

Validation of Germany
Final Validation Report
Cowater Sogema Independent Validator
17th March, 2019

1. EXECUTIVE SUMMARY

Germany became an EITI Candidate in February 2016, after submitting its candidature application in December 2015. Germany has published one EITI Report, covering the year 2016. The report was published in August 2017 and updated in October 2018. On 4 September 2018, the Board approved Germany's request for early Validation and agreed that Validation under the 2016 EITI Standard would commence on 1 November 2018.

This report presents the findings and initial assessment of the International Secretariat's data gathering and stakeholder consultations. The International Secretariat has followed the Validation Procedures and applied the Validation Guide in assessing Germany's progress with the EITI Standard. While the assessment has not yet been reviewed by the MSG or been quality assured, the Secretariat's preliminary assessment is that four of the requirements of the EITI Standard have not been fully addressed in Germany. The recommendations and suggested corrective actions identified through this process relate in particular to licenses (see Requirements 2.2 and 2.3) and comprehensiveness (see Requirements 4.1 and 4.5).

This validation report follows on from a quality assurance review of the International Secretariat's initial assessment and a review of feedback on the draft report received from the MSG. The Validator agrees that Germany has satisfied the requirements of the EITI Standard for all but four of the requirements: meaningful progress has been made for requirements 2.2, 2.3, 4.1 and 4.5.

2. BACKGROUND

The extractive sector is not significant to the German economy as a whole but bears some importance in regions and towns where production is concentrated. There is relatively modest, and mostly declining, production of oil, gas, coal, salt and quarried resources. Consumption of these resources is mainly domestic. Due to its harmful impact on the climate, especially lignite (brown coal) production has been at the centre of controversy in recent years.¹

The government is ending its subsidies to hard coal mining at the end of 2018. In 2016, the Federal Government alone subsidised the hard coal industry by over EUR 1.2 billion. In addition, extractive companies benefit from the electricity and energy tax concessions provided by the government.² Total government gross revenue from the sector is estimated to have been EUR 490 million in 2016.³

¹ See e.g. (Vaughan, 2018)

² Section 7 of the 2016 EITI Report.

³ Section 5 of the 2016 EITI Report.

Germany is a significant importer and consumer of oil, gas and minerals. The government is aiming to reduce its dependence on fossil energy, which will in the medium and long term affect oil, gas and coal imports and domestically especially the production of lignite.

In line with the Validation Guide, the International Secretariat carried out the first phase of validation—initial data collection, stakeholder consultations, and preparation of their initial evaluation of progress against the EITI requirements (the “Initial Assessment”). Cowater Sogema was appointed as the independent Validator to evaluate whether the Secretariat’s work was carried out in accordance with the Validation Guide. Cowater Sogema’s principal responsibilities as Validator are to review and amend the Initial Assessment, as needed, and to summarize its independent review in this Validation Report for submission to the Board through the Validation Committee.

1. Work Performed by the Independent Validator

The Secretariat’s Initial Assessment was transmitted to Cowater Sogema on 21st December, 2018. Our Validation Team undertook this phase of the Validation process through: (1) In-depth review and marking up of the EITI Assessment by each team member; (2) Detailed review and comments by the Multi-Stakeholder Specialist of Requirements 1 and the Civil Society Protocol; (3) Detailed review and comments by the Financial Specialist of Requirements 4, 5 and 6; (4) Consolidation of reviews and the production of the draft Validation Report, sent to the International Secretariat on the 15th January, 2019.

2. Comments on the Limitations of the Validation

The Validator carefully reviewed the Secretariat’s Initial Assessment. With regards to Requirements 2.2 and 2.3 the D-EITI MSG interprets “available upon request” to equate to “publicly available”. The precedent within EITI is that available upon request falls short of publicly available, which is why the Validator has rejected in both cases the request to upgrade the assessment. However, the Validator suggests that a clarification on the definition of publicly available is developed and published by the International Secretariat.

3. Comments on the International Secretariat’s Initial Assessment

The initial data collection, stakeholder consultations, and drafting of the Initial Assessment were generally undertaken by the International Secretariat in accordance with the 2016 Validation Guide. The data collection took place across three phases. Firstly, a desk review of the available documentation relating to the country’s compliance with the EITI Standard, including but not limited to:

- The EITI work plan and other planning documents such as budgets and communication plans;
- The multi-stakeholder group’s Terms of Reference, and minutes from multi-stakeholder group meetings;
- EITI Reports, and supplementary information such as summary reports and scoping studies

- Communication materials;
- Annual progress reports; and
- Any other information of relevance to Validation.

Secondly, a country visit, which took place on 19-23 November 2018. All meetings took place in Berlin or as teleconferences. The secretariat met with the multi-stakeholder group and its members, the Independent Administrator and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the multi-stakeholder group. In addition to meeting with the MSG as a group, the Secretariat met with its constituent parts (government, companies and civil society) either individually or in constituency groups, with appropriate protocols to ensure that stakeholders are able to freely express their views and that requests for confidentiality are respected.

Finally, the International Secretariat prepared a report making an initial assessment of progress against requirements in accordance with the Validation Guide. The initial assessment did not include an overall assessment of compliance.

2. GENERAL COMMENTS

- **Progress in EITI Implementation**

There is limited domestic demand for EITI data, which is bound to lead to limited impact. EITI has improved dialogue between stakeholders and collated in one place data that was previously scattered across different sources. There is potential for the EITI to contribute to ensuring that mandatory payment reports and beneficial ownership data are accessible and user-friendly. Stakeholders see value in using domestic implementation as a means to encourage other resource-rich countries to implement the EITI and high social and environmental standards. Whether domestic implementation is the most effective and cost-efficient way to promote this objective, is yet to be seen.

The key strength of D-EITI is a well-functioning MSG and the will to go beyond EITI Requirements to address issues relevant in the German context. The MSG is one of very few platforms where the three constituencies take decisions as equal partners. The MSG authored the non-financial sections of the 2016 EITI Report, which involved intensive debate about scope and wording. The inclusion of information about subsidies, environmental issues and renewable energy increases the relevance of the report.

- **Impact of EITI Implementation**

The challenge is making EITI relevant in a resource-poor setting. While going beyond the Standard partly addresses this, the most pressing issue in German public debate, phasing out the use of lignite, is not within the scope of discussions or reporting. The federal structure and strong tax secrecy make reporting challenging. As core elements of the Standard, such as licensing and reconciliation, are of little interest to stakeholders, meeting requirements becomes a technical exercise with little meaning for domestic resource governance.

The Independent Validator's Assessment of Compliance

EITI Requirements		LEVEL OF PROGRESS				
		No progress	Inadequate	Meaningful	Satisfactory	Beyond
Categories	Requirements					
MSG oversight	Government engagement (#1.1)					
	Industry engagement (#1.2)					
	Civil society engagement (#1.3)					
	MSG governance (#1.4)					
	Work plan (#1.5)					
Licenses and contracts	Legal framework (#2.1)					
	License allocations (#2.2)					
	License register (#2.3)					
	Policy on contract disclosure (#2.4)					
	Beneficial ownership (#2.5)					
	State participation (#2.6)					
Monitoring production	Exploration data (#3.1)					
	Production data (#3.2)					
	Export data (#3.3)					
Revenue collection	Comprehensiveness (#4.1)					
	In-kind revenues (#4.2)					
	Barter agreements (#4.3)					
	Transportation revenues (#4.4)					
	SOE transactions (#4.5)					
	Direct subnational payments (#4.6)					
	Disaggregation (#4.7)					
	Data timeliness (#4.8)					
	Data quality (#4.9)					
Revenue allocation	Distribution of revenues (#5.1)					
	Subnational transfers (#5.2)					
	Revenue management and expenditures (#5.3)					
Socio-economic contribution	Mandatory social expenditures (#6.1.)					
	SOE quasi-fiscal expenditures (#6.2)					
	Economic contribution (#6.3)					
Outcomes and impact	Public debate (#7.1)					
	Data accessibility (#7.2)					
	Follow up on recommendations (#7.3)					
	Outcomes and impact of implementation (#7.4)					

Figure 1 – Validator's assessment

Legend to the assessment card

	The country has made no progress in addressing the requirement. The broader objective of the requirement is in no way fulfilled.
	The country has made inadequate progress in meeting the requirement. Significant elements of the requirement are outstanding and the broader objective of the requirement is far from being fulfilled.
	The country has made progress in meeting the requirement. Significant elements of the requirement are being implemented and the broader objective of the requirement is being fulfilled.
	The country is compliant with the EITI requirement.
	The country has gone beyond the requirement.
	This requirement is only encouraged or recommended and should not be taken into account in assessing compliance.
	The MSG has demonstrated that this requirement is not applicable in the country.

3. DETAILED FINDINGS

The Validator does not disagree with the findings of the Initial Assessment.

4. RECOMMENDATIONS

Corrective actions

- In accordance with Requirement **2.2**:
 - (1) Germany is required to publish information about mining licenses awarded or transferred in the period covered by the EITI Report (Requirement 2.2.a.iii).
 - (2) It is required that the MSG considers whether any non-trivial deviations from the legal framework took place in the award or transfer of licenses in the period covered by the EITI Report (Requirement 2.2.a.iv). The MSG may wish to assess possible deviations by providing an overview of license awards and transfers challenged in court and references to the rulings, where already available.
- In accordance with Requirement **2.3**, Germany is required to ensure and demonstrate that states maintain a publicly available register or cadastre system that includes at least licenses held by companies covered in the EITI Report. Alternatively, any outstanding information can be disclosed in the EITI Report or the D-EITI online portal. If practical barriers prevent comprehensive disclosure of information on licenses pertaining to non-material companies, these should be explained in the EITI Report.
- In order to comply with Requirement **4.1**:
 - (1) Germany is required to ensure that companies making material payments to the government participate in EITI reporting. It is recommended that D-EITI focuses on engaging companies that mandatory payment reports demonstrate made the largest payments. If companies refuse to participate despite efforts made by D-EITI and the company constituency, D-EITI should disclose material omissions in the EITI Report and refer to data published in mandatory payment reports.
 - (2) Germany is required to publish the names of material companies that declined to participate in EITI Reporting and assess the effect of their omissions on the comprehensiveness of the EITI Report.
- In accordance with Requirement **4.5**, Germany is required to ensure that Südwestdeutsche Salzwerke AG participates in future EITI Reports. Germany is encouraged to ensure that the company provides comprehensive disclosures through its mandatory payment reports.

Strategic recommendations

- To strengthen implementation, the International Secretariat recommends that the government considers increasing personnel resources on the EITI at the lead agency, the Federal Ministry for Economic Affairs and Energy (BMWi) (Requirement **1.1**).

- To strengthen implementation, the International Secretariat recommends that company representatives support the national secretariat in the outreach efforts to include more material companies in the reporting process (Requirement **1.2**).
- To ensure continued participation of civil society, the government is encouraged to continue its financial support to civil society organisations (Requirement **1.3**).
- To ensure the relevance of EITI implementation, the MSG is encouraged to continue to address topics beyond the EITI Standard that are of national interest (Requirement **1.4**).
- To further strengthen the transparency of the EITI process in Germany, the MSG is encouraged to fully cost all activities in the work plan that have a financial implication (Requirement **1.5**).
- To further improve the accessibility of information on the legal framework and fiscal regime (Requirement **2.1**), D-EITI may wish to add links to relevant federal and state-level legislation on the online portal.
- D-EITI is encouraged to add a link to the report containing awards and transfers of oil and gas licenses in future EITI Reports (Requirement **2.2**).
- To strengthen implementation of Requirement **2.4**, D-EITI is encouraged to review state practices on granting access to mining authorisation books.
- To strengthen implementation of requirement **2.5**, Germany is encouraged to adopt a beneficial ownership data standard that improves the accessibility and usability of the Transparency Register. As the register already exists, it is recommended that it is made publicly available without legitimate interest without delays. Germany is also encouraged to make beneficial ownership information on all legal entities, including trusts, publicly available.
- The MSG is encouraged to revisit the issue of state participation regularly, to review the applicability of Requirements **2.6** and **6.2**.
- To strengthen implementation of Requirement **3.2**, D-EITI may wish to include production values in the online interactive map. As a result, production data could be excluded from the EITI Report.
- To make implementation more cost-efficient, it is recommended that D-EITI undertakes, and publishes, an assessment of the mandatory disclosure reports in the view of moving towards mainstreaming EITI disclosures. The MSG may wish to provide recommendations on strengthening the accessibility of the mandatory payment reports or publish the data in open format in the D-EITI online portal. The MSG may also wish to consider asking companies to disclose data for the mandatory payment reports by revenue stream, in line with EITI Requirements (Requirement **4.1**).
- To strengthen the implementation of Requirement **4.7**, the MSG is encouraged to note in the EITI Report that the revenue data is available in a more granular form on the D-EITI website.
- In order to improve the timeliness of disclosures (Requirement **4.8**), Germany is encouraged to

disclose non-financial data on government websites or the D-EITI portal as soon as it becomes available.

- Germany may wish to seek the EITI Board's approval for an adapted implementation request to mainstream EITI disclosures in line with Requirement **4.9.c**.
- To strengthen implementation of Requirement **5.1**, all municipalities are encouraged to make budget information publicly available in open data format.
- To increase public understanding about subnational transfers (Requirement **5.2**), the MSG is encouraged to include in the EITI Report or the D-EITI portal links to information about the financial equalisation mechanism and annual reallocation decisions.
- A description of extractive revenues earmarked for specific programmes or geographic regions (Requirement **5.3**), should be provided and this should include a description of the methods for ensuring accountability and efficiency in their use as required under this provision
- To strengthen implementation of Requirement **6.1**, the MSG is encouraged to cover voluntary social expenditures in EITI reporting.
- To strengthen the implementation of Requirement **6.3**, Germany may wish to consider disclosing the contribution of the extractive sector to the GDP of resource-rich states. The MSG may also wish to consider presenting subsidies and tax concessions provided to extractive companies side-by-side with total government revenue from the sector.
- To strengthen the implementation of Requirement **7.1**, the MSG is encouraged to review the communications strategy. The MSG is encouraged to assess whether there is interest in revenue data on the local level, as well as to assess the comprehensiveness and user-friendliness of data on beneficial ownership and licenses.
- The MSG may wish to consider exploring other content forms to present information on their report portal, to make it more engaging, and consider adding a search function to the page (Requirement **7.2**).
- To increase the relevance and interest in the Germany may wish to consider including more recent data on the report portal than the year of report covered, if that data is available (Requirement **7.2**).
