

Validation of Germany

Assessment of progress in implementing the EITI Standard

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Acronyms

AG	Aktiengesellschaft (PLCs)
AML	Anti-Money Laundering Directive of the EU
BBergG	<i>Bundesberggesetz</i> , Mining Code from 1980
BilRUG	<i>Bilanzrichtlinie-Umsetzungsgesetz</i> , EU Accounting Directive
BMWK	<i>Bundesministerium für Wirtschaft und Klima</i> , Ministry for the Economy and Climate
BND	<i>Bundesnachrichtendienst</i> , Germany's federal intelligence agency
BO	Beneficial owner
D-EITI	Germany EITI
EITI	Extractive Industries Transparency Initiative
GWG	Abbreviation for <i>Geldwäschegesetz</i> , in full <i>Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten</i> , the German transposition of the Anti-Money Laundering Directive, AMLD
GmbH	<i>Gesellschaft mit beschränkter Haftung</i> , limited liability company
HGB	<i>Handelsgesetzbuch</i> , Commercial code
KG	<i>Kommanditgesellschaft</i> , limited commercial partnership
MSG	Multi-stakeholder group
PEP	Politically exposed person

Executive summary

This draft Validation report presents the findings of the International Secretariat's Validation of Germany, which commenced on 1 October 2023. The draft report was finalised for review by the multi-stakeholder group (MSG) on 8 April 2024. Following comments from the MSG on 16 May 2024, the Validation report was finalised on 12 June for consideration by the EITI Board. The assessment suggests that Germany has exceeded two EITI Requirements, fully met 20, mostly met two and partly met one requirement, with eight requirements assessed as not applicable.

Key achievements

- The EITI in Germany has continuously reviewed the scope of its report to provide information linked to raw material and extraction issues that are current topics of debate, most recently with adding a chapter on the role of the domestic extractives industries in ensuring the security of supply. Other topics include the circular economy, the effect of the energy transition, environmental protection and renaturation, and the role of state subsidies.
- Germany EITI has piloted a new approach to reporting to demonstrate an alternative to reconciliation as quality assurance to data and to demonstrate the complementarity of the EU Accounting Directive to the EITI Standard. There have been three reports to date published and the pilot is informing the review of the EITI's standard terms of reference for reporting. Germany EITI publishes much of its data through its website, in open format. As a federal state with devolved responsibilities, D-EITI demonstrated added value in pulling information together and signposting where it can be found, through its website and in the EITI Report.
- Both achievements are the outcomes of a highly engaged multi-stakeholder group. Stakeholders from all constituencies have worked together to ensure that the EITI continues to evolve, and that it remains relevant both nationally and internationally.

Areas for development

- Whereas the EITI has fulfilled its role in collating and transmitting information, the MSG may explore what role it could play in data analyses from the extractives sector to inform public debate. The MSG may also wish to consider the areas it could actively advocate for more transparency and better accessibility of information on companies and key documents of the extractives sector, where information is not yet available as required by the EITI Standard.
- The pilot on alternative approaches to quality assurance has been successful and the MSG continues to look for opportunities to draw on routinely available information to lighten the reporting burden, such as using payments to government reports from companies for reporting. In doing so, the MSG should ensure that the level of disaggregation is in accordance with the EITI, both on payments and on project level, to allow the public to understand the amount of revenues that are collected by oil, gas, mining and quarrying. To further inform the understanding of the contribution of the extractive industries, Germany may consider publishing project level data for production

for mining and quarrying, where this does not undermine company competitiveness concerns.

- While the legal framework is set by the federal government, the extractive industry in Germany is managed on the regional level. EITI reporting could consider presenting information on revenues collected, production volume and value disaggregated by region alongside the national aggregation, to reach audiences in the regions (*Länder*), for example on the percentage of non-tax contributions to the regional government revenue. In a similar vein, civil society may wish to consider exploring if there are needs and interest from civil society actors in the regions that have important extractive activities, to understand if the current disclosures match user needs and what analysis may be of interest. This would ensure that the EITI continues to respond to nationally and regionally relevant discussion on the role and impact of the extractive industries, as interest is growing to increase domestic extraction in the context of the energy transition.

Progress in implementation

EITI Validation assesses countries against three components – “Stakeholder engagement”, “Transparency” and “Outcomes and impact”.

Stakeholder engagement

Members from the multi-stakeholder group (MSG) from companies, civil society and government remain engaged in implementation and collaborate in the writing of the report chapters on the different thematic areas. The development of the alternative approaches to reconciliation has tested the MSG’s cooperation, but thanks to continued commitment the approach has evolved over the past three years. The MSG is well managed by the Secretariat, which has also facilitated the transition to online meetings during the COVID-19 pandemic. While government continues to provide operational and financial support, some stakeholders consider that the Champion could do more to leverage and position the EITI’s work on national discussions and foreign policy outreach, in particular in the context of the energy transition. On issues of disclosures, government and companies could be more proactive to find ways to remove barriers to disclosures, for the few areas where they are in place.

Transparency

Germany has produced three EITI Reports since the previous Validation, all three were conducted using an alternative approach to reporting. In essence, instead of relying on reconciliation as quality assurance mechanism, Germany EITI developed a systematic and risk-based analysis of the government and company control systems to assess the reliability of data. The approach and learnings are well documented, and the MSG has been very engaged in the development of the methodology. EITI reporting provides a solid overview of the industry characteristics and contribution to the German economy. There may be value in greater D-EITI communication outreach to demonstrate the contribution to regional budgets given the revenue is collected and managed on regional and municipal level. To complement the comprehensive overview of legislation in place, D-EITI is encouraged to highlight the key reform items for the review of the Mining Code. Licenses transferred or attributed since 2021 need to be accessible without barriers, and from the existing information it is not clear what licenses have been transferred.

Outcomes and impact

Germany EITI has been diligent in ensuring that the changes to the Standard (from 2016 to 2019) have been reflected in its activities. D-EITI has added datasets in open format to the rohstofftransparenz.de website and data and the Report is being used, among others, to inform an academic class at the Technical University of Aachen on sustainable mining. There has been little uptake in the media on disclosures. The information published in the report and portal are mainly descriptive, and besides the revenue data, most information on oil and gas, mining and quarrying (including salt) is already in the public domain. Germany EITI has been diligent in planning, monitoring and reviewing its own work, recommendations from reporting and Validation. Albeit related to strategic priorities, D-EITI is not considered a forum for discussion about reform of the Mining Code, as other consultation mechanisms already exist.

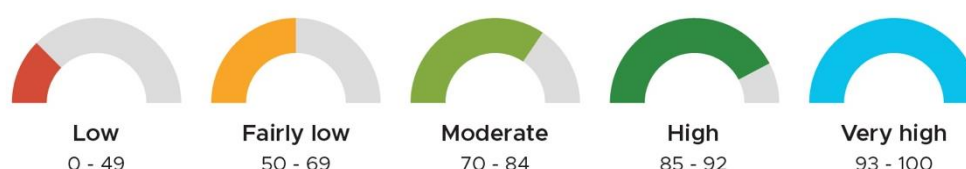
Validation scorecard

Component & module	EITI Requirement	Progress	Score
Overall score		High	89 /100
Outcomes and impact	Extra points: Effectiveness and sustainability indicators		2
	Work plan (#1.5)	Fully met	90
	Public debate (#7.1)	Fully met	90
	Data accessibility and open data (#7.2)	Fully met	90
	Recommendations from EITI (#7.3)	Fully met	90
	Outcomes & impact (#7.4)	Fully met	90
Component score: Outcomes and impact		High	92/100
Multi-stakeholder oversight	Government engagement (#1.1)	Fully met	90
	Industry engagement (#1.2)	Fully met	90
	Civil society engagement (#1.3)	Fully met	90
	MSG governance (#1.4)	Exceeded	100
Component score: Stakeholder engagement		High	92.5/100
Overview of the extractive industries	Exploration data (#3.1)	Fully met	90
	Economic contribution (#6.3)	Fully met	90
Legal and fiscal framework	Legal framework (#2.1)	Fully met	90
	Contracts (#2.4)	Mostly met	60
	Environmental impact (#6.4)	Fully met	90
Licenses	Contract and license allocations (#2.2)	Fully met	90
	License register (#2.3)	Fully met	90
Ownership	Beneficial ownership (#2.5)	Partly met	30
State participation	State participation (#2.6)	Not applicable	-
	In-kind revenues (#4.2)	Not applicable	-
	SOE transactions (#4.5)	Not applicable	-
	SOE quasi-fiscal expenditures (#6.2)	Not applicable	-
Production and exports	Production data (#3.2)	Fully met	90
	Export data (#3.3)	Fully met	90
Revenue collection	Comprehensiveness (#4.1)	Fully met	90
	Barter agreements (#4.3)	Not applicable	-
	Transportation revenues (#4.4)	Not applicable	-
	Disaggregation (#4.7)	Mostly met	60
	Data timeliness (#4.8)	Fully met	90
	Data quality (#4.9)	Exceeded	100
Revenue management	Distribution of revenues (#5.1)	Fully met	90
	Revenue management & expenditures (#5.3)	Not assessed	-
Subnational contributions	Direct subnational payments (#4.6)	Fully met	90
	Subnational transfers (#5.2)	Not applicable	-
	Social and environmental expenditures (#6.1)	Not applicable	-
Component score: Transparency		Moderate	83/100

How EITI Validation scores work

Component and overall score

The three components of EITI Validation – “Transparency”, “Stakeholder engagement” and “Outcomes and impact” – each receive a score out of 100. The overall score represents an average of the component scores.



Assessment of EITI Requirements

Validation assesses the extent to which each EITI Requirement is met, using five categories. The component score is an average of the points awarded for each requirement that falls within the component.



- **Exceeded** (100 points): All aspects of the requirement, including “expected”, “encouraged” and “recommended” aspects, have been implemented and the broader objective of the requirement has been fulfilled through systematic disclosures in government and company systems.
- **Fully met** (90 points): The broader objective of the requirement has been fulfilled, and all required aspects of the requirement have been addressed.
- **Mostly met** (60 points): Significant aspects of the requirement have been implemented, and the broader objective of the requirement is mostly fulfilled.
- **Partly met** (30 points): Significant aspects of the requirement have not been implemented, and the broader objective of the requirement is not fulfilled.
- **Not met** (0 points): All or nearly all aspects of the requirement remain outstanding, and the broader objective of the requirement is far from fulfilled.
- **Not assessed**: Disclosures are encouraged, but not required and thus not considered in the score.
- **Not applicable**: The MSG has demonstrated that the requirement doesn’t apply.

Where the evidence does not clearly suggest a certain assessment, stakeholder views on the issue diverge, or the multi-stakeholder group disagrees with the Secretariat’s assessment, the situation is described in the assessment.

1. Effectiveness and sustainability indicators

The country is awarded 0, 0.5 or 1 point for each of the five indicators. The points are added to the component score on Outcomes and impact.

1.1 National relevance of EITI implementation

This indicator considers the extent to which EITI implementation in Germany addresses nationally relevant extractive sector challenges and risks.

The D-EITI objectives consider both specific EITI implementation activities and nationally relevant extractive sector priorities, however, those are not named and referenced in the work plan. The linkages of the EITI objectives to national and sector priorities are documented in the outcomes and impact template submitted for this Validation. Among D-EITI's objectives are both the contribution to further development of the EITI Standard as a global standard and enhancing Germany's credibility regarding political and financial support for the EITI. These objectives align with the German National Raw Materials Strategy, recognising the importance of EITI implementation in increasing Germany's credibility in their efforts to encourage emerging resource-rich countries to adopt the EITI Standard. The German Raw Materials Strategy states that energy transition resources must be extracted under conditions respecting human rights, the climate and the environment. The strategy aims to increase German civil society acceptance of extractive activities to support supply security for renewable energy infrastructure. D-EITI's contributes to this goal through communicating current laws on extraction, environmental protection and public revenues generated from extractive industries to civil society.

The D-EITI work plan and reporting reflects national priorities regarding raw material supply security and raw material extraction in the context of energy transition. The thematic chapters of the German D-EITI reports go beyond the EITI Standard to align with these extractive sector priorities. For example, in 2022 the MSG introduced the chapter "Contribution of domestic natural resources extraction to security of supply and Germany's role in the international natural resources market" outlining Germany's natural resource requirements, challenges and goals. Moreover, D-EITI reports thematically reflect the national priorities of energy security and challenges regarding environmental impact. The MSG have expanded D-EITI reporting to include chapters addressing these challenges by disclosing information on circular economy, waste management, and gender in mining. The MSG encourages reporting on extractive industry topics generating interest from the public such as impact on water usage, renaturation of mining sites, environmental protection and compensation measures, circular economy measures, and the increased need for raw materials to support the transition to renewable energy sources.

The German Open Government Partnership (OGP) Third National Action Plan (2021-2023) further highlights the country's commitment to promoting transparency and combating corruption in the extractive sector. Additionally, the D-EITI explicitly link their activities with the EU Accounting and Transparency Directives, to ensure Germany's alignment with international standards in promoting transparency and accountability in the extractive industries.

Germany's pilot approach to EITI reporting is innovative and demonstrates the country's commitment to tailoring EITI activities to its specific context. The pilot approach is a risk-based methodology allowing for more targeted and cost-effective reporting.

The Secretariat proposes that 0.5 additional point be added to the score on Outcomes and impact for this indicator.

1.2 Systematic disclosures of extractive industry data

This indicator considers the extent to which extractive sector data is disclosed systematically through routine government and corporate reporting.

Germany is a federally decentralised country, consisting of 16 regions with significant autonomy. Most of the data is disclosed by each region. The scope of disclosed data and level of disaggregation varies. The German regions that have extractive industry activities are Mecklenburg-Vorpommern, Saxony-Anhalt, Thuringia, Hesse, Rhineland-Palatinate, Baden-Württemberg, North Rhine-Westphalia, Bavaria, Brandenburg/Berlin, Lower Saxony, Saarland, Saxony.

The D-EITI facilitates accessibility to systematically disclosed data by collating and presenting it through the online portal rohstofftransparenz.de.¹ The rohstofftransparenz.de (English: Resource transparency) portal acts as a clearing house for a wide range of systematically disclosed EITI-reported data, including government-, region-, and private extractive industry company portals. The data include a narrative of ongoing and planned reforms, the license award and transfer process, and data sets on license registers at the state level, production data for oil and gas companies, export data payments made by state-owned enterprises to the government external and company audits on federal and state levels, subnational transfers, general information on the German budget, and the contribution of the extractive sector to the economy and employment. The portal goes beyond the EITI Standard to include systematically disclosed data on water abstraction and renewable energy.

EITI-relevant data such as extractive industry export data, GDP contribution of the extractive sector, or production level data is available on the Genesis-Online² database developed by the Federal Statistical office of Germany and regional offices. Medium and large companies systematically disclose their annual financial statements and mandatory payment reports through the central corporate registry, the *Bundesanzeiger*.³ The regulations and procedures for access to license registers vary across the regions. Some regions provide online access, while others provide physical paper registers at request. In Thuringia, Saxony-Anhalt, Lower Saxony, Baden-Württemberg and Bavaria, access can be obtained through online data portals. The regions of Saarland, North Rhine-Westphalia, Mecklenburg-Vorpommern, and Brandenburg/Berlin offer both online and physical access to their license registers. In Saxony, Hesse and Rhineland-Palatinate, access to license registers is only available in physical format at the designated locations.

The Secretariat proposes that 0.5 additional points be added to the score on Outcomes and impact for this indicator.

¹ See more: <https://rohstofftransparenz.de/>

² [Homepage - German Federal Statistical Office \(destatis.de\)](https://www.destatis.de)

³ There are two places this data is published: <https://www.bundesanzeiger.de/pub/de/start?0> (national notice journal ; could be considered the official journal in Germany, but is owned by a private company) and the trade register (handelsregister) There are two sites this is disclosed: the commercial registry and the trade registry (Handelsregister): https://www.handelsregister.de/rp_web/welcome.xhtml;jsessionid=466826E69D876A00321D5F1ED5E80D43.tc05n02

1.3 Environment for citizen participation in extractive industry governance

This indicator considers the extent to which there is an enabling environment for citizen participation in extractive sector governance, including participation by affected communities.

The information provided by D-EITI suggests that there is an existing environment supporting citizen participation in extractive sector governance in Germany. Laws and regulations provide public access to information on government policies and developments, including through the Freedom of Information Act (IFG) and the Environmental Information Act (UIG). Citizens are free to submit views to environmental impact assessments required for planning approval. Every extraction permit requires an operation plan, which are updated whenever there are changes to the extraction activities. Operation plans are to be public and residents are allowed to appeal against the administrative decision of the mining authorities.⁴ Some mining authorities publish planned extractions on sections of their website.⁵

The financial mechanism to support the phase-out of coal in Germany is described in detail in the D-EITI report, functioning as a valuable resource for local communities that host coal mining projects. Additionally, the D-EITI's MSG has played a role in bringing together actors from government, companies, and civil society, providing civil society with access to discussion with decision-makers in relevant government departments. There have been no observed changes in expanding civic space for participation on the management of extractive resources in the period under review, and civil society actors in the MSG are based in the capital.

The Secretariat proposes that 0.5 additional points be added to the score on Outcomes and impact for this indicator.

1.4 Accessibility and use of extractive industry data

This indicator considers the extent to which extractive sector data is accessible and used for analysis, research and advocacy.

Since the previous Validation, the D-EITI MSG, supported by the D-EITI National Secretariat, has further expanded the data sets available through the D-EITI website to provide a central place to access data related to the extractive industries, and has added the financial reporting data from the EITI to the national open data platform, GovData. Datasets are available in xlsx and csv formats, include the source (if not by EITI) as well as a reference to the license (CC BY 4.0). Thus, extractive sector data available in a usable format that allows interested stakeholders to access and analyse it. The data are made available in a timely manner, in line with EITI Requirement 4.8 and national policies.

There is some limited evidence on the use of data sets available through rohstofftransparenz.de. The German University RWTH Aachen has drawn on the materials (including non-datasets, such as slides) on the EITI as a part of the curriculum on sustainable mining. D-EITI data⁵ stimulated interest for two academic publications: "Mining goes Digital: Proceeding of the 39th International Symposium"⁶ and "Who owns the German subsurface? Ownership and sustainable governance

⁴ See for example the <https://rp-darmstadt.hessen.de/presse/eroerterung-des-aenderungsantrags-tagebau-dudenhofen>

⁵ See EITI Report p. 30 for links to all mining authorities. For example, in Brandenburg there are "citizen information points" <https://lbgr.brandenburg.de/lbgr/de/aktuell/buengerinformationen/>

⁶ See more: https://books.google.de/books?hl=en&lr=&id=rqWaDwAAQBAJ&oi=fnd&pg=PA17&dq=D-EITI+&ots=en_w5zkuVk&sig=tc1TfILjpaZH6-syPvV_abKYX4Y#v=onepage&q=D-EITI&f=false

of the subsurface in Germany.”⁷ Academic representatives expressed the limitation of the published data due to the lack of disaggregation by extractives project, but welcomed in particular the central access to license register information. There is no evidence of the data publications through EITI contributing to public debate or being used to strengthen accountability at the national and subnational levels, such as mentioning of the data in the press.

The Secretariat proposes that 0.5 additional points be added to the score on Outcomes and impact for this indicator.

1.5 EITI-related changes to extractive industry policy and practice

This indicator considers the extent to which EITI has informed changes in extractive sector policies and practices.

Germany has updated the Sustainable Development Strategy⁸ since the previous Validation, now incorporating the D-EITI among the national anti-corruption measures aimed at fostering integrity.

D-EITI's annual progress report of 2022 highlights improved access to mining licenses, as part of the reform of the federal mining code section § 76 (3) BBergG. While this is an important development, it occurred before the period under review and is therefore not considered for an award of points. Stakeholders from all constituencies stated that the EITI does not play a role in the planned modernisation of the federal mining code (BBergG) dating from 1980 in light of incentivising domestic supply of critical minerals and strengthening the environmental dimensions of extraction activities. Existing consultation mechanisms already fulfil the role of multistakeholder fora.

The Secretariat proposes that no additional points be added to the score on Outcomes and impact for this indicator.

⁷ See more: <https://link.springer.com/article/10.1007/s10668-021-01530-w>

⁸ See [2021-07-26-gsds-en-data.pdf](https://www.bundesregierung.de/Content/DE/Pressemitteilungen/2021/07/2021-07-26-gsds-en-data.pdf) ([bundesregierung.de](https://www.bundesregierung.de))

2. Outcomes and impact

This component assesses EITI Requirements 7 and 1.5, which relate to progress in addressing national priorities and public debate.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in annex to this report.

EITI Requirement and assessment	Summary of progress in addressing the EITI Requirement
<p>Work plan (Requirement #1.5)</p> <p><i>Fully met</i></p>	<p>The International Secretariat’s assessment is that Requirement 1.5 is fully met. The work plan is an effective tool for planning and monitoring and is the product of wider stakeholder consultation. The work plan states that national priorities are considered when agreeing on the new work plan, and the national strategies it contributes to are listed in the outcomes and impact templates – but are not included in the work plan narrative itself. Stakeholders from all constituencies stated that their views had been reflected in the work plan and that the wider constituencies had opportunities to provide input.</p> <p>The first two objectives of the 2023 work plan reflect the EITI principle of contributing to public understanding of the extractive industries through reporting and inclusion of relevant topics. National priorities are not explicitly cited through reference of specific strategy document. Rather, the work plan narrative cites “<i>addressing emerging issues of public interest such as Germany’s increasing resource needs and dependence on import</i>”. The further objectives include advancing the development of the EITI Standard through its pilot on reporting, sharing of experiences with other EITI countries and underscoring Germany’s credibility as supporter of the EITI. The outcomes and impact template more clearly link the objectives of implementation to national priorities, including the activities under the OGP and the national resource strategy. There are steps to mainstream through the pilot approach and exploring the use of systematically disclosed financial company information on reporting. The work plan includes measurable and time-bound activities to achieve the agreed objectives and notes no capacity or financial restrictions. The work plan includes activities related to the scope of EITI implementation, including plans for strengthening systematic disclosures.</p> <p>The work plan does not include any activities aimed at addressing legal or regulatory obstacles. Members of the MSG from civil society and government noted that this was not considered to be the D-EITI’s role, but rather that there are public consultation mechanisms that would be drawn. However, the EITI Standard requires the MSG to identify barriers to disclosures and devise a plan on how to overcome those. Obstacles identified include the disclosure of beneficial owners through EITI reporting in the absence of unrestricted public access to the registry. The work plan includes activities addressing recommendations from Validation and reporting, is fully costed, has time-bound activities that are measurable and is available for the public. D-EITI publishes work plans annually. The MSG regularly reviews the scope of reporting.</p>

	<p>The work plan is set up and used as a monitoring tool, as it has built-in columns to track progress. A “monitoring” version is published at the end of the year to document the progress achieved, effectively fulfilling part of Requirement 7.4. In order to strengthen implementation, D-EITI should include the references and linkages of the work plan objectives to national priorities, as listed in the outcomes and impact templates, directly in the work plan narrative.</p>
<p>Public debate (Requirement #7.1)</p> <p><i>Fully met</i></p>	<p>The Secretariat’s assessment is that Requirement 7.1 is fully met, as in the previous Validation. The Secretariat assesses that the objective of enabling evidence-based public debate on extractive industry governance through active communication of relevant data to key stakeholders in ways that are accessible and reflect stakeholders’ needs has been fully met. The MSG assessed Germany’s progress as “exceeded” in the Outcomes and impact template due to expanding the scope of EITI reporting, improvement comprehensiveness of data and active engagement in outreach activities. The Secretariat welcomes these efforts, but notes opportunities to increase the contribution to public debate by further tailoring EITI implementation to the federal state and municipality level and to enhance data analysis for this requirement to be exceeded.</p> <p>The 2020 Germany EITI Report has been prepared in German and English and is publicly available on the D-EITI website.⁹ Additionally, a shorter version¹⁰ of the report has been developed to provide a summary of the extractive sector data in 2020 to broader audiences. The D-EITI website includes a broad range of documentation and media materials covering different aspects of EITI implementation and serves as a platform for EITI data. D-EITI has updated its communications strategy¹¹ in 2020 which describes the main communication goals, target groups and activities/measures.</p> <p>The EITI disclosures are comprehensible and publicly accessible to a diverse range of stakeholder groups. The D-EITI portal and the Outcomes and impact template provide a comprehensive list of examples of EITI data use, including integration of an EITI module into the university (RWTH Aachen) curriculum and publication of articles on D-EITI implementation and data, linked to relevant ongoing debates in Germany such as raw material strategy and resource efficiency.</p> <p>The D-EITI portal and the Outcomes and impact template document a comprehensive list of outreach events organised and/or attended by different EITI stakeholders to spread awareness about the EITI process and facilitate dialogue between different constituencies. Communications and dissemination activities appear to have considered the diversity of population as well as included peer learning with other countries, but there has been little attention to tailoring data analysis and explanation of trends to the regional audience. The Outcomes and impact template documents the efforts aimed at adjusting EITI reporting to local needs, including disclosure of relevant local taxes. At the same time, it appears that only several events seemed to address communities in extractive regions and that there might be</p>

⁹ See <https://d-eiti.de/en/dokumente/>

¹⁰ See https://d-eiti.de/Downloads/DEITI_Bericht_5_KURZ_ENG_DIGITAL.pdf

¹¹ See https://d-eiti.de/wp-content/uploads/2020/02/2020_02_10_Kommunikationsstrategie_Kurzfassung.pdf

	<p>opportunities for further tailoring outreach activities to potential interests on the federal state and municipality levels.</p> <p>Consulted stakeholders across constituencies highlighted efforts aimed at ensuring the comprehensibility of EITI data and integration of emerging policy areas into EITI reporting. At the same time, opinions varied about the EITI's contribution to the public debate. Some stakeholders noted that EITI data could be useful in case of any fraud, however, there appeared to be a relatively high degree of trust in the extractive sector regulation. It was mentioned that the link with anti-corruption efforts could be further investigated. It was also noted that further efforts on integrating EITI into national and international extractive sector debate could strengthen its impact. Civil society representatives highlighted that there are opportunities for detailing the international dimension of revenue flows, both in terms of investments of German industry abroad to secure raw materials, as well as the purchase of raw materials from abroad, as the country is a major consumer of raw materials for production. They further highlighted that D-EITI could consider expanding reporting to refining of raw materials in Germany.</p>
<p>Data accessibility and open data (Requirement #7.2)</p> <p><i>Fully met</i></p>	<p>The Secretariat's assessment is that Requirement 7.2 is fully met, as in the previous Validation. The objective of this requirement is to enable the broader use and analysis of information on the extractive industries, through the publication of information in open data and interoperable formats. The MSG assessed Germany's progress as "exceeded" in the Outcomes and impact template. The Secretariat commends efforts aimed at strengthening open data disclosures and comprehensibility of extractive sector information but notes opportunities to further enhance data interoperability for this requirement to be exceeded.</p> <p>The D-EITI open data concept¹² was adopted in 2016 and sets out open data principles within the framework of the D-EITI implementation. The concept includes such principles as completeness, primary sources, timely availability, easy access, machine readability, non-discrimination, use of open standards, licensing, persistence and free use.</p> <p>D-EITI data are available in an open data format (xlsx and csv) through the D-EITI reporting portal¹³ and the GOVDATA website.¹⁴ The information on the D-EITI reporting portal is labelled is available for reuse without restrictions. Some extractive sector information is disclosed in an open data format through relevant government and company systems, with relevant references included into EITI reporting. This, for example, includes production and export data (see <i>Requirements 3.2 and 3.3</i>). Additionally, the MSG has completed the summary data file for 2020 and published it on the D-EITI portal.¹⁵ Consulted stakeholders confirmed availability of data in open data format and highlighted efforts aimed at further strengthening comprehensibility of disclosures, including through using interactive formats.</p> <p>With regard to encouraged aspects of this requirement, the EITI disclosures are publicly accessible in machine-readable format through the D-EITI</p>

¹² See https://www.d-eiti.de/wp-content/uploads/2016/12/2016-10-21-D-EITI-Open-Data-Konzept-finale-Version_EN.pdf

¹³ See <https://rohstofftransparenz.de/en/>

¹⁴ See <https://www.govdata.de/web/guest/suchen/-/details/daten-des-1-d-eiti-berichts>

¹⁵ See "collected data of the D-EITI": <https://rohstofftransparenz.de/en/download/>

	<p>reporting portal and the GOVDATA website. It appears that a significant share of systematically disclosed data are also available in machine-readable format. However, there are opportunities for conducting further review to determine the share of systematic disclosures in machine-readable format. Available documentation does not comment on inter-operability of available data and any efforts to code or tag EITI disclosures and other data files.</p>
<p>Recommendations from EITI implementation (Requirement #7.3)</p> <p><i>Fully met</i></p>	<p>The Secretariat’s assessment is that Requirement 7.3 is fully met, as in the previous Validation. The Secretariat assesses that the objective of this requirement to ensure that EITI implementation is a continuous learning process that contributes to policymaking is fully met. The MSG assessed Germany’s progress as “exceeded” in the Outcomes and impact template, in particular due to regular monitoring of recommendations and their implementation, including on expanding the scope of EITI implementation. The Secretariat welcomes these efforts, but notes opportunities to discuss recommendations and strategies for advancing disclosures on issues related to the extractive industries on the national and regional level.</p> <p>The Outcomes and impact template documents in detail the MSG’s progress in taking steps to act upon addressing strategic recommendations from the previous Validation. Available documentation confirms continuous inclusion of activities related to recommendations from Validation and EITI reporting into the work plan, and timely monitoring of progress. Consulted stakeholders did not express any concerns related to mechanisms established by the MSG for following up on recommendations and discrepancies and noted that such activities were integrated into work plans and MSG discussions. The Outcome and impact template reflects on the lessons learnt from EITI implementation since the previous Validation and provides examples of actions taken to address the main challenges.</p> <p>Available documentation shows that the MSG has considered recommendations for strengthening government systems and enhancing efficiency of EITI reporting, such as harmonisation of D-EITI with the German Accounting Directive Implementation Act (BilRUG) and a pilot on alternative reporting. Available documentation does not comment on whether the MSG has considered recommendations for strengthening natural resource governance and followed up on such recommendations where appropriate. MSG members noted that the EITI is not playing a role as sounding board or stakeholder in the planned reform of the Mining Code, as they consider there are other fora to collect stakeholder views. As noted in the assessment of Requirement 1.4, the Secretariat is of the view that recommendations in EITI reporting could more strongly identify the barriers to disclosures and suggest ways of overcoming those.</p>
<p>Review the outcomes and impact of EITI implementation (Requirement #7.4)</p> <p><i>Fully met</i></p>	<p>The International Secretariat’s assessment is that Requirement 7.4 is fully met, as in the previous Validation. The annual review documents the outputs against the work plan, takes gender considerations into account and provides an overview of actual expenses for the year under review. Stakeholders from all constituencies confirmed that they had the opportunity to contribute to the yearly review. The Secretariat is of the view that the underlying objective of ensuring regular public monitoring and evaluation of implementation is fully met.</p>

	<p>The progress report reflects on the achievement of the objectives, including lessons learned and opportunities to change activities to achieve more outcomes. The progress report provides some examples of outcomes of EITI implementation, including on Germany's contribution to the development of EITI on the international level and actions to extend the scope of EITI reporting to ensure its relevance for local stakeholders. There is little reflection on the actual impact of EITI implementation on extractive sector governance. The monitoring version of the yearly work plan is the annex to the narrative report to serve as a monitoring tool. The annual review includes a full assessment with regards to all EITI Requirements.</p> <p>The yearly review process has been used to review and integrate new topics into the EITI Report and the online platform rohstofftransparenz.de. It demonstrates that the MSG reviews and explores the scope of implementation, adapting to a changing political and economic landscape.</p> <p>The MSG could consider to not only acknowledge the limitations to the access of information of certain data points, but also propose strategies on how to overcome them. Furthermore, the MSG could reflect on the impacts of the different outcomes identified in the assessment of progress on accountability and informed decision-making, or how the EITI has contributed to other impacts observed on the extractives sector governance in Germany. The MSG could strengthen implementation by reflecting on the underlying objectives of some requirements, to understand if those are fully met, and seek targeted input, where feasible, for example on project-level disclosures.</p>
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Corrective actions and recommendations

- To strengthen implementation of Requirement 1.5, Germany EITI is encouraged to provide linkages of the work plan objectives to national and sectoral priorities within the work plan narrative, to ensure external stakeholders are fully aware of the anchoring of the EITI's implementation in the national context.
- To strengthen implementation of Requirement 7.1, Germany is encouraged to consider further communication efforts toward extractive communities to strengthen evidence-based public debate on extractive industry governance on a local level.
- To strengthen implementation of Requirement 7.2, Germany is encouraged to make systematically disclosed data machine-readable and inter-operable, and to code or tag EITI disclosures and other data files so that the information can be compared with other publicly available data.
- To strengthen implementation of Requirement 7.4, Germany could provide reflections on the impact of the outcomes identified in the work plan and its assessment of progress, in particular related to strengthening the accountability of the extractives sector.

3. Stakeholder engagement

This component assesses EITI Requirements 1.1 to 1.4, which relate to the participation of constituencies and multi-stakeholder oversight throughout the EITI process.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in annex to this report.

EITI Requirement and assessment	Summary of progress in addressing the EITI Requirement
<p>Government engagement (Requirement #1.1)</p> <p><i>Fully met</i></p>	<p>The Secretariat’s assessment is that Requirement 1.1 is fully met, as in the previous Validation. The government is engaged both on the strategic and operational level in EITI implementation. Effective coordination between ministries on the federal level, and mining authorities on the regional level is carried out through the government constituency coordinator. Industry stakeholders confirmed the government’s engagement, whereas some civil society noted there was significantly more potential for government leadership, through Germany’s EITI Champion, to raise the profile of D-EITI in domestic and international engagements and debates. All stakeholders agreed that the operational management of the EITI is strong.</p> <p>Implementation of the EITI is embedded with the Ministry of the Economy and Climate. Dr Franziska Brantner, Parliamentary State Secretary to the Federal Ministry for Economic Affairs and Climate Action, is the Federal Government’s EITI Champion. The MSG is chaired by Mr. Bernhard Kluttig, Head of department at the Federal Ministry for Economic Affairs and Climate Action. His alternate is Dr. Peer Hoth, who usually presides at the MSG and led the German delegation of the EITI at the Global Conference in Dakar in 2023. The ministry routinely publishes statements of support through press releases on the EITI Report and mentions the EITI at conferences.</p> <p>On the operational level, the government ensures the coordination of different government entities, both on national and regional level, through a dedicated government coordinator, allowing for the effective follow-up on information and clarification requests, in addition to a dedicated working group. The government assures funding (EUR 800,000 annual budget) for the EITI implementation through financing a secretariat, which is executed by GIZ staff, which is also responsible for the portal rohstofftransparenz.de. The government provides funding for civil society to ensure their effective participation. Government participation in the MSG is stable. The government issues a press release on the publication of the EITI report. No bespoke dissemination activities on the EITI Report were undertaken,. More details on government engagement can be found in the stakeholder engagement template.</p> <p>On balance the International Secretariat considers the current level of engagement is sufficient for a commensurate implementation and encourages the government to explore opportunities to reference the EITI or to use the MSG to explore strategies to remove barriers to systematic disclosures.</p>

<p>Industry engagement (Requirement #1.2)</p> <p><i>Fully met</i></p>	<p>The Secretariat’s assessment is that Requirement 1.2 is fully met, as in the previous Validation. Stakeholders from all constituencies confirm that companies are fully, actively and effectively engaged in the EITI, both in terms of disclosures and participation in the work of the multi-stakeholder group, and that the government ensures an enabling environment for this.</p> <p>Stakeholders from government and civil society highlighted the contribution of companies in the chapter on energy security (co-authored with civil society). The International Secretariat notes that companies continue to report payments using EITI templates in addition to the payments to government reports, which aggregate the payments made for exploration and exploitation projects to regional mining authorities. It also notes the reluctance of companies to explore ways to overcome barriers to the unilateral publication of beneficial owners in order to fulfil the objective of Requirement 2.5.</p> <p>Constituency coordination between the mining and oil and gas representatives happens through a dedicated coordinator. Coordination with the wider constituency happens through the industry federations and associations. Other MSG members consider their participation to be constructive and regular. Dissemination of the EITI happens through the industry association channels, in particular around the EITI Report launch. Further information can be found in the stakeholder engagement template.</p>
<p>Civil society engagement (Requirement #1.3)</p> <p><i>Fully met</i></p>	<p>The Secretariat’s assessment is that Requirement 1.3 is fully met, as in the previous Validation. Stakeholder consultations confirmed that civil society is fully, actively and effectively engaged in the EITI process, and that there is an enabling environment for this.</p> <p>The organisations represented on the MSG are largely the same since its inception in 2013/2014, but individuals have changed and the constituency coordination rotates. Civil society members noted that there is limited interest in the NGO space to participate in EITI implementation, given that certain issues, such as the risk of default on renaturation payments which will result as consequence of the coal exit, remain off the table of MSG discussions. There have been no particular efforts to identify civil society groups present in mining, quarrying and oil and gas regions, who may take an interest in the EITI’s work. Most of the actors in civil-society are Berlin-based organisations, which are well intertwined and exchange information and seek views on a regular basis.</p> <p>Civil society highlighted their contribution in continuously extending the content of the EITI Report to cover questions on recycling, renewable energies, and energy security, to name a few. They use their social media channels and internal coordination networks for outreach on EITI topics.</p> <p>In its assessment on civic space, civil society did not identify a breach of the civil society protocol. Below is a brief summary of civic space indicators as they relate to Germany. Civicus Montior (assessing state of civic space) downgraded Germany from “open” to “narrowed” between 2022 and 2023, citing repressive measures implemented by the authorities to curtail the activities of environmental activists engaged in protesting against coal</p>

	<p>mining.¹⁶ The International Secretariat’s review of the documented cases do provide evidence of a pattern of government repression. The International Secretariat has not found any linkages of the civil society groups affected by the arrests being substantially engaged in the EITI.. Freedom house rating remains unchained from 2018, when the previous Validation was undertaken, rating Germany as “free” with 94/100 points.¹⁷ Reporters without borders (RSF)’s press freedom index sees a decline in Germany’s press environment from 85 (2018) to 81.9 (2023) points. It notes that while overall environment is favourable to journalism, violence and verbal attacks are on the rise. Draft bills threaten the protection of journalistic sources, such as the whistleblower bill.¹⁸ Access to information is fragmented and media pluralism has been decreasing.¹⁹ Observers have noted an increase of attacks on journalists, in particular during the COVID-19 pandemic,²⁰ leading to a call of better protection of journalists by the police.</p> <p>For the period under review, despite concerning developments, no limitations on the possibility for civil society working on EITI implementation, or extractive resource management more largely, were identified. To prepare for the implementation of the 2023 EITI Standard, the MSG may consider establishing a mechanism to monitor Germany’s adherence to the Protocol: Participation of civil society and document its discussions related to any shortcomings identified, as well as activities undertaken to address them.</p>
<p>Multi-stakeholder group (Requirement #1.4)</p> <p><i>Exceeded</i></p>	<p>The Secretariat’s assessment is that Requirement 1.4 is exceeded, which is an improvement to the previous Validation. All MSG members considered that engagement had been at a high level. Members noted that the MSG had addressed issues beyond the scope of the EITI Standard. Further examples of high engagement include participation in the EITI reporting pilot and work to develop an alternative to reconciliation. The International Secretariat is of the view that this objective is exceeded given the significant investment of engagement of all stakeholders in the scope and approach to quality assurance, as well as the facilitation for MSG members to observe EITI Board meetings.</p> <p>Members from industry and civil society noted their independence in the nomination of their representatives. While the nomination process is not codified, views of stakeholders have noted that it has not undermined the openness for other organisations or companies to put forward their candidate. For both industry and civil society, the wider constituency had been informed about openings and had not received expressions of interest from other</p>

¹⁶ The 2023 Report (<https://civicusmonitor.contentfiles.net/media/documents/GlobalFindings2023.pdf>) refers to police beating of an environmental portester in Lützerath in January 2023, where activities occupied a village in North Rhine-Westphalia, which was to be cleared to give way to the expansion of the Garzweiler coal mine. The protesters had ignored the eviction order.

¹⁷ Compare <https://freedomhouse.org/country/germany/freedom-world/2023> to <https://freedomhouse.org/country/germany/freedom-world/2018>

¹⁸ See <https://europeanjournalists.org/blog/2022/10/04/germany-draft-bill-does-not-guarantee-sufficient-protection-for-whistleblowers/> and on the BND draft: <https://aboutintel.eu/bnd-reform-cjeu/> (2021). In 2022 the Federal Constitutional Court declared the draft bill as unconstitutional, affecting the right of the intelligence service (BND) to pass on information on individuals to the police. The change of the law specified that transmitting information was only allowed when the life, freedom of an individual or state security were at stake. See <https://www.bundesregierung.de/breg-de/service/gesetzesvorhaben/bnd-gesetz-2216648>, 15 December 2023.

¹⁹ <https://rsf.org/en/index?year=2023>

²⁰ See <https://www.dw.com/en/protection-for-journalists-in-germany/a-57317382>

	<p>organisations or companies. Hence the International Secretariat is of the view that the appointment of constituency members was sufficiently open, fair and transparent. To strengthen implementation, industry and civil society are strongly encouraged to adopt constituency nomination procedures. The MSG's comments on the draft Validation report noted that the nomination procedure was laid out in the terms of reference²¹ published on the D-EITI website.²² Article 2 (2) notes that the MSG members' term is set to two years renewable, with an interest of 'continuity', hence not limiting the number of terms. Article 2(3) further notes that constituencies consider gender and diversity of views in the nomination of their members. The MSG terms of reference do not detail the constituencies' criteria for selection, including any minimum criteria. Hence the Secretariat maintains that civil society and companies are encouraged to adopt codified nominations procedures to ensure that interested potential members understand the criteria and election process to put forward their candidature.</p> <p>Stakeholders from industry and civil society consider that they are sufficiently represented in the MSG and that their representation sufficiently reflects the diversity of their constituency. During Validation consultation it was noted that there are no representatives from civil society from regions (Bundesland) outside of Berlin. Stakeholders from civil society responded that it was difficult motivating members to participate on the MSG through CSO groups that are engaged in extractives issues, mainly through the international policy advocacy and federal policy input. They confirmed their independence in appointing their own representatives and the internal rules for changing MSG representatives have been adhered to in the period under review. The gender balance can be considered achieved for the civil society constituency (40%), whilst companies' representatives are 30% female. None of the government representatives are female. Government representatives noted that the appointment to the MSG is by means of the position they hold rather than by gender. The ToRs note that the constituencies are responsible for considering the gender balance of their own constituency when nominating their member or alternate. To note, the D-EITI secretariat is led by a woman and the government coordinator (not member of the MSG) is also female. The MSG does not have a legal basis, which is not a requirement.</p> <p>The Terms of Reference (ToRs) of the MSG are published on the D-EITI website and were adjusted to update the name of the EITI Champion in September 2023. The MSG's outline the role and responsibilities of MSG members and MSG members are effectively carrying out their tasks, including constituency outreach, which happens through constituency coordinators. Stakeholder views collected through consultations confirmed that all members and alternates had the capacity to carry out their duties. The D-EITI secretariat ensures capacity building for new members through onboarding. All constituencies have established communication channels and routines with their wider constituencies, which they use to update on items for decision on the MSG and input to key EITI products, such as work plans. They use the same channels to conduct outreach to disseminate key products of the EITI. The ToRs require MSG members to abide by the EITI Association code of</p>
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²¹ Direct link: https://d-eiti.de/wp-content/uploads/2023/10/Geschaeftsordnung_D-EITI-MSG.pdf

²² <https://d-eiti.de/en/participants/>

	<p>conduct and no conflict of interests or other breaches of the code have been noted in the period under review.</p> <p>The MSG's ToRs give the MSG a mandate to approve work plans, the appointment of the Independent Administrator, EITI Reports and annual activity reports. The ToRs include internal governance rules and procedures. Decisions are taken by way of consensus, the default mode of decision making foreseen by the ToRs. Stakeholder consultations found that there was only one instance where civil society request to report on the level of actual provisions (financial reserves) that coal companies are obliged to set aside for decommissioning, as they consider that the most pressing issue with financial dimension and public relevance in the extractives sector.²³ A non-MSG civil society member confirmed that this was of high public interest. Industry and government considered public disclosures were sufficient to provide information on financial provisions and that legal mechanisms were in place to safeguard against a potential bail-out. There is no documentation of an actual voting on this matter, which the ToRs would allow. At the same time, members from all constituencies, including civil society, considered that their views and requests carry weight and are reflected in the increased scope of topics addressed in the EITI report and on rohstofftransparenz.de. Both industry and civil society view the MSG as a forum of building of mutual understanding, which was noted to be particularly important on questions of security of supply and energy transition. MSG stakeholders have commended their colleagues for the quality of discussions and willingness to build consensus, as well as their engagement in the working groups of the MSG.</p> <p>No per diems are paid, but travel expenses are covered, and those are published on the website as part of the annual budget (not listed as a separate line item). Civil society members received funds through the German Development Agency GIZ (Gesellschaft für Internationale Zusammenarbeit), which is the entity running the operative functions of D-EITI implementation. The amount of support and recipient organisations are published on the website.²⁴ The financial support is intended to help the organisations to inform their stakeholders about EITI and to build up technical expertise on the topic of raw materials policy.</p> <p>MSG members considered that there was sufficient advance notice of quarterly meetings and timely circulation of documents prior to debate and proposed adoption. MSG meeting minutes are published on the D-EITI website²⁵, including an overview of all decisions taken by the MSG, updated</p>
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²³ In the case that the provisions are not sufficient the government would need to step in to finance renaturation and any clean-up through the use of public funds (taxes), hence the public interest of the disclosures. This is covered through “implementation securities” which is an instrument to implement the renaturation, safeguarding and rehabilitation measures to be carried out by extractive sector companies. For coal in Saxony and Brandenburg there is a special purpose vehicle between the open-cast mine operator LEAG and the federal states of Saxony and Brandenburg to ensure compliance with the obligations to rehabilitate and provide any aftercare for the mining areas. The funds are earmarked for that purpose. The underlying precautionary agreement is public (<https://lbgr.brandenburg.de/lbgr/de/aktuell/buergerinformationen/vorsorgevereinbarung/#>). Civil society criticises that there is little data on the actual amounts amassed to date and ask for the actual figures of reserved funds to be public.

²⁴ See bottom of this page: <https://d-eiti.de/eiti-in-deutschland-akteure-2/> For 2022, CSO representatives were supported with EUR 115000.

²⁵ See <https://d-eiti.de/mediathek-dokumente/>. Agendas and minutes are published, back to 2015. For MSG decisions, see „MSG Beschlüsse“, https://d-eiti.de/wp-content/uploads/2023/11/2023_11_Beschluesse-der-MSG-1-2-1.xlsx

	<p>on an ongoing basis. More detail on the management and operation of the MSG can be found in the stakeholder engagement template, part I “MSG oversight”.</p> <p>Further to the significant investment of time and effort by MSG members in drafting new chapters of EITI Reports, the development and refinement of the alternative approach to reconciliation over the course of three years, commissioned to the Independent Administrator, demanded significant input and approval from the MSG members, and financial commitment from the government. Furthermore, D-EITI provided input to the development of materials on how to run successful multi-stakeholder partnerships.²⁶</p> <p>To strengthen implementation, the MSG may wish to consider using data analysis to highlight key trends in volumes and values over time, or project-level disclosures, which could cater to audiences in the regions. The MSG could consider to adding more detailed information on the status of the review of the Mining Code and how citizens can participate in sharing their views through their parliament representatives or through hearings. Finally, the MSG could consider including as part of EITI reporting current barriers of the publication of data as required by the EITI Standard, in addition to steps it has identified to overcome those.</p>
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Corrective actions and recommendations

- To strengthen implementation of Requirement 1.1, the government is encouraged to raise the profile of the EITI and its national implementation in its national and international engagements on the extractives industry and public financial management, to increase the visibility and relevance of the EITI in line with its national priorities. The government is encouraged to proactively identify steps to improve the granularity and accessibility of information on beneficial ownership disclosures and disaggregated revenues. The government is encouraged to use the MSG to explore strategies to remove barriers to disclosures.
- To strengthen implementation of Requirement 1.2, industry is encouraged to proactively identify steps to improve the granularity and accessibility of information on project level payments disaggregated payment data. Industry is encouraged to explore ways to overcome barriers to the unilateral publication of beneficial owners.
- To strengthen implementation of Requirement 1.3, civil society is encouraged to consider diversifying the civil society representations to include organisations locally engaged in the mining, quarrying and oil and gas regions, in view of consulting them on their information and analysis needs, or for nomination to the MSG. To further strengthen implementation, the MSG is encouraged to monitor Germany’s adherence to the Protocol: Participation of civil society and document its discussions related to any shortcomings identified, as well as activities undertaken to address them.
- To strengthen implementation of Requirement 1.4, industry and civil society constituencies are encouraged to publicly codify the nomination procedure of their MSG members. To strengthen implementation, the MSG is encouraged to explore more data use and analysis as part of reporting on the extractives sector, and its management in principle and practice.

²⁶ See resources under <https://partnerschaften2030.de/publications/praxistipps-map-erfolgsfaktoren/>

4. Transparency

This component assesses EITI Requirements 2 to 6, which are the requirements of the EITI Standard related to disclosure.

Overview of the extractive sector (Requirements 3.1, 6.3)

Overview of progress in the module

The EITI Report draws extensively on systematic disclosures from national and regional level, as well as industry sector annual reports to present key figures, historical and geographic context to the extractive industries, which in itself is a value add as signposting. As the extraction and mine site royalties are collected by the regional mining authorities, it would enhance contextual understanding if reporting could present the non-tax revenue as a percentage contribution to the regional government income (in addition to the overall Germany figure). This would give the reader more insight into the resource revenue dependence of different regions and would contribute to making reporting more relevant to a regional audience.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in annex to this report.

EITI Requirement and assessment	Summary of progress in addressing the EITI Requirement
<p>Exploration (Requirement #3.1)</p> <p><i>Fully met</i></p>	<p>The Secretariat's assessment is that Requirement 3.1 is fully met. The Secretariat considers that the objective to ensure public access to an overview of the extractive sector in the country and its potential, including recent, ongoing and planned significant exploration activities, is met through disclosures in the EITI Report, the portal and more in detail through systematic disclosures on government and industry websites.</p> <p>Reporting includes an overview of the extractive industries, including any significant exploration activities. The EITI Report includes a brief history of the extractive industries and information on the economic importance. The EITI Report notes how much of the consumption of the extractive resources are produced domestically, and the countries from which Germany sources its remaining demand. The figures on the potash industry cite the volume (6.2 m tonnes) and value of potash and potash salt products and their value but does mention the 35.3 m tonnes of potash salt produced (see Requirement 3.2). It is unclear if the percentage value of salts to the total value of natural resources mined in Germany includes potash salt.²⁷ The report routinely cites systematically disclosed information. There are no estimates on reserves for oil, salts, and quarrying, which is encouraged.</p>
<p>Contribution of the extractive sector to the</p>	<p>The Secretariat's assessment is that Requirement 6.3 is fully met. Stakeholders from civil society and industry were of the view that the report draws together systematically disclosed information to provide a central</p>

²⁷ See p. 22, «economic importance».

<p>economy (Requirement #6.3)</p> <p><i>Fully met</i></p>	<p>overview, which ensures a public understanding of the extractive industries' contribution to the national economy and the level of natural resource dependency in the economy. The International Secretariat views this objective as fulfilled.</p> <p>The report contains information on gross value added of the extractive sector and its percentage contribution towards Gross Domestic Product. There is no reference to informal or artisanal mining activities and desk research could not find evidence of the presence of those in Germany. The report notes government tax from the extractive sector in <i>aggregate</i>, i.e. not disaggregated by region or municipality²⁸ and its percentage contribution towards total government revenues; non-tax revenues (royalties and surface fees, aggregated as “royalties”) are disaggregated by region, and include all royalties paid to the region (including from non-reporting companies).²⁹ The figures are given for oil, gas, mining and quarrying in aggregate, but some specific information on different commodities (contribution to extraction value add by commodity) is provided in the chapter on the overview of the sector. The report details the exports of the extractive sector, and its percentage contribution towards total exports of the country, broken down by coal, oil and gas, quarrying. The number of employed persons in the extractive sector, by gender, and their percentage contribution towards total employment numbers is provided. The overview of commodities includes a description of key regions where production is concentrated. The EITI Report disaggregates the employment figures by gender and occupational level, but not by company, which is an encouragement of the EITI Standard.</p>
Corrective actions and recommendations	
<ul style="list-style-type: none"> • To strengthen implementation of Requirement 3.1, Germany is encouraged to publish estimates on reserves for oil and quarrying. • To strengthen implementation of Requirement 6.3, Germany is encouraged to publish the employment figures by the largest companies. All of Germany's regions collecting mine site royalties are encouraged to publish aggregate annual figures. To strengthen implementation, Germany could consider publishing extractive industries revenue as a percentage of the regional government revenue, given that all revenues are collected on the regional and municipal level. 	

Legal environment and fiscal regime (Requirements 2.1, 2.4, 6.4)

Overview of progress in the module

Germany performs well in advancing public disclosures on the legal and fiscal regime. D-EITI reporting provides a clear description of the legal and institutional framework governing the extractive industries, including the relationship between the federal government and regional authorities. Reporting goes beyond a narrow description of extractive sector legislation by also

²⁸ Since there is no full government disclosure of taxes and non-taxes in Germany, the figures in Germany are based on special evaluations of the corporate tax statistics from 2010–2017, the trade tax statistics of 2010 and 2017 and the statistics on the partnerships and communities from 2010–2012 and 2014–2017 as well as estimates and updates of the Federal Ministry of Finance (EITI Report p. 204).

²⁹ The data on royalties is provided by the regions to the central government (Federal Ministry of Finance) for the purpose of inclusion in the full overview of regional government revenues when calculating the financial “equalisation” transfers. See Requirement 5.2.

covering other relevant policies, laws and regulations that are relevant to the sector, such as those on anti-corruption, energy transition and environmental protection. Public institutions systematically disclose information on the legal environment and fiscal regime, as well as on environmental impacts, though disclosure practices and the ease of access vary by region.

The Validation found scope to improve transparency related to license disclosure. The Federal Mining Act (BBergG) limits the right to accessing the full text of licenses to persons who can demonstrate legitimate interest. Access and disclosure practices vary by region. Some regional mining authorities systematically disclose licenses online. Elsewhere regional mining authorities apply BBergG's legitimate interest restrictions. While stakeholders consulted for this Validation did not view this as a significant concern, the International Secretariat views this as a development opportunity to facilitate public understanding of the obligations of companies operating in the sector.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in the annex to this report.

EITI Requirement and assessment	Summary of progress in addressing the EITI Requirement
<p>Legal framework and fiscal regime (Requirement #2.1)</p> <p><i>Fully met</i></p>	<p>The International Secretariat's assessment is that Requirement 2.1 is fully met, as in the previous Validation. Stakeholders consulted for this Validation were of the view that transparency on the legal framework and fiscal regime are well established in Germany and that the objective to ensure public understanding of all aspects of the regulatory framework for the extractive industries is fulfilled.</p> <p>The D-EITI report and online portal provide a clear overview of the overarching legal framework governing Germany's extractive industries. Reporting describes key provisions in the Mining Code (BBergG), which governs the oil, gas and mining sectors. Reporting explains institutional responsibilities, including the split of responsibilities between the federal government and Germany's regions. Reporting provides an overview of the various categories of mineral rights and fiscal terms as defined in BBergG and an explanation of which license types are exempt from the standard provisions. While the EITI Report and portal reference the ruling coalition's intent to reform the Mining Code, which dates back to 1980, the coalition agreement available online provides little information on the direction of the reform, other than "modernisation".</p> <p>The report and portal provide a broader description of other policies, laws and regulations that are relevant to the extractive sector, including anti-corruption provisions, energy transition and environmental protection. D-EITI reporting also provides an overview of public subsidies applicable to the extractive industries. While the applicability of the EU Accounting Directive is mentioned in the report section on payment flows and quality assurance, the report and online portal do not include the reporting obligation on payments to government (EU Accounting Directive, "BilRug") as part of the overview on laws and regulations affecting the extractive industry.</p>

	<p>Systematic disclosure of the legal framework and fiscal regime is well established in Germany. D-EITI reporting provides a link to BbergG and explains that regional governments develop their own regulations in line with federal legislation. Regional governments systematically disclose these regulations and D-EITI reporting provides links to the websites of each regional mining authority where these documents can be accessed.</p>
<p>Contracts (Requirement #2.4)</p> <p><i>Mostly met</i></p>	<p>The International Secretariat’s assessment is that Requirement 2.4 is mostly met. The publication of contracts does not apply in Germany because there is no contracting regime. Nonetheless, the accessibility of licenses and the ability to assess deviations from model terms remains applicable. In several regions legitimate interest must be demonstrated to access licenses. Stakeholders from all constituencies noted that this does not pose a significant impediment to public understanding of the obligations of companies because key information is captured in public license registries. Nonetheless, legitimate interest restrictions mean that the objective of Requirement 2.4 is not yet fully met.</p> <p>Germany has a licensing regime for the extractive sector in which regional mining authorities do not negotiate contract terms with companies. Instead, they issue a license document (<i>Erstbescheid</i>) in which project-specific terms, such as the name of the license holder, license coordinates and approval and expiry dates, are documented. This information is then captured in license registries administered by regional mining authorities. All other terms of exploration and extraction are defined in federal legislation and regional regulations. License documents are based on a model license (or document), but the model license is different from region to region.</p> <p>The MSG concluded that for the period under review, Requirement 2.4 of the EITI Standard is not applicable for D-EITI due to the absence of a contracting regime in the extractive sector. The International Secretariat notes that the requirement equally applies to the disclosure of extractive sector licenses.</p> <p>According to the federal mining law, license documents do not need to be made publicly available unless the request is made by a person who can prove legitimate interest.³⁰ In practice, government approaches to license disclosure vary by region. D-EITI’s reporting portal provides guidance on the disclosure practice of each region. Lower Saxony, Bremen, Hamburg and Schleswig-Holstein appear to be the only regions which systematically disclose most license documents (with some gaps, particularly in the case of very old licenses).³¹ In all other regions, legitimate interest must be demonstrated in order to gain access to these documents. BbergG does not provide a definition for what constitutes legitimate interest, and the guidance published on the D-EITI website does not explain what would be considered “legitimate interest”. The International Secretariat is not aware of any of these regions publishing a model license document in lieu of actual licenses.</p> <p>Stakeholders consulted for this Validation were of the view that the public interest restrictions are not a major impediment for understanding the obligations of companies operating in the extractive sector, as payment obligations are defined in federal and regional legislation, which is systematically disclosed. The government argued that there are no deviations in</p>

³⁰ Bundesministerium der Justiz, *Bundesberggesetz* § 76. https://www.gesetze-im-internet.de/bbergg/_76.html

³¹ See NIBIS Kartenserver. <https://nibis.lbeg.de/cardomap3/>

	<p>licenses from the standard clauses, but the International Secretariat is not aware that this was reviewed or assessed. License-specific information, such as license holder and duration, is recorded in the license registries administered by regional mining authorities. This information can also be downloaded from the D-EITI portal (see Requirement 2.3).</p>
<p>Environmental impact (Requirement #6.4)</p> <p><i>Fully met</i></p>	<p>The Secretariat’s assessment is that Requirement 6.4 is fully met. Stakeholders noted that D-EITI’s proactive approach to disclosing environmental information is a positive step towards strengthening public understanding and advancing the EITI’s relevance to public debate. Stakeholders from all constituencies felt that disclosures enabled them to assess the adequacy of the regulatory framework and monitoring efforts to manage the environmental impacts, and to assess extractive companies’ adherence to environmental obligations.</p> <p>D-EITI reporting provides an overview of environmental laws and regulations, including the relationship between federal and regional authorities on environmental issues. D-EITI reporting includes a description of Germany’s environmental protection law, as well as several other policies, laws and regulations related to the extractive sector’s environmental impacts, including in relation to water, climate change, renewable energy and coal-phase out. The report also includes an example of an environmental permit and water use data aggregated by region.</p> <p>D-EITI reporting explains that the right to access environmental information is enshrined in law. Federal and regional authorities systematically disclose environmental information and D-EITI’s reporting portal provides links to the websites of relevant authorities.³² Legally mandated environmental impact assessments are available on the websites of federal and regional authorities. The D-EITI report also explains how to access information on environmental compensation payments. D-EITI reporting does not explain whether any checks are conducted on the comprehensiveness or reliability of these disclosures.</p> <p>Stakeholders consulted for this Validation stressed that information on environmental impact is among the topics generating the most public interest in Germany. Stakeholders were of the view that there is a strong approach to systematic disclosure of environmental policies, laws and regulations in Germany. However, government stakeholders noted that disclosure practices and the ease of accessing and navigating information vary significantly by region. In some instances, information is proactively disclosed online. In other cases, stakeholders must request information in person from the relevant authorities. For example, in most regions information on environmental compensation payments is either published online or available on request. However, in Hesse, Mecklenburg-Western-Pomerania, Lower Saxony and Saxony Anhalt this information cannot be viewed by the public.</p> <p>A key point of concern raised by civil society stakeholders relates to transparency on the funds (reserves, <i>Rückstellungen</i>) that companies are required to set aside to pay for environmental rehabilitation. While the D-EITI report provides a description of the rules governing these funds (referred to as “implementation securities”), civil society stakeholders noted that the information available does not sufficiently provide information on the actual amount, and what the repercussions are for the clean-up if a company goes</p>

³² See DEITI portal, *Data on environmental information*.
https://rohstofftransparenz.de/downloads/211215%20Umweltinformationsstellen_%C3%9Cbersicht.xlsx

	bankrupt and the reserves are not available. Civil society concerns centre on the risk that companies may be setting aside insufficient funds to cover rehabilitation needs and that the government may be required to take on financial liabilities if a company ceases to operate. Stakeholders noted that this is of particular concern in the lignite sector, where environmental rehabilitation requirements are substantial.
Corrective actions and recommendations	
<ul style="list-style-type: none"> • To strengthen implementation of Requirement 2.1, Germany is encouraged to provide key points of the planned reform of the Mining Code, and to present the timeline for the development of the legislative proposal. To strengthen implementation, Germany may wish to reference the financial reporting requirements for companies substantially engaged in the extractive industry as part of the overview of the laws and regulations governing the sector. • In accordance with Requirement 2.4, Germany is required to ensure that the full text of all licenses are accessible to the public without the need to demonstrate legitimate interest. Germany is required to have an overview of the active licenses that are accessible, and how to access those. To strengthen implementation of Requirement 2.4, Germany may wish to consider establishing a procedure to review or assess deviations in licenses from standard clauses. • To strengthen the implementation of Requirement 6.4, Germany should assess the actual practice related to environmental management and monitoring information. D-EITI reporting is encouraged provide clear guidance on how to access sector, company or project-specific information. In relation to environmental compensation payments, all regions should disclose such data. D-EITI may also consider exploring the feasibility of strengthening disclosures related to mine closure and rehabilitation, including data on rehabilitation funds by reporting companies. 	

Licenses and property rights (Requirements 2.2, 2.3)

Overview of progress in the module

Germany has made progress in advancing transparency on licenses and property rights since its 2019 Validation. D-EITI reporting provides a clear description of licensing processes and government institutions systematically disclose this information. The disclosure of registry data has also improved. D-EITI reporting consolidates regional registry data into a single spreadsheet downloadable from the D-EITI portal and provides guidance on how to access each region's registry. Following revisions to BBergG, the public's right to access key registry data without demonstrating legitimate interest is now enshrined in law and many regions are moving towards establishing online registries, indicating a commitment to facilitating public access.

The Validation identified the opportunity for Germany to improve the disclosure of information on license transfers. D-EITI reporting does not describe the rules governing transfers and registry data only gives a partial picture of transfers. Stakeholders did not express concern about this gap. However, the International Secretariat is of the opinion that strengthening disclosures on license transfers is important for ensuring public understanding of licenses and property rights in the extractive sector.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in the annex to this report.

EITI Requirement and assessment	Summary of progress in addressing the EITI Requirement
<p>Contract and license allocations (Requirement #2.2)</p> <p><i>Fully met</i></p>	<p>The International Secretariat’s assessment is that Requirement 2.2 is fully met, as in the previous Validation. While the Secretariat has identified a gap in the description of license processes and difficulties with assessing the information from regions given different reporting structures, stakeholders consulted for this Validation did not view this issue as a concern.. While D-EITI publishes a centralised overview of changes in licenses, there is a lack of information on transfers of licenses, both on the process and the number of licenses. In its comments to the draft report, the MSG argued for an upgrade to ‘fully met’ given that they consider the absence of description of transfers not to be sufficiently material in fulfilling the underlying objective, and that the decentralised administration of licenses does not allow for a harmonised data set of licence allocations and transfers. The Secretariat is of the view that given that stakeholders did not raise any concerns on the allocation of licenses and that any allocations that deviate from the statutory process for allocations and transfers can be challenged in the administrative court, the underlying objective is fulfilled. Notwithstanding, D-EITI may take strategic considerations into account for disclosures on transfers and on processing inactive licenses.</p> <p>D-EITI reporting explains that the allocation of mining and petroleum licenses is governed by the Mining Code. Licenses are awarded by regional mining authorities. The EITI Report describes the different types of licenses applicable in the extractive sector and the different processes for granting these. Key steps include the award of the mining right, the agreement of a site-specific workplan and the granting of various environmental permits. D-EITI reporting signposts where in BbergG the criteria for rejecting license applications can be found. The EITI Report does not describe the processes or criteria for transferring or selling a license. BbergG defines criteria for rejecting license transfers but EITI reporting does not identify where to find this information.³³ In its comments to the draft report, the MSG noted that the regions Hesse and Saxony systematically disclose the description of transferring licenses and that Saxony-Anhalt publishes the full documentation on changes in license holders on the website.³⁴ The government considers that this gap is not sufficiently material for ‘mostly met’ and argues for an upgrade of ‘fully met’.</p> <p>The D-EITI portal provides a spreadsheet that captures information on licenses awarded and transferred between 2018 and 2022 disaggregated by region. Germany could improve the disclosure of information on transfers. The level of detail of disclosure varies by region. In North Rhine-Westphalia, for example, the spreadsheet only lists the current license holder but not the previous owner. This represents an impediment to full public understanding of the parties involved in a transfer. A further challenge arises from the fact that different regions use</p>

³³ See BbergG § 22 and 23. <https://www.gesetze-im-internet.de/bbergg/>

³⁴ URL: <https://lagb.sachsen-anhalt.de/service/bekanntmachungen#:~:text=Aufhebung%20einer%20Bergbauberechtigung%20nach%20%C2%A7,%20Sachsendorf%20und%20Schwarz%22%20bekannt>, however the website could not be reached at the time of finalising this report to confirm.

	<p>different terms to describe transfers making it difficult to systematically search the D-EITI spreadsheet. D-EITI reporting does not provide a consolidated overview of all transfers within the reporting period. In its comments to the draft report, the MSG noted that the previous license holders are available through direct inquiry with regional mining authorities. It further noted that the level of detail of public information (as detailed in the spreadsheet) is determined by the regional mining authority's administration system in line with the degree of relevance of this data for the governance of the sector. The comments further noted that there are a large number of effective and expired mining authorisations or frequent changes of holders of rights, which is why only current license holders are disclosed. The Secretariat is of the view that mining authorities should consider disclosing the number of transfers per year to allow the public to understand what the volume of transfers relative to all active licenses is. In cases where there are numerous inactive licenses (see Requirement 2.3) mining authorities may wish to explain the process and progress of revoking inactive licenses, where for example the company holding the license no longer exists.</p> <p>Mining authorities report non-trivial deviations from applicable rules and are also subject to independent audits. D-EITI reporting does not include detail on how checks for non-trivial deviations are conducted, or the MSG's commentary on the efficiency of licensing procedures, which is encouraged. The International Secretariat's understanding is that the national secretariat requests mining authorities to disclose material deviations as part of the annual data enquiry and that the MSG has the opportunity to review this information. Civil society and company constituency members did not have any concerns about the approach taken. Within the reporting period, no deviations were reported. In its comments to the draft assessment, the MSG underlined that there were no deviations in the period under review and that the MSG had no mandate to carry out any assessment on the efficiency of the licensing procedure.</p> <p>Stakeholders consulted for this Validation did not view the issue described above with concern. While some civil society stakeholders expressed concern over the ability meaningfully influence licensing decisions through public consultations, stakeholders were of the view that there was sufficient transparency over licensing processes and outcomes.</p>
<p>Register of licenses (Requirement #2.3)</p> <p><i>Fully met</i></p>	<p>The International Secretariat's assessment is that Requirement 2.3 is fully met, as in the previous Validation. Stakeholders outside of the MSG noted that they were not yet aware of the central overview of all licenses through D-EITI, and that it was a welcome provision of information to understand who the companies, including smaller ones, are, that own licenses. The Secretariat view is that the underlying objective of ensuring the public accessibility of comprehensive information on property rights related to extractive deposits and projects is met.</p> <p>Germany's license registers are administered by regional mining authorities. A 2017 amendment to BbergG provides for public access to registry data without proof of legitimate interest. Stakeholders consulted for this Validation view this reform as a major achievement of D-EITI implementation in Germany.</p> <p>Disclosure practices vary by region. Some regions maintain online license registers. The D-EITI report refers to the NIBIS portal for Niedersachsen, Bremen, Hamburg and Schleswig-Holstein as a particularly good example of online</p>

	<p>disclosure.³⁵ Other regions with online registers include Baden-Wuerttemberg, Berlin-Brandenburg, North Rhine-Westfalia and the Saarland. D-EITI reporting provides guidance on how to access registry data for each region. The ease of accessing and navigating online registers varies significantly by region.</p> <p>While there is no consolidated license register covering all of Germany, D-EITI's data portal provides a spreadsheet that captures registry data from each region. This spreadsheet appears to comprehensively list all licenses. For most entries the information provided is in line with Requirement 2.3., except for some instances where coordinates are not included and a note explains that this information can only be viewed in the physical registry books. No material licenses are affected by those gaps. The spreadsheet contains a large number of historical licenses where the license holders may in fact no longer be operational. During consultations, government representatives noted that this was due to the licenses in principle still being active and that the mining site has not yet been closed. Elsewhere application dates are missing, either because these are not recorded by the licensing authorities or because they can only be viewed in the physical registry books. The Secretariat has reviewed the materiality of those licenses and has deemed them immaterial. For licenses granted before BbergG was enacted, there is no expiry date. As a result, these fields are blank in the spreadsheet. In some instances, it can be difficult to identify reporting companies in the registry because of variations in the name of the parent company used in the D-EITI report and the name of the license holder (ExxonMobil versus Mobil Erdgas-Erdöl GmbH; JTSD versus MIBRAG). Region's column titles also vary, making the data more difficult to collate.</p>
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Corrective actions and recommendations

- To strengthen implementation of Requirement 2.2, Germany is encouraged to disclose information on the processes and criteria applicable to license transfers . D-EITI is encouraged to engage with mining authorities to ensure that disclosures on license transfers are comprehensive and easy to identify and is encouraged to publish an overview of number of license transfers per year, per region alongside active licenses to provide the public with an understanding of the volume of changes in license holders, and where the changes are publicly announced, provide a link to where to find that information. Germany may consider publishing the previous and new license holders of material licenses. Germany is encouraged to describe the regional mining authorities' internal oversight mechanism to identify any potential deviations in transfers and allocations of licenses. D-EITI is encouraged to clarify how mining authorities process licenses that remain in the register despite the company becoming defunct.
- To strengthen the implementation of Requirement 2.3, regions not yet systematically disclosing licenses are encouraged to do so. To further strengthen implementation, the mining authorities may wish to review the description of older licenses, which seem to have expired.

³⁵ See NIBIS Kartenserver. <https://nibis.lbeg.de/cardomap3/>

Beneficial ownership (Requirement 2.5)

Overview of progress in the module

Adherence to Requirement 2.5 on beneficial ownership is assessed in full in Validation as of 1 January 2022 as per the framework agreed by the Board in June 2019.³⁶

Technical assessment

The technical assessment is included in the Transparency template, in the tab on Requirement 2.5, and in the table below. The assessment consists of a technical assessment and an assessment of effectiveness. The assessment shows that the legal and regulatory frameworks are in place to collect beneficial and legal ownership (BO and LO) information from all companies that apply for or hold licenses, as the regulation applies to all companies. Company submissions are well under way. The definitions of BO and politically exposed persons (PEPs) are in line with the EITI's requirement. The information is collected and published by the Transparency Register, which has been operational since 2017. In the period of 1 January 2020 to 22 November 2022 BO entries could be requested upon registration with the register and against a small (EUR 1.65) fee.

Following the Court of Justice of the European Union (CJEU) ruling³⁷ the company Bundesanzeiger Verlag GmbH, which has been authorised by the Federal Ministry of Finance as the office in charge of the register, issued a statement to which unrestricted public access was suspended and a test of “legitimate interest” is introduced.³⁸ Under the new access regime, which is not yet regularised by national legislation, other government entities have access to the register, including mining authorities. The IA received access to the beneficial ownership information for all private (non-listed) companies in the scope of the EITI Report following intervention from the MSG.

Legal ownership data is systematically disclosed³⁹ for all companies where the commercial code applies. For one type of company (companies with limited liability, GmbH) beneficial ownership information can be accessed *if* individuals are listed as shareholders – in that case the protection of private information doesn't seem to apply. The MSG has tasked the IA to assess the plausibility of entries of *reporting* companies in the register. The conclusion, published on April 2023 on the website,⁴⁰ is that the information in the register corresponds with the information in the public domain and hence the entries seem correct. It was noted that for one company the transparency register had identified discrepancies/ inconsistencies which are still pending. Currently, no beneficial ownership information for companies other than GmbHs, where shareholders are individuals, is available.

Assessment of effectiveness

There is no assessment by the MSG or the government on the comprehensiveness and reliability of beneficial ownership data of non-reporting companies, but there are mechanisms in place to

³⁶ <https://eiti.org/document/assessing-implementation-of-eitis-beneficial-ownership-requirement>.

³⁷ <https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-37/20&jur=C>

³⁸ See <https://www.transparenzregister.de/treg/de/aktuell?1#N13>

³⁹ There are two platforms to access information on legal owners: through the “common register portal”, handelsregister.de and the company register, unternehmensregister.de. In terms of ease of access to locating and downloading LO information, the Common register is faster.

⁴⁰ See <https://rohstofftransparenz.de/en/rohstoffgewinnung/wirtschaftlich-berechtigter/> section “Situation as of April 2023”

give penalties for the lack of information, and penalties are being distributed.⁴¹ The register is maintained by the Federal Office of Administration (Bundesverwaltungsamt) and hosted by the company Bundesanzeiger GmbH.⁴² The MSG did not express views if there are any high-risk companies but has demonstrated through the IA that full beneficial ownership information is publicly available for companies making material payments to the government (reporting companies). There were no concerns raised by stakeholders on omissions or suspension of PEPs in one of those companies, but to note that the assessment carried out by the IA did not contain the presentation of actual names (BOs) of the companies, but an assessment of plausibility. No concerns on comprehensiveness and data reliability were raised. No assessment was made on the verification method of BO information by the competent entity (Transparenzregister). In its comments to the draft report, the government noted that some authorities and entities as listed in GwG, that are required to undertake the verification. It also stated that Germany has been continuously improving its review mechanism. Details to ongoing improvements are listed in the submission of comments, which are available as an annex. As part of the comments the government further noted that it was not possible for the MSG to carry the verification for the register's entries given the very large amount of legal persons that request or hold licenses. The Secretariat notes that the MSG is not expected to carry out the verification itself, but to review the verification mechanism that is in place to form a view on its robustness.

The MSG requested reporting companies to consider requesting their beneficial owners to waive the confidentiality provision in order to fulfil the requirement. During consultations, a government entity confirmed that such a waiver would not constitute an infringement if the disclosure was allowed by the beneficial owner(s). However, and companies indicated that unilateral disclosure would be a disproportionate burden. In its comments to the draft assessment, the government noted that companies said that as a legal body, they could not identify the beneficial owner and request the waving of confidentiality. The MSG does not yet provide direct links to the systematically disclosed legal ownership and public shareholder information such as stock exchange listings, which could serve as a signpost for citizens interested in ownership structure of extractive companies.

Germany's latest mutual evaluation⁴³ by the Financial Action Task Force (FATF) was completed in August 2022. It rates Recommendation 24 (Transparency and beneficial ownership of legal persons) as partially compliant, noting in particular that not all legal persons are required to provide basic information, information collected across different registers is inconsistent and not all information is publicly available, and that not all legal persons are required to collect and maintain information on shareholders or BO or records. Germany uses a combination of the registry and existing information approaches to obtain and determine the beneficial ownership of legal persons. However, the approach taken does not cover all legal persons as non-registered

⁴¹ According to the 2022 Mutual assessment of the FATAF, failure to report the correct beneficial ownership information in a timely manner and to report changes regarding the beneficial owner constitutes an administrative offence which can incur an administrative fine up to a maximum of EUR 150 000. In case of serious, repeated, or systemic violations, a fine of up to EUR 1 000 000 – or twice the amount of the financial benefit – can be applied. All legal persons are obliged to respond to queries, and a non-answer of those queries is an administrative offence and can incur an administrative fine up to a maximum of EUR 5 000 000 or 10% of the total revenues of the legal entity (GwG, s.56(3)).

⁴² See coordinated statement from the government and industry on 2.5, linked above, p. 2

⁴³ See <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-germany-2022.html>

partnerships (that is partnerships which are not partnership companies) are not required to record, retain or collect BO information.⁴⁴

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in the annex to this report.

EITI Requirement and assessment	Summary of progress in addressing the EITI Requirement
<p>Beneficial ownership (Requirement #2.5)</p> <p><i>Partly met</i></p>	<p>The International Secretariat’s assessment is that Requirement 2.5 is partly met. Stakeholders had diverging views on the fulfilment of this objective. Beneficial ownership information is being collected by the authorities and can be accessed if legitimate interest is demonstrated. Legal ownership information is systematically disclosed. While the MSG has tasked the IA to review the plausibility of the BO data of <i>reporting</i> companies, and those findings were discussed, neither legal owners, nor beneficial owners, nor direct links to the stock exchange filings for listed companies of reporting companies were disclosed. While government and companies view the existing level of information as sufficient (‘fully met’), and argue that the CJEU ruling makes the generalised access invalid (government) or impractical (companies), civil society evaluated this provision as partly met. While information on the legal owners of companies is available for all companies covered by the commercial law, the information is not accessible for beneficial owners of all companies applying for, and holding, extractives licenses. Given the limitations of disclosures and the limited efforts from stakeholders on the MSG, the International Secretariat is of the view that the objective of the requirement to enable the public to know who ultimately owns and controls the companies operating in the country’s extractive industries, is only partly fulfilled.</p> <p>In its comments to the draft assessment, the government reiterated that it was not possible to provide access to any beneficial owners given the CJEU ruling. The Secretariat notes that the anti-corruption objective of the requirement, to enable the public to know who ultimately owns and controls the companies operating in the country’s extractive industries to help deter improper practices in the management of extractive resources was not considered sufficient legitimate interest to access material company entries. The Independent Administrator has received access to the register, but other stakeholders using the requirement’s objective do not. While the Secretariat recognises the legal constraints set by the ruling, the onus is on the MSG or government to demonstrate how and whether the overall objective of the requirement has been met despite the legal constraint. Given the above and in the absence of any disclosures of beneficial owners of material companies, this requirement remains only partly met.</p> <p>The government codified the collection of beneficial owners as part of the transposition of the EU’s Anti-Money Laundering directive, which applies to all sectors, with the aim to avoid the use of the financial system for money laundering or finance of terrorism. The Law on the detection of profits from</p>

⁴⁴ The assessment was maintained in the follow up report: <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Mutualevaluations/germany-fur-2023.html>

	<p>serious criminal offences (“EU-Geldwäscherichtlinie”) includes a definition in line with the EITI requirement. The declaration threshold is set at 25%. The definition of PEPs is stated in Art.3. On the availability of a list of PEPs, the government stated that a list is compiled by the Finance Ministry and sent to the European Commission, which is charged with its publication. To date, the European Commission has not yet published this list. It is unclear if there is a different threshold applied to the declaration of PEPs, or if only PEPs that hold 25% control in a company are required to report.</p> <p>All companies that are subject to the German Commercial Code (HBG) are obliged to report information on beneficial owners, hence the law in place includes companies applying for, or operating or holding interest in an extractives project. There is no reference in the legal framework that obliges mining authorities to check the beneficial owners of applicants, but stakeholders from the mining authorities noted that companies need to have a proof of registration in the commercial register to apply for a license, and that they have access to the transparency register. As per the current legislation in force guiding license allocations, the mining authorities are not obliged to review the beneficial owners of applicants. Stakeholders consider there is an enabling legal environment for the collection of beneficial ownership information.</p> <p>There is currently no <i>public</i> register of beneficial owners of the corporate entity(ies) that apply for, operate or hold a participating interest in an exploration or production oil, gas or mining license or contract. The unrestricted access to the transparency register⁴⁵, which provided access upon proof of identity of the requester, was taken removed in November 2022, following the CJEU ruling, and replaced with a mechanism where registered users need to demonstrate a legitimate interest in the need to view this information for the purposes of fighting money laundering. The ruling stated that the full and indiscriminate access to beneficial owners of all companies, for the objective of combatting money laundering, was not compatible with the fundamental right of the protection of privacy. Government noted that in the case of companies with limited liability (“GmbH”), the information on beneficial owners (first name, last name, date of birth, town of residence and percentage shareholding) is de facto available where the shareholders field in the commercial register (“Liste der Gesellschafter”) are individuals (and not other companies). A guideline on how to access this information is not given in the EITI Report or on the reporting portal. The information on beneficial owners is not available for public limited company (PLCs, or “AG”) or hybrids of the legal forms the GmbH (limited liability company) and the Kommanditgesellschaft (KG) limited partnership companies (“GmbH&Co. AG”). Listed companies must provide voting rights notifications for changes above 2.5% cumulative ownership. The EITI Report or portal do not provide direct links to the stock exchange filings of reporting companies.</p> <p>Further on access, for those individuals that were found to have legitimate interest, is a fee of EUR 1,65 applies per requested dataset. To request BOs, individuals and CSOs that can prove legitimate interest, need to provide proof of identity to the registry. The law allows beneficial owners to ask for their information to be restricted on the basis that the publication would have very harmful impacts, and the register publishes yearly statistics on the restrictions</p>
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⁴⁵ [The Transparency register](#) is run by a company “Bundesanzeiger Verlag GmbH”⁴⁵ tasked by the Ministry of Finance, who is the responsible ministry. The company also runs the company register and publication of laws.

	<p>granted.⁴⁶ Government states that organisations and media that can demonstrate that they work on issues of anti-corruption would be granted access.</p> <p>Stakeholder consultations confirmed that all companies are <i>requested</i> to disclose beneficial owners. On the comprehensiveness of the information for <i>all</i> companies applying for, and holding licenses, the government could not provide an assurance of the comprehensiveness, as the government entity does not check the comprehensiveness of data of specific sectors. The MSG has tasked the IA with assessing and documenting gaps or weaknesses in disclosure of beneficial ownership information of reporting companies, including an assessment of the materiality of omissions and the reliability of beneficial information. Given that the reporting companies constitute the largest active companies in the oil, gas, mining and quarrying sector, this can be considered as a risk-based approach. The IA was found to have “legitimate interest” for the purpose of conducting this analysis on behalf of the EITI MSG. The MSG did not view the list of BOs and did not publish the beneficial owners of the reporting companies that it had tasked the IA to review. The IA’s conclusion was that the information provided in the register for the 18 reporting companies was comprehensive and plausible, as it corresponded to information on ownership which can be found through desk research. It is not known to the MSG if there are any PEPs among the beneficial owners. In its comments to the draft assessment, the government stated that there were no PEPs among the reporting companies. However, the Secretariat notes that there is no possibility of scrutiny of PEPs given there is no public BO data. During consultations, the government confirmed that mining authorities can view the information in the transparency register.</p> <p>The assurances are defined by the anti-money laundering law and there is a running list of companies⁴⁷ that receive penalties for not complying with the request for publication. Stakeholders viewed that this mechanism was sufficient for enforcement of the reporting requirement, as it also provided an element of public accountability for those companies failing to fulfil their obligation. The MSG has not commented on the data verification method of the transparency register.</p> <p>Publicly listed companies that are reporting are listed in the transparency template, but without direct links to their stock exchange filings. The MSG has not considered how rigorous the requirement to the stock exchange are, which is an encouragement. The International Secretariat is not aware of the existence of joint ventures for any of the extractive’s projects.</p> <p>Information on legal owners of companies operating in the extractive industry are obliged to fulfil the commercial register’s reporting requirements, including on legal owners. This information is available under the commercial register and can be found by searching the company name and the registration number, which are provided for material companies in the EITI Report.</p> <p>In its statement submitted for Validation,⁴⁸ the government maintains that the removal of public access to the transparency register was necessary to comply</p>
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⁴⁶ [Statistik nach 23 Abs 2.pdf;jsessionid=753B5299ED635E7A5E4BC60C3E3DC64B.app11 \(transparenzregister.de\)](#)

⁴⁷ Currently up to 1336 companies listed as of 25 January 2024, see [BVA - Bußgeldentscheidungen \(bund.de\)](#) The list includes the date of the decision and the name of the company, as well as the reason for the penalty.

⁴⁸ See [230928 Coordinated position govMSG 2.5-EITI-Standard beneficial-ownership.docx \(live.com\)](#)

	<p>with the CJEU ruling and the protection of fundamental privacy rights and that the requirement on public access is fully met. In the statement the government argues that the transparency register remains online and accessible to members of the public, such as the Independent Administrator. In the statement the government argues that the transparency register remains online and accessible to members of the public, such as the Independent Administrator. The government further argues, that based on a legal commentary, the decision has a general binding and legal effect, which meant introducing the access barrier was necessary. The note further argues that the court judgement does not allow for a difference in weighing the fundamental rights according to the economic sector, such as the extractives sector. The note also concedes that there is a need to amend relevant regulations that are incompatible and that the concept of legitimate interest requires to be sufficiently concrete.</p> <p>It is the Secretariat's understanding that the ruling is a narrow decision, invalidating in principle the generalised access to beneficial ownership information provided through the 2018 AMLD, but does not strictly forbid the public access to this information. The International Secretariat undertook the request to view entries in the register arguing with the underlying objective⁴⁹ of the requirement, but that rationale was not deemed sufficiently legitimate to access the data.⁵⁰ Based on the current levels of disclosures the International Secretariat concludes that the criteria of public access to beneficial owners for the public arguing with the rationale of the requirement is not yet met, and that there are further actions the MSG could undertake to improve access to existing information on ownership of reporting companies.</p> <p>Upon request if the companies had been asked to waive their confidentiality, one government representative stated during consultations that a company publishing its beneficial owner would be unlawful, but another government representative stated that companies are allowed to make disclosures on their owners, as long as those agree, and the information is published on their own corporate website. Government highlighted that it was not possible to publish beneficial owners in EITI Reports, as the individuals could revoke at any time their consent to the publication of their identity. This could be addressed by publishing the data on beneficial owners as dataset on the transparency portal, as is done for the license register. Civil society criticised the lack of willingness on companies and government to provide information on beneficial owners through EITI reporting, for example through waivers.⁵¹ They further criticised the lack of risk assessment by the MSG to identify what companies could be verified for their accuracy (besides the reporting companies). Civil society members stated that the MSG did not discuss the findings of the IA's review. They stated that neither the government, nor companies were providing input on how to overcome the barriers for disclosure. They were further of the view that accessing legal ownership information, and information on shareholders,</p>
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⁴⁹ The [objective of this requirement](#) is to enable the public to know who ultimately owns and controls the companies operating in the country's extractive industries, particularly those identified by the multi-stakeholder group as high-risk, to help deter improper and corrupt practices in the management of extractive resources and to help monitor the ownership of politically exposed persons.

⁵⁰ Email correspondence with International Secretariat staff, available upon request.

⁵¹ Netherlands EITI, in its 2021 Report, reported the beneficial owners in its annexe 7: <https://eiti.org/sites/default/files/2023-01/NL-EITI%20Report%202021.pdf>. In its comments to the MSG, the government notes that the publication coincided with the report publication (one month after the ruling) and was thus not comparable.

through systematic disclosure requires knowledge on what terms for the filings to look for, and that therefore at least the publicly available information on reporting companies should be available through EITI reporting. In a statement submitted for Validation on beneficial ownership, companies noted that the request for permission to publish private information would be a large added task for the IA and present administrative burden for companies to fulfil.⁵² In its comments to the draft report the government noted that the results were discussed and the findings were published on the [website](#). The Secretariat notes that the description on the website does not give any information about the beneficial owners themselves, such as number of foreign nationals holding controlling interest.

Corrective actions and recommendations

- In accordance with Requirement 2.5, Germany is required to disclose the beneficial owners of all companies holding or applying for extractive licenses. To ensure public disclosure of this information going forward, Germany should undertake the following measures:
 - Address legal barriers to ensure the collection and public disclosure of beneficial ownership information on all companies holding or applying for extractive licenses. This could include developing a plan on how to define legitimate interest for companies operating sectors that are identified as at high risk for corruption in view of the current renegotiation of the AML legislation on EU level; While addressing the legal barrier, the MSG should conduct discussions with key stakeholders and agree how the overall objectives of Requirement 2.5 could be met and how meeting this objective could be demonstrated despite the existing legal barriers.
 - The MSG should indicate, per company, instructions or direct links where information on beneficial owners for reporting companies are already publicly available (for GmbHs where the shareholders are private individuals) or to the stock exchange filings for listed companies;
 - Continue encouraging companies to request that their beneficial owners consider waiving confidentiality in view of making beneficial ownership information of material companies available to the public;
 - Ensure public disclosure of legal owners of all companies holding or applying for extractive licenses through direct links in EITI reporting, publishing guidance on how to access information on legal owners, and provide direct links to stock exchange filings for listed companies;
 - The MSG should review the existing verification mechanism in place and form recommendations to improve the reliability and comprehensiveness of beneficial ownership data.

⁵² See <https://d-eiti.de/wp-content/uploads/2023/11/Private-Sector-Consolidation-Position-on-2.5-3.2-1.pdf>

State participation (Requirements 2.6, 4.2, 4.5, 6.2)

Overview of progress in the module

The EITI Report lists one company, Südwestdeutsche Salzwerke AG, as being owned by the region and one municipality, at 49% each. The company has extraction and production activities outside of the region and community but isn't considered a key player in the salt and extractives market (EUR 303 m turnover in 2022), and given the financial disclosures available through corporate reporting the MSG does not consider covering the requirements to be commensurate. During consultations, one stakeholder off the MSG raised the question if the state, represented by municipalities holding minority stakes (below the 3% threshold) could amount to over 50% of ownership of lignite companies, making them de facto state-owned. The MSG is invited to clarify if the shareholder structure of RWE has been reviewed in more detail to come to such a conclusion.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in the annex to this report.

EITI Requirement and assessment	Summary of progress in addressing the EITI Requirement
<p>State participation (Requirement #2.6)</p> <p><i>Not applicable</i></p>	<p>The International Secretariat's assessment is that Requirement 2.6 is not applicable, as in the previous Validation. Despite there being one company where the regional government holds a majority share, stakeholders from the MSG constituencies did not consider the company to be an important actor in the salt industry, and hence the objective of this Requirement did not apply to this company. Stakeholders considered that the information on financial performance and governance of the SOE to be sufficient to ensure accountability of the company. The International Secretariat views this as a commensurate approach.</p> <p>Civil society stakeholders outside of the EITI called for greater clarity on potential cumulative majority state ownership due to many municipalities owning interests in lignite companies but holding interests of less than the 2.5% threshold. The question on the rate of participation of the state through its regions or municipalities emerged in consultation with stakeholders outside of the MSG. The person pointed to the possibility that municipalities or state pension funds hold shares below the notification shareholding threshold in the lignite company RWE Group⁵³, and that in cumulative they could be above the 50%+1 share threshold. The stakeholder said it was of public interest to understand if the lignite company is in fact majority state-owned, as it may influence the decision making of the company. There are opportunities for the MSG to clarify any de facto state ownership in RWE Group.</p> <p>The EITI Report notes that only one material company is considered state-owned, the Südwestdeutsche Salzwerke AG (SWS AG) located in Baden-Württemberg. Ownership is exerted by the state of Baden-Württemberg through Stiftung Baden-Württemberg⁵⁴ (foundation) with 49% and the Beteiligungsgesellschaft Stadt</p>

⁵³ See <https://www.rwe.com/en/investor-relations/rwe-share/share-at-a-glance/shareholder-structure/>

⁵⁴ See <https://www.bwstiftung.de/de/magazin/perspektiven-02-2022/23>

	Heilbronn mbH (holding/investment company of the City of Heilbronn) with a 49%, together a 98% ownership. The company issues financial statements and extensive governance information, including on the anti-corruption policy through routine company disclosures ⁵⁵ . Through the disclosures available, civil society stakeholders noted that it was sufficiently possible to assess the practices of SOE's practices and that the audited financial statements provide sufficient assurances for the sound management of the company. The government constituency noted that there are no statutory rules regarding this SOE for relationships with the state. Rather, the company operates as commercial entity (AG – public limited company) with state-entities as majority owners.
Sale of the state's in-kind revenues (Requirement #4.2) <i>Not applicable</i>	The Secretariat's assessment is that Requirement 4.2 is not applicable, as in the previous Validation. There is no evidence of in-kind revenues to SWS. The legal framework does not allow for in-kind payments.
Transactions related to state-owned enterprises (Requirement #4.5) <i>Not applicable</i>	The Secretariat's assessment is that Requirement 4.5 is not applicable.. Given that the MSG views that the MSG does not regard state participation in the extractive sector as material, which the Secretariat agrees, this requirement was not considered applicable (see Requirement 2.6).
Quasi-fiscal expenditures (Requirement #6.2) <i>Not applicable</i>	The Secretariat's assessment is that Requirement 6.2 is not applicable, as in the previous Validation. The MSG has reviewed the applicability in the 2020 EITI Report.
Corrective actions and recommendations	
<ul style="list-style-type: none"> To strengthen implementation of Requirement 2.6, Germany is encouraged to clarify if any of the reporting companies are majority-owned by state bodies, including on the regional and municipal level government entities, or other holdings and funds managed by the state. 	

Production and exports (Requirements 3.2, 3.3)

Overview of progress in the module

Germany discloses production and export data through EITI reporting and relevant government agencies' portals. EITI reporting provides clear references to relevant sources of information and overview of available data. Additionally, production and export information is accessible in an open data format, and can be used for analysis by interested stakeholder. Relevant data are disclosed by commodity for all sectors. In addition, production volumes and values for the oil and gas sector as well as export volumes and values for four main commodity groups are disaggregated by federal state.

⁵⁵ See <https://www.salzwerke.de/de/investor-relations/finanzberichte.html>

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in the annex to this report.

EITI Requirement and assessment	Summary of progress in addressing the EITI Requirement
<p>Production (Requirement #3.2)</p> <p><i>Fully met</i></p>	<p>The International Secretariat’s assessment is that Requirement 3.2 is fully met,. The Secretariat assesses that the objective of ensuring public understanding of extractive commodity(ies) production levels and the valuation of extractive commodity output, as a basis for addressing production-related issues in the extractive industries, has been met. . Production data are disaggregated by commodity and disclosed in an open data format for all commodities produced in 2020, except for production values for potash salt. According to EITI reporting, salts accounted for 19% of the total value of extractive commodities produced in Germany in 2020. Consulted stakeholders across constituencies did not express strong concerns about non-availability of production values for potash salt.</p> <p>Production values and volumes are disclosed for all extractive commodities, except for production values for potash salt, in an open format through the D-EITI website. The data is disclosed in a timely manner, with 2021 disclosures available per time of this Validation. Production data is also available through different government portals, including the German Federal Institute for Geosciences and Natural Resources (BGR). Consulted stakeholders did not express any concerns with regard to data comprehensiveness. Government and company representatives noted that production values could not be disclosed for potash salt due to the quasi-monopoly position of the main producing company, where publication of data would disclose company-level information. Available documentation provides production volumes and values for “usable extracted output” for potash and potash salt products. The Secretariat is of the view, upon evaluating the issue on commercial sensitivity , that given that potash salt is not sold in its raw form, disclosure of the volume and value of the refined product meets the overall objective of the requirement in order to contribute to any debate on the level of return to the public through taxes and royalties that is relevant in the context of Germany. With regard to encouraged aspects of this requirement, production data do not appear to be disaggregated by state/region, company or project for the mining and quarrying sector. At the same time, an interactive resource map on the D-EITI portal includes disaggregated production data per federal state for the oil and gas sector. Consulted stakeholders noted that disaggregation of production data for other commodities was not possible due to legal obstacles. This is also documented in the published statements of the government and the industry constituencies. While sources of information are clearly noted in EITI reporting, the methods for calculating production volumes and values do not appear to be specified.</p>
<p>Exports (Requirement #3.3)</p> <p><i>Fully met</i></p>	<p>The International Secretariat’s assessment is that Requirement 3.3 is fully met, as in the previous Validation. The Secretariat assesses that the objective of this requirement to ensure public understanding of extractive commodity(ies) export levels and the valuation of extractive commodity exports, as a basis for addressing export-related issues in the extractive industries, has been fully met.</p>

	<p>Export data are disaggregated by commodity and available in an open data format.</p> <p>The 2020 Germany EITI Report and the D-EITI portal provide information on export volumes and values for the following commodity groups: coal, crude oil and natural gas, quarried natural resources, and ores. It is noted that export data include re-exports. More detailed disaggregation by each exported commodity is available through the Transparency template and the website of the Federal Statistical Office of Germany. Export data are available in an open data format. According to EITI reporting, the crude oil and natural gas sector was the biggest contributor to the country's exports, through primarily re-exports of natural gas.</p> <p>The Secretariat notes that there are no export volumes and values for potash and potash salt products. The yearly report on extractive resources notes that this data has not been published since 2008 given data protection concerns.⁵⁶ However, via the UN Comtrade portal, export volumes and values are available only for potassium chloride (HS Code 310420). The total on the category "Mineral or chemical fertilisers, potassic" (HS Code 3104, one level above) is the same as for potassium chloride sub-category (HS Code 310420) which means that export data on other sub-categories (HS Code 310410, 310430, etc.) are not available (or equal to zero). Given the availability of third party sources on potash, D-EITI should consider those as 'third party source' in EITI disclosure.</p> <p>With regard to encouraged aspects of this requirement, export data are disaggregated per federal state, according to the four abovementioned broader commodity groups. It does not appear that export data are disaggregated by company and/or project. While sources of information are clearly noted in EITI reporting, the methods for calculating export volumes and values do not appear to be specified.</p>
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Corrective actions and recommendations

- To strengthen implementation of Requirement 3.2, Germany is encouraged to consider data analysis of exports by commodity. The MSG could also discuss the possibility of further disaggregation of production data, including by company or project. The MSG might also consider including or providing references to the methods for calculating export volumes and values for extractive commodities.
- To strengthen implementation of Requirement 3.3, Germany is encouraged to publish export data for potash- and potash salts. If that data cannot be published due to confidentiality concerns, the MSG is to propose ways to overcome that barrier, for example by referencing available COMTRADE data for potash and potash salts, given its materiality in terms of key extractive resource in Germany.

⁵⁶ Rohstoffsituation Deutschland 2022, footnote 3,
https://www.bgr.bund.de/DE/Themen/Min_rohstoffe/Downloads/rohsit-2022.pdf?__blob=publicationFile&v=4

Revenue collection (Requirements 4.1, 4.3, 4.4, 4.7, 4.8, 4.9)

Overview of progress in the module

Germany EITI reporting on revenues from the extractive industry relies on company disclosures. As a decentralised country, tax revenue is collected by different levels of government (regional and municipal), all of whom extractive companies would need to waive their tax confidentiality rights with. Germany also implements the EU Accounting Directive (2013/34), which obliges all companies substantially engaged in the extractives sector to disclose their payments to government. Germany EITI participates in the pilot on alternative approaches to EITI reporting⁵⁷ and has developed a risk-based approach to evaluate the robustness of the disclosures by companies and government entities, which in the Secretariat's view goes beyond the required aspects of the EITI Standard and has helped shape Board deliberations on the future of EITI reporting. While the payments disclosed are considered comprehensive, reliable and of good quality, this Validation has identified that more disaggregation is needed for disclosures of royalties and license fees, and that the MSG should demonstrate how the licenses are operationally and geographically interconnected to justify why extractive licenses are aggregated as single project at the regional level. Clarification by D-EITI could support Board deliberations on recognition of national payments disclosures regulations.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in the annex to this report.

EITI Requirement and assessment	Summary of progress in addressing the EITI Requirement
<p>Comprehensive disclosure of taxes and revenues (Requirement #4.1)</p> <p><i>Fully met</i></p>	<p>The Secretariat's assessment is that Requirement 4.1 is fully met, as in the previous Validation. The method of selecting material companies remains unchanged from the previous Validation. Germany's model of reporting fully relies on company disclosures. The Secretariat is of the view that the methodology applied, which is combined with an assurance methodology as part of the pilot for alternative reporting (see Requirement 4.9) allows the underlying objective, of ensuring the comprehensive disclosure of company payments and government revenues as a basis for detailed public understanding of the contribution of the extractive industries to government revenues, to be fulfilled. Stakeholders from all constituencies confirmed their confidence in the approach and considered the German pilot as demonstration of the complementarity of the EITI to national company reporting regimes.</p> <p>The description of each material revenue stream, related materiality definitions and thresholds are disclosed. On <i>materiality</i>, the sectors lignite, crude oil, natural gas, potash and salts, and quarried natural resources are covered through EITI reporting. For selection of companies, the MSG decided to include companies that are subject to the accounting directive ("BilRug"), meaning companies that are substantially engaged in the extractive industry, are</p>

⁵⁷ See Board decision on the pilot: <https://eiti.org/board-decision/2020-07>. The EITI International Secretariat regularly updates the Board on the implementation of the different approaches.

	<p>“large”.⁵⁸ The MSG also used the criteria of “substantial coverage” of the sector as criteria. From the understanding of the International Secretariat, this is achieved for lignite, crude oil, gas and potash and salts, but not for quarrying, as they are too small to report under BilRug.</p> <p>With regards to the <i>payment streams and thresholds</i>, the MSG follows the materiality threshold of EUR 100000. The payment streams covered are pursuant the BilRug (Commercial code Section 341r, article 3⁵⁹), and include the payment streams as required under EITI Requirement 4.1. The EITI considers “payments to the improvement of infrastructure” not to be part of the payment streams listed under 4.1.c, as those are direct payments from companies to the municipalities affected by extraction (see Requirement 6.1 and 4.3). The payment streams in section 341r HGB are required to be disclosed in the payment to government reports. The report does not provide an overview of links to reporting companies’ financial statements, which is encouraged. Though there is no government disclosures to compare with, the IA deems that it is implausible that there are any material omission of payment streams (Requirement 4.1.c).</p> <p>On <i>comprehensiveness of reporting companies</i>, the Secretariat follows the view of the MSG that the companies covered sufficiently cover the sector, and that most, if not all companies that fall under the BilRug reporting requirement, report to the EITI to fulfil satisfactory coverage.⁶⁰ The payment to government reports, which are publicly available under company filings at the company register, are the basis of scoping the companies. To ensure that all companies that fall into the definition of the directive indeed are part of the scope, the IA reviewed a commercial database where companies active in the extractive industry are listed and compared it to the list of companies that publish payment to government reports. Regarding the risk of non-disclosures of the payment reports by companies, the IA noted that company auditors would bring it to the management’s attention if the legal obligation to report wasn’t fulfilled in the year under review. Those audit reports which would contain such a notice are not public, but available to the regulator, which would request the company to comply with the regulation. The EITI Report explicitly states that there are some companies that publish reports but don’t participate in EITI reporting, but the MSG refrains from naming the non-reporting companies.⁶¹ During stakeholder consultations, the IA and government stakeholders stated that the reader could technically review the payment to government disclosures available in the commercial register and compare those with the EITI reporting companies, which all receive a separate reporting template from the EITI secretariat/IA. The coverage of companies was determined comparing the production figures of the reporting companies to the sector production disclosures, as comparing the mining and extraction royalties paid by</p>
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⁵⁸ Fulfilling at least two of the following three criteria: Balance sheet total of EUR 20 million, sales of more than EUR 40 million and yearly average of more than 250 employees.

⁵⁹ See https://www.gesetze-im-internet.de/englisch_hgb/englisch_hgb.html#p2177

⁶⁰ The Independent Administrator stated that there was one lignite company that did not publish a payment to government report and argued that it was below the materiality threshold of EUR 100000. It is the same lignite company that previously didn’t report. The impact on coverage is estimated to be 0.5% as demonstrated in table 13 on p. 180, 2020 EITI Report. The IA’s conclusion, followed by the MSG, is that this does not impact the comprehensiveness of the EITI report.

⁶¹ See EITI Report p. 177.

	<p>companies to the aggregate figures provided by the mining authorities and considered satisfactory by the MSG.⁶²</p> <p><i>Full government revenues</i> are based on estimations, with the exception of extraction royalties, where government disclosure is available for all regions. Total mine site royalties are only available for four regions. Tax income is based on estimations. The International Secretariat deems that the level of information is satisfactory, as it was deemed in the previous Validation where the reconciliation coverage was comparable and the assessment of this requirement found Germany “satisfactory”. To improve the estimation of coverage Germany could consider that all mining authorities with extractives activities publish total mine site (surface fees) and extraction royalties.</p> <p>While company scoping relies on payments to government reports, D-EITI currently still requests companies to submit reporting templates to the IA, who compares the figures to the public payment to government reports, and assesses the plausibility of omission of companies comparing the companies publishing payment to government reports with a private company database that identifies companies active in the extractives sector . The MSG is exploring if it could rely entirely on payment to government reporting data to reduce the reporting burden. D-EITI would continue playing the role of the aggregator of data from payments to governments, publishing the company data in excel format, but would not require companies to report these separately. In doing so, the MSG is encouraged to assess if the level of disaggregation is sufficient to meet Requirement 4.7.</p>
<p>Infrastructure provisions and barter arrangements (Requirement #4.3)</p> <p><i>Not applicable</i></p>	<p>The Secretariat's assessment is that Requirement 4.3 is not applicable, as in the previous Validation. The IA and MSG have assessed the applicability again in the elaboration of the 2020 EITI Report and came to the same conclusion as in previous years.</p> <p>There is a payment stream called “payment for the improvement of infrastructure” which is a mandatory payment made by lignite companies only (see Requirement 6.1). The MSG confirms that there is no evidence of agreements that provide the direct exchange of goods or services against the granting of oil, gas or mining licenses.</p>
<p>Transportation revenues (Requirement #4.4)</p> <p><i>Not applicable</i></p>	<p>The Secretariat's assessment is that Requirement 4.4 is not applicable, as in the previous Validation. The 2020 EITI Report states that there are no specific revenue streams for the use of oil and gas pipelines levied by government agencies.</p>
<p>Level of disaggregation (Requirement #4.7)</p> <p><i>Mostly met</i></p>	<p>The Secretariat's assessment is that Requirement 4.7 is mostly met. The Secretariat is of the view that the objective to ensure disaggregation in public disclosures of company payments and government revenues from oil, gas and mining that enables the public to assess the extent to which the government can monitor its revenue receipts as defined by its legal and fiscal framework, and that the government receives what it ought to from each individual extractive project, is not yet fully met. Stakeholders on the MSG are of the view that this requirement is fully met, including civil society. Non-MSG CSO members stated in consultations that disaggregation of revenues from royalties paid by project is needed to understand contributions of companies</p>

⁶² The coverage is over 95% for lignite, oil, gas, potash, rock and boiled salt. Table 13, p. 180

	<p>per extractives project. The International Secretariat also notes that mine site royalties (de facto license fees) and extraction royalties are aggregated in company reporting, even though their basis of imposition is different. On project level disclosures of these payment streams, the MSG is requested to demonstrate how extractives projects from the same company in one region are operationally interconnected, for the International Secretariat to conclude if project-level payments are correctly declared. In its comments to the draft report, the government noted that from its perspective, there is no interest of disaggregation by company for royalties and mine site levies given that the amount of levies is published in regional budget plans. The Secretariat notes that those are not disaggregated by company, which is a requirement. In its comments, civil society is of the view that the disaggregation on the level of companies is of public interest.</p> <p>Companies in their payments to government reports aggregate mine site royalties and extraction royalties. While BilRug allows companies to aggregate non-tax payments paid in cash to be aggregated, the EITI and IMF's classification of revenue streams the extractive industries categorises mine site royalties as license fees.⁶³ Mining authorities levy mine site fees (mine site royalties in the EITI Report) for on the mine site⁶⁴ covered by the license. While BilRug allows companies to aggregate non-tax payments paid in cash to be aggregated, the EITI and IMF's classification of revenue streams for the extractive industries categorises mine site royalties as license fees.⁶⁵ Mining authorities levy mine site fees (called mine site royalties in the EITI Report) for exploration only, based on surface size⁶⁶ of the mine site⁶⁷ covered by the license. Mining authorities also issue extraction royalties based on extraction licenses. The standard rate for extraction royalties is 10% of the market value of the extracted natural resource, variations by region may apply. The EITI requires disaggregation by company and each individual payment stream in accordance with the IMF's Government Finance Statistics (GFS). The EITI Report clarifies that the two revenue streams are levied at a project level, but for different activities, hence they should be disclosed as individual payment streams. This would be particularly useful to better gauge the coverage of EITI reporting companies, as the extraction royalties are listed per region, and for mine site royalties, for only four regions.⁶⁸ It would allow readers to understand what the percentage contribution mine site fees and extraction royalties make to the regional state budget.⁶⁹ Stakeholders from government said the reason is that the two payment streams are reported together in the annual revenue reporting is due to art. 341 if the commercial code. During consultations, company representatives confirmed that they were separately invoiced by the mining authorities and paid those amounts separately.</p> <p>The MSG has identified the mine site royalty and extraction royalty as the two payment streams which are levied on project level, as these relate directly to a</p>
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⁶³ (114521E)

⁶⁴ In German: Erlaubnisfeld, see p. 50 of EITI Report

⁶⁵ (114521E)

⁶⁶ The mine site fee is a surface rental fee and calculated based on the km² surface. It can increase from EUR 5 per square kilometre to a maximum of EUR 25 per year. The expenses incurred for prospecting can be set off against the mine site royalties/fees.

⁶⁷ In German: Erlaubnisfeld, see p. 50 of EITI Report

⁶⁸ See pages 71 and 72 of the EITI Report.

⁶⁹ While mine site royalties are appropriated into the respective Federal State's budget, the revenue from extraction royalties is used for inter-state financial equalisation.

	<p>company's extraction of natural resources. For the purposes of reporting, the disaggregation for project level adopted by the MSG corresponds to this extraction royalties and mine site fee notices. During consultations, notices were described as the request for payments to companies from the mining authorities based on preliminary company self-assessments on mine site fees and extraction royalties. Consultations clarified that these notices are separate for mine site fees and extraction royalties. While the amounts are calculated based on individual by licenses, the notice collects all due payments per license for one company per mining authority. The MSG argues that the notices (aggregation of payments per mining authority) are the basis for project, as the notices form the basis of the payment liability.</p> <p>The Secretariat's view is that while the definition of project adopted (as specified in Section 341r no. 5 of the German Commercial Code (HGB)) is in line with the EITI Standard, it is not sufficiently clear how the licenses listed in the notice are operationally and geographically interconnected. Requirement 4.7 states <u>[underline added]</u>: <i>A project is defined as operational activities that are governed by a single contract, license, lease, concession or similar legal agreement, and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, the multi-stakeholder group must clearly identify and document which instances are considered a single project. Substantially interconnected agreements are a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements with substantially similar terms that are signed with a government, giving rise to payment liabilities. Such agreements can be governed by a single contract, joint venture, production sharing agreement or other overarching legal agreement.</i>⁷⁰</p> <p>The International Secretariat is of the view that it is the license as the legal instrument confer rights that imply liabilities for mine site fees and extraction royalties. D-EITI has not yet publicly demonstrated how different extraction activities by companies, both for exploration and extraction, are operationally and geographically interconnected, to argue that they are indeed <i>substantially interconnected</i>. D-EITI has yet to clearly identify and document which instances are considered a single project for substantially interconnected agreements.⁷¹</p> <p>Whereas the mining code provides the framework for the amount of royalties that can be levied, it is the regions that transpose the national law as regulations. The EITI Report lists the different rates adopted by the different regions for different commodities and thus demonstrates the heterogeneity of rates across the regions. In addition, companies can request deductions on both mine site royalties and extraction royalties, which will lead to different amounts invoiced at constant extraction values. Hence the information on what extraction royalty rates apply and what deductions are made <i>per company</i> for their extractive operations is only known to the license-holding company and the licensing authority.</p>
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⁷⁰ The English translation of the definition

⁷¹ The accompanying note to the implementation of the accounting directive into national law [23/15](#) clearly lays out the intention of the project definition, in that projects of the same company need to be disaggregated. Translated by EITI, p. 110 to paragraph 341u, section 3 HGB-E.: *Paragraph 3 regulates the so-called project-related presentation of payments [...]. First of all, a clear designation of the project is required in order to distinguish this project from other projects of the same company. [...]*

	<p>Stakeholders from civil society on the MSG underlined that they have no doubts on the sound processes and invoicing of royalties by the mining authorities. However, stakeholders from the regions stated that it was not possible to conclude with the available information what the royalty rate applied to a specific extraction activity (project) in their region, and what that project contributed to the regional government revenue.</p>
<p>Data timeliness (Requirement #4.8)</p> <p><i>Fully met</i></p>	<p>The Secretariat's assessment is that Requirement 4.8 is fully met. The Secretariat's view is that the objective of ensuring that public disclosures of government revenues from oil, gas and mining are sufficiently timely to be relevant to inform public debate and policy making is fulfilled.</p> <p>The MSG may consider if it is feasible to request the disaggregated payment information from companies based on their payments to government reports, which are issued by listed companies within six months of publication of the financial statements, and for private companies within twelve months. This could further improve the timeliness of reporting.</p> <p>The International Secretariat notes that the 2021 EITI Report was not published online by 31 December 2023, which means that the timeliness was not respected for the report that was due after the period under review in this Validation. In its comments to the preliminary assessment, the MSG noted that the data as required by the EITI Standard was published by 31 December 2023 and only the PDF was published in January 2024.</p>
<p>Data quality and assurance (Requirement #4.9)</p> <p><i>Exceeded</i></p>	<p>The Secretariat's assessment is that Requirement 4.9 is exceeded. The EITI Report and the report on the pilot go into detail of the audit and assurance procedures that companies and government entities involved in the payment streams as laid out in the Accounting Directive comply with, which is an encouraged aspect of the requirement. This allows the public to gauge the robustness of government systems accounting for extractive revenues and risk of misstatement of revenues. Stakeholders from the MSG were of the view that the risk-based procedure developed under the pilot approach provides a very nuanced picture of the assessment and collection of the extraction royalties and the associated external and parliamentary controls and has built their capacity.</p> <p>The MSG's alternative approach to reporting is explained in detail in Chapter 10 of the EITI Report and on in a report on the pilot elaborated by the IA.⁷² The EITI Report includes an assessment on the comprehensiveness and reliability of the financial data presented. The report indicates the coverage of company reporting, as noted under Requirement 4.1., including that while not all identified companies complied with the reporting request, it did not have a material impact on the comprehensiveness of disclosures.</p> <p>The EITI Report and the report on the pilot go into detail of the audit and assurance procedures that companies and government entities involved in the payment streams as laid out in the Accounting Directive comply with, which is encouraged.</p> <p>Even though the payment to government reports, on which the disclosures in the EITI Report are based on, are not subject to statutory audits, the reporting</p>

⁷² See <https://d-eiti.de/Downloads/Report%20of%20the%20IA%20on%20the%20D-EITI%20Payment%20Reconciliation%20Pilot.pdf>

	<p>companies comply with the audit requirements for companies for financial statements.⁷³ The report notes that all reporting companies have filed their annual financial disclosures with the regulator and where those can be found publicly available.⁷⁴ It includes an in-depth review of the controls that are in place for governments, for the report under review in particular for the collection of corporate tax and mine site fees and extraction royalties.⁷⁵ The EITI Report includes a section with recommendations from the IA on the further development of the pilot, including lessons learnt from the reporting pilot.</p> <p>The pilot approach replaces reconciliation as the quality-assurance mechanism with a multi-level system-based approach of information gathering and analysing the processes and controls relevant for the management of revenues. The method was developed by the IA in close cooperation with the national secretariat and the MSG, which the latter endorsed as part of the elaboration of the EITI Report. Beyond the MSG's wish to advance EITI policy at the international level, the risk-based approach to reporting is also aimed at freeing up MSG resources to focus on other topics of relevance. Stakeholders confirm that for the first three years, the development of the pilot had been very time intensive, but that they expect as the approach has matured, and stakeholders have a better understanding of the approach and findings, the time investment will be freed for other EITI activities.</p>
Corrective actions and recommendations	
<ul style="list-style-type: none"> • To strengthen implementation of Requirement 4.1, Germany is encouraged to publish full mine site royalties to be able to better gauge the coverage of reporting companies against full government non-tax revenues. To strengthen implementation of Requirement 4.1, the MSG may consider to provide an overview of where to find the audited financial statements for each reporting company for the year under review. To strengthen implementation, Germany is encouraged to present an analysis for fluctuating payments for the period under review. Germany is encouraged too publish government site total figures on mine site royalties. • In accordance with Requirement 4.7, Germany is required to ensure the disaggregation of the payment mine site fees from extraction royalties. Germany is required to demonstrate how substantially interconnected licenses are operationally and geographically interconnected, including the list of those interconnected licenses. To strengthen implementation, Germany is encouraged to disaggregate key data on the level of regions (Bundesländer), to ensure clear understanding of the contribution of the extractive industry to the regional state budget. • To strengthen implementation or Requirement 4.8, Germany is encouraged to explore more timely payment disclosures. 	

Revenue management (Requirements 5.1, 5.3)

Overview of progress in the module

EITI reporting and the D-EITI portal describe the allocation of extractive revenues in Germany, noting that all extractive revenues are distributed to the federal government, federal state and

⁷³ See p. 157, 2020 EITI Report and assessment of Requirement 4.9.

⁷⁴ but do not provide the direct link to the section on the company register

⁷⁵ See also EITI 2020 Report pages 192-193

municipality budgets. A description of the country’s budget and audit processes and links to the publicly available information on budgeting, expenditures and audit reports are provided. However, there are opportunities to strengthen disclosures for federal states and municipalities.

Additionally, the 2020 Germany EITI Report includes additional revenue management and expenditure information that can further public understanding and debate around issues of revenue sustainability and resource dependence.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in the annex to this report.

EITI Requirement and assessment	Summary of progress in addressing the EITI Requirement
<p>Distribution of extractive industry revenues (Requirement #5.1)</p> <p><i>Fully met</i></p>	<p>The International Secretariat’s assessment is that Requirement 5.1 is fully met, as in the previous Validation. The objective of this requirement is to ensure the traceability of extractive revenues to the national budget and ensure the same level of transparency and accountability for extractive revenues that are not recorded in the national budget. Available documentation and stakeholder consultations indicate that this objective has been fully met, noting opportunities for more comprehensive disclosure of subnational budget information.</p> <p>EITI reporting and the D-EITI portal provide an overview of distribution of extractive industry revenues in Germany. According to the Basic Law (GG), extractive revenues are distributed between different administrative levels – the federal government, federal states and municipalities – and recorded in respective budgets. The Federal Ministry of Finance (BMF) provides information on the federal budget on its website. Additionally, information on federal state and municipal budgets is publicly available through the open budget portal (Offener Haushalt), an NGO driven website (Open Knowledge Foundation, OKF). However, the website is not government hosted and is no longer updated with data of the period under review (2020). Available documentation also provides an overview of the financial equalisation mechanism (see <i>Requirement 5.2</i>).</p> <p>Regarding encouraged aspects, the Transparency template includes a reference to the BMF legislation (for example, Budget Law for 2022) that provides information on the national revenue classification system.</p> <p>In its comments to the draft report, the MSG submitted a separate annex listing the regional budgets where surface rent and royalties are listed in some cases in aggregated form, in some case disaggregated. The overview is available as part of the MSG comment documentation.</p>
<p>Revenue management and expenditures (Requirement #5.3)</p> <p><i>Not assessed</i></p>	<p>The International Secretariat’s assessment is that Requirement 5.3 remains not assessed, given that several encouraged aspects of this requirement remain to be addressed by Germany EITI.</p> <p>The 2020 Germany EITI Report and the Transparency template note that extractive revenues are not earmarked for specific purposes. EITI reporting provides information on the country’s budget and audit processes. The</p>

	<p>Transparency template confirms that all government entities are subject to independent audits by public audit offices. Links to publicly available information about budgeting and expenditure are provided. However, it appears that the portal containing information on the federal state and municipal level is outdated (<i>see Requirement 5.1</i>).</p> <p>EITI reporting also includes additional information on issues of revenue sustainability and resource dependence, including on state subsidies and tax concessions, sustainability in the extraction of raw materials, energy transition, contribution of domestic natural resources extraction to security of supply and Germany's role in the international natural resources market. Consulted stakeholders noted that such disclosures were of great value for furthering public understanding and debate around emerging policy areas and revenue management.</p>
Corrective actions and recommendations	
<ul style="list-style-type: none"> • To strengthen implementation of Requirement 5.1, Germany is encouraged to systematically disclose budget allocation information for federal states and municipalities. • To strengthen implementation of Requirement 5.3, Germany is encouraged to systematically disclose information on budgeting, expenditures and audit reports for federal states and municipalities. 	

Subnational contribution (Requirements 4.6, 5.2, 6.1)

Overview of progress in the module

Germany has made progress in maintaining disclosures on subnational payments, in particular with regard to trade and lease payments. Available documentation and stakeholder consultations indicate that subnational transfers are not applicable in Germany due to horizontal redistribution of relevant revenue streams, rather than transfer between central and local government entities.

Germany EITI has conducted a comprehensive review of environmental payments and identified that none of relevant revenue streams were material. There appear to be opportunities for further analysis of applicable voluntary social expenditures and available disclosure mechanisms.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in the annex to this report.

EITI Requirement and assessment	Summary of progress in addressing the EITI Requirement
<p>Subnational payments (Requirement #4.6)</p> <p><i>Fully met</i></p>	<p>The International Secretariat's assessment is that Requirement 4.6 is fully met, as in the previous Validation. Available documentation and stakeholder consultations suggest that the objective, to enable stakeholders to gain an understanding of benefits that accrue to local governments through</p>

	<p>transparency in companies' direct payments to subnational entities and to strengthen public oversight of subnational governments' management of their internally generated extractive revenues, is fully met.</p> <p>Available documentation suggests that Germany has two levels of subnational governments – federal states (regions) and municipalities, with no extractive revenues collected by the central government. Consulted stakeholders indicated that only payments to municipalities were considered as subnational payments due to administrative division in Germany and did not express any concerns related to the quality of subnational payment data disclosed through EITI reporting.</p> <p>According to the 2020 D-EITI Report, trade tax is the main direct payment to the municipality level. Additionally, lease payments and payments to improve the infrastructure could be paid on a federal state or municipality level. The 2020 D-EITI Report notes that trade tax and lease payments (where applicable) are the only material subnational payments, and notes applicable legal and regulatory provisions. The report also provides the total amount of trade tax from the extractive sector as well as data on trade and lease tax disaggregated per each reporting company in 2020. Additionally, the D-EITI reporting portal and the 2020 D-EITI Report provide detailed information on trade tax for 20 municipalities with the highest trade tax payments from reporting companies, disaggregated by paying company and receiving municipality. The selected scope appears to go beyond the Board decision confirming the proposal from the multi-stakeholder group in Germany on the materiality threshold for direct subnational payments (see here).</p> <p>The 2020 D-EITI Report also clarifies that previous EITI reporting analysed the payments for improvement of infrastructure that are primarily applicable to the lignite sector. The report notes that information on the recipients and purpose of such payments can be partially found in the companies' payment reports. Stakeholder consultations indicated that these payments cover compensation for using land and infrastructure and were part of operational planning which was publicly available (see Requirement 6.1). Consulted stakeholders did not express any concerns about the exclusion of this revenue stream from the scope of EITI reporting.</p>
<p>Subnational transfers (Requirement #5.2)</p> <p><i>Not applicable</i></p>	<p>The International Secretariat's assessment is that Requirement 5.2 is not applicable. Previously, progress on this Requirement was assessed as "satisfactory progress". However, based on available documentation and stakeholder consultations, the Secretariat considers that Requirement 5.2 is not applicable.</p> <p>The Transparency template notes that tracking transfers is not possible in practice because relevant extractive revenue streams are not earmarked and cannot be distinguished from revenue collected from other sectors. This has been also confirmed during stakeholder consultations. Available documentation and stakeholder consultations indicated that royalties could be redistributed between different federal states through the financial equalisation mechanism which combines several different revenue streams from various sectors. Information about the financial equalisation mechanism is available on the website of the Ministry of Finance (MoF), including basic principles of the revenue-sharing formula. The website also includes detailed annual data about actual equalisation transfers, disaggregated by a federal state. Consulted</p>

	<p>stakeholders from government alleged that some federal states might lower royalty rates to avoid redistribution of revenues to other states with less revenues, an issue that D-EITI could potentially investigate in future.</p> <p>EITI reporting and stakeholder consultations indicated that reallocation of other revenue streams (trade taxes, corporation taxes) could also take place through a specific allocation and redistribution mechanism. Available documentation suggests that such revenue streams are also merged with revenues collected from other sectors.</p> <p>Based on the abovementioned information, the Secretariat assesses that the EITI Requirement 5.2 on subnational transfers is not applicable in Germany. While redistribution of revenues appears to happen on both federal state and municipality levels, such revenues are not earmarked and such equalisation mechanism is not specific to extractive revenues only.</p>
<p>Social and environmental expenditures (Requirement #6.1)</p> <p><i>Not applicable</i></p>	<p>The International Secretariat’s assessment is that Requirement 6.1 is not applicable. This requirement was found to be not applicable in the previous Validation. During stakeholder consultations, it emerged that such infrastructure improvements could be included in operation plans. In its comments to the draft report, the MSG clarified these payments are voluntary and not tied to the granting of the license.</p> <p>Payments for the improvement of infrastructure are only applicable to the lignite sector. Available documentation does not appear to clearly confirm if mandatory social expenditures are applicable in Germany. Stakeholder consultations with companies confirmed that infrastructure payments to host communities can be required of lignite companies as part of the regulatory approval of their operational plans. Consultations further confirmed the existence of voluntary social payments which are not covered in the EITI Report.</p> <p>The EITI Report includes the “payment for the improvement of infrastructure” as a payment stream, which is disclosed in accordance with the Accounting Directive, for payments that are above EUR 100,000. The MSG classified the payment for the improvement of infrastructure as “Compulsory transfers to government (infrastructure and other) (1415E4)”. While lignite companies in Germany do not pay royalties (and licenses do not have an expiration date), it is the Secretariat’s understanding that companies are subject to mandatory payments to the improvement of infrastructure as part of the approval of operational plans. Stakeholder consultations also indicated that this revenue stream might be paid to both government entities and third parties.</p> <p>In its comments to the draft report, the MSG noted that the disclosures are not applicable under 6.1 but 4.1. As the recipients of those payments are published in the payment to government report (LEAG and RWE) the Secretariat concludes a “not applicable” for 6.1 with a strategic recommendation for the MSG to ascertain if indeed some of the payments as declared under “payments for the improvement of infrastructure” are defined in the operation plans, such as the rerouting of a highway to give way to a pit extension. Those interventions seem to be linked closely with the approval of the plan, and hence the continued validity of the license. D-EITI may also wish to make the disaggregated payment data from the company disclosures available in open format (currently it’s a scanned PDF) as only the aggregated values are available in the summary data template, with no specific recipient. The companies may wish to distinguish</p>

	<p>between payments that need to be made in context of operation plan (rerouting of highway to give way to the pit) and voluntary payments (financing of social programs). Depending on the outcome, the MSG may wish to distinguish those payment flows between the IMF GFS classifications Mandatory social payments as “Compulsory transfers to government (infrastructure and other), 1415E4” and Voluntary social payments as “Voluntary transfers to government (donations), 144E1”.</p> <p>With regard to environmental payments, the Transparency template notes that a working group had been established to agree on reporting on relevant revenue streams. Stakeholder consultations confirmed that the working group reviewed all relevant environmental payments and identified water abstraction fees as the only mandatory environmental payment relevant to the extractive sector. It was noted that the MSG considered this revenue stream as not material, and therefore agreed that water abstraction fees to be reported as a total and disaggregated by company where payments were above the set threshold of EUR 100,000.</p>
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Corrective actions and recommendations

- To strengthen implementation of Requirement 5.2, Germany is encouraged to consider, on an annual basis, whether there are transfers between national and subnational government entities that are related to extractive sector revenues and mandated by a constitution, statute or other revenue-sharing mechanism. Where material, relevant disclosures are expected to be addressed in EITI reporting in accordance with Requirement 5.2.
- To strengthen implementation of Requirement 6.1, Germany should clarify if any of the payments for the improvement of infrastructure from companies are tied to as the approval of an operation plan. Companies are encouraged to publish the infrastructure payments in open format. To further strengthen implementation , the MSG is encouraged to disclose discretionary social expenditures and environmental payments, if applicable, or to summarise the ones that occurred in the period under review, by company and receiving entity, or link to where this information is disclosed.

Background

Overview of the extractive industries

An overview of the extractive industries is accessible on the [country page](#) of the EITI webpage for Germany.

History of EITI implementation

The history of implementation is accessible on the [country page](#) of the EITI webpage for Germany.

Explanation of the Validation process

An overview of the Validation process is available on the EITI website.⁷⁶ The [Validation Guide](#) provides detailed guidance on assessing EITI Requirements, while the more detailed [Validation procedure](#) include a standardised procedure for undertaking Validation by the EITI International Secretariat.

The International Secretariat's country implementation support team include Mark Burnett and Lisa Sviland, while the Validation team was comprised of Christina Berger, Sebastian Salah and Olesia Tolochko. The internal review for quality assurance was conducted by Alex Gordy, Gilbert Makore, Bady Baldé and Mark Burnett.

Confidentiality

The detailed data collection and assessment templates are publicly accessible, on the internal Validation Committee page here.

The practice in attribution of stakeholder comments in EITI Validation reports is by constituency, without naming the stakeholder or its organisation. Where requested, the confidentiality of stakeholders' identities is respected, and comments are not attributed by constituency. This draft report is shared with stakeholders for consultation purposes and remains confidential as a working document until the Board takes a decision on the matter.

Timeline of Validation

The Validation of Germany commenced on 1 October 2023. A public call for stakeholder views was issued on 1 July 2023. Stakeholder consultations were held virtually on 16-17 November 2023. The draft Validation report was finalised on 8 April 2024. Following comments from the MSG received on 16 May 2024, the Validation report was be finalised for consideration by the EITI Board on 12 June.

⁷⁶ See <https://eiti.org/validation>

Resources

- Validation data collection file – [Stakeholder engagement](#)
- Validation data collection file – [Transparency](#)
- Validation data collection file – [Outcomes and impact](#)