

EITI Validation of Germany 2023, Draft Validation Report – Feedback D-EITI MSG

The D-EITI MSG thanks the validation team of the international EITI Secretariat for their guidance and support during the validation process and their efforts to develop the draft validation report. The D-EITI MSG thanks for the overall high degree of esteem with regard to the dedicated and committed work of all participants who contribute to the D-EITI process.

Furthermore, the D-EITI MSG is delighted about the particularly positive preliminary assessment of the MSG governance (1.4) and the data quality with the assurance-mechanism developed by the pilot approach (4.9).

The proposed corrective actions and recommendations are much appreciated by the D-EITI MSG and provide a very valuable input for the progress and work plan of the MSG.

This document provides feedback of the D-EITI MSG concerning the draft assessment of progress in implementing the EITI Standard, dated 8th of April 2024.

In the first part of this document the MSG wishes to comment on specific requirements. The second part addresses the questions posed by the international EITI secretariat to the MSG within the Transparency template.

The MSG kindly requests the Board to exercise its right to consider some supplementary information as outlined below.

1. D-EITI MSG comments on specific requirements

Requirement (Assessment)	Passage in the draft assessment	Feedback D-EITI MSG
1.4 Multi-stakeholder group (Exceeded)	“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.” - page 20	Added content: By now the nomination process per constituency is codified on the d-eiti.de website: Multi-Stakeholder Group - D-EITI .
	“No per diems are paid, but travel expenses are covered, and those are published on the website.” – page 22	Clarification: Travel expenses are covered by the annual budget, which is published online on the d-eiti.de website. However, travel expenses are not listed separately.
2.2- Contract and license allocations (mostly met)	“The EITI report does not describe the processes of 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.” – p. 30	<p>The stakeholder group of government representatives in D-EITI MSG (hereinafter “the government”) intends to propose adding a section in chapter 3 of the D-EITI Report about the provisions in BBergG regarding transfer of licences and of mining property to the MSG in the course of the next update process of the D-EITI reporting. According to para 22 of the BBergG, a transmission of a licence is only possible with the consent of the mining authority. Furthermore, the law requires a written contract of the old and new licensee. It also refers to reasons which stand against a transfer.</p> <p>Against this background, the government kindly requests to reassess whether the gap justifies a regression from previous validation to “mostly met”, especially as the stakeholders did not have concern on this topic and the official version of the provisions is always publicly accessible on: https://www.gesetze-im-internet.de/bbergg/</p> <p>Furthermore, the government notes that Länder provide publicly available information on licence transfers and changes. For examples of detailed description of the procedures see Hesse or Saxony. An example of publicly available full documents on changes in licence owners is Saxony-Anhalt.</p>
2.2- Contract and license allocations (mostly met)	“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.” -p. 30	Due to a very large number of effective and expired mining authorisations in North Rhine-Westphalia and a frequent change of holders of rights in some cases, the Open Data file only lists the current holder of rights. Previous holders of mining authorisations can be identified via the mining

		<p>authorisation book and files of mining authority in North Rhine-Westphalia if enquired. The research effort depends on the case.</p> <p>The government notes that the general relevance of mining also varies in different Länder. In line with the constitutional principle of efficiency, the reasonable detail of available data in general depends on the relevance of the mining sector in a particular Land.</p> <p>The government intends to bring the topic of updating the required licence data according to corrective actions from validation for discussion to the Federal Government-Länder-Committee on Mining.</p>
<p>2.2- Contract and license allocations (<i>mostly met</i>)</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. (...) Within the reporting period, no deviations were reported.” – p. 30.</p>	<p>The government notes that in the course of the annual data enquiry it was reported by the mining authorities that there were no deviations. This result was presented to the MSG. It was also confirmed during validation. As deviations do not exist, the information on “checks” is not relevant for D-EITI.</p> <p>The MSG is legally and practically not in the position to carry out a competent assessment on the efficiency of licencing procedures.</p> <p>Furthermore, constitutional provisions and Federal Mining Law do not give the Federal Government the right to supervise the mining authorities of the Länder. Implementing the EITI standard, the federal system has to be respected.</p>
<p>2.4 – Contracts (<i>mostly met</i>)</p>	<p>“In Saxony, Hesse and Rhineland-Palatinate, access to license- and legal registers is only available in physical format at the designated locations.” p10f.</p> <p>“Some regions require legitimate interest for access to the license registers, namely Baden-Württemberg, Bavaria, Brandenburg/Berlin, North Rhine-Westphalia and Saxony.” - p.10f</p> <p>“In several regions legitimate interest must be demonstrated to access licenses”- p. 27. “Lower Saxony, Bremen, Hamburg and Schleswig-Holstein appear to be the only regions which systematically disclose most license documents (...)”-p. 27</p>	<p>Government: It is not correct that “some regions” require legitimate interest for access to the licence registers (p. 10f). The legal situation regarding viewing rights is equal in all Länder, as it is ruled by para 76 BBergG which is Federal Law. Authorities of Länder have to comply with para 76 BBergG.</p> <p>It has to be clarified:</p> <p>A. According to para 76 section 3 BBergG, the competent authority grants information about mining licences without the presentation of justified interest. The information is about the owner, fields to which the mining licence refers, date of application and date of issue, duration and mineral to which the mining licence refers.</p>

		<p>Para 76 section 3 BBergG requires that this information shall be available on application (f.ex the case in Thuringia) or can be publicly accessible - also online in many Länder such as:</p> <ul style="list-style-type: none"> - Baden-Wuerttemberg: https://maps.lgrb-bw.de/(Berechtsamtskarte) - North Rhine-Westphalia: GEOPortal NRW - Saxony: „Geoportal-Sachsenatlas“ - Rhineland-Palatinate: „Berechtsamtskarte“ - Brandenburg/Berlin: Geoportal of LBGR https://geo.brandenburg.de/ <p>Moreover, there is a jointly developed online platform “BergPass“ The platform has been designed on the basis of the Federal Online Access Act (OZG). The platform BergPass is already available in Saxony, Lower Saxony and Rhineland-Palatinate and will soon be available in 11 additional Länder.</p> <p>Furthermore, public accessibility of geospatial data is also required by the EU INSPIRE Directive.</p> <p>B. Regarding further documentation such as the mining authorisation book, the mining authorisation map and any deeds referred to in the entries, para 76 section 1 BBergG states that any person proving legitimate interest shall be allowed to view these.</p> <p>The D-EITI website refers to further examples (Licenses and contracts (rohstofftransparenz.de)).</p>
<p>2.5– Beneficial ownership (<i>partly met</i>)</p>	<p>Overall assessment with “partly met”.</p>	<p>Government requests to reconsider the coordinated position of the government on 2.5 (https://d-eiti.de/wp-content/uploads/2023/12/230922-Stellungnahme-zu-2.5-EITI-Standard_beneficial-ownership_BMWK.pdf) and the arguments below.</p> <p>Germany has a transparency register which is active and online accessible to the public (“legitimate interest” is required). The entry and filing obligations are in force and are not affected by the ECJ ruling in <i>Luxembourg Business Registers</i> (Judgment of 22 Nov. 22, C-37/20, C-601/20, hereinafter: “ECJ ruling”). All registered companies have to file information. Within the EU, Germany is not on a solo path, but</p>

		<p>coordinates with other Member States on consensus regarding the transparency register.</p> <p>The threshold for access to the registered data (“legitimate interest”) is low and allows media and NGOs to access.</p> <p>In its abovementioned ruling, the ECJ has held that unrestrained public access to a transparency register violates the fundamental rights of the UBOs as enshrined in Art. 7, 8 of the European Charter of Fundamental Rights. It has therefore held that the abolition of the “legitimate interest” criterion in the EU AML directive is invalid. National authorities - such as the German authorities - are obliged to apply national laws according to EU law. BO data from the register may not be publicly reproduced without any access criterion as it would contravene EU fundamental rights (as confirmed by the ECJ).</p> <p>The Academic Office of the Bundestag has already examined the tasks for the federal legislator to ensure compliance with EU law as laid out in the ECJ ruling (see reference in the coordinated position of the government on 2.5 (230922-Stellungnahme-zu-2.5-EITI-Standard_beneficial-ownership_BMWK.pdf (d-eiti.de))).</p> <p>Germany would risk the initialization of an infringement procedure by the EU Commission, were it if it to uphold or pass laws which would contravene EU law (e.g. the European Charter of Fundamental Rights).</p> <p>The implementation of EITI standard must respect Germany’s position as EU Member State and the EU law compliance obligations such membership entails.</p>
<p>2.5 – Beneficial ownership <i>(partly met)</i></p>	<p>"There is no assessment of comprehensiveness and quality of submissions for all extractive companies..."-p.33</p> <p>"No assessment was made on the verification method of BO information by the competent entity (Transparenzregister).-p-33</p> <p>"(...) the government does not check the comprehensiveness of data of specific sectors."-p.35</p>	<p>Government: The very large amount of obligated legal persons in Germany practically does not allow to carry out a controlling procedure for each entry. Federal money laundering provisions (GwG) state that some authorities and all persons who are under obligation according to para 2 GwG (f. ex. banks, lawyers, insurance companies, tax advisors etc.) are required to file inconsistency notifications (para 23a GwG). The competent authority is obliged to conduct investigations in these cases.</p> <p>Furthermore, Germany has taken a lot of measures to improve availability or accuracy of beneficial ownership information in the last few years. It is an ongoing process and new measures are evaluated and implemented continuously. Please see the additional information below regarding the main measures at the moment*</p>

<p>2.5 – Beneficial ownership (partly met)</p>	<p>“The MSG has not commented on the data verification method of the transparency register.” -p. 36</p>	<p>Government: this seems to go beyond standard requirement in 2.5. EITI Standard 2019. The MSG cannot legally act as a controlling instance for the competent authority which is responsible for the transparency register. The MSG does not have competent capacities to carry out a serious evaluation of the method.</p>
<p>2.5 – Beneficial ownership (partly met)</p>	<p>“The MSG did not request companies to waive their confidentiality or to unilaterally disclose”- p.33</p>	<p>As beneficial ownership information regards personal data of the affected person which legally cannot be waived by a company as a legal body, the MSG clarified with the private sector stakeholders whether voluntarily disclosure of beneficial owners of D-EITI companies would be feasible. Companies stated that obtaining consents from the affected owners would face several practical and legal obstacles and were not feasible (see also Protokoll_Austausch-Validierungsvorbereitung.pdf (d-eiti.de))</p>
<p>2.5 – Beneficial ownership (partly met)</p>	<p>„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.” – page 34/35</p>	<p>Civil Society: Civil society shares the International Secretariat's assessment that the criteria for public access to beneficial owners have not been met. Civil society considers beneficial ownership information to be a fundamental element of transparency reporting. Therefore, despite the restrictions on the <i>Transparenzregister</i> imposed by the CJEU ruling, ways must be found to inform the public about who ultimately owns and controls the companies operating in the extractive industries.</p> <p>Government: The D-EITI MSG has invested a lot of resources and efforts to identify ways how the requirement can be fulfilled without compromising Germany’s obligations under EU law (as confirmed by the ECJ, in <i>Luxembourg Business Registers</i> (Judgment of 22 Nov. 22, C-37/20, C-601/20). These include:</p> <ul style="list-style-type: none"> • elaborated detailed position by the government stakeholders on the beneficial ownership and existing mechanisms in Germany, based on extensive research and coordination within government 230922-Stellungnahme-zu-2.5-EITI-Standard_beneficial-ownership_BMWK.pdf (d-eiti.de) • MSG chair coordinated possible first measures, including: <ul style="list-style-type: none"> - MSG obtained feedback from the company stakeholders on the possibility of a waiver (see also https://d-eiti.de/wp-content/uploads/2023/11/Private-Sector-Consolidation-Position-on-2.5-3.2-1.pdf)

		<ul style="list-style-type: none"> - Exchange with other EITI implementing countries in the European Region - Federal Government assured that the IA has anytime access to the transparency register • Involved authorities within the Federal Government are sensitised in regard of EITI standard requirements and developments on AML legislation on EU level
	<p>“The EITI Report or portal do not provide direct links to the stock exchange filings of reporting companies.” – page 36</p>	<p>Direct links to beneficial ownership information are not accessible via the stock exchange, but via the respective company websites or register portal (as reported during validation consultations).</p>
	<p>“To date, the European Commission has not yet published this list” (on publicly exposed persons, PEP) – page 35 “It is not known to the MSG if there are any PEPs among beneficial owners.”-p.35</p>	<p>Clarification: The MSG kindly asks the international EITI Secretariat to take note of the information regarding Article 1 No. 13 of the amending Directive to the 4th EU Money Laundering Directive (Directive [EU] 2018/843) on the D-EITI reporting portal:</p> <p>“To make it easier to identify PEPs, each EU member state and the European Commission update a list in accordance with Article 1 No. 13 of the amending Directive to the 4th EU Money Laundering Directive (Directive [EU] 2018/843) in which the precise functions are stated that are to be considered as important public offices as defined by the Directive. In Germany, the Federal Ministry of Finance is responsible for drawing up and updating the list and sending it to the European Commission. The European Commission combines the EU member states’ lists and their own list and publishes a joint list.”</p> <p>Following from this the EC list comprises the definitions of what persons are considered as PEP in the respective EU country and not the names of natural persons.</p> <p>The IA presented the result to the MSG that there are no PEPs among beneficial owners of D-EITI companies. MSG agreed to publish the result. The result was published via the D-EITI reporting, under Beneficial Ownership (rohstofftransparenz.de): “</p>
<p>2.5 – Beneficial ownership (partly met)</p>	<p>“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 barriers for disclosure.”- p. 37</p>	<p>Government: The IA’s findings were subject to discussion and decision of MSG meeting.</p> <p>The findings of the IA’s review were discussed after the consultations in the frame of the validation. The MSG reviewed the findings of the IA in the MSG session on February 19th, 2024 (see 20240315_Protokoll-28.-</p>

		<p>MSG-Sitzung Entwurf final.pdf (d-eiti.de) and decided to publish them via the D-EITI reporting under Beneficial Ownership (rohstofftransparenz.de) as well as within the work report of the IA (https://d-eiti.de/wp-content/uploads/2024/03/Work-Report-IA_6th-D-EITI-Report.pdf).</p> <p>Government carried out extensive research on legal barriers and the framework, please see above. The result was discussed several times in the MSG.</p>
<p>2.5 – Beneficial ownership <i>(partly met)</i></p>	<p>“Civil society criticised the lack of willingness on companies and government to provide information on beneficial owners through EITI reporting, for example through waivers.”-p-37 The assessment refers here to Netherlands EITI report 2021 (Fn 48).</p>	<p>Government notes that it has to follow the ECJ ruling despite political commitment to implement the EITI standard.</p> <p>The situation in Germany is not comparable to Netherlands, where the 2021 report was made after March 2022 (final date application (U)BO information for public register in the Netherlands) and before the ECJ ruling in <i>Luxembourg Business Registers</i> (Judgment of 22 Nov. 22, C-37/20, C-601/20). According to information of the MSG-Chair, The Dutch Ministry of Finance subsequently determined on 22 November 2022 that ‘for the time being no further provision of information is possible’ from the (U)BO register. This remains the current situation. The process to consolidate this into legislation is underway.</p>
<p>3.2 – Production data <i>(mostly met)</i></p>	<p>“Production values and volumes are disclosed for all extractive commodities, except for production values for potash salt (...)” - p. 41</p> <p>“(…) salts accounted for 19 % of the total value of extractive commodities produced in Germany in 2020. While (...) stakeholders (...) did not express strong concerns about non-availability of production values for potash salt, they did not comment on availability of estimates, such as reference prices. As potash salt is a material commodity in Germany, the absence of any approximation in value is considered a gap to fulfill the objective of this requirement.” – p. 40</p>	<p>Potash is processed from potash salt. Due to quasi-monopoly position of K+S regarding potassium salt mining in Germany, the company does not disclose exact disaggregated production values for legal reasons (see statement from government stakeholders regarding 3.2). Thus, the company publishes the annual sales quantity and the average price of Potassiumchloride in its company reports (2020 p. 48; 2021 p. 54; 2022 p. 35, 36, 51, 52). KplusS also publishes data for reserves and resources for its potash and other salt extraction on mining sites in Germany (2020, p. 32 etc.)</p> <p>Total values of extracted potash and potash products in Germany is mentioned in D-EITI reporting (2020, Chapter 2, p. 21, table p. 26). The market value of potash products is in table p. 27.</p> <p>Regarding other Salts, there is a significant production especially of Natriumchlorid in Germany. The market comprises of several main producers, among those are Dow or Südwestdeutsche Salzwerte (SWS).</p>

		<p>The D-EITI reporting includes extraction data and market values for Natriumchlorid (2020, Chapter 2, p. 21f, table 26, 27).</p>
<p>4.7 – Level of disaggregation <i>(mostly met)</i></p>	<p>“Companies in their payments to government reports aggregate mine site royalties and extraction royalties. (...) 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”. -p. 45/46</p> <p>“</p>	<p>Civil society shares the International Secretariat's assessment that the objective of ensuring disaggregation at project level leaves room for improvement. Disaggregation of revenue data at project level can be an added value, especially at regional level, as citizens are interested in the benefits a project brings to their local communities. Only then can an honest cost-benefit judgement take place.</p> <p>The government takes the view that it is practically irrelevant for the D-EITI implementation in Germany whether mine site levies (Feldesabgaben) and extraction levies (Förderabgaben) are disclosed as separate payment streams or as one stream. From the view of the public interest, the exact amount of the collected levies is always published online in the budget plans of each Land.</p> <p>In respect of the constitutional and budget rights of each regional parliament, it is within the discretion of the respective Länder, whether the amount of the mine site levies (Feldesabgaben) and extraction levies (Förderabgaben) is stated in separate budget positions (f. ex. Brandenburg) or expressed as a total figure (f. ex. North-Rhine Westphalia). This may depend on the - in some cases very small - size of the figures. In some Länder, there is no budget position for the levies, as these are not being collected (f. ex. Berlin) or only one of the two levies is being collected (f. ex. Rhineland-Palatinate; in Thuringia no mine site levies have been collected for several years).</p> <p>Please find an overview of the websites of the online published recent budget plans in the <u>attached</u> document including the examples above.</p> <p>This information also intends to illustrate available regional budget data according to Requirement 5.1, 5.3 (p. 49, 50 of assessment).</p>
<p>4.8 – Data timeliness <i>(fully met)</i></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.” – page 48</p>	<p>Clarification: The D-EITI MSG published all information mandatory to the EITI standard via the reporting portal before 31 December 2023. Only the pdf-file, which from now on is considered by the MSG as an archive file documenting the state of the reporting at the end of each year, was</p>

		<p>laid out and brought online only in the beginning of the year 2024. Also see message to the international Secretariat from 21st of December 2023. The MSG kindly asks the international EITI Secretariat to take note that the D-EITI MSG published all mandatory contents of the EITI reporting on time.</p>
<p>6.1 – Social and environmental expenditures <i>(mostly met)</i></p>	<p>“Given the information in the EITI Report and views from stakeholders consulted, the Secretariat is of the view that payments for the improvements of infrastructure constitute mandatory social expenditures.” p. 54</p> <p>“The Secretariat assesses that the objective of enabling public understanding of extractive companies’ social and environmental contributions and providing a basis for assessing company compliance to contractual obligations is mostly met, given the lack of clarity if the company obligations related to improvement of infrastructure are all, or partly, mandatory.” p. 54</p>	<p>The government kindly asks to reassess whether the requirement is applicable. In the previous validation the requirement was found to be not applicable. The general relevant situation and the facts remain unchanged since then until today. This has been reviewed by the MSG prior to validation:</p> <ul style="list-style-type: none"> - Within the annex to the yearly progress report of the D-EITI (https://d-eiti.de/Downloads/Anlage%201_Fortschrittsbericht%202022_Overview_w_Validation-Recommendations_EITI-changes.xlsx) as well as - via the elaboration of the validation templates. <p><u>Assessment by the IA:</u></p> <p>“Payments for the improvements of infrastructure” is one of the 7 payment streams, to be disclosed in accordance with HGB. As stated in the D-EITI reporting, the legal basis for those payment are bilateral contracts between the subnational state institution and the extractive company (5th D-EITI report, chapter 10, p. 153, 183).</p> <p>Payments for the improvement of the infrastructure are no mandatory payments linked to the award of the licence.</p> <p>They are furthermore not defined as social expenditure in Germany (HGB).</p> <p>Furthermore, according to the guideline for public auditors for auditing payment reports based on the HGB: Payments for the improvements of infrastructure include payments that an extractive company makes to government agencies to provide infrastructure access, e.g. roads or the connection of plants to be built to public utilities. This also includes, for example, payments to promote municipal investments or educational facilities.</p> <p>To sum up:</p>

		<p>Payments for the improvement of the infrastructure in Germany are not considered as social payments by the MSG. Therefore, the D-EITI reporting discloses these payments fully under 4.1. and not under 6.1.</p> <p>Given the overall objective of the EITI standard that all material payments from extractive companies must be disclosed, the MSG states that all payments are fully disclosed via the Bundesanzeiger and additionally via D-EITI reporting with a threshold of 100.000 EUR based on the HGB.</p> <p>The legal basis of those payments is described in the D-EITI reporting. They are defined within <u>voluntary</u> bilateral contracts - independent of the award procedure of the license for extraction (5th D-EITI report, chapter 10, p. 153, 183).</p> <p>Therefore the MSG argues that, depending of the understanding of the validation team</p> <p>-Either 6.1. is considered as not applicable (no mandatory social payment) or fully met since all payments are fully disclosed and the legal basis is described in the D-EITI reporting.</p>
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2. Questions by the International EITI Secretariat to the MSG

Requirement (Assessment)	Question	Feedback D-EITI MSG
2.1 – Legal framework <i>(fully met)</i>	How can state-level regulations be accessed?	<p>Federal laws (f. ex. BBergG) and ordinances are online publicly available on the official data base of the Federal Ministry of Justice: https://www.gesetze-im-internet.de/</p> <p>Laws and ordinances of the Länder are online publicly available on the official websites of the respective Land which link to their data bases (usually run by specialised publishing houses). See Lower Saxony as example.</p> <p>Furthermore, the D-EITI report lists all mining authorities of the Länder (chapter 3 table 1). The websites of the mining authorities usually link to the</p>

		<p>relevant regulations. The D-EITI report gives an overview of the system and Legal Framework (rohstofftransparenz.de) for the mining sector.</p>
	<p>Is the coalition agreement and MSG discussions on planned reforms accessible on the D-EITI website? If yes, where?</p>	<p>The D-EITI report is referring to the current coalition agreement (f. ex. p. 140 fn 170). The current coalition agreement is online publicly available via the website of the German Federal Government (Koalitionsvertrag 2021 (bundesregierung.de)) which links to the websites of the coalition parties, who are responsible for the content of the agreement.</p> <p>The government notes that the coordinators of the three stakeholder groups and the MSG have discussed in meetings whether (and to what extent) planned reforms relating to the mining sector can be reported in the D-EITI report. So far, the MSG decided not to report about planned reforms but only about finalized legal framework. This will be reconsidered against the new requirement in the EITI Standard 2023.</p> <p>Furthermore, the Federal Government informs the public on proposed federal and EU-legislation and offers a monitoring tool on the implementation progress of important measures (see Gesetzesvorhaben der Bundesregierung Bundesregierung and Regierungsmonitor: Transparente Politik Bundesregierung)</p>
<p>2.2 – Contract and license allocations <i>(mostly met)</i></p>	<p>Where can data on the license awards for the reporting year be found? Only through registry spreadsheet?</p>	<p>Data on the licence awards for the reporting year can be found on the registry spreadsheet, the physical registries of the state mining authorities (Berechtsamsbuch) as well as in online registries of the respective Länder. For details please see statement on 2.2. above.</p>
	<p>Is there a discussion of material deviations in the D-EITI report or portal? How are deviations checked? (procedure license awards/procedure license transfers)</p>	<p>As part of the annual data inquiry, the mining authorities report whether there are non-trivial deviations from statutory procedures in licence awards and license transfers. For the period under review mining authorities reported that there were no deviations. The result was presented to the MSG. For details please see statement on 2.2. above.</p>
	<p>Where can data on the license transfers for the reporting year be found?</p>	<p>Data on the licence transfers for the reporting year can be found on the registry spreadsheet, the physical registries of the state mining authorities (Berechtsamsbuch) as well as in online registries of the respective Länder. For details please see statement on 2.2. above.</p>
	<p>Where can information on transfer processes be found? Is this the same as for license awards?</p>	<p>For details please see statement on 2.2. above.</p>

	Where can information on transfer criteria be found? Are these different to the award criteria?	For details please see statement on 2.2. above.
2.3 – License registers <i>(fully met)</i>	Why is there a discrepancy between license registries listed on the transparency template, the D-EITI portal and the downloadable registry spreadsheet?	<p>The transparency template as well as the registry spreadsheet on the D-EITI reporting portal were updated prior to the validation. There are no discrepancies between those excel files. Whereas the context reporting will be updated in the next reporting cycle and will be subject to deep dive review by the MSG.</p> <p>Furthermore, the tables contain additional links to online portals where geo-data are published but which are not categorized as “online licence registries”.</p> <p>In the meantime, further portals went online (see also comments on requirement 2.4).</p>
	Is it possible to provide additional information on which states are planning to develop online registries?	For details please see statement on 2.4 above.
	Why are coordinates in some instances not carried over from physical registry books into the consolidated spreadsheet?	Due to the large number of coordinate points in some licenses and the low level of interest from the public, some mining authorities have refrained from registering the coordinate into the consolidated spreadsheet.
	<p><i>The D-EITI report also mentions that oil and gas license data is published annually through a government publication but does not provide a link.</i></p> <p>How can the government publication in question be accessed?</p>	<p>The mentioned report published by Lower-Saxony is online publicly available: Jahresbericht "Erdöl und Erdgas in der Bundesrepublik Deutschland" Landesamt für Bergbau, Energie und Geologie (niedersachsen.de)</p> <p>The D-EITI reporting portal has already been supplemented accordingly: Licenses and contracts (rohstofftransparenz.de)</p>
2.4 – Contracts <i>(mostly met)</i>	What is the government's policy on license disclosure?	The accessibility of licence information is regulated by federal law in para 76 BBergG. For details please see statement on 2.4 above.
	Are all states publishing licenses? (This is the case for NIBIS but unclear if accessible for all states, including in hard copy). Is a model license publicly available?	<p>For details on publishing licenses please see statement on 2.4 above.</p> <p>As stated in the consultations by government representatives in the course of validation, there is no such legally binding document which can be regarded as a “model license” for a permit or approval or mining rights under BBergG (f.ex. as confirmed by Thuringia). Any templates for text processing programs do not have external effects. <u>Mining licences are based on legal requirements.</u></p>

	Is it possible to access licenses at the offices of mining authorities?	Federal law in para 76 BBergG applies. For details please see statement on 2.4 above.
2.5 – Beneficial Ownership (partly met)	If a BO is a PEP, does the 25% threshold still apply?	The status as beneficial owner of a company is to be assessed independently of a possible PeP status of the beneficial owner. A PeP status says nothing about the actual control over a company (e.g. through more than 25% of the shares or voting rights). According to EU regulations, the PeP status does not have to be recorded in the transparency register.
	<i>All companies that are subject to the German Commercial Code (HBG) have to report information on beneficial owners.</i> Has this been assessed by the MSG or the IA?	For details please see statement on 2.5 above and the detailed note at the end of the document.
	<i>The Independent Administrator was able to check all entries of the companies participating in the D-EITI in the German transparency register for plausibility. The IA stated on 24 April 2023: "After reviewing the information [...] and comparing it with public sources accessible to us, we have not identified any implausibilities in the information (as of 21.04.23)."</i> Where can we find that statement documented?	The statement is documented on the D-EITI reporting portal: Beneficial Ownership (rohstofftransparenz.de) under the section "Obtaining information from the Transparency register."
	<i>Names of stock exchanges for publicly-listed companies</i> What are the direct links to the financial information?	Direct links to beneficial ownership information are not accessible via the stock exchange, but via the respective company websites or register portal (as reported during validation consultations).
2.6 – State participation (not applicable)	Given that the company is state-owned and material, how did the MSG come to the conclusion that it is not material as a whole?	The MSG argues that one direct state participation in a company is not material for the extractive sector as a whole. Nevertheless, all revenues are reported both via the annual report of the federal state as well as via D-EITI reporting.
3.2 – Production data (mostly met)	Can the MSG confirm the list of extractive commodities produced in 2020?	The Multi-Stakeholder-Group has confirmed the list of extractive commodities produced in 2020 in course of updating D-EITI report.
	Could stakeholders please clarify what n/a stands for? What were the main reasons for non-availability of production data for some commodities? Has the MSG considered alternative approaches to data collection?	The abbreviation „n/a“ means that no data is available or can be published. The main reasons for barriers on publishing certain data are described in the coordinated positions of the government and of the private sector on 3.2 (230922-Stellungnahme-zu-3.2-EITI-Standard_production_BMWK.pdf (d-eiti.de)).

		<p>For further details on production data and its source see also the D-EITI reporting portal under “data on natural resource extraction in Germany” - Download Data and Documents (rohstofftransparenz.de)</p> <p>Regarding potash and other salts, please see statement on 3.2 above.</p>
3.3 – Export data <i>(fully met)</i>	Did stakeholders review publicly accessible export data? Are there any concerns related to data quality and comprehensiveness?	Stakeholders did not express concerns about the reliability or comprehensiveness of the export data.
4.2 – In-kind revenues <i>(not applicable)</i>	Can the IA point to the section of the report where that is documented, the absence of in-kind revenues?	<p>Background: The form which was sent by the IA to the D-EITI reporting companies in order to collect all the payment data includes no category “<i>in kind payments</i>” (in German: <i>Sachdividenden</i>) or similar.</p> <p>There is no indication for in kind <u>payments</u> by the D-EITI reporting companies. Such payment would be reported in the companies annual report which were reviewed by the IA. No such payments are included.</p> <p>Furthermore, there is no indication for in kind <u>revenues</u> by the D-EITI reporting companies. Such revenues would be listed in the annual public budget(s) which was not the case.</p> <p>According to the IA, even if such <i>Sachdividenden</i> would be provided they would not be considered as material payment according to the EITI Standard.</p> <p>The conclusion is documented in the annex of the report under ii. requirement 4.2 (p.190).</p>
4.6 – Subnational direct payments <i>(fully met)</i>	<p>Could stakeholders please clarify which revenue streams were considered to be subnational payments in 2020?</p> <p>How the reporting municipalities were selected?</p>	<p>The MSG considers the following revenue streams to be subnational payments in 2020 see also disclosed payment flows https://rohstofftransparenz.de/downloads/2020_Datenmeldung_Unternehmen_Stand%2020230420_neu.xlsx:</p> <ul style="list-style-type: none"> • Sum of payments for trade tax (and, where applicable) for leases (municipality level): €45.354.798,17 (leases: €3.447.542,20; trade tax: €41.907.255,97) • Sum of payments to improve the infrastructure (level of local government): €23.230.056,76 • Sum of mine site and extraction royalties (Länder level): €99.297.607,94 <p>For the 5th D-EITI report, the trade tax collection process was analysed in more detail using a questionnaire developed by the IA. This questionnaire was sent to the 20 municipalities that received the highest trade tax</p>

		(Gewerbsteuer) payments from D-EITI participating companies for the reporting year 2020 (work report of the IA page 17; also Verfahren zur Qualitätssicherung - rohstofftransparenz.de under section „Notes on the quality assurance process for trade payments).
	Could stakeholders please clarify the total amount of the trade tax (subnational payments)?	The total amount of the trade tax is published in the 5th D-EITI report, chapter 10, table 14, p. 181f (total amount: €41.907.255,97.)
	Which materiality threshold was applied to subnational payments?	All materiality thresholds are published via the D-EITI reporting under https://rohstofftransparenz.de/en/auswahl-der-zahlungsstroeme/#sectionMenu_4 <ul style="list-style-type: none"> - Royalties: 100.000 EUR as defined in the HGB - Trade tax: 100.000 EUR as defined in the HGB and reported via the Bundesanzeiger. According to the MSG decision, agreed with the EITI International Secretariat as well as validated in the first validation the materiality threshold trade tax for D-EITI reporting companies was raised since the 2nd D-EITI Report to 2 Mio. EUR per state institution and lowered since the 5th D-EITI Report to the 20 municipalities that received the highest trade tax payments from participating companies for the reporting year.
4.7 – Level disaggregation <i>(mostly met)</i>	Can the MSG clarify why royalties are disaggregated by the government entity receiving the royalties, but not the project? Can the MSG clarify where to find the overview of licenses that generate royalties, and which ones are substantially interconnected?	Please see statement above on 4.7. Please further see the coordinated position of the government on 4.7 (230922-Stellungnahme-zu-4.7-EITI-Standard_level-of-disaggregation_BMWK.pdf (d-eiti.de)).
5.2 Subnational transfers <i>(not applicable)</i>	Could you please confirm that financial equalisation mechanism is applied only to royalties (for the extractive sector)?	While mine-site royalties are appropriated into the respective Land’s budget, the revenue from extraction royalties is used for interstate financial equalisation (5. D-EITI report, chapter 4. b) ii., p. 51).
6.4 Environmental impact <i>(fully met)</i>	Do the portals contain the full text of EIAs?	Public access to environmental information and authorisation decisions is described in 5. D-EITI report, chapter 3. b) iv and v., p. 36-39. Federal provisions in para 19 and para 20 UVPG specify the publication obligations for documents in the context of the participation process for EIAs. According to para 20 UVPG, documents - including the full EIA report - have to be published freely accessible on a central internet portal (either www.uvp-portal.de or www.uvp-verbund.de).

***Additional information regarding 2.5 (beneficial ownership):**

Germany has taken a lot of measures to improve availability or accuracy of beneficial ownership information in the last few years. It is an ongoing process and new measures are evaluated and implemented continuously. At the moment the main measures are:

Checks by the office maintaining the register during the filing process

Pursuant to section 20 (1) and section 21 (1) of the Money Laundering Act (GwG) associations or legal arrangements (entities obliged under money laundering legislation) have to obtain, retain and keep up to date the information regarding their beneficial owners specified in section 19 (1) of the Money Laundering Act (GwG) and have to notify the beneficial owners to the Transparency Register.

Pursuant to section 18 (3) Money Laundering Act (GwG) the office maintaining the register will check if a notification is incomplete, unclear or if it is doubtful which association or legal arrangement the information on the beneficial owner contained in the notification is to be attributed to. Errors checked for are if some information regarding the beneficial owner is missing, if the transmitted information is implausible – e.g. “wrong nature” of beneficial interest, like beneficiary for a LLC; Wrong combination of nature and extent of beneficial interest, like legal representative as nature and 50 percent of capital shares as extent; A Minor as the legal representative of the company; Mixed-up Pre- and Surname etc. – or if the association or legal arrangement is not clearly identifiable because of incomplete and wrong names or because of multiple notifications for the same association or legal arrangement.

Discrepancy reports

Some authorities, those entities obliged under money laundering legislation that have looked at an extract from the Transparency Register, or otherwise become aware of its contents in order to fulfil their due diligence requirements, must submit a discrepancy report if they discover discrepancies between an entry (including its non-existence) and their own findings.

Failure to submit a required discrepancy report may constitute an administrative offence under section 56 (1) no 65 of the Money Laundering Act (GwG).

Continuously comparison of the existence of legal entities

The legal entities kept in the Transparency Register are continuously compared to the legal entities kept in the business register and the company register. Therefore, changes to the information on the legal entity are automatically transferred to the Transparency Register.

Information campaigns

In order to improve the availability and quality of data in the Transparency Register, the Federal Office of Administration (BVA), as supervisory authority, also took a large number of measures to raise awareness of it at an early stage, i.e. when the Transparency Register was introduced. These measures include providing entities obliged under money laundering legislation with an extensive range of information relating to the Register and the associated obligations. The measures to draw public attention include:

- Creation of a website with information on the Transparency Register (August 2017)
- Publication of FAQs relating to the Transparency Register on BVA website (September 2017, regular updates since then)

- Information targeted at the Federal Association of German Foundations (Bundesverband Deutscher Stiftungen e.V.) and the foundation supervisory authorities in the Länder (end of 2017)
- Circular to all chambers of industry and commerce (IHKs) and the umbrella organisations of the chambers of trade and agriculture; with information sheet for dissemination (December 2017)
- Publication of a schedule of penalties on the BVA website (October 2018; updated in February 2020)
- New circular with information sheet to all IHKs (April 2018)
- Circulars to all Bar Associations, Chambers of Notaries, Chambers of Tax Advisors, Chambers of Skilled Crafts, Chambers of Industry and Commerce, and about 400 industry associations and interest groups (November 2019)

In addition to the Federal Office of Administration (BVA), the Bundesanzeiger Verlag, as the registrar entity, also provides a range of information on its website for entities obliged under money laundering legislation. These include, for example, service numbers (Monday to Friday 8:00am to 6:30pm) where you can enquire about registering, submitting an entry, inspecting the Transparency Register, reporting a discrepancy and fee notifications. Obligated entities can also register for free webinars – several held each week – on the Transparency Register, where basic information on using the Transparency Register website can be obtained. Furthermore, obliged entities can subscribe to a newsletter about technical or organisational changes in the Transparency Register. A download area also provides additional information on the Transparency Register. For example, obliged entities can view and/or download a quick guide to entries in the Register. Additionally, at the end of 2021 all in Germany existing associations (around 600.000) were informed about the Transparency Register and their filing obligation by individual letter.

Reporting of possible cases for sanctions

The office keeping the register does report possible cases for sanctions to the federal office of administration pursuant to section 18 (3a) of the Money Laundering Act (GwG). Through this mechanism it is safeguarded that possible breaches of the rules are persecuted by the authority responsible for sanctions.

Measures coming into force shortly

In addition to the measures mentioned above, the following additional measures have been developed over the last two years, which are to be implemented in the near future with the Combating Financial Crimes Act (currently deliberated in Parliament). The draft provides for a number of amendments to the German Anti-Money Laundering Act (GwG) aimed at improving the quality of the data in the Transparency Register for the legal entities subject to registration. For example, to further increase the data quality the linking of registers will be driven forward by providing the register-keeping office with additional access rights to publicly and non-publicly registers, directories and databases to enable data reconciliation. This includes the automated account data retrieval system in accordance with the German Banking Act (KWG) as well as the access to the register of residents and the directories of foundations of the German federal states. Further measures include the appointment of authorized representatives as contact persons for the register-keeping office and the voluntary transmission of ownership and control structure overviews by the legal entities subject to registration.

Attachment to the feedback document for D-EITI validation regarding requirements 4.7, 5.1, 5.3		
	Land	Examples for websites of budget plans of the Länder from 2023
1	Baden-Württemberg	2023/2024: https://fm.baden-wuerttemberg.de/de/landesfinanzen/landeshaushalt-2023/2024/einzelplaene
2	Bayern	2023: https://www.stmfh.bayern.de/haushalt/2023/haushaltsplan/Gesamthaushalt.pdf
3	Berlin	2024/2025: https://www.berlin.de/sen/finanzen/haushalt/downloads/haushaltsplan-2024-25/artikel.1414232.php#headline_1_0 Example for no income on site and extraction levies according to D-EITI reporting, no position in the budget plan.
4	Brandenburg	2023/2024: https://mdfe.brandenburg.de/mdfe/de/themen/haushalt-und-finanzen/landeshaushalt/landeshaushalte-haushaltsplaene-und-rechnungen/# Example for separate budget positions: 08 122 10 632 (Feldesabgabe) and 08 122 20 632 (Förderabgabe)
5	Bremen	https://www.finanzen.bremen.de/haushalt/haushalt/aktuelle-haushaltsplaene-und-haushaltsportraet-1692 - nach Meldungen für D-EITI keine Einnahmen
6	Hamburg	2023/2024: https://www.hamburg.de/fb/haushaltsplaene/16405144/doppelhaushalt-2023-2024/
7	Hessen	2023/2024: https://finanzen.hessen.de/haushalt/haushaltsplaene
8	Meckl.-Vorpom.	2024/2025 (Entwurf): https://www.landtag-mv.de/landtag/ausschuesse/ausschuesse/finanzausschuss/unterlagen-zum-haushalt
9	Niedersachsen	2024: https://mf.niedersachsen.de/startseite/themen/haushalt/haushaltsrecht_inklusive_haushaltsplane/haushaltsplanentwurf_2024/haushalt-2024-223542.html
10	Nordrhein-Westfalen	2023: https://www.haushalt.fm.nrw.de/grafik/index.php?year=2023&data_type=1&type=-1 Example for one budget position: 03 310 122 30 632 (Feldes- und Förderabgaben)

1 1	Rheinland- Pfalz	2023/2024: https://fm.rlp.de/fileadmin/04/Themen/Finanzen/Landeshaushalt/Haushaltsplaene/HH2324_gesamt.pdf Example for the only budget position "Förderabgaben": 20 2002 122 11 632
1 2	Saarland	2023: https://www.saarland.de/SharedDocs/Downloads/DE/mfw/Haushaltsplan_2023_final/Haushaltsplan2023 Example for one budget position: 08 07 122 01 632 (Feldes- und Förderabgaben)
1 3	Sachsen	2023/2024: https://www.finanzen.sachsen.de/doppelhaushalt-2023-2024-6645.html
1 4	Sachsen- Anhalt	2024: https://mf.sachsen-anhalt.de/finanzen/haushalt
1 5	Schleswig- Holstein	2024: https://www.schleswig-holstein.de/DE/fachinhalte/H/haushalt_landeshaushalt/haushalt_ep_2024.html?nn=da3ce3a3-f500-4307-9bc5-aaf8ff8d084e
1 6	Thüringen	2024: https://finanzen.thueringen.de/themen/haushalt/haushaltsplaene/haushalt-2024