprises. Hardly any of the companies in the sector are subject to any legal obligation to draw up payment reports and cannot consequently be identified through the criteria intended for the identification of the companies for the first D-EITI report (see also the explanations in Chapter 9.b.ii.).

### iii. Selection of cash flows

In accordance with the EITI standard, cash flows from the extractive industry must be taken into account if they are regarded as significant for a complete presentation of the company payments and state revenues. The following cash flows are recorded within the framework of the first D-EITI report or are subject to the payment reconciliation with the revenues of the government agencies (cf. the explanations in Chapter 4.b.).

## Taxes

### Corporation tax

Corporation tax is the main income tax of limited companies in Germany; it is not a specific tax for extractive industry companies, but is levied on all limited companies that are domiciled in Germany or are active in the country. The assessment basis for corporation tax is the taxable commercial income, which is derived from the annual net profit; any tax modifications that may apply are also considered. If an enterprise is also active in other sectors as well as in the extractive sector, there may be delimitation problems regarding the share of corporation tax attributable to the activities in the extractive sector, since the corporation tax is calculated on the basis of the total taxable income (cf. Chapter 4.b.i.).

For this reason, corporation tax is classified as a non-project-related payment in the payment reports to be prepared under commercial law. Allocation of these

payments to activities within and outside the extractive sector can be selectively carried out by companies if a proper and reliable coding (based on appropriate allocation criteria) is possible. This commercial practice is pursued for the purposes of EITI reporting.

### Trade tax

Commercial enterprises in Germany are subject to trade tax. The municipalities in which the company in question has its operating facilities are entitled to levy trade tax; an operating facility may also extend across several municipalities. Payment recipients for trade tax payments are neither the Federal Government nor the Federal States in a central role, but the relevant individual municipalities; this in itself is a reflection of the Federal State structure in Germany (see also Chapter 4.b.iii.) – however, the many municipalities pose special challenges for payment reconciliation in terms of trade tax<sup>18</sup>. In addition to this, individual municipalities – unlike the individual tax offices in the case of corporation tax – cannot be centrally addressed via an organisational unit.

Just which government agencies – and how many of them – receive trade tax payments cannot be foreseen. This information can only be provided by the companies themselves within the framework of the data collection process.

Against this background, the MSG has therefore decided to include the trade tax payments of the companies in the data collection framework and to present these in the current EITI report; however, a general payment reconciliation for the first D-EITI report will not be included. The reconciliation of trade tax payments with the revenue of the municipalities as recipients will instead be exemplarily demonstrated by the payment data of one company that participates in the reporting process and which represents all the other participating companies. Esco – european salt company GmbH & Co. KG, Hanover, a company of the

18 According to the Federal Office of Statistics, there are 11,192 municipalities.

K+S Group headquartered in Kassel, was willing to represent this exemplary trade tax payments reconciliation. For further details and the results of this payment reconciliation of the trade tax payments, please see the explanations in Chapter 9.c.iii.

#### **Particularities with regard to the recording of tax payments in certain parent-subsidiary constellations**

Business partnerships such as the GmbH & Co. KG traditionally play a leading role in Germany's small and medium-sized enterprises, in contrast to many other jurisdictions. They are subject to trade tax, but not to corporation tax. Corporation tax is first levied at shareholder level, but only if the shareholder is a limited company. In this respect, one special feature of the German tax law should be noted, according to which business partnerships are not themselves the subject of taxes in terms of income tax; the income generated by the company is subject to taxation at the level of the shareholders, together with the income they have earned from other sources.

In the subsidiary-partnership constellation of a parent limited company, consequences may arise for the recording of the tax payments (trade tax and corporation tax) within the framework of data collection for the EITI report; examples of such consequences are shown below. In each case, it is assumed that a company has voluntarily participated in the data collection for the EITI report if it is active in the extractive industry.

If both the parent limited company and the subsidiary business partnership are active in the extractive industry, all the relevant tax payments (trade tax of the subsidiary and the parent company as well as corporation tax at the parent company level) are recorded in the EITI report. If, on the other hand, the subsidiary or parent company is not active in the natural resources sector, either not all or too many tax payments to government agencies are recorded. If, for example, the parent limited company is active in the extractive

industry, but the subsidiary-business partnership is not, the reported corporation tax payments of the parent company also include the financial results of the subsidiary. From the viewpoint of commercial law, it is possible (but not obligatory) to allocate corporate tax payments to activities both within the extractive sector and outside of it. If, on the other hand, the subsidiary-business partnership is active in the extractive industry, but the parent limited company is not, trade tax payments are only recorded for the subsidiary through the subsidiary's (sole) participation in the data collection, but not, the corporation tax paid by the parent limited company (on a pro rata basis) for the financial results of the subsidiary.

This handling of corporation tax is due to the German tax system. The MSG has decided to pursue this legal, tax-related standpoint, also for EITI purposes.

#### **Particularities with regard to recording the tax payments of consolidated tax groups**

German tax law has specific special arrangements in the case of trade tax and corporation tax for corporate groups. Under certain conditions, a so-called 'consolidated tax group' may exist.

In constellations like this, the incorporated companies (subsidiary organisations), which are themselves limited companies do not usually pay tax; the payment of taxes levied on the financial result of all the companies incorporated in the consolidated tax group is carried out entirely and exclusively by the parent company. The parent company in turn pays taxes on its own income and on the income of its subsidiaries, which may not exclusively result from activities related to the extraction of natural resources.

For the purposes of the (consolidated group) payment report under German commercial law, the following differentiations are made at the level of the parent company:

- If the consolidated tax group is mainly active in the extractive industry pursuant to § 341r No.1 of the HGB, reporting can be carried out for the total amount of the taxes paid by the parent company. There is no obligation to allocate the tax payments to activities within or outside the scope of § 341r No.1 of the HGB.
- If, on the other hand, the consolidated tax group is not mainly active in the extractive industry as set down in §341r No. 1 of the HGB, the tax payments made by the parent company may be allocated on a voluntary basis. Otherwise, details of the tax payments made by the parent company will be omitted.

The results of the payment reconciliation substantiate the major practical importance of consolidated tax groups in the taxation of groups of companies. In various cases concerning the companies participating in the payment reconciliation, details of the taxes paid by the parent company are consequently omitted (cf. the figures on the results of the payment reconciliation in Chapter 9.c.).

With regard to the recording of tax payments within the framework of consolidated tax groups, the MSG has also opted to pursue the viewpoint according to German commercial law for EITI purposes.

### **Minesite and extraction royalties pursuant to the BBergG**

Minesite and extraction royalties are levied as a specific tax on extractive companies for free-to-mine natural resources, based on the German Federal Mining Act (§§ 30, 31 BBergG) (for further details see Chapter 4.b.ii.).

The MSG has decided to include minesite and extraction royalties in the EITI report as a cash flow and (in addition to corporation tax) to make these royalties subject to payment reconciliation.

### **Lease payments**

Minesite and extraction royalties are the only taxes that are levied for the exploration and extraction of free-to-mine natural resources in Germany. However, lease payments may have to be made to government agencies in connection with the extraction of non-free-to-mine natural resources, particularly in the quarried natural resources sector, and this is indeed the case when government agencies (as owners) conclude contracts for the extraction of natural resources with extractive sector companies. Such contractual arrangements may include fixed payments or payments that depend on the quantity extracted, or a combination of both variants.

The recipients of the lease payments are the government agencies that have concluded the contractual arrangements with the company (e.g. municipalities, forestry offices, as well as state property administration and moor management authorities). The content and the number of contracts are not centrally documented (cf. Chapter 4.b.iv.). In addition, the individual government agencies which have concluded lease contracts – unlike the individual tax offices in the case of corporation tax – cannot be centrally addressed via an organisational unit. As in the case of trade tax, this leads to particular difficulties in payment reconciliation.

Just which government agencies – and how many of them – receive lease payments cannot be foreseen. This information can only be provided by the participating companies themselves within the framework of the data collection process.

The MSG has therefore decided to record payments made to government agencies by the companies within the framework of the data collection process,

but to exclude them from payment reconciliation. By way of example, and in keeping with the trade tax payments, the MSG originally intended to have the Independent Administrator reconcile the leasing payments made by one participating company as a representative example for all other participating companies. However, this exemplary reconciliation has not yet come to fruition.

■ **Figure 7:** Disclosed payment flows and payment reconciliation

Cash flow	Reporting by companies	Payment reconciliation
Corporation tax	yes	yes
Minesite and extraction royalties	yes	yes
Trade tax/lease payments	yes	no

#### iv. Project level reporting

The EITI standard generally requires reporting at project levels (EITI Requirement 4.7). The MSG has decided to implement the content and scope of the project concept by the analogous application of legal regulation § 341r, No. 5 of the HGB. Payments to government agencies must therefore be detailed for each project if the reporting company has carried out more than one project during the reporting period. The concept of the project is concretised in § 341r No. 5 of the HGB in the form of a summary of operational activities which form the foundation for payment obligations to a government agency and which are based on a contract, license, lease agreement, concession or similar legal agreement.

As a rule, no project-related reporting is provided for ‘corporation tax’ and ‘trade tax’ cash flows, since these are flows that are based on a legal regulation and not on one of the legal agreements set down in § 341r No. 5 of the HGB.

In the case of the ‘minesite and extraction royalties’ cash flow, specifying the relevant permit/extraction site within the scope of the data report ensures the sufficient determinability of the project in question. With regard to lease payments, the data collection templates provide for the allocation of project-related payments to government agencies.

## v. Materiality of payments

The commercial regulations for the preparation of (consolidated group) payment reports stipulate that the companies concerned must report payments of €100,000 and upwards made to individual government agencies per reporting year (cf. § 341t(4) of the HGB). A government agency to which less than €100,000 has been paid during the reporting period does not have to be included.

The MSG has decided to adopt these rules for the first D-EITI report. If payments made during reporting year 2016 amounted to less than €100,000 per government agency, the data collection templates require relevant proof of the existence of payments, but without mentioning any specific amounts.

The investigative measures carried out by the Independent Administrator do not constitute a (final) examination or auditor's examination in accordance with the professional standards accepted in Germany or recognised internationally, therefore the Independent Administrator did not submit an overall judgment (neither with sufficient nor with limited judicial certainty) in terms of the subject of the investigation measures. The Independent Administrator did not undertake any specific investigations to verify the correctness, completeness and reliability of the payment data, in particular with regard to the data notifications of the participating companies and/or of the government agencies. In addition, the objectives of the investigative measures carried out were neither to uncover errors nor to detect violations on the part of the participating companies or government agencies.

## b. Procedure for payment reconciliation

### i. Explanation of the nature and extent of the work of the Independent Administrator

The work of the Independent Administrator encompasses the performance of investigative measures as per the International Standard on Related Services (ISRS) 4400, 'Engagements to Perform Agreed-Upon Procedures'. The nature and scope of the work of the Independent Administrator has been particularly described and/or explained within the scope of the following chapters of the EITI report:

- Chapter 9.b.ii.: Identification of companies eligible for participation in the EITI process,
- Chapter 9.b.v.: Measures for safeguarding confidential data,
- Chapter 9.b.vi.: Development of data collection templates and notes on data collection,
- Chapter 9.c.: Implementation of the payment reconciliation and the presentation of its results.

### ii. Identification of companies

The first step was to identify the companies that were relevant for the first D-EITI report. Here the Independent Administrator used a database analysis<sup>19</sup> to select all the companies which are mainly active in the extractive industry and which are allocated to the lignite, crude oil/natural gas and quarried natural resources (including potash & salts) sectors. The classification criterion was the allocation of the companies to sub-sections 05 to 08 pursuant to Regulation 1893/2006/EC of December 20, 2006 (cf. Chapter 9.a.ii.). In the second step, these companies were filtered according to the size criteria stipulated by the HGB for 'large' companies.

The Independent Administrator manually expanded the group of these provisionally-identified companies by including groups of companies in which a potential 'consolidated tax group infection' caused by 'active' subsidiaries existed (for details, cf. Chapter 9.a.ii.). The results were subsequently subjected to an analysis by the MSG members. The following knowledge and/or results were obtained:

19 Orbis Europe Database of the Provider Bureau van Dijk ([www.bvdinfo.com](http://www.bvdinfo.com)) retrieved on February 2, 3 and 28, 2017

- Companies the main activities of which are allocated to the storage (e.g. construction and operation of cavern storage facilities for the storage of natural gas) of natural resources underground are not considered, since the extraction of natural resources is not their primary activity, despite their being allocated to sub-sections 05 to 08.
- All the companies identified and allocated to sub-section 07 (ore mining) do not actively engage in extractive mining in Germany and are therefore not considered.

On the basis of the above-described selection process, a total of 48 companies and/or groups of companies were identified for possible participation in the D-EITI process and were requested to take part. Due to the difficult data situation, however, this number (48) cannot be described as being clear or conclusive.

It is evident that the selection criteria specified by the MSG ensure a prominent level of coverage for the lignite, crude oil and/or natural gas, potash and salts/industrial brine sectors (cf. Chapter 9.c.). These are solely free-to-mine natural resources and these particular sectors contain comparatively few, but relatively large business units. On the other hand, quarried natural resources are extracted by a very high number of business operations with many extraction facilities and/or mines. One key reason for the purely regional production and marketing of these natural resources is the prohibitive cost of their transport. According to estimates by the German Building Materials Association – Quarried Natural Resources (BBS), the 25 largest quarried natural resources suppliers would account for only about 1.6% of the total number of companies in the industry and around 22% of the total number of the industry's extraction sites. It must also be assumed that a number of companies and/or consolidated companies (which are already among the 25 largest providers in this sector) do not fulfil the size criteria in Chapter 9.a.ii. and are therefore not identified by the selection criteria screen adopted by

the MSG. As a result of the high number of non-identified small and medium-sized enterprises in the quarried natural resources sector, the coverage of this sector clearly lags behind that of the other sectors.

### iii. Identification of government agencies

The total number of government bodies that generate revenues from the extractive industry in Germany stem directly from the cash flows that were defined for this first D-EITI report. No central recording of the relevant cash flows is possible, however, due to the federal structure of the administration in Germany.

The following individual government agencies are responsible for:

- Corporation tax: the responsible tax offices at the respective headquarters of the companies
- Mining and extraction royalties: the responsible mining authorities of the Federal States in which the approved/licensed site is located
- Trade tax: the municipalities in the territory of which the taxable operating facilities are located (no payment reconciliation)
- Lease payments: The government agencies which generate revenues from extractive companies on the basis of individual contractual arrangements (no payment reconciliation)

#### **iv. Managing tax secrecy**

Both the EITI reporting and the payment reconciliation processes encompass tax data, viz. cash flows relating to corporation tax and trade tax, which are subject to tax secrecy pursuant to §§ 30 et seq. of the AO (German Tax Code, cf. the comments in Chapter 4.c.). The following aspects are particularly significant in the context of tax secrecy:

1. In the course of the preparation of the EITI report, the cash flows reported by the companies and received by government agencies are prepared and disclosed. This also affects tax payments, i.e. data that is subject to tax secrecy. This usage of tax-relevant data is only permissible if the taxpayer, i.e. the respective company, expressly agrees (§ 30(4), No. 3 of the AO). The data collection templates ensure that this consent is obtained from each company for the purpose of publishing the data in the context of EITI reporting.
2. As part of the payment reconciliation to be carried out, the tax payments reported by a company must be reconciled with the data reported by the tax authorities, which are the recipients of the payments. Due to tax secrecy, the respective financial authority may not make this data available for the purposes of payment reconciliation; this requires the taxpayer's express authorisation for the Independent Administrator to act.

The form and the content of this power of attorney were examined by the competent departments of the Federal Ministry of Finance and the Federal States and were also approved by a joint Federal-State committee. When the approval of the MSG and the mining

authorities had been given, the approved power of attorney for submission to the respective tax authorities was also used as a model for a corresponding power of attorney for submission to the responsible mining authorities for the purpose of reconciling mining and extraction royalties.

#### **v. Measures for safeguarding confidential data**

All project-related communication via e-mail and all other project-related data is stored in an ISO 27001 and ISO 9001-certified data centre in Germany. A platform has been specifically made available for the exchange of project-related data, and companies can use this to upload data (several times where required). Uploaded data cannot be changed for security reasons. Measures have been taken to prevent any company from gaining access to the data of other participants. The administration of the data exchange, storage and e-mail service is the responsibility of the D-EITI Secretariat in Berlin.

#### **vi. Templates and notes on data collection**

In accordance with the decisions made by the MSG regarding the shaping of the contents of the D-EITI reporting process, the Independent Administrator has developed an Excel-based template for the collection of relevant payment reconciliation data. In addition to the data collection templates, the Independent Administrator has also created further 'Notes on data collection within the framework of the D-EITI process'. These notes will give companies practical tips and help them to understand and use the data collection templates.

## vii. Quality of data provided by companies and government agencies

Companies in Germany are subject to comprehensive, legally-regulated

- accounting,
- disclosure and
- auditing obligations.

These obligations depend on the company's size, legal form and activity. Limited companies and limited liability partnerships within the meaning of § 264a of the HGB must draw up an annual financial statement with notes and (where required) a management report at the end of each fiscal year. The obligation to carry out the annual audit is regulated (inter alia) in the HGB (§§ 316 et seq. HGB) and in § 6 of the Act on the Accounting of Certain Companies and Groups (PublG). The HGB stipulates a statutory audit obligation (inter alia) for 'medium-sized' and/or 'large' companies, whereby two of three criteria for grouping into the size classes must be met within a given period of time (for further details, cf. § 267 of the HGB).

The statutory audit must at least include the annual accounts (balance sheet, profit and loss account and notes), plus the management report and the accounting records. The auditor must determine whether or not the accounting is consistent with the underlying accounting principles and with any other legal basis such as the Articles of Association or the deed of partnership (compliance/regularity audit). It must also be determined whether or not the respective annual financial statement provides an accurate picture of the situation of the company as a whole. An assessment of whether or not the opportunities and risks of future development are presented in an accurate manner must also be carried out. The (consolidated group) payment reports pursuant to §§ 341q et seq. of the HGB, however, are not yet subject to statutory audit obligations. However, the EU Commission

reserves the right to address the question of a future statutory audit obligation as part of a previously-announced review of the new regulations on the (consolidated group) payment report<sup>20</sup>.

Due to the Federal State structure in Germany, there are independent, state-owned audit offices to control the budgetary economy at both Federal and state levels. The jurisdiction of the German Federal Audit Office is restricted to the sphere of the Federal Government's financial practices; it has no legal supervisory rights or right of direction over the states' audit offices. The audit offices are independent, highest-level authorities of the Federation and the states; they act independently of the executive and legislative bodies. Their tasks are defined by the constitution and/or the state constitutions, which are defined in detail by Federal and state budgetary regulations.

The audit offices also assume the task of external financial auditing (the 'supra-local audit') at local territorial authority level (municipalities and associations), depending on the Federal State in question. Internal administrative control ('local audit') is carried out by municipal audit offices and/or reviewing offices.

The following principles apply as a standard of review for the auditing of state and municipal budgetary and economic administration:

- the regularity of the execution of the law and administrative action, as well as
- economic efficiency and economical practices in budgetary and economic administration

The principle of regularity includes (inter alia) the accounting correctness (proper and legal calculation, justification and booking) of the individual invoice amounts. The respective audit office is solely responsible for the content, scope and frequency of the auditing procedures.

20 cf. recitals to EU Directive 2013/34/EU of June 26, 2013, sub-para. 52

The results of the audit offices' work are made known to the relevant government agencies in the form of audit reports. The audit office may communicate the audit result to agencies other than those reviewed if it considers this action necessary for particular reasons. Selected audit results are nevertheless summarised in annual reports that are accessible to the public.

In addition to external control processes carried out by the audit offices, internal administrative control processes are also of key importance for assessing government agencies' data quality. These essentially consist of internal rules for the allocation of responsibilities (separation of functions) between the (notification-) issuing authority and the agency receiving the payment. In addition, control mechanisms involving the '4-eyes principle' are also set up within the authorities in the context of the drafting of the relevant communications.

### **c. Data collection and payment reconciliation**

#### **i. Participating companies and coverage of the sectors**

Of the 48 companies and/or consolidated group companies identified by the Independent Administrator in accordance with the requirements of the MSG, a total of 12 companies or groups of companies have participated in the reporting process during the preparation of this EITI report.

We would like to point out that the majority of the companies identified as being subject to the legal regulations for the preparation of (consolidated group) payment reports may now prepare and disclose their payment reports by December 31, 2017, a timeframe which exceeds the data collection period originally planned for this EITI report. Only capital market-oriented companies must submit the (consolidated group) payment report by June 30, 2017 if their fiscal year corresponds to the calendar year. The MSG has therefore decided to give extractive companies the opportunity to participate in the EITI reporting process until the beginning of 2018. This decision was based on the statutory deadlines for the preparation and disclosure of (consolidated group) payment reports. It is planned to process and/or publish the data of other companies that will possibly issue reports in the context of a supplementary report to the existing EITI report.

The following overview shows the distribution of the participating companies and/or consolidated companies in the various sectors, taken from the first data collection phase:

**Figure 8:** Participating companies and/or group of companies

		Sector
1	BEB Erdgas und Erdöl GmbH & Co. KG, Hanover	Crude oil and natural gas
2	DEA Deutsche Erdoel AG, Hamburg	Crude oil and natural gas
3	Dyckerhoff-Gruppe, Wiesbaden	Quarried natural resources
4	ENGIE E&P Deutschland GmbH, Lingen	Crude oil and natural gas
5	ExxonMobil Production Deutschland GmbH, Hanover	Crude oil and natural gas
6	Heidelberger Sand und Kies GmbH, Heidelberg	Quarried natural resources
7	K+S-Gruppe esco – european salt company GmbH & Co. KG, Hanover K+S Kali GmbH, Kassel	Potash and salt products Potash and salt products
8	LafargeHolcim-Gruppe Buss Basalt GmbH & Co. KG, Münzenberg Holcim (Deutschland) GmbH, Hamburg Holcim Beton und Zuschlagstoffe GmbH, Hamburg Holcim Kieswerk Zeithain GmbH & Co. KG, Dresden Holcim West Zement GmbH, Beckum Kalksteinwerke Medenbach GmbH, Breitscheid Kieswerk Leinetal GmbH & Co. KG, Diekholzen Kieswerk Hermann GmbH & Co. KG, Kirchhain Kieswerke Borsberg GmbH & Co. KG, Pirna	Quarried natural resources Quarried natural resources
9	Lausitz Energie Bergbau AG, Cottbus	Lignite
10	RWE-Gruppe Rheinische Baustoffwerke GmbH, Bergheim RWE Power AG, Essen	Quarried natural resources Lignite
11	Vermillion Energy Germany GmbH & Co. KG, Schönefeld	Crude oil and natural gas
12	Wintershall Holding GmbH, Celle	Crude oil and natural gas

The following overview shows the coverage of the respective sectors by the group of identified companies and the companies actually participating in

the reporting process, with their respective reference values upon which the determination procedure was based:

**Table 10:** Coverage of sectors

Sectors*	Estimated coverage of all identified companies
Lignite	100.0%
Crude oil	96.0%
Natural gas	99.7%
Potash	97.8%
Salts (including industrial brine)	83.4%

\* Against the background of the small-scale nature of the sector, the determination of a degree of coverage of the quarried natural resources sector was dispensed with, cf. Chapter 9.b.ii.

\*\* Coverage details have been omitted to ensure the protection of competition-relevant data.

The following overview shows the 2016 payments made by the participating companies to government

agencies for the corporation tax, trade tax, lease payments, minesite and extraction royalties cash flows:

**Table 11:** Overall overview of reported company data

Reported company data	Corporation tax Euro
1 BEB Erdgas und Erdöl GmbH & Co. KG, Hanover	- <sup>1</sup>
2 DEA Deutsche Erdoel AG, Hamburg	0.00
3 Dyckerhoff – Gruppe, Wiesbaden	1,456,787.64
4 ENGIE E&P Deutschland GmbH, Lingen	12,819,700.00 <sup>2</sup>
5 ExxonMobil Production Deutschland GmbH, Hanover	55,301,318.00 <sup>2</sup>
6 Heidelberger Sand und Kies GmbH, Heidelberg	1,127,213.66

1 No payments have been made due to the legal form of the company.

2 Payments are made by the parent company.

	Estimated coverage of all participating companies	Reference value – Determination – Coverage
	89.0%	Quantity extracted in 2016
	96.0%	Quantity extracted in 2016
	99.7%	Quantity extracted in 2016
	97.8%	usable quantity in 2015
	no details available**	usable quantity in 2015

	Trade tax Euro	Minesite/extraction royalties Euro	Lease payments Euro	Total reported payments Euro
	37,089,446.37	65,116,685.09	0.00	102,206,131.46
	4,325,138.00 <sup>2</sup>	72,117,540.42	0.00	76,442,678.42
	1,903,953.04	0.00	0.00	3,360,740.68
	6,536,606.01	9,432,090.97	0.00	28,788,396.98
	44,496,333.10	41,190,853.28	0.00	140,988,504.38
	1,609.00	0.00	0.00	1,128,822.66

Reported company data		Corporation tax Euro	
7	K+S – Gruppe  esco – european salt company GmbH & Co. KG, Hanover  K+S Kali GmbH, Kassel	– <sup>1</sup>  No information available <sup>3</sup>	
8	LafargeHolcim – Gruppe  Buss Basalt GmbH & Co. KG, Münzenberg  Holcim (Deutschland) GmbH, Hamburg  Holcim Beton und Zuschlagstoffe GmbH, Hamburg  Holcim Kieswerk Zeithain GmbH & Co, KG, Dresden  Holcim West Zement GmbH, Beckum  Kalksteinwerke Medenbach GmbH, Breitscheid  Kieswerk Leinetal GmbH & Co. KG, Diekholzen  Kieswerk Hermann GmbH & Co. KG, Kirchhain  Kieswerke Borsberg GmbH & Co. KG, Pirna	– <sup>1</sup>  No information available <sup>3</sup>  No information available <sup>3</sup>  – <sup>1</sup>  No information available <sup>4</sup>  288,082.52  – <sup>1</sup>  – <sup>1</sup>  – <sup>1</sup>	
9	Lausitz Energie Bergbau AG, Cottbus	0.00	
10	RWE – Gruppe  Rheinische Baustoffwerke GmbH, Bergheim  RWE Power AG, Essen	No information available <sup>3</sup>  No information available <sup>3</sup>	
11	Vermillion Energy Germany GmbH & Co. KG, Schönefeld	– <sup>1</sup>	
12	Wintershall Holding GmbH, Celle	No information available <sup>3</sup>	
<b>Total reported company payments</b>		<b>70,993,101.82</b>	

1 No payments have been made due to the legal form of the company.

3 No payment information available due to the existence of a consolidated tax group.

4 Payments have been made, but in total less than €100,000.00.

The reports on the cash flows of corporation tax and trade tax illustrate the high relevance of consolidated tax groups in Germany. In these cases, if the main activity of the consolidated tax group does not involve the extraction of natural resources, the details of the taxes paid by the parent company can be omitted

(cf. footnote 3 table 11). On the other hand, if the consolidated tax group is mainly active in the extractive industry, a report (on a pro rata basis and/or complete) of the taxes paid by the parent company is required (cf. footnote 2 in table 11; see also Chapter 9.a.iii).

	Trade tax Euro	Minesite/extraction royalties Euro	Lease payments Euro	Total reported payments Euro
	3,766,118.87	0.00	0.00	3,766,118.87
	No information available <sup>3</sup>	1,007,841.68	0.00	1,007,841.68
	No information available <sup>4</sup>	0.00	0.00	0.00
	No information available <sup>3</sup>	0.00	219,510.00	219,510.00
	No information available <sup>3</sup>	0.00	No information available <sup>4</sup>	0.00
	109,566.00	0.00	0.00	109,566.00
	No information available <sup>4</sup>	0.00	0.00	0.00
	216,174.00	0.00	0.00	504,256.52
	No information available <sup>4</sup>	0.00	0.00	0.00
	No information available <sup>4</sup>	0.00	0.00	0.00
	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00
	No information available <sup>3</sup>	0.00	140,945.06	140,945.06
	No information available <sup>3</sup>	0.00	0.00	0.00
	0.00	2,114,465.01	0.00	2,114,465.01
	No information available <sup>3</sup>	40,832,665.00	0.00	40,832,665.00
	<b>98,444,944.39</b>	<b>231,812,141.45</b>	<b>360,455.06</b>	<b>401,610,642.72</b>

## ii. Payment reconciliation for corporation tax and minesite and extraction royalties

Comparisons of the corporation taxes and/or mining and extraction royalties reported by the participating

companies for the year 2016 with the corresponding revenues of the government agencies have led to the following provisional and/or final differences:

**Table 12:** Overview of the reconciliation of corporation tax and minesite/extraction royalty payments

	Total payments according to the company Euro	Total payments according to the public authorities Euro	Provisional differences Euro	
Corporation tax	70,993,101.82	70,993,101.82	0.00	
Minesite and extraction royalties	231,812,141.45	231,384,155.84	427,985.61	
	<b>302,805,243.27</b>	<b>302,377,257.66</b>	<b>427,985.61</b>	

The payments and differences in the cash flow of corporation tax are shown as follows for each company:

**Table 13:** Results of the reconciliation of corporation tax payments

Corporation tax	Amount according to the company Euro	
1 BEB Erdgas und Erdöl GmbH & Co. KG, Hanover	– <sup>1</sup>	
2 DEA Deutsche Erdoel AG, Hamburg	0.00	
3 Dyckerhoff – Gruppe, Wiesbaden		
Dyckerhoff GmbH, Wiesbaden	1,447,779.00 <sup>2</sup>	
Dyckerhoff Kieswerk Trebur GmbH, Trebur-Geinsheim	9,008.64	
4 ENGIE E&P Deutschland GmbH, Lingen	12,819,700.00 <sup>2</sup>	
5 ExxonMobil Production Deutschland GmbH, Hanover	55,301,318.00 <sup>2</sup>	
6 Heidelberger Sand und Kies GmbH, Heidelberg	1,127,213.66	
7 K+S – Gruppe		
esco – european salt company GmbH & Co. KG, Hanover	– <sup>1</sup>	
K+S Kali GmbH, Kassel	No information available <sup>3</sup>	

<sup>1</sup> No payments have been made due to the legal form of the company.

<sup>4</sup> Payments have been made, but in total less than €100,000.00.

<sup>3</sup> No payment information available due to the existence of a consolidated tax group.

	Provisional differences %	Differences to be explained Euro	Unexplained differences Euro	Unexplained differences %
	0.0	0.00	0.00	0.0
	0.2	-427,985.64	-0.03	0.0
		-427,985.64	-0.03	

	Amount according to the public authorities Euro	Provisional differences Euro	Provisional differences %	Differences to be explained Euro	Unexplained differences Euro	Unexplained differences %
	0.00	0.00	0.0	0.00	0.00	0.0
	1,447,779.00	0.00	0.0	0.00	0.00	0.0
	9,008.64	0.00	0.0	0.00	0.00	0.0
	12,819,700.00	0.00	0.0	0.00	0.00	0.0
	55,301,318.00	0.00	0.0	0.00	0.00	0.0
	1,127,213.66	0.00	0.0	0.00	0.00	0.0

Corporation tax		Amount according to the company	
		Euro	
8	LafargeHolcim – Gruppe		
	Buss Basalt GmbH & Co. KG, Münzenberg	– <sup>1</sup>	
	Holcim (Deutschland) GmbH, Hamburg	No information available <sup>3</sup>	
	Holcim Beton und Zuschlagstoffe GmbH, Hamburg	No information available <sup>3</sup>	
	Holcim Kieswerk Zeithain GmbH & Co. KG, Dresden	– <sup>1</sup>	
	Holcim West Zement GmbH, Beckum	No information available <sup>4</sup>	
	Kalksteinwerke Medenbach GmbH, Breitscheid	288,082.52	
	Kieswerk Leinetal GmbH & Co. KG, Diekholzen	– <sup>1</sup>	
	Kieswerk Hermann GmbH & Co. KG, Kirchhain	– <sup>1</sup>	
	Kieswerke Borsberg GmbH & Co. KG, Pirna	– <sup>1</sup>	
9	Lausitz Energie Bergbau AG, Cottbus	0.00	
10	RWE – Gruppe		
	Rheinische Baustoffwerke GmbH, Bergheim	No information available <sup>3</sup>	
	RWE Power AG, Essen	No information available <sup>3</sup>	
11	Vermillion Energy Germany GmbH & Co. KG, Schönefeld	– <sup>1</sup>	
12	Wintershall Holding GmbH, Celle	No information available <sup>3</sup>	
		<b>70,993,101.82</b>	

1 No payments have been made due to the legal form of the company.

4 Payments have been made, but in total less than €100,000.00.

3 No payment information available due to the existence of a consolidated tax group.

	Amount according to the public authorities Euro	Provisional differences Euro	Provisional differences %	Differences to be explained Euro	Unexplained differences Euro	Unexplained differences %
	288,082.52	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	70,993,101.82	0.00	0.0	0.00	0.00	0.0

The payments and differences in the cash flow of minesite and extraction royalties are shown as follows for each company:

**Table 14:** Results of the reconciliation of minesite/extraction royalties

Minesite and extraction royalties by company		Sector	Amount according to the company*	Euro
1	BEB Erdgas und Erdöl GmbH & Co. KG, Hanover	Crude oil and natural gas	65,116,685.09	
2	DEA Deutsche Erdoel AG, Hamburg	Crude oil and natural gas	72,117,540.42	
3	Dyckerhoff – Gruppe, Wiesbaden	Quarried natural resources	0.00	
4	ENGIE E&P Deutschland GmbH, Lingen	Crude oil and natural gas	9,432,090.97	
5	ExxonMobil Production Deutschland GmbH, Hanover	Crude oil and natural gas	41,190,853.28	
6	Heidelberger Sand und Kies GmbH, Heidelberg	Quarried natural resources	0.00	
7	K+S – Gruppe esco – european salt company GmbH & Co. KG, Hanover K+S Kali GmbH, Kassel	Potash and potash salt Potash and potash salt	0.00 1,007,841.68	
8	LafargeHolcim – Gruppe Buss Basalt GmbH & Co. KG, Münzenberg Holcim (Deutschland) GmbH, Hamburg Holcim Beton und Zuschlagstoffe GmbH, Hamburg Holcim Kieswerk Zeithain GmbH & Co. KG, Dresden Holcim West Zement GmbH, Beckum Kalksteinwerke Medenbach GmbH, Breitscheid Kieswerk Leinetal GmbH & Co. KG, Diekholzen Kieswerk Hermann GmbH & Co. KG, Kirchhain Kieswerke Borsberg GmbH & Co. KG, Pirna	Quarried natural resources Quarried natural resources	0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00	

\* Payments made in the crude oil and natural gas sector relate to the own production share from the economic exploitation of the respective mining rights.

	Amount according to the public authorities Euro	Provisional differences Euro	Provisional differences %	Differences to be explained Euro	Unexplained differences Euro	Unexplained differences %
	64,987,248.76	129,436.33	0.2	-129,436.12 <sup>3</sup>	0.21	0.0
	72,058,852.01	58,688.41	0.1	-58,688.98 <sup>1</sup>	-0.57	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	9,432,090.97	0.00	0.0	0.00	0.00	0.0
	41,190,853.13	0.15	0.0	0.00	0.15	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	1,007,841.68	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0

<sup>1</sup> Corrections due to duplicate entries

<sup>3</sup> Correction for other fees, etc.

Minesite and extraction royalties by company		Sector	Amount according to the company*	
			Euro	
9	Lausitz Energie Bergbau AG, Cottbus	Lignite	0.00	
10	RWE – Gruppe Rheinische Baustoffwerke GmbH, Bergheim RWE Power AG, Essen	Quarried natural Lignite	0.00 0.00	
11	Vermillion Energy Germany GmbH & Co. KG, Schönefeld	Crude oil and natural gas	2,114,465.01	
12	Wintershall Holding GmbH, Celle	Crude oil and natural gas	40,832,665.00	
				<b>231,812,141.45</b>

\* Payments made in the crude oil and natural gas sector relate to the own production share from the economic exploitation of the respective mining rights.

The payments and differences for minesite/extraction royalties are attributable to the following mining authorities:

**Table 15:** Results of the reconciliation of minesite/extraction royalties by mining authority

Minesite and extraction royalties by mining authority	Amount according to the company	Amount according to the public authorities	
	Euro	Euro	
State Office for Mining, Energy and Geology, Hanover (LBEG)	177,293,644.24	176,934,011.78	
LBEG on behalf of: Fiscal Administration of Schleswig-Holstein, Kiel	49,415,226.88	49,354,265.90	
LBEG on behalf of: State Treasury of Bremen, Bremen	23,726.00	23,725.80	
State Office for Geology and Mining, Mainz-Hechtsheim	2,787,291.19	2,779,898.98	
Government of Upper Bavaria, Mining Office of Southern Bavaria, Munich	1,284,411.46	1,284,411.70	
Regional Council of Darmstadt, Wiesbaden	1,007,841.68	1,007,841.68	
	<b>231,812,141.45</b>	<b>231,384,155.84</b>	

	Amount according to the public authorities Euro	Provisional differences Euro	Provisional differences %	Differences to be explained Euro	Unexplained differences Euro	Unexplained differences %
	0.00	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	0.00	0.00	0.0	0.00	0.00	0.0
	2,011,648.60	102,816.41	4.9	-102,816.41 <sup>2</sup>	0.00	0.0
	40,695,620.69	137,044.31	0.3	-137,044.13 <sup>3</sup>	0.18	0.0
	<b>231,384,155.84</b>	<b>427,985.61</b>	<b>0.2</b>	<b>-427,985.64</b>	<b>-0.03</b>	<b>0.0</b>

2 Adjustments due to the different timing of certain booking entries

3 Correction for other fees, etc.

	Provisional differences Euro	Provisional differences %	Differences to be explained Euro	Unexplained differences Euro	Unexplained differences %
	359,632.46	0.2	-359,632.45	0.01	0.0
	60,960.98	0.1	-60,960.98	0.00	0.0
	0.20	0.0	0.00	0.20	0.0
	7,392.21	0.3	-7,392.21	0.00	0.0
	-0.24	0.0	0.00	-0.24	0.0
	0.00	0.0	0.00	0.00	0.0
	<b>427,985.61</b>	<b>0.2</b>	<b>-427,985.64</b>	<b>-0.03</b>	<b>0.0</b>

### **iii. Exemplary trade tax payments reconciliation**

With regard to the reconciliation of payments for trade taxation, the MSG has refrained from a general

payment reconciliation of the reported trade taxes, against the background of the federal system in Germany and the many municipalities which can be considered as payment recipients (cf. the explanations in Chapter 9.a.iii.). The implementation of an

■ **Table 16:** Results of the reconciliation of trade tax payments made by esco

Trade tax reconciliation for esco – european salt company GmbH & Co. KG, Hanover	Amount according to the company Euro	Amount according to the public authorities Euro	
State Capital Hanover, Johannsenstraße 10, 30159 Hanover	355,164.11	355,164.11	
Bernburg, Schlossgartenstraße 16, 06406 Bernburg	1,452,246.19	1,452,246.19	
Integrated municipality Grasleben, Bahnhofstraße 4, 38368 Grasleben	591,734.75	591,734.75	
Rheinberg, Kirchplatz 10, 47495 Rheinberg	1,366,973.82	1,366,973.82	
	<b>3,766,118.87</b>	<b>3,766,118.87</b>	

exemplary payment reconciliation of trade tax payments was resolved, for which esco – european salt company GmbH & Co. KG of Hanover volunteered to make itself available. The following overview shows the results of this payment reconciliation:

	Provisional differences Euro	Provisional differences %	Differences to be explained Euro	Unexplained differences Euro	Unexplained differences %
	0.00	0.0	0.00	0.00	0.0
	0.00	0.0	0.00	0.00	0.0
	0.00	0.0	0.00	0.00	0.0
	0.00	0.0	0.00	0.00	0.0
	<b>0.00</b>		<b>0.00</b>	<b>0.00</b>	

# 10

## RECOMMENDATIONS OF THE INDEPENDENT ADMINISTRATOR



## Identification of companies

The MSG agreed to carry out the content-related development of the EITI process in Germany, in accordance with the legal provisions of §§ 341q et seq. of the HGB. The identification of potential participating companies was carried out accordingly (*inter alia*) by a selection process based on the size criteria of the HGB and the existence of an ‘activity’ in the extractive industry (cf. Chapter 9.a.ii. and 9.b.ii.). This meant that the selection procedure was not primarily based on the type and extent of actual payments made to government agencies. For the D-EITI reports from 2018 on, the published (consolidated group) payment reports can act as a reference for the identification of companies.

### Recommendations of the Independent Administrator

- Analysis of the published (consolidated group) payment reports with regard to the nature and extent of the declared payments to government agencies and, where appropriate, the adjustment of the payments to be reported for future D-EITI reports
- Reconciliation of the group of published (consolidated group) payment reports with the identified companies for the present EITI report
- Targeted contacting of companies that publish a (consolidated group) payment report, but have not yet participated in the EITI process

## Contacting of the identified companies

Feedback from the identified companies responding to the request for participation in the EITI process was not forthcoming in a number of cases. Furthermore, it was not always possible to get in touch with the companies in order to present details of the EITI process and/or to ask for a decision from the company management regarding the intention to participate.

### Recommendations of the Independent Administrator

- Introduction of additional process steps involving the various MSG stakeholder groups in order to contact companies which have not yet replied to the request for participation in the EITI process

## Increased involvement of companies in the work of the EITI

The latest developments and results of the international and national EITI process should be communicated directly and promptly to extractive industry companies, in order to promote a more comprehensive understanding of the process and to give companies the opportunity to request further information and/or to give their opinions.

### Recommendations of the Independent Administrator

- Establishment of a direct information exchange mechanism between extractive companies and the D-EITI Secretariat

## Implementation of the payment reconciliation

The deadlines for the issuance of the EITI report are currently not fully compatible with the statutory deadlines for the publication of (consolidated group) payment reports when the fiscal year is the same as the calendar year. This particularly applies to companies which are not subject to § 264d of the HGB (non-capital market-oriented companies). Against this background, the MSG has decided to provide companies with the opportunity to participate in the D-EITI by extending the data report submission deadline until January 31, 2018.

### **■ Recommendations of the Independent Administrator**

- The deadlines for the submission of future EITI reports should be harmonised with the statutory time limits for the publication of (consolidated group) payment reports in consultation with the international EITI Secretariat.

For future reporting processes, possibilities should be investigated which would allow the submission of the data report for the EITI to be carried out near to the date for the publication of the (consolidated group) payment reports – this would allow companies more temporal flexibility in dealing with their submissions. The government agencies identified by means of the reported data could then prepare the necessary documentation immediately (if the relevant authorisations were available) and subsequently make it available via the existing data transmission routes.

### **■ Recommendations of the Independent Administrator**

- Examination of the possibilities to create temporal flexibility for companies regarding the data submission and for government agencies, and of the subsequent data reconciliation by the Independent Administrator, e.g. through the establishment and/or use of a relevant data memory base which would be permanently available to all involved in the payment reconciliation process.

## **Composition of the MSG**

### **■ Recommendations of the Independent Administrator**

- Inclusion of municipal representatives in the MSG, also against the background of the importance of trade tax revenues in Germany and the Federal State system and/or the federal administrative structures

## **Integration of expert knowledge into the work of the MSG**

### **■ Recommendations of the Independent Administrator**

- Continuation and/or intensification of the use of expert knowledge for the adequate analysis of complex topics and the efficient preparation of the MSG's decision-making process. It may be advisable to integrate experts into the further discussion of subjects such as contractual transparency and ensuring data quality on the part of the public authorities.

## **Documentation of the activities of working groups (WGs)**

### **■ Recommendations of the Independent Administrator**

- In addition to an overview of the current WGs and their members, the results of the WGs meetings should also be centrally documented by the EITI Secretariat and made available to the public.

## **The future of the payment reconciliation**

Given the present results of the payment reconciliation and the expected transfer of the data collection and data delivery procedures in routine processes, the perspective today is that there will be no significant differences in future payment reconciliation procedures for cash flows (corporation tax and mining/extraction royalties). This may lead to more stringent questioning of the justification of the payment reconciliation procedure, also with regard to the associated added value for the EITI process.

## Recommendations of the Independent Administrator

- The German EITI Secretariat should introduce the future results from the national EITI process into the discussion begun at international level on the possibilities of the transition to unilateral reporting of cash flows without subsequent payment reconciliation. If new payment flows are added to the process, obligatory, time-limited implementation of the payment reconciliation may be a solution. Depending on the results of the payment reconciliation, the individual payment flows could then be transferred to a unilateral system for reporting by companies.
-