

Validation of Germany

Report on initial data collection and stakeholder consultation

Abbreviations

BBergG	Federal Mining Act (Bundesberggesetz)
BDI	Federation of German Industries (Bundesverband der Deutschen Industries)
BiRUG	German Accounting Directive Implementation Act (Bilanzrichtlinie-Umsetzungsgesetz)
BMF	Federal Ministry of Finance (Bundesministerium für Finanzen)
BMJV	Federal Ministry of Justice and Consumer Protection
BMWi	Federal Ministry for Economic Affairs and Energy (Bundesministerium für Wirtschaft und Energie)
BMZ	Federal Ministry for Economic Cooperation and Development (Bundesministeriums für wirtschaftliche Zusammenarbeit und Entwicklung)
BRGR	Institute for Geosciences and Natural Resources (Bundesanstalt für Geowissenschaften und Rohstoffe)
D-EITI	Germany EITI (Deutschland-EITI)
DIHK	Association of German Chambers of Industry and Commerce (Deutsche Industrie- und Handelskammer)
EU	European Union
GIZ	Gesellschaft für Internationale Zusammenarbeit GmbH
HGB	Commercial Code (Handelsgesetzbuch)
IA	Independent Administrator
IG BCE	Mining, Chemical and Energy Union (Industriegewerkschaft Bergbau, Chemie, Energie)
LEAG	Lausitz Energie Bergbau AG
SOE	State-owned enterprise
ToR	Terms of Reference

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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*).

Overall conclusions

- 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.
- 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.

Commented [A1]: Germany is not resource-poor. It is still one of the biggest (brown) coal, salt and potash producers worldwide. Measured by the quantity the extraction of gravel and sand, broken natural stone, limestone, clay and coal as well as gas have a big importance in Germany as well.

Commented [A2]: Regarding public debate in general, the MSG discussed very intensively and thoroughly options to address actual public debate including the general debate on lignite extraction in Germany. Based on these discussions the MSG (on initiative of the civil society) has included a wide range of new and innovative topics in the report such as subsidies, renewable energy, and dealing with human intervention in nature addressing these debates and is committed to continue doing so in future reports. This commitment is well documented. The numerous "positive" aspects seem to be mitigated by the omission of one current public discussion. In light of this, the D-EITI would like to point out that the actual specific discussions on the phasing out of the use of lignite peaked only in 2018 when the first report was already published and decisions about the second report were almost finished. Furthermore, the issue itself is not a mere extractive topic but highly political and more related to general questions about climate policy and management of structural change. To address related aspects to the phasing out of lignite, the Federal Cabinet has decided to establish the coal exit commission. This commission among others drafted recommendations for the closure of hard coal power plants, running on imported coal as well.

Recommendations

The International Secretariat has identified four corrective actions that Germany should undertake to address shortcomings in meeting EITI Requirements, as well as strategic recommendations that Germany is encouraged to consider for strengthening implementation.

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.
- 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).

Figure 1– initial assessment card

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)					

Legend to the assessment card

	No progress. The country has made no progress in addressing the requirement. The broader objective of the requirement is in no way fulfilled.
	Inadequate progress. 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.
	Meaningful progress. 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.
	Satisfactory progress. All aspects of the requirement have been implemented and the broader objective of the requirement has been fulfilled.
	Beyond. 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.

Introduction

Brief recap of the sign-up phase

The German government announced its intention to test the EITI in a pilot region on 18 June 2013, at the G8 summit¹. On 2 July 2014, the government announced its intention to join the EITI and the appointment of Uwe Beckmeyer as the EITI Champion². On 10 March 2015, the German multi-stakeholder group met for the first time³.

A press release in on 22 December 2015 publicised the Governments submission of the candidature application⁴ ahead of the Board meeting in Lima, Peru. On 23 February 2016 the EITI Board admitted Germany as an EITI candidate country⁵. The main steps to the sign-up phase are also available online⁶.

Objectives for implementation and overall progress in implementing the work plan

The objectives of EITI implementation are outlined in the 2018 work plan. They relate to extending EITI reporting to contribute to the broader debate on resource policy, which includes aspects of sustainability (economic, environmental, and social). A key objective of EITI implementation is to influence the international EITI Standard and EITI implementation in resource rich countries. As such, the EITI is seen as a tool to establish better governance in sourcing countries for raw materials, which are essential for the German industry. The importance of raw materials, especially from mining, will increase with Germany's implementation of the energy transition⁷. The work plan includes time-bound activities and is used to track the MSG's decisions, deliverables and overall performance. The MSG is largely on track on implementing its activities.

History of EITI Reporting

Germany published its first EITI Report in August 2017 covering the calendar year 2016. The report covers oil, gas, mining and quarrying. The 2016 EITI Report was updated and re-published in October 2018. The updated report includes data that was not available when the original report was published. Reconciliation is extended to cover also trade tax. This initial assessment is based on the updated report, which is at the time of writing, only available in German.⁸ Preparations for the 2017 EITI Report are underway, and publication is expected in mid-2019.

¹ G8 Communiqué, section 38. (G8 Summit, 2013, s. 10)

² (Deutsche Bundesregierung, 2014)

³ See the MSG meeting minutes on the d-eiti.de website: <https://www.d-eiti.de/mediathek-dokumente/>

⁴ (Deutsche Bundesregierung, 2015)

⁵ (EITI International Secretariat, 2016)

⁶ <http://www.deiti.de/de/mitmachen-mitgestalten/>

⁷ Minerals are key components for renewable energy technologies and batteries, needed for e-mobility. See chapter 8 of the 2016 EITI Report.

⁸ <https://www.d-eiti.de/mediathek-dokumente/>

Summary of engagement by government, civil society and industry

Government, civil society and industry are very engaged in the EITI process. Each constituency is equally represented in the multi-stakeholder group and the members from relevant institutions, companies and civil society organisations. MSG membership has been quite stable and the attendance rate very high in all three constituencies. Constituency coordination mechanisms work well, and members draw on temporary working groups to discuss topics and bring them to the MSG for decision or clarification. The MSG occasionally calls onto experts to deepen its understanding on issues. All constituency groups have contributed to writing the EITI Report. All constituency members find that they are building each other's capacity in the understanding of the sector and how it is intertwined with the wider German raw materials resource policy. Stakeholder engagement in the design, implementation and monitoring of the EITI process has been constantly strong.

Key features of the extractive industry

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.⁹

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, [energy-intensive extractive companies benefit from the electricity and energy tax concessions provided by the government to energy intensive companies of the production industry in general](#).¹⁰ Total government gross revenue from the sector is estimated to have been EUR 490 million in 2016.¹¹

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.

Explanation of the Validation process

Validation is an essential feature of the EITI implementation process. It is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the provisions of the EITI Standard. It also addresses the impact of the EITI, the implementation of activities encouraged by the EITI Standard, lessons learnt in EITI implementation, as well as any concerns stakeholders have expressed and recommendations for future implementation of the EITI.

The Validation process is outlined in chapter 4 of the EITI Standard¹². It has four phases:

⁹ See e.g. (Vaughan, 2018)

¹⁰ Section 7 of the 2016 EITI Report.

¹¹ Section 5 of the 2016 EITI Report.

¹² See also <https://eiti.org/validation>.

1. Preparation for Validation by the multi-stakeholder group (MSG)
2. Initial data collection and stakeholder consultation undertaken by the EITI International Secretariat.
3. Independent quality assurance by an independent Validator who reports directly the EITI Board
4. Board review.

The [Validation Guide](#) provides detailed guidance on assessing EITI Requirements, and more detailed [Validation procedures](#), including a standardised procedure for data collection and stakeholder consultation by the EITI International Secretariat and standardised terms of reference for the Validator.

The Validation Guide includes a provision that: “Where the MSG wishes that validation pays particular attention to assessing certain objectives or activities in accordance with the MSG work plan, these should be outlined upon the request of the MSG”. The MSG requested that the Validation consider aspects of where they consider Germany to have exceeded the requirements of the EITI Standard, including: MSG governance, communications efforts, knowledge sharing, environmental aspects and state subsidies.

In accordance with the Validation procedures, the International Secretariat’s work on the initial data collection and stakeholder consultation was conducted in three phases:

1. Desk Review

Prior to visiting the country, the Secretariat conducted a detailed 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 communication plan;
- The multi-stakeholder group’s Terms of Reference, and minutes from multi-stakeholder group meetings;
- 2016 EITI Report, and supplementary information such as scoping studies;
- Communication materials;
- Annual progress reports; and
- Any other information of relevance to Validation.

In accordance with the Validation procedures, the Secretariat has not taken into account actions undertaken after the commencement of Validation.

2. Country visit

A country visit 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. The list of stakeholders consulted is outlined in Annex D.

3. Reporting on progress against requirements

This report provides the International Secretariat initial assessment of progress against requirements in accordance with the Validation Guide. It does not include an overall assessment of compliance.

The International Secretariat's team comprised: Lydia Kilpi, Validation Manager and Christina Berger, Digital Officer. Support and quality assurances were provided by Sam Bartlett, Technical Director.

Part I – MSG Oversight

1. Oversight of the EITI process

1.1 Overview

This section relates to stakeholder engagement and the environment for implementation of EITI in country, the governance and functioning of the multi-stakeholder group (MSG), and the EITI work plan.

1.2 Assessment

Government engagement in the EITI process (#1.1)

Documentation of progress

Public statement:

The German government has made repeated public statements in support of the EITI, both in its role as a supporting country¹³ and in its intention to join the EITI as implementing country.

The German government announced its intention to test the EITI in a pilot region on 18 June 2013, at the G8 summit¹⁴. On 2 July 2014, the government announced its intention to join the EITI and the appointment of Uwe Beckmeyer as the EITI Champion¹⁵. In the statement he says: *“German implementation of the EITI strengthens the global Standard. In doing so, we set an important political signal for strengthening the efforts of fighting corruption in resource rich developing and threshold countries. We want to encourage more countries ... to join the international transparency agenda”*.

On 26 November 2014, in preparation for Germany’s EITI sign-up, the German government hosted the D-EITI Transparency Summit in Berlin. Around 110 delegates from politics, industry and civil society attended the summit, as did the then EITI Chair Clare Short and Champion Uwe Beckmeyer. As part of the Transparency Summit the Champion stated that reconciling payments in a federal system has its challenges and Germany’s experiences could prove to be a source of learning for EITI countries facing a similar challenge¹⁶.

Implementation of the EITI is also a commitment Germany made as part of pledges for the Open

¹³ The government issued a statement of support at the G8 summit in Heiligendamm, on 8 June 2007: “The G8, together with their African partners, also welcomed the Extractive Industries Transparency Initiative (EITI) and agreed to implement an Action Plan for Good Financial Governance.” (G8 Summit, 2007)

¹⁴ G8 Communiqué, section 38. (G8 Summit, 2013, s. 10)

¹⁵ (Deutsche Bundesregierung, 2014)

¹⁶ Q&A section, p. 15 of (Germany EITI, 2014)

Government Partnership. It has anchored EITI implementation in its 2017-2019 action plan¹⁷.

Senior lead:

The German government appointed Mr Beckmeyer as EITI Champion in July 2014¹⁸. He was the parliamentary state secretary at the Federal Ministry for Economic Affairs and Energy. Mr Beckmeyer did not stand for election in 2017 and on 11 April 2018, his successor, Oliver Wittke, was appointed Champion of the EITI in Germany¹⁹. Mr Wittke holds a senior position and has the authority and freedom to coordinate action on the EITI across relevant ministries and agencies and is able to mobilise resources for EITI implementation. He appears to enjoy the trust of all stakeholders.

The EITI Champion is supported by the International Raw Materials Policy Division of the Federal Ministry for Economic Affairs and Energy (Bundesministerium für Wirtschaft und Energie, or BMWi). This unit is responsible for EITI implementation. The MSG is chaired by department head for industrial policy, Winfried Horstmann. His alternate and National Coordinator, Andrea Jünemann, is head of division for international raw materials policy. She is also the spokesperson for the government constituency.

The BMWi has contracted Germany's technical assistance agency, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), to manage the national Secretariat (D-EITI secretariat) and implementation of the EITI in Germany²⁰. This is mainly due GIZ's longstanding experience with the EITI through technical support in other implementing countries (Germany EITI, 2015, p. 9).

Active engagement:

The government is represented by five members in the multi-stakeholder group. The Chair, department head for industrial policy at the Federal Ministry for Economic Affairs and Energy; head of fiscal division from the Finance Ministry, department head of the Arnsberg district government (which administers the extraction of the biggest lignite mine in Germany), and two members from the State-level (*Länder* level) – Hesse and Lower Saxony.

The former Champion State Secretary Beckmeyer had attended three of the four multi-stakeholder group meetings held in 2015 prior to the candidature application²¹. The government hosted a transparency summit on 26 November 2014 to publicise the government's intention to join the EITI²².

The attendance chart of the MSG meetings shows that government representatives participated in over 85% of the MSG meetings²³. The membership of this constituency has been fairly stable. While both the

¹⁷ See <https://www.opengovpartnership.org/countries/germany>, commitment 5

¹⁸ See reference above.

¹⁹ See press release: (BMWi, 2018)

²⁰ See (BMWi and GIZ, 2014)

²¹ (Germany EITI, 2015, p. 8)

²² (Germany EITI, 2014)

²³ Calculated using spreadsheet (Germany EITI, 2018)

Chair and the National Coordinator, as well as a representative of the Ministry of Finance have changed, all other MSG members have remained the same.

The government has established a working group called “Federal Government – State Government working group” (Bund-Länder AG)²⁴ with representatives from various federal ministries and state ministries, including a representative from the Federal Chancellery to relate the EITI work to the OGP, and the Federal Foreign Office. All government MSG members are represented in this working group. Its function is to improve the coordination work from the federal to the state (Länder) level, disseminate information from the EITI process and to consult with them in case of questions or need for input. It has also been used to follow-up on recommendations of EITI implementation, such as the change in legislation on licenses²⁵. [The Bund-Länder AG reflects the shared responsibility between federal and state level. The federal level passed the Federal Mining Act and the state level is supervising mining and enforcing the Federal Mining Act.](#)

The government agencies present in the MSG participated in outreach activities with companies and drafted or commented on chapters of the EITI Report, in accordance to their areas of expertise.

The Ministry of Economic Affairs and Energy (BMWi) is financing EITI implementation and invested EUR 4 million from June 2014 to May 2019 for financing the Secretariat, its outreach activities and the EITI Report²⁶. [In addition to financing the secretariats budget the ministry financed its EITI related costs \(events organized by the ministry, travel costs, personnel costs\).](#)

From the available documentation one can see that the government (BMWi) has gone to great lengths to ensure that four out of five participating civil society organisations are adequately funded to engage into the EITI process. As the initial commitment phase 2015-2017 was reaching an end, the BMWi actively mapped out options for civil society financing via BMZ and other institutions and approached BMZ in particular to finance their activities further, to remove any potential risk of being accused of co-option through the government²⁷. The BMWi, BMZ and D-EITI secretariat supported the CSO in its application to Bengo²⁸. Civil society received EUR 356,000 from 2015-2017 from the BMWi and EUR 100,000 from BMZ in 2018 (or EUR 114,000 on average per year).

Stakeholder views

Stakeholder consultations indicate strong government engagement. The EITI discussions have raised interest in other federal ministries, in particular the Federal Minister for the Environment, Nature Conservation, and Nuclear Safety. [This ministry drafted the chapter on renaturation in the 2016 EITI Report.](#) All constituencies indicated strong engagement, albeit civil society indicated that the government

Commented [A3]: According to stakeholders feedback the chapter was drafted by the MSG.

²⁴ *Liste der Mitglieder der Bund-Länder AG* (list of members), available from the D-EITI secretariat.

²⁵ See for more information section License registers (#2.3)

²⁶ (BMWi and GIZ, 2014)

²⁷ The BMWi's support to CSO is documented in email exchanges and minutes from meeting with the BMZ and civil society members and have been shared with the international secretariat.

²⁸ More background in section on civil society engagement, 1.3

could play a bigger role in shaping the agenda, rather than acting as a mediator between civil society and industry.

Commented [A4]: The CSO disagree with that notion.

EITI implementation is also seen as a foreign policy tool. Housing the EITI implementation within the international section of the BMWi for raw materials policy, it is closely linked to the strategic objective the government of encouraging the adoption of, or strengthening existing, commitments to sound resource governance and environmental and social standards in sourcing countries. The EITI is part of the section “developing access to foreign markets”²⁹ (which for 2019 is budgeted with EUR 115.8 million). With Germany’s raw minerals dependency growing, it wishes to encourage the establishment of governance, environmental and social standards in countries German industry is sourcing its materials and contribute to a level-playing field for companies worldwide. While all constituencies voiced support for expanding the scope of reporting to new topics, such as renaturation, the government hopes to, by including chapters in the EITI Report, inspire other implementing countries to report on environmental efforts and show how that can be done as part of the legal obligations towards companies. Besides own implementation (“as an example”) the German government supports the EITI in several developing countries (through the GIZ). The government constituency stated that it raises awareness on the EITI with government representatives in resource rich countries in its outreach capacity.

The representation of the state level (two of five constituency members in the MSG), as well as the coordination efforts within the central government and with the state-level through the above mentioned working group has ensured smooth communication and input from the subnational level. The working group has met face-to-face prior to all MSG meetings to date. The government lead in particular holds strong links to the state-level finance and mining ministries in three mainly still mining Länder. Coordination with other government agencies, such as the statistical office and the German Mineral Resources Agency is the national information and consultancy platform for mineral raw materials.

Consultations with the government clarified that the financial commitment for implementation beyond the first Validation is secured. According to proposal for 2019 federal budget act³⁰, the EITI in Germany will be funded with EUR 800,000 in 2019³¹ (2018: EUR 850,000³²) and government stakeholders have indicated that funding over the next three years is secured for at least up to 2020. The EITI is budgeted as part of “access to foreign markets”. It is seen as acceptable to other stakeholders that the government supports civil society financially through the GIZ. Civil society representatives pointed out that the BMWi spends most of its budget for the “access to foreign markets” – as part of which the EITI is listed as budget item - on developing markets for German companies, and helping to secure the industry’s access to minerals.

Commented [A5]: According to the government, the last part is not a purpose of the budget “access to foreign markets”.

Industry representatives lauded the government for its efforts to minimise the additional administrative burden on companies by aligning EITI reporting as closely as possible to the reporting requirements of the Transparency and Accountability EU-Accounting Directive in terms of timing of reporting and reporting

²⁹ “Erschließung von Auslandsmärkten”, see p. 5 (Bundesministerium für Wirtschaft und Energie, 2018)

³⁰ (Deutscher Bundestag, 2018)

³¹ Ibid, p. 1132

³² (Deutscher Bundestag, 2017, S. 1154)

thresholds.

All stakeholders confirmed the well-functioning of the D-EITI secretariat and are aware of the offer for capacity building on EITI, which has not been in demand yet outside of MSG meetings. All stakeholders confirmed that they felt fairly and equally treated by the Chair of the MSG and that the government lead was concerned with shaping a consensus through mediation.

Company stakeholders confirmed that the secretariat supported the company constituency in its outreach efforts to encourage more companies to report through a joint information meeting in 2017³³

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress in meeting this requirement. The government is fully, actively and effectively engaged in EITI implementation. Government ministries, both on federal and state-level, participate actively in the MSG's work. The government is concerned with the well-functioning of multi-stakeholder group, supports finding a medium-term solution in CSO funding and funds the EITI implementation in Germany.

The national secretariat is embedded at the GIZ, [a state owned service provider in the field of international cooperation. Its main commissioning party is the German Federal Ministry for Economic Cooperation and Development \(BMZ\) which implements development project for the Ministry for Economic Cooperation and Development \(BMZ\).](#) This solution seems to work well, though the contract for housing the D-EITI secretariat had not been extended beyond May 2019. Funding for D-EITI implementation is secured until at least ~~2020~~[2021. The government intends to extend the contract for housing the secretariat in the present setting.](#)

To strengthen implementation, the International Secretariat recommends that the government consider increasing the personnel resources on the EITI at the lead agency, BMWi.

Industry engagement in the EITI process (#1.2)

Documentation of progress

Active engagement:

The company constituency has five members and five alternates in the MSG. Company engagement is organised through the largest industry association, the [Association Federation for German Industries](#) (Bundesverband [der Deutschen Industrie](#) (BDI)), the alternate is the [Association of German Chambers of Commerce and Industry](#) (DIHK, Deutscher Industrie- und Handelskammertag e.V.). Both are industry-wide associations. BDI is the constituency coordinator. Four sector-specific associations share two seats on the MSG (Vereinigung Rohstoffe und Bergbau e.V., Bundesverband Baustoffe - Steine und Erden e.V., Bundesverband Mineralische Rohstoffe (MIRO) e.V. and Deutscher Braunkohlen-Industrie-Verein e.V).

³³ (BDI und D-EITI, 2017)

The other two positions are filled with an oil and gas company (Wintershall Holding GmbH) and a quarrying company (K+S Aktiengesellschaft)³⁴. Participation in MSG meetings was very high with over 93%. To date, there had been four changes in the constituency composition.

In the establishment phase of the MSG (July 2014), the government (BMW), together with the industry association Bundesverband der Deutschen Industrie (BDI) and GIZ, invited companies to a roundtable [organized by GIZ](#) to inform about the EITI and the role of MSG members from the industry. Nineteen company and industry association representatives participated³⁵. A follow-up workshop was held in October 2014 to orient company members on their rights and duties as part of the MSG and reporting entities³⁶.

In terms of engagement in reporting, 14 out of **48 identified** companies reported as part of the reporting process³⁷. In terms of coverage, the oil, gas and coal companies are well represented. However, it is difficult to evaluate the degree of coverage of the quarried natural resources sector due to its fragmented nature³⁸.

The lack of company participation has been identified as a key issue and is explained by company representatives by the cautious approach companies were taking in view of new reporting requirements that coincided with the start of EITI implementation. Companies point to three things: (1) uncertainty on how to comply with the EU Accounting Directive, (2) prioritising legal reporting obligations over voluntary (EITI) reporting, and (3) a general reluctance to publish data, which could give other companies in the industry a competitive advantage.

The company constituency participated in outreach activities. It has co-developed an information flyer on what the EITI reporting requirements for companies entail and has organised and hosted information sessions for companies³⁹. Companies continue to be committed to more outreach. All 14 companies signed a tax waiver to ensure that the information on payments made by them and received by the [local tax office or](#) municipal government can be reported. This is necessary due to Germany's tax secrecy laws.

There is no evidence to suggest that companies used data from EITI reports. Several company representatives mentioned that they communicate on their EITI participation as part of their corporate social responsibility activities.

Enabling environment:

The MSG ensured that reporting requirements for companies were harmonised with German legislation

³⁴ (Germany EITI, 2018)

³⁵ (Germany EITI, 2014)

³⁶ (Germany EITI, 2014)

³⁷ (Germany EITI, 2018, s. 90)

³⁸ see chapter 9.b.ii. of the EITI 2016 Report

³⁹ For example the information session on EITI reconciliation and parallels to the transparency and accountability directive, on 30 May 2017 at the GIZ in Eschborn.

Commented [A6]: The IA identified the 48 companies as "potentially compliant" with the reporting requirements. Only 22 companies published a mandatory payments report for 2016. Ten out of these 22 reported under EITI. If one excludes the quarrying sector (12 companies), eight out of ten companies reported under EITI.

(national transposition of the EU Accounting Directive 2013/34/EU). This affected the selection of the companies as well as an adjustment to the reporting deadline for (non capital-market oriented) to match the timeframe given by the regulation for the preparation of payment reports (from 30 June to 31 December 2017)⁴⁰. In the commonly agreed communication strategy of the D-EITI the MSG outlined the strategy to inform, convince and support companies in detail (see pillar one of the strategy). The business associations are identified as key disseminators in the strategy.

A key obstacle to the participation of companies to the EITI process in terms of data submission is the stringent tax secrecy laws. The companies, business associations and the IA with support of the government and the D-EITI secretariat had undertaken several outreach efforts to companies to explain the EITI's goal and reporting requirements for companies⁴¹. ~~The secretariat has also sent~~ The MSG, with support of the IA, drafted a 19-page guide on how to submit data for companies⁴² and has provided templates for data collection and waivers. These documents were accompanied by guidance, prepared by the Independent Administrator (IA).

Stakeholder views

Company representatives considered the EITI as a useful tool for engaging in dialogue with civil society and considered that it had helped build understanding on how the companies operate, their legal requirements and framework they operate in. They felt the guidance received for filling in the reporting templates had been very good, but that it's still up to the goodwill of companies to find value in participating in the exercise. All of the identified companies also need to report under the Transparency and Accounting Directives of the EU and the extra burden to report for the EITI is not significant. Doubts around tax secrecy breach had been solved in the first reporting round and company representatives felt confident that more companies will report the next time. Company representatives highlighted the clear guidance by the IA, which made the reporting process run quite smoothly.

All constituency groups found it was good to see so many associations represent companies and welcomed in particular the participation of the BDI as Germany's most important voice for industry. The private sector members each communicate to other companies through their networks⁴³.

Company constituency communications is led by the BDI. Consultations occur usually prior to an MSG meeting to define its position and on an ad-hoc basis if feedback to draft chapters needs to be collected.

⁴⁰ (Germany EITI, 2018, s. 90)

⁴¹ D-EITI has produced a flyer for companies and an information event for companies on 30 May 2017, which recorded seven company representatives and four industry representatives. A consultancy was commissioned to produce information materials on reporting requirements for companies.

⁴² D-EITI commissioned Warth & Klein Grant Thornton to facilitate the data collection (Warth&Klein Grant Thornton and D-EITI, 2017).

⁴³ Such as their own sector organisations, if not already present on the MSG. For example, the BDI disseminates EITI work in the raw material committee.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress in meeting this requirement.

The Secretariat does not find any indications of obstacles to company participation. Despite the lack of participation of 70% of the companies that were identified by the IA, the coverage of companies per sector is quite high for most extracted resources⁴⁴. Companies continue to engage in outreach and expect more companies to disclose data for the second EITI Report.

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.

Civil society engagement in the EITI process (#1.3)⁴⁵

Documentation of progress

Freedom house ranked Germany as "Free" in its 2018 report⁴⁶ with a score of 94 (of 100) and also ranked Germany's freedom of the press environment as "Free"⁴⁷.

Expression:

In Germany Article 5 of the German constitution guarantees the freedom of expression while article 8 guarantees the freedom of assembly⁴⁸.

Civil society representatives are able to engage actively in public debate on the EITI and on issues concerning the sector. Civil society representatives are able to speak freely on transparency and natural resource governance issues. Civil society is encouraged to be involved in the design, implementation, monitoring and evaluation of the EITI⁴⁹.

⁴⁴ Over 95% for oil, gas, lignite and potash

⁴⁵ The first Validation under the EITI Standard (Azerbaijan 2016) established precedent for the Validation of requirement 1.3. The CSO protocol "operationalises" requirement 1.3. Each part of the CSO protocol speaks to specific parts of Requirement 1.3:

2.1 of the CSO protocol is intended to assess provisions 1.3(d), 1.3(e)(i), 1.3(e)(iv).

2.2 of the CSO protocol is intended to assess provisions 1.3.(b) and 1.3(c).

2.3 of the CSO protocol is intended to assess provision 1.3(e)(iii).

2.4 of the CSO protocol is intended to assess provisions 1.3.(a) and 1.3(e)(ii)

2.5 of the CSO protocol is intended to assess provision 1.3(d).

⁴⁶ (Freedom House, 2018)

⁴⁷ (Freedom House, 2017)

⁴⁸ See (German Federal Republic, 2014): http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0037

⁴⁹ This conclusion is drawn from a review of the MSG minutes (Germany EITI, 2018). Each stakeholder's view point (civil society, companies, government) is clearly indicated in the minutes (underlined) which allows to quickly view where there are disagreements and how they are dealt with.

Operation:

There were no indications of legal, regulatory, administrative or actual barriers to civil society, preventing participation in EITI nor any obvious restrictions of fundamental rights. Civil society groups engaged in the EITI process are able to communicate and cooperate with each other regarding the EITI process. Regular anti-coal demonstrations and the long-standing protest against lignite-mining in the Hambach forest demonstrate that civil society is able to operate freely on extractive sector governance, without coercion or fear of reprisal⁵⁰.

Association:

Civil society in Germany consists of 616,000 non-profits, foundations and community groups, ranging from sports clubs, to faith communities, environmental organisations and professional associations. They are also called “the third sector”. The freedom of association is protected by the constitution, the German Basic Law (Art. 9).

There is no Publish What You Pay coalition in Germany. CSOs working on the EITI are organically organised as a result of the EITI process. The coordinating role rotates among the CSOs that are MSG members and MSG member organisations which receive government funding.⁵¹ CSOs are funded by state institutions to enable them in taking part of the German EITI process. MSG-Members of CSOs are not funded. A civil society coalition called AK Rohstoffe works on Germany’s raw material policy from a development perspective. They are represented on the MSG through Forum on Environment and Development, which is itself an umbrella NGO.

In Germany, about 7.4 million people are organised in labour unions⁵². Labour unions emerged as organisation of civil society to demand better working conditions and are an elementary feature of the German political landscape. They continue to represent worker’s rights and interest. The main labour union in the representing (among other sectors, the) extractive industry is Industriegewerkschaft Bergbau, Chemie, Energie (Mining, Chemical and Energy Union, IG BCE in short)). The Union has 637.600 members⁵³.

Engagement:

The German government actively reached out to CSOs in the MSG establishment process. In the establishment phase of the MSG (July 2014), the government (BMWi), ~~together with GIZ~~, invited civil society organisations (CSOs) to a roundtable to inform about the EITI, the opportunities and the role of MSG members from civil society. The invitation had been sent to an open CSO distribution list of 26 persons as identified in the feasibility study for German EITI candidature⁵⁴ and CSO members were encouraged by the BMWi to further disseminate the invitation to potentially interested actors. The information on the round table was also publicly available on the Germany EITI website. It is upon the

⁵⁰See e.g. (The Guardian, 2018)

⁵¹All but the trade union.

⁵²See (European trade union institute, 2018)

⁵³As of 2017, see https://www.dgb.de/uber-uns/dgb-heute/mitgliederzahlen/2010/?tab=tab_0_0

⁵⁴(Germany EITI, 2014, s. 4)

invitation of the government that the trade union IG BCE was invited to participate in the MSG.

MSG meeting minutes demonstrate that civil society members participate actively in implementation. Stakeholder consultations confirmed that many of the elements of the 2016 EITI Report that go beyond the Standard were proposed by civil society. CSOs also ~~participated~~ took on an important role in drafting the report and other documents e.g. the Open Data Concept. Civil society has engaged in several outreach efforts among others by presenting the EITI Report in their conference on raw material policy in October 2017⁵⁵. A full list of outreach activities is provided in the annual progress reports.

~~Civil society representatives have the technical and financial capacity to engage in implementation. Funding from the government has enabled MSG members to build their capacity on domestic extractive sector issues. The civil society constituency in the MSG is diverse, as it includes development, environmental and anti-corruption NGOs, as well as a trade union. Additionally, MSG members draw on the expertise of other CSOs beyond the MSG on specific policy issues. The D-EITI multi-stakeholder process is based on a representative involvement of all stakeholders of the German resource sector and on an active, equal and informed participation of all organizations involved. With a view to enable this participation and to guarantee for a successful implementation of the EITI in Germany, civil society is receiving financial support from the government in order to build up necessary resources and implement activities. In 2018 the following organizations received a grant of 100.000 € in total (2015: 146.000 €; 2016: 120.000 €; 2017: 90.000 € in total): Forum Ökologisch-Soziale Marktwirtschaft e.V., Forum Umwelt und Entwicklung, Open Knowledge Foundation Deutschland e.V. and Transparency International Deutschland e.V. This grant enables the organizations to inform their respective stakeholders on the status of EITI implementation in Germany and to build up a differentiated opinion on future implementation. Furthermore the grant provides the opportunity to have an intensive preparation and follow-up of the issues discussed in the MSG by building up expertise on these issues.~~

The BMWi directly supported civil society members to actively participate in the German EITI process, initially for 2015-2017 to cover for their engagement in the run-up to publishing the first EITI Report⁵⁶. The feasibility study on EITI candidature had identified insufficient financial and personnel capacity as a limiting factor for civil society to engage in the work of the MSG. The report recommended to explore funding of CSO representatives through foundations or other associations, aware of the danger of co-option⁵⁷ if civil society is sponsored by the government agency carrying the responsibility of EITI implementation. Twelve civil society organisations had been interviewed for this study⁵⁸. Transparency International Germany volunteered as CSO constituency coordinator.

The following CSOs received financial support from the BMWi for 2015-2017: Green Budget Germany, Forum on Environment and Development, Open Knowledge Foundation Germany e.V. (OKFN DE) and Transparency International Germany e.V. (TI DE). The financial reporting ~~and~~ of all four, and contracts of

⁵⁵ See http://ak-rohstoffe.de/wp-content/uploads/2018/09/programmflyer_ARW_2017.pdf

⁵⁶ This can be found in the funding proposals // double check

⁵⁷ (Heidi Feldt, 2014, ss. 37-38)

⁵⁸ (Heidi Feldt, 2014, s. 51)

three of these CSO and GIZ were shared with the International Secretariat. The rationale for government sponsoring of the CSOs and the amount of funding is available on the Germany EITI website as part of the overview of the MSG members⁵⁹ and amounted to EUR 456,000⁶⁰.

The funding situation for CSOs deteriorated for 2018, as correspondence of the BMWi with CSOs and the D-EITI Secretariat documents. The BMZ stepped in to provide provisional funding for 2018. CSOs were encouraged to seek more sustainable funding via a development service provider of the BMZ, Bengo⁶¹. As of 1 November 2018, the funding for CSOs engagement for 2019 and onwards had not been resolved.

Access to public decision-making:

Civil society representatives have used the EITI process to promote public debate to inform the public about the EITI process and opportunities⁶².

There is no evidence to suggest that civil society representatives aren't able to engage in activities and debates about natural resource governance, including for example conducting analysis and advocacy on natural resource issues, use of EITI data, engagement with media outlets, development of tools to communicate the findings of the EITI Report. Information on the EITI is in the public domain and has been further disseminated by civil society members, for example with blogs⁶³ and panel discussions⁶⁴.

Civil society is included in ongoing debates on coal extraction. To guide the fierce discussion between supporters and opponents of lignite extraction, the government instituted a commission (in short "the coal commission") in June 2018. Former politicians, activists, entrepreneurs, trade unions and academia are part of the commission appointed by the government⁶⁵.

Civil society has made use of its right to bring action against the approval of coal companies' operating plans. The recent example of protests around the clearance of the Hambach Forest is a good example. The environmental organisation BUND had taken action against the District Government of Arnsberg,

⁵⁹ See <https://www.d-eiti.de/eiti-in-deutschland-akteure/>

⁶⁰ 2015: EUR 146'000, 2016: EUR 120'000, 2017: EUR 90'000 and 2018: EUR 100'000. 2018 was covered by the BMZ, while 2015-2017 support by the BMWi.

⁶¹ CSOs are seeking funding via development service vehicle Engagement Global gGmbH (referred to as Bengo), which received funding from the BMZ, drawing on the ministry's program to support multi-stakeholder partnerships. In its project outline, Forum on Environment and Development and OKFN DE propose a partnership with Ukraine's CSO dixigroup, which is an active member of Ukraine's MSG. The rationale is to link the CSO work in Germany with supporting CSOs in developing countries. This refocuses the role of the CSO in Germany's MSG from engagement in Germany more towards international development support (GIZ, , 2018, s. 2).

⁶² Such as the discussion round "Mehr Transparenz – Mehr Wert?" on 21 October 2015, organized by four of the five civil society organisations represented on the MSG.

⁶³ See, for example, <http://www.schattenblick.de/infopool/politik/wirtschaft/pwroh122.html>

⁶⁴ The four civil society organisations invited the public to a debate on the first EITI Report. (Transparency International Deutschland, 2017)

⁶⁵ See (Die Bundesregierung, 2018)

Commented [A7]: Regarding public debate in general, the MSG discussed very intensively and thoroughly options to address actual public debate including the general debate on lignite extraction in Germany. Based on these discussions the MSG (on initiative of the civil society) has included a wide range of new and innovative topics in the report such as subsidies, renewable energy, and dealing with human intervention in nature addressing these debates and is committed to continue doing so in future reports. This commitment is well documented. The numerous "positive" aspects seem to be mitigated by the omission of one current public discussion. In light of this, the D-EITI would like to point out that the actual specific discussions on the phasing out of the use of lignite peaked only in 2018 when the first report was already published and decisions about the second report were almost finished. Furthermore, the issue itself is not a mere extractive topic but highly political and more related to general questions about climate policy and management of structural change. To address related aspects to the phasing out of lignite, the Federal Cabinet has decided to establish the coal exit commission. This commission among others drafted recommendations for the closure of hard coal power plants, running on imported coal as well.

which had approved energy company RWE's operating plan to in the administrative court⁶⁶.

In terms of the broader environment, civil society organisations in Germany operate in, interest groups are free to organise and express their views, as long as the aim of the association is not contrary to the constitution⁶⁷. Interest groups, associations that follow a political goal, are estimated at about 5,000⁶⁸. Most of the interest groups are active on federal level. The "list of lobbyists" of the German Parliament gives an indication of the scale of CSO activity; it currently lists the details of 2,350 interest groups and is freely accessible⁶⁹. While more financial means can improve the reach of political influence in Germany, all interest groups are free to get involved in public decision-making⁷⁰.

Stakeholder views

Civil society members confirmed that they have been fully, freely and actively engaged in the EITI process. The civil society members that received funding (four out of five) vehemently assured that their freedom of speech is not compromised by government funding. Government and company stakeholders confirm that view.

CSO members stressed that it was upon their initiative that the chapters covering renewable energies, renaturation and subsidies were added. They do not see value in publishing payments from companies to the government as such for the public as such, as they don't identify corruption being an issue in the sector in Germany. The second report will include some data on recycling of extractive resources, [social standards and an update to the chapter on renewables](#) which they find relevant to highlight and which makes the report interesting to the public. Civil society feels that by linking resource policy to renewable energies and social and environmental standards they have shaped the understanding of other members of the multi-stakeholder group. Since many high-level officials are represented in the MSG, as well as company representatives from large industry associations, they feel the MSG is an excellent forum to shape issues around resource extraction, which could have an effect on how the government deals with resource-rich countries as part of their sourcing strategy.

Civil society feels that they operate in a professional environment, can have disagreements and find a compromise. CSO members had expressed that the MSG offered a unique setting where civil society had the same immediate access to the Ministry of Economic Affairs and Energy (BMWi) as companies did, and participated on equal footing with government and industry. The representatives of civil society engage with other CSOs in regular coordination meetings, where they inform other networks (such as the AK Rohstoffe) of any relevant discussions from the EITI meetings. Constituency coordination rotates ~~on a~~

Commented [A8]: This sentence is too generalized and does not reflect the opinion of all CSOs. For instance the CSOs argue for the disclosure of provisions, implementation securities, the payments of subsidies and indirect subsidies like concessions for electricity and energy taxes.

⁶⁶ See (Frankfurter Allgemeine Zeitung, 2018)

⁶⁷ (German Federal Republic, 2014, s. Article 9)

⁶⁸ (Bundeszentrale für politische Bildung, 2009)

⁶⁹ (Deutscher Bundestag, 2018). Institutions, corporations and foundations under public law and their umbrella organisations, as well as organisations whose representation of interests already takes place on a supraregional level are not considered on this list. The same applies to affiliated associations of an already registered umbrella organisation as well as to individual clubs and individual companies.

⁷⁰ (Bundeszentrale für politische Bildung, 2009)

~~roughly yearly basis~~ between the four organisations. Coordination meetings happen prior to MSG meetings. Similarly, they draw on their CSO network (Tax Justice Germany, Bundesverband Erneuerbare Energien⁷¹). Civil society has also engaged with civil society abroad, such as CSO members from Mexico and the Ukraine. CSO members participated in a few international EITI board meetings as observer, financed by the D-EITI secretariat (offered to all MSG members). CSO members participated in the pre board CSO meetings and were able to network with other CSO representatives.

The civil society constituency is divided. The trade union (Industriegewerkschaft Bergbau, Chemie, Energie) representing mining employees belongs to civil society, representing domestic labour and social affairs. The four other CSOs do not coordinate their positions with the trade union, as it often has a different opinion especially when it comes to the continuation of lignite extraction in Germany. Stakeholders state that their positions are often more aligned with company and government positions.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress in meeting this requirement. Civil society is able to express, operate and associate freely on issues related to natural resource governance. CSOs are engaged in EITI implementation and have access to decision-making.

German civil society members have used the EITI process to address environmental issues, subsidies and the linkage to renewable energies related to the extractive industry in Germany in the 2016 EITI Report⁷². It largely uses the EITI to shape the expert discussion on resource policy more broadly.

The financial support enabling CSO engagement had not been secured for 2019 at the commencement of Validation. Government commitment to the EITI and to resolve the funding issue for CSOs remains high.

To ensure continued participation of civil society, the government is encouraged to continue its financial support to civil society organisations.

MSG governance and functioning (#1.4)

Documentation of progress

MSG composition and membership:

The first multi-stakeholder group meeting took place on 10 March 2015, one month before the formal establishment of the MSG on 14 April 2015⁷³. In the formation phase (2014), BMWi had organised open information events for company and civil society to invite participation from both constituencies (see *Requirements 1.2 and 1.3*). A stakeholder mapping had been undertaken in the preparation phase to

⁷¹ TI funding report, 2017 (GIZ, 2017)

⁷² see the introductory remarks of the 2016 EITI Report, p.3.

⁷³ (BMWi, 2015)

Commented [A9]: This seems to be a misunderstanding. The civil society always coordinates its positions with the trade union, since we are all in one constituency group- only initiatives agreed upon by all five member organizations are brought into the MSG.

Commented [A10]: This statement is regarding the debate about coal phase out and not regarding the issues discussed in the MSG.

identify possible CSO and company representatives⁷⁴. A transparency summit was organised by the BMWi in November 2014 to inform the larger public on the plans for Germany's EITI candidature, which further opened the possibility of engagement for interested actors who had not been specifically contacted⁷⁵. Contact information of the Secretariat is available on the website.

The MSG agreed on its terms of reference ("rules of procedures") at its first MSG meeting on 10 March 2015 and these are available online⁷⁶. Article 2 of the rules of procedure establishes that the MSG shall be chaired by the BMWi. Members are appointed by the government for a period of at least two years. General renewal of the MSG is not foreseen⁷⁷. Constituencies nominate their own members and ensure balanced representation⁷⁸ and also nominate new members if one of their representatives resigns. Each member has an alternate. All constituencies have five members.

According to the MSG terms of reference, members may propose observers and experts to participate in MSG meetings if they notify the Chair ten days in advance. The decision for participation is in agreement with the MSG. The Chair decides if the observer has a speaking slot. A permanent observer slot is allocated to the International Secretariat. At the time of Validation, a member of the Federal Ministry of Environment (BMU) was a de facto permanent observer of the MSG⁷⁹.

There is no law or regulation establishing the MSG or Germany EITI. In the period between March 2015 and 1 November 2018, 16 MSG meetings have taken place.

Civil society representation:

Civil society members are represented by five members on the MSG: Transparency International Germany e.V. (TI), the trade union Industriegewerkschaft Bergbau, Chemie, Energie, the NGO coalition Forum on Environment and Development, the open data-oriented NGO Open Knowledge Foundation Germany e.V. and Green Budget Germany, which analyses the impact of tax policy on the environment⁸⁰. TI is represented by the chair person. Attendance to MSG meetings was high with 89%.

The selection process of civil society MSG members was broadly consultative and open to all. Criteria for the selection of CSOs which were contacted in preparation of the information meeting included a broad representation and the coverage of all relevant topics (e.g. transparency, accountability, open government and open data, the environment, development, as well as labour and social affairs). As follow-up of the round table with civil society, two civil society representatives assumed the responsibility

⁷⁴ (Heidi Feldt, 2014, s. 25)

⁷⁵ (Germany EITI, 2014)

⁷⁶ See link on <https://www.d-eiti.de/eiti-in-deutschland-aktEUR e/>

⁷⁷ Article 2, paragraph 2 states that "to safeguard the MSG's functionality, continuity of membership shall be maintained as far as possible".

⁷⁸ Article 2, paragraph 2

⁷⁹ This is recorded as such in the attendance register "Beobachterin Bund". There is no indication in the Rules of Procedures that permanent members need to be approved by the MSG.

⁸⁰ (Germany EITI, 2018)

of nominating other constituency members to the MSG⁸¹. Constituency coordination rotates, but Transparency International is considered the speaker of the constituency. The CSO constituency has seen most changes, but mainly for alternates (14 in total). The representative of Green Budget Germany changed once. Consultations with the constituency confirmed that changes are due to changes in the professional role of the MSG members. The civil society nomination process was open and independent, without any suggestion of coercion.

Commented [A11]: The CSO notes that all CSO organisations are equally represented without an official speaker of the constituency.

To enable the active, equal and well-informed participation of CSOs, four of the five organisations receive financial support⁸². The financial support is managed and disbursed by GIZ, who is contracted by the BMWi to manage the EITI national secretariat⁸³. CSO members have noted the high workload to engage in the MSG, as it deals with many specialist topics⁸⁴. Besides receiving funding from government, the organisations are independent of government and companies, both operationally and in policy terms.

Civil society members engaged in discussions with other interest groups in extractives, many of which have a development focus⁸⁵. The funding reports⁸⁶ of EITI-sponsored CSOs document outreach and dissemination efforts. For example, the member of the NGO coalition Forum on Environment and Development is part of the network “AK Rohstoffe”, a network of NGOs with a development and raw materials focus. Coordination calls happen on a monthly basis. The network evaluated its position conditions for approving the 2016 Report and for continued engagement in the EITI process⁸⁷.

Industry representation:

Companies are represented by five members on the MSG, three of which belong to industry associations (Federation of German Industries (BDI), German Commodities and Mining Federation and German Building Materials Association), and two to private companies (K+S Aktiengesellschaft and Wintershall Holding GmbH)⁸⁸. Alternates of the industry association MSG members are from different associations (Association of German Chambers of Industry and Commerce (DIHK), Federal German Association of Lignite Producing Companies, German Association of the Minerals Industry)⁸⁹.

The selection process for company MSG members was broadly consultative and open to all potential

⁸¹ (Germany EITI, 2014, s. 5)

⁸² see section 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.

Civil society engagement in the EITI process (#1.3) for information on the financial support

⁸³ (Germany EITI, 2015)

⁸⁴ See for example the 2015 report on the use of funds by Green Budget Germany (GIZ, 2016)

⁸⁵ For example, one alternate MSG member is part of the “working group for natural resources “(AK Rohstoffe), which is an NGO network for human rights and environmental protection for communities (<http://ak-rohstoffe.de/ueber-uns/>).

⁸⁶ The D-EITI Secretariat has supplied the International Secretariat with the funding reports of CSOs.

⁸⁷ (Forum für Umwelt und Entwicklung, 2018)

⁸⁸ (Germany EITI, 2018)

⁸⁹ (Germany EITI, BMWi, 2016)

reporting companies (see Industry engagement in the EITI process (#1.2)). As follow-up of the round table with companies, the BDI and the DIHK organised the consultation process with the private sector. Both organisations are not sector-specific⁹⁰. Companies decided to be represented by individual companies and by associations of the industries to cover all sectors relevant to the EITI.

Participation in MSG meetings was very high with over 93%. There has been little turnover in the industry constituency (four changes in total).

Government representation:

Given the importance of the state-level (*Länder*) in Germany and the fact that most revenue from the extractive sector in Germany is generated in the states and municipalities, the government set up a Federation-Länder working group to coordinate the government side of the German EITI process in Berlin and in all 16 federal states⁹¹. The government stakeholder group was constituted as part of this working group⁹². [The federal level passed the Federal Mining Act and the state level is supervising mining and enforcing the Federal Mining Act.](#)

Dr Winfried Horstmann, Director General for Industrial Policy of the BMWi is the chair of the MSG. His alternate is Andrea Jünemann, who is also the constituency coordinator. The government stakeholder group of the MSG was constituted from the Federation-State Working Group on D-EITI. Of the other four members, one more is from a federal agency (Ministry of Finance, BMF) and three are from state or district level government officials (Arnsberg District Council, North Rhine-Westphalia; Ministry for Economic Affairs, Labour and Transport, Lower Saxony; Ministry of Finance, Hesse). Alternates are from other state-level ministries⁹³. There has been a low turnover in this constituency, three in total. A list of all changes in the MSG is available in annex A.

Terms of reference:

The MSG agreed on its terms of reference (ToRs⁹⁴) at its first MSG meeting. The ToRs of the D-EITI MSG are clear and public⁹⁵. Before the MSG's constitution, the D-EITI secretariat had circulated drafts of both the terms of reference and roles of procedure for the MSG for comment to all nominated MSG members⁹⁶ and amendments were incorporated in the first meeting⁹⁷. The ToRs were revised once on in July 2016. The ToRs define the MSG's objectives in line with the government's goals of contributing to the further dissemination and development of the EITI and of promoting transparency and dialogue in the German raw materials sector. It clearly delineates the MSG's responsibilities in line with requirement

⁹⁰ The BDI is the umbrella organisation of German industry representing 36 member associations, with a combined membership of over 100,000 private businesses. The DIHK is an umbrella organization as well, representing 80 chambers of commerce and industry, which together have more than 3.6 million member companies of every size, from every branch of industry and every region. (Germany EITI, 2015, p. 12)

⁹¹ (Germany EITI, 2015, p. 4)

⁹² (Germany EITI, 2015, p. 11)

⁹³ (Germany EITI, BMWi, 2016)

⁹⁴ D-EITI calls its ToRs "Rules of Procedure"

⁹⁵ "MSG rules and procedure" under <https://www.d-eiti.de/en/the-eiti-in-germany-participants/>

⁹⁶ (Germany EITI, 2015, p. 11)

⁹⁷ (Germany EITI, 2018, s. 8)

1.4.b.i.

The ToRs specify that it is the MSG's responsibility to define the scope of EITI reporting, approve the ToRs for the independent administrator, approve the EITI Reports and annual progress reports, oversee the reporting process, develop, apply and review the work plan (including costing), as well as develop and apply the communications strategy⁹⁸.

Germany does not have a legal basis for its MSG other than the ToRs.

Internal governance and procedures:

The D-EITI terms of reference for the MSG state that stakeholders are treated as partners⁹⁹. Article 2 establishes that the German EITI multi-stakeholder group is based on the principle of parity and shall be chaired by the BMWi. MSG members shall meet every 12 weeks until compliance with the EITI Standard is achieved¹⁰⁰. The MSG made some slight adjustments concerning change in representative (Art.3), the publication of CSO's level of financial support and the members' duty to be prepared and participate in MSG meetings (Art. 11)¹⁰¹. Some other minor adjustments were made, mainly to update references to the 2016 EITI Standard. The changes of the internal procedures were adopted unanimously in its 6th meeting on 13 July 2016¹⁰².

The rules of procedure allow the creation of working groups (Section 4, articles 1-3) to work on certain areas. Each working group must have a member of each constituency. It also allows for adding experts to the group if needed. The MSG minutes reflect that working groups were frequently used to investigate certain areas and suggest options to the MSG¹⁰³.

The rules of procedure require four weeks advance notice of meetings and timely (three weeks in advance) circulation of documents prior to the meetings¹⁰⁴. A review of the internal page of the MSG can confirm that these timeframes are applied in practice.¹⁰⁵

Decision-making:

The rules of procedure state that the MSG shall take decisions by consensus¹⁰⁶. If a decision by consensus is not possible, the Chair may decide to vote on the issue, to which quorum must be met as well as at

⁹⁸ (Germany EITI, 2016), Article 1 (4) on the role of the MSG:

⁹⁹ (Germany EITI, 2016), Art. 1 (2).

¹⁰⁰ Article 3 (3)

¹⁰¹ The new articles are reflected in the German internal procedures, available on the German website: (Germany EITI, 2016). The possibility of removal arises if an MSG member does not attend three meetings in a row. The Constituency decides in collaboration with the Chair if they seek to replace the MSG member.

¹⁰² As recorded in the MSG minutes, agenda point 3.

¹⁰³ For example.

¹⁰⁴ Article 3(1), rules of procedure.

¹⁰⁵ Internal section of the deiti.de website, section "Termine und Fristen – Archiv"

¹⁰⁶ Article 5 (1)

least a 2/3 majority¹⁰⁷. Members are expected to attend the meetings in person and decisions are permitted to be taken by circular, if needed¹⁰⁸.

The minutes of the MSG confirm the practice that decisions are taken by consensus. Different positions of stakeholder are noted, as well as the mode of the final decision (“by consensus”).

As part of the 2017 strategy process, the MSG members found the decision-making effective and the composition of the MSG to be stable¹⁰⁹.

Record-keeping:

Both the MSG as well as the working groups record the minutes of the meetings. The MSG meeting minutes are available online and complete. The EITI secretariat holds a record of attendance of MSG meetings which is available upon request.

Germany EITI has an internal page on its website which documents all meeting records, including a section listing all decisions (per meeting), an overview of all deadlines¹¹⁰, and correspondence of the secretariat with key stakeholders that are of interest to the MSG. This guarantees that all MSG members have the same level of information.

Capacity of the MSG:

The composition of the MSG is diverse and brings in knowledge on a wide area of topics¹¹¹. Where members feel missing expertise, the rules of procedures foresee to set up working groups and to call on external experts to support the work¹¹².

As part of a strategy session in November 2017, MSG members have noted that capacity is a challenge in particular to civil society and its funding situation¹¹³. The D-EITI secretariat and BMWi have supported the civil society constituency, through direct funding and for 2019 onwards, in seeking new funding opportunities¹¹⁴. Members of the MSG, as part of the strategic review recommended using working groups more to reduce the workload, which was deemed too high on the individual members¹¹⁵. Finally, MSG members stressed the usefulness of the MSG for creating new networks and access to information and people¹¹⁶.

¹⁰⁷ Article 5(2-4)

¹⁰⁸ Article 3(4)

¹⁰⁹ (LNB Strategies, 2017, s. 10)

¹¹⁰ The D-EITI secretariat provided the international secretariat with log in credentials. Record keeping is excellent.

¹¹¹ See above sections on Government, industry and civil society engagement

¹¹² See section “internal governance”

¹¹³ (LNB Strategies, 2017, s. 10)

¹¹⁴ The D-EITI Secretariat provided correspondence on the matter of providing support to find funding for 2019 onwards.

¹¹⁵ (LNB Strategies, 2017, s. 10)

¹¹⁶ *ibid*

The documentation of the strategy process¹¹⁷ that took place in late 2017 reflects the engagement of all MSG members to participate in defining the direction of EITI implementation in Germany, and the willingness of the German government for a collaborative and results-oriented implementation of the EITI, in line with the objectives as defined in the rules of procedure.

In terms of capacity building for MSG members, industry and civil society were informed as part of the roundtables (mid-2014) that the D-EITI secretariat could provide tailored capacity-building sessions for different stakeholders. The D- EITI work plan 2018 lists as action point 45 that trainings are offered on demand.

Per diems:

There is no evidence for per diems in Germany EITI. Civil society receives financial support, which is made public on the D-EITI website. This does not include explicit per diems for MSG meetings.

Attendance:

The D-EITI secretariat records attendance of all MSG meetings. According to the minutes, all meetings had quorum and attendance was generally very high (average 89%). Signed MSG attendance lists are available from the D-EITI secretariat. Annex B contains an overview of the attendance per constituency.

National secretariat:

The National secretariat (D-EITI secretariat) was founded in 2014 to support EITI implementation in Germany. The BMWi contracted GIZ to carry out the function of a neutral supporter of German EITI implementation and to manage the MSG¹¹⁸. The contract is dated to 5 August 2014 and has been amended four times to adjust the scope of the work of the secretariat. The last amendment was made in August 2018. Besides the contract the terms of reference define the scope and deliverables of the D-EITI secretariat. The current cost estimate for EITI implementation is at EUR 4 million for the period of 1 June 2014 to 31 May 2019. The Terms of Reference for the D-EITI Secretariat were presented at the first MSG meeting on 10 March 2015. The current version of ToRs for the Secretariat is dated to 16 July 2016 and is available online¹¹⁹.

Stakeholder views

MSG members felt that the constituency nominations process was open and transparent. Some CSO stakeholders expressed that the government expected the IG BCE to have a seat on the MSG as part of

¹¹⁷ The "strategy process" was initiated by the MSG (when, where) and was carried out by the strategy working group. MSG members of all constituencies were interviewed as part of the process and the results documented in a short study, which was sent to the MSG for comment in November 2017. The final version was shared with the MSG in December 2017 and presented at the MSG meeting in an extraordinary meeting on 4 December 2017. The documentation was shared with the International Secretariat.

¹¹⁸ See Article 2(7) of the rules of procedures of the MSG: "The management of the MSG is delegated to the D-EITI Secretariat, and is available to the Chair and constituency representatives. The Secretariat attends all meetings of the MSG without voting rights. The tasks of the management include planning the meetings.

¹¹⁹ See Terms of Reference D-EITI-Sekretariat, 16. Juli 2016 (Germany EITI, 2016)

civil society representation. There is no consensus within the constituency on if this was contrary to the freedom of civil society to organise itself¹²⁰. Civil society stressed that it was difficult to find enough representatives to fill the MSG seats due to the lack of relevance of transparency of payment flows to any of their campaigning topics at that time. Civil society members said they had clearly stated from the beginning that participation in the EITI would only be viable for them if they received financial support.

Stakeholder consultations found a highly engaged, interested and invested multi-stakeholder group. All constituencies felt adequately represented in the MSG. Members confirmed that decisions were taken by consensus and at times required intensive negotiation between constituency spokespersons. Stakeholders confirm that there had been no decisions taken using voting.

MSG members confirmed participating in the selection of the IA, approving work plans, annual progress reports and terms of reference of the IA. All constituency members confirm the terms of reference being followed and that the Chair and secretariat considers any written change requests to common products, such as the MSG meeting minutes.

All stakeholder groups highlighted the high level of professionalism of the MSG, both in terms of leadership and members. The level and culture of discussion was very good and had improved over time. They felt the preparation, chairing and follow-up of meetings were handled professionally.

Stakeholders commented that more decisions had been taken by circular recently. This was mainly the result of having been able to build trust between the constituencies and coordination running more smoothly over time. The feedback was widely that MSG meetings had become more efficient and effective.

Stakeholder consultations found a high engagement of MSG members in the drafting and commenting of chapters in the first EITI Report. Responsibility of preparing chapters was allocated in the MSG, with different constituencies leading on the first draft. Both EITI Report content as well as MSG minutes are frequently commented upon and adjusted as the result. All constituencies drew on expert networks (within the government for example, or as part of NGO or company knowledge networks) to ensure that the respective larger constituencies had possibility to comment and input on the language of the report and topics covered in it.

Consultations confirmed the use and effectiveness of working groups to prepare subject matters in more depth to enable the MSG to take informed decisions¹²¹.

Members of all constituencies felt that the work in the MSG led to clarifying misunderstandings and to addressing knowledge gaps. All constituency members feel they had influenced and shaped other member's understanding of the sector. Despite Germany having a vibrant civil society and the legal

¹²⁰ Some civil society members found it important to have a trade union as part of the civil society constituency, others found trade union's position to be much closer to that of companies and government, and wondered if it was right to place them into the MSG.

¹²¹ The minutes reflect the contributions of working groups, for example the second MSG meeting on 10 June contains a report of the working group on scope and materiality.

framework allows companies and the “third sector” to partake in decision-making, CSO members said in particular that the MSG setting was unique in the sense that civil society had the same attention and access to government as companies. Other constituency members have underlined the value they saw in the space the MSG facilitated discussions to happen in a largely unconflictual matter. External stakeholders have pointed to the risk of MSG members seeing so much value in the process itself that it would outweigh tangible impact.

Members of the MSG found that in particular the supplementary chapters of the EITI Report 2016¹²² to be their product and to be written in a manner that reflects the nature of consensus of the MSG, and that has helped the EITI to be relevant in the public discussion. Corruption is not seen as a problem in the sector, since they find the legal framework does not provide any space for deviations from what are administrative procedures. The linkage to other topics was the MSG’s, and civil society’s in particular, attempt to make sure that the EITI adds value in Germany, beyond the reconciliation of revenues and the basic explanation of the legal framework.

Several MSG members have pointed to seeing the work of the MSG in Germany to serve as an example in other countries of how the MSG can select the topics covered by the EITI. Government representatives in particular saw value in the EITI covering social and environmental issues. They hoped that countries would follow suit and start embedding these issues in their coverage of the sector, which would eventually lead to a more reliable supply-chain in source countries for raw materials for German industry and improve living conditions in particular in mining regions.

Some members felt that the issue of exit of lignite extraction to be a topic that is out of question of being discussed at the table. This was clearly a line of division in the MSG. Stakeholders from government and companies did not see the MSG as place to carry out this discussion, but that it is in the public arena already¹²³. Some stakeholders commented that the role of the EITI in Germany could be to analyse the implications of any decisions made, once they were made, by the “coal commission¹²⁴”, whereas other external stakeholders said that they the relevance of the EITI in Germany determined by its ability to shape that debate actively.

Initial assessment

The International Secretariat’s initial assessment is that Germany has made satisfactory progress towards meeting this requirement.

The MSG has invested much time and effort to ensure that topics are addressed which frame the extractive industries, both in view of adding value to the German context, as well as creating precedents for other countries to follow suit and cover topics such as environmental and social standards, and subsidies. Extending the scope of issues covered did not happen smoothly, but was subject to engaged

¹²² Dealing with human intervention in nature, state subsidies and tax concessions and renewable energies

¹²³ On 6 June 2018 the government instituted a commission (in short “the coal commission”) to lead the debate on lignite extraction, see <https://www.kommission-wsb.de/WSB/Navigation/DE/Home/home.html>

¹²⁴ See note above

debate. The outcome is a report and portal¹²⁵ that are owned by the MSG.

The composition of the MSG covers a wide range of actors both in terms of coverage of topics, but also in political space. The federal structure of Germany is well mirrored in the MSG, giving the state-level more representatives than the federal level. The nomination processes of constituencies were free and transparent.

All three constituencies have functioning constituency coordination, besides of the trade union (CSO) which acts more on its own behalf. All constituencies communicate regularly with their wider network to ensure regular feedback into their constituency work. Coordination of positions works smoothly. The terms of reference of the MSG are largely observed in practice.

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.

Work plan (#1.5)

Documentation of progress

To establish the objectives of EITI implementation, the MSG, at its first meeting, formed a working group on “objectives and scope”¹²⁶. The work plan was built upon the agreed objectives. The first draft work plan was prepared by the D-EITI secretariat¹²⁷ and adopted by the MSG on 9 November 2015¹²⁸. The core objectives have not changed since.

The MSG meeting minutes over the past years clearly indicate that the work plan is used to track the decisions on the scope of the EITI Report, as well as dissemination activities and other action items in line with the D-EITI objectives¹²⁹. As part of the strategy process in 2017, the strategy working group proposed some more substantial changes to the indicators which are used to measure progress in reaching an objective.

The current work plan, which was discussed in an extraordinary MSG meeting on 4 December 2017 and adopted via circular on 12 January 2018¹³⁰, is based on the Validation requirements, the communications strategy of D-EITI, the open data concept and the strategy discussions of the MSG. The work plan is largely

¹²⁵ Content of the EITI Report were put online to www.rohstofftransparenz.de

¹²⁶ The working group was formed in the first MSG meeting and results presented at the second MSG meeting on 10 June 2015, agenda item 4. The discussions on the objectives are documented in the minutes of the meeting.

¹²⁷ 2nd MSG meeting minutes,

¹²⁸ 4th MSG meeting minutes, item 4 “Beschluss Arbeitsplan”

¹²⁹ For example, the MSG decided in its meeting on 19 June 2018 to remove the action item for expert consultation on the topic of company secrecy and contract transparency (MSG minutes, point 8 AOB). The current work plan still contains this action point (nr 6).

¹³⁰ Minutes of the extraordinary MSG meeting, agenda item 4.

up to date¹³¹, and following the comments by the D-EITI secretariat, the expectation is that the work plan is updated *annually*¹³².

Publicly accessible work plan:

The D-EITI work plan is publicly available on the website¹³³. It has been amended to reflect the decisions of the latest MSG discussions that had impacts on action items on the work plan.

Objective for implementation:

The work plan in its version as of 1 November 2018 lists 7 goals of D-EITI implementation. The goals are the same as adopted in 2014. The objectives are: (1) producing timely reports that are understandable and accessible to the general public and based on a transparent, open and innovative EITI process in Germany; (2) processing contextual information concerning the German extractive sector, with a view to promoting a broad debate on resource policy that includes aspects of sustainability (economic, environmental, and social); (3) engaging in understandable, commensurate and increasingly comprehensive reporting to the general public in compliance with the EITI Standard and in harmony with the EU Accounting and Transparency Directives, whilst generating added value; (4) contribute to the further development of the EITI Standard and its implementation and acceptance as a de-facto global standard, to support the global striving for transparency and accountability as well as the fight against corruption in the extractive sector; (5) sharing experience from the multi-stakeholder process, in particular with respect to participatory democracy, citizen engagement and knowledge transfer, and also with regard to EITI implementation in a federal state; (6) substantially enhancing Germany's credibility as regards its political and financial support for EITI and (7) ensuring ongoing implementation of the D-EITI with the intended multi-stakeholder model while building capacity for broad-scale public debate¹³⁴.

A key priority for the government is to improve the governance of extractive industry governance in the source countries for raw materials, as Germany is mainly an importer of raw materials. Thus encouraging countries to implement the EITI, and to use the EITI to address other topics, such as social and environmental impacts, as well as economic support and consequences of the extractive industry, is a central goal of the government as part of their international raw materials strategy. This rather outward focused objective is reflected in goals 4-6.

Measurable and time-bound activities:

Each objective has sub-goals and associated activities. Most of them are measurable and time-bound¹³⁵. Each sub-objective has clear indicators and related action points that allow to determine how to meet the objective and how to determine that it has been met. A responsible party is assigned to each action point.

¹³¹ The decision to remove the topic of company secrecy and contract transparency were decided to be removed in the 12th MSG meeting in June 2018 but still figure on the current work plan.

¹³² See meeting minutes of the third extraordinary MSG meeting on 19 December 2017, item 4. The Secretariat states that it can also be updated during the year if the MSG agrees.

¹³³ See <https://www.d-eiti.de/mediathek-dokumente/>, section "materials regarding EITI implementation, first link.

¹³⁴ Objectives are taken from the original work plan, as submitted to for the candidature application. The objectives have not changed (Germany EITI, 2015).

¹³⁵ The actions are either connected to an actual date, time of year, MSG meeting or to be "continuously" dealt with, such as the publication of MSG minutes online.

Activities aimed at addressing any capacity constraints:

The work plan suggests that the MSG has reviewed potential obstacles to the achievement of the objectives but has not identified any. The work plan contains an action point for the D-EITI secretariat to build MSG member capacity with training, upon request (action point 45).

Activities related to the scope of EITI reporting:

Activities related to the scope of EITI reporting are listed under objective 1, EITI reporting (activities 1-20). Several action points in that section relate to questions of expanding the scope of EITI reporting (for example point 16 on recycling and action point 19) and addresses systematic disclosure (see below).

Activities aimed at addressing any legal or regulatory obstacles identified:

There are several activities addressing regulatory requirements for company reporting. Objective 3 of D-EITI relates to complying both with the requirements of the 2016 EITI Standard and the EU Accounting and Transparency Directives (sub-goal 3.2). For example, the MSG decided to adopt the same reporting deadline for companies for EITI reporting and reporting under the EU Directive for the 2017 reporting cycle. Other activities to harmonise EU Directives and national requirements with the EITI Standard can be found in earlier versions of the work plan¹³⁶. Tax secrecy is an obstacle to publication of company payments and has been addressed with the tax waiver¹³⁷. One action point dealt with inviting an expert on contract transparency but has been removed from the work plan as it could not be fulfilled in 2018.¹³⁸

Plans for implementing the recommendations from Validation and EITI reporting:

Recommendations from EITI reporting are part of the work plan and in some cases have already been addressed¹³⁹. The first recommendation of the 2016 Report is to increase the number of reporting companies, which corresponds to action point 1 in the work plan and the activity has been updated with actions undertaken during the year. Stakeholder consultations found that all the recommendations of the first report had been addressed either through the work plan, or through follow-up by the responsible party.¹⁴⁰

Costings and funding sources, including domestic and external sources of funding and technical assistance:

The first work plan included columns on costs and some of the actions are costed. Many of them do not need to be costed, and some could be but are not. For example, conducting reconciliation of supplementary companies by the Independent Administrator (action 2) is not costed.

¹³⁶ Such as the work plan submitted with the candidature application (Germany EITI, 2015)

¹³⁷ Companies needed to grant a taxpayer waiver to allow for data collection. This was action item 60 on the first work plan and implemented as part of the 2016 reconciliation. See EITI 2016 Report, section 9.b.iv.

¹³⁸ Stakeholder consultations found that the reason was lack of funding from the government at the given time (Summer 2018). The topic contract transparency is to be reviewed in 2019.

¹³⁹ One of the recommendations from the first report was the harmonisation of reporting deadlines, as noted in the paragraph on legal obstacles. This has been addressed.

¹⁴⁰ For example, the government constituency decided against the addition of a representative from the municipal level after the EITI Board had waived Germany's reporting requirement to collect revenue data from all

The D-EITI process relies neither on outside technical nor financial assistance.

Mainstreaming:

The work plan addresses mainstreaming as an action item (nr 44, 44a and 44b). The status of the discussion is to establish what parts of EITI implementation is fit for mainstreaming in Germany. The MSG has discussed the understanding and implication of the Board's mainstreaming decision in several meetings¹⁴¹. It has decided, for example, that routine financial reporting from material companies on their payments to government is not feasible since it is contrary to the principle of tax secrecy. Concrete activities resulting from a mainstreaming review have not entered the work plan yet.

Open data:

Publishing information in a more accessible format is part of the work plan. The work plan draws its action points from the open data concept¹⁴²

Stakeholder views

All stakeholders confirmed the possibility to contribute to the work plan. Stakeholders confirmed the consultation with their wider constituency to shape the work plan. Civil society members in particular stated their influence on the work plan to include new topics was due to feedback from the larger NGO constituency.

Stakeholders confirmed that any changes to the work plan was done in consensus and documented in the minutes.

All members confirmed being aware of the offer to receive bespoke capacity building, but that they did not see the need to draw on that offer currently. Much capacity building had happened as part of MSG sessions and in consultation with expert networks.

Initial assessment

The International Secretariat's initial assessment is that Germany has made "beyond" satisfactory progress towards meeting this requirement.

The 2018 Germany EITI work plan is publicly accessible, produced in a timely manner and updated more often than annually. The work plan is adhered to as the consensus of what is to be discussed in a given year, with emerging topics tabled to 2019. The work plan is used to track deliverables of the MSG at the end of the year. It is updated more often than once a year to reflect any substantial changes on action points, following discussions in the MSG.

Indeed, Germany has made efforts to go beyond the basic requirements through including new topics into the work plan – a result of wider constituency consultation – and by updating the work plan more than once a year. The work plan's objectives are aligned with national priorities. The work plan reflects

¹⁴¹ November 2015, March 2016, July 2016, December 2017 (in view of preparations for the second report)

¹⁴² For example action points 22, 26 and 27.

the ongoing effort to make the EITI valuable, not only for the international context, but also to add to the national debate by including topics in the report that are outside of the scope of mandatory reporting. The work plan integrates action points on other working documents, such as the open data concept and the communications strategy.

The work plan documents that the MSG dealt in detail with the necessary steps to prepare for reporting (i.e. decisions on materiality and scope of reporting) and has used the work plan to track the coverage of the requirements as well as topics going beyond the scope of EITI reporting. The work plan addresses mainstreaming and open data, tracks recommendations from the EITI report and sets clear timeframes for when the MSG should decide on coverage of topics in line with the reporting cycle.

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.

Table 1 – Summary initial assessment table: MSG oversight

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Government oversight of the EITI process (#1.1)	The government is fully and actively engaged in the EITI process. Agencies, both on the federal and state-level contribute to discussions and act as expert resources. The government has shown interest in enabling funding for civil society	Satisfactory progress
Company engagement (#1.2)	There is an enabling environment for company participation. Challenges to EITI reporting posed by taxpayer confidentiality provisions have been overcome through annual confidentiality waivers signed by all reporting companies and receiving agencies. Mining, oil and gas companies are actively and effectively engaged in the EITI process.	Satisfactory progress
Civil society engagement (#1.3)	There are no suggestions of any legal, regulatory or practical barriers to civil society's ability to engage in EITI-related public debate, to operate freely, to communicate and cooperate with each other, to fully, actively and effectively engage on EITI-related matters. CSOs can speak freely on transparency and natural resource governance issues, as well as to ensure that the EITI contributes to public debate.	Satisfactory progress
MSG governance and functioning (#1.4)	The MSG functions in an equitable and effective manner, and the ToR is followed. The MSG reflects a broad representation of constituencies and has developed its capacity significantly. The MSG is engaged in writing of the report and has included several topics outside of the narrow scope of EITI reporting.	Satisfactory progress
Work plan (#1.5)	The 2018 work plan is publicly accessible, produced in a timely manner and updated on an ongoing basis, effectively used as a monitoring and tracking tool. Objectives aligned with priorities of larger national objectives. The work plan includes specific activities to follow up on recommendations	Beyond

	from EITI reporting. The three constituencies have consulted their broader stakeholder groups in preparing annual work plans.	
<p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> • To strengthen implementation, the International Secretariat recommends that the government consider increasing the personnel resources on the EITI at the lead agency, 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 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). 		

Part II – EITI Disclosures

2. Award of contracts and licenses

2.1 Overview

This section provides details on the implementation of the EITI requirements related to the legal framework for the extractive sector, licensing activities, contracts, beneficial ownership and state participation.

2.2 Assessment

Legal framework (#2.1)

Documentation of progress

EITI Report:

The EITI Report describes the legal framework and fiscal regime, including the level of fiscal devolution, an overview of relevant laws and regulations and information on the roles and responsibilities of government agencies.¹⁴³ The applicable legal framework for different types of resources is explained, as well as the status of mining rights gained under older legislation and features of environmental legislation.¹⁴⁴ In addition, the report includes information about the concessions for electricity and energy taxes.¹⁴⁵ Laws and specific articles are clearly referenced.

Due to the federal system, state-level authorities have significant regulatory and fiscal responsibilities. The report describes the division of labour between federal and state authorities and includes the royalty rates of different states.¹⁴⁶ Hyperlinks are included to websites of the mining authorities on state level.¹⁴⁷ The report describes reforms on state level to create online license cadastres¹⁴⁸ and includes information about the end of subsidised production of hard coal at the end of 2018¹⁴⁹.

Systematic disclosures:

The D-EITI data portal provides information about the legal and fiscal framework in a clear and approachable manner.¹⁵⁰ Federal legislation is accessible on the website of the Federal Ministry of Justice

¹⁴³ Section 3.a-b and Section 4.a-b.

¹⁴⁴ Section 3.b.

¹⁴⁵ Section 7.c.

¹⁴⁶ Section 4.b.

¹⁴⁷ Section 3.a.

¹⁴⁸ Section 3.c.

¹⁴⁹ Section 7.a.

¹⁵⁰ <http://www.rohstofftransparenz.de/en/rohstoffgewinnung/>

and Consumer Protection (BMJV).¹⁵¹ The Federal Ministry of Economic Affairs and Energy (BMWi) has overall control of the Federal Mining Act (BBergG). The ministry's website includes some non-financial information about mineral resources used in energy production, including oil, natural gas, hard coal and lignite.¹⁵²

BBergG allows states to stipulate different regulations in their legislation for the calculation of minesite and extraction royalties under certain conditions.¹⁵³ This means that detailed regulations are spread across state websites and online portals. For example, the website of the State Office for Energy and Geology of Lower Saxony includes information about exploration and mineral production in the state¹⁵⁴, as well as, for example, a link to the state-level regulation on royalties¹⁵⁵. For the purpose of this initial assessment, a comprehensive review of state-level websites was not undertaken.

Stakeholder views

Stakeholders across constituencies expressed confidence in the legal framework and its enforcement. Stakeholders did not comment on the information provided by the EITI on the legal and fiscal framework.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress in meeting this requirement. All information under Requirement 2.1 is provided in the EITI Report, including reforms in the sector. Due to the federal structure, the EITI Report and the D-EITI online portal are useful tools for collating information and links to state-level sources. This is highlighted by the fact that there appears to be limited information about the extractive sector on the website of the Federal Ministry of Economic Affairs and Energy (BMWi).

To further improve the accessibility of information on the legal framework and fiscal regime, D-EITI may wish to add links to relevant federal and state-level legislation in the online portal.

License allocations (#2.2)

Documentation of progress

EITI Report:

The allocation of both mining and petroleum licenses is directed by the Federal Mining Act (BBergG). The EITI Report describes the different license types and the process for obtaining them. In addition, a site-specific operating plan is required, as well as an Environmental Impact Assessment in the case of larger

¹⁵¹ <http://www.gesetze-im-internet.de>.

¹⁵² (BMWi, 2018b)

¹⁵³ Section 4.b.ii.

¹⁵⁴ (State Office for Energy and Geology of Lower Saxony, 2018)

¹⁵⁵ (Federal State of Lower Saxony, 2010)

projects. Licenses are awarded by state-level mining authorities.¹⁵⁶ The EITI Report does not describe the process for transferring or selling a license, but BBergG does.¹⁵⁷

The EITI Report includes references to specific sections of BBergG that outline the criteria for assessing license applications. In principle, a license is awarded unless the requirements are met. The grounds for denial, in effect the technical and financial criteria, are outlined in the law.¹⁵⁸ The criteria are partly vague, especially where the law refers to the “reliability” of the applicant. According to the EITI Report, relevant legislation for assessing applications may also include state-level regulations, federal building law, water law, environmental protection and nature conservation laws.¹⁵⁹ The report describes the status of licenses awarded before the enactment of BBergG in 1982 or under laws of the German Democratic Republic prior to 1990.¹⁶⁰

The EITI Report does not include information on license awards or transfers taking place in the period covered by the report (2016) or refer to deviations from the legal framework. The EITI Report only notes that new licenses are entered into mining authorisation books and maps (*See Requirement 2.3*).

There is no indication that licenses were awarded through a bidding process, and BBergG does not recognise such an approach. The EITI Report does not include the MSG’s commentary on the efficiency of licensing procedures.

Systematic disclosures:

While the EITI Report does not refer to actual license awards or transfers that took place in 2016, information about the award and transfer of oil and gas licenses is published annually by the Federal Ministry for Economic Affairs and Energy (BMWi). The report lists licenses in each state and documents changes compared to the previous year.¹⁶¹ The EITI Report does not include a link or reference to the information.

Similar disclosures are not available regarding the award or transfer of mining licenses. Some states appear to publish notifications of changes to licenses but this does not appear to be a legal requirement.

Stakeholder views

Stakeholders across constituencies expressed that they did not have concerns about the license allocation procedure. They considered the legislation sufficiently rigorous to prevent any deviations. Some civil society representatives did note that while they were confident that the law was being followed, the law itself was skewed towards favouring mining over environmental conservation. A government representative clarified that confirming the reliability of the applicant referred to a general compliance check.

¹⁵⁶ Section 3.b.

¹⁵⁷ § 22 and 23 of the BBergG.

¹⁵⁸ § 11-13 of the BBergG.

¹⁵⁹ Section 3.c.iii.

¹⁶⁰ Section 3.b.

¹⁶¹ (BMWi, 2018), pp. 127-236.

Stakeholders consider the 2017 amendment to the Federal Mining Act, which requires mining authorities to grant access to license information, to be a significant success for D-EITI. In the course of Validation, the D-EITI Secretariat confirmed from all 16 states that information about licenses awarded or transferred in a particular year was publicly available upon request. D-EITI considers the requirement met.

The award or transfer of licenses does not appear to be a topic of interest to consulted stakeholders as few new licenses are being awarded. It does not appear that the MSG considered whether licenses were awarded or transferred in the period covered by the EITI Report (2016). A government representative noted that a third party could challenge the administration's decision on a license, permit or operating plan in court. The government agency then has the burden of proof to demonstrate that license was allocated according to the criteria set out in the law. **The expansion of the lignite mine in Hambach had been challenged in court twice.**

Initial assessment

The International Secretariat's initial assessment is that Germany has made meaningful progress towards meeting this requirement.

In accordance with Requirement 2.2.a.iii, Germany is required to publish information about mining licenses awarded or transferred in the period covered by the EITI Report. The procedure for awarding and transferring licenses is directed by law, including the technical and financial criteria for assessing applications. However, the International Secretariat was not able to locate information about mining licenses awarded or transferred during the period covered by the EITI Report. There is no indication that information about licenses awarded or transferred in 2016 is available in a centralised manner or even published on state-level. The information appears to be available upon request from state-level mining agencies. D-EITI is encouraged to add a link to the report containing awards and transfers of oil and gas licenses in future EITI Reports.

In accordance with Requirement 2.2.a.iv, 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. 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. There is no indication that possible deviations from the statutory process have been considered. Stakeholders expressed confidence in the administrative process. Legislation allows third party groups to challenge the legality of licensing decisions in court and civil society groups have used this possibility.¹⁶² There appears to be a functioning mechanism for ensuring the accountability of license allocations. By compiling and publishing an overview of court cases related to licensing in the year covered by the EITI Report, D-EITI would provide accessible information about suspected and proven deviations from the legal framework.

Commented [A12]: The Hambach case is not challenging the legitimacy of the respective mining license. It is thus not an example of a deviation from the applicable legal and regulatory framework governing license transfers and awards.

¹⁶² (Deutsche Welle, 2018)

License registers (#2.3)

Documentation of progress

EITI Report:

The EITI Report describes that licenses are managed on state level, and there is no federal-level license register. Following EITI implementation, the Federal Mining Act (BBergG) was amended in 2017 to provide for public access to license information detailed in Requirement 2.3.b. Instead of coordinates the law refers to “fields to which the mining licence refers”¹⁶³ (translated as “extraction sites” in the EITI Report).¹⁶⁴ Stakeholders confirmed that this meant coordinates in practice. The law applies to all mining licenses, whether pertaining to companies material or not from an EITI perspective.

The report mentions that several states have already created online portals to access license registers. Others are mandated by law to provide the information upon request. The names of responsible state-level authorities and hyperlinks to their websites are included in the report. It remains unclear from the law and the EITI Report, whether information requests apply to specified mining licenses or whether a list of all licenses will be made available. The law states that proof of “legitimate interest” is required before allowing access to mining authorisation books and mining authorisation maps, which contain more comprehensive information on licenses.¹⁶⁵ Due to the federal structure, the EITI Report and the D-EITI online portal are useful tools for collating links to state-level online portals and clarifying the legal right to access licensing information.

Systematic disclosures:

The EITI Report highlights the online cadastre of the Lower Saxony State Office for Mining, Energy and Geology as a positive example.¹⁶⁶ The cadastre includes license information from the states of Lower Saxony, Bremen, Hamburg and Schleswig-Holstein. The maps in the portal also include information on, for example, contaminated sites, erosion and hydrogeology. Data can be downloaded from the portal, but the portal does not allow the user to search license information by the license holder’s name. Several other states have or are developing online license portals.¹⁶⁷ The D-EITI online portal includes links to these. The website of the Bavarian Ministry of Economic Affairs, Regional Development and Energy contains a pdf map that outlines license areas in the state. A list of licenses was added to the website in November 2018, after the commencement of Validation.¹⁶⁸

For the purpose of this initial assessment, the International Secretariat undertook spot checks on the availability of required license information (see Annex F). The International Secretariat reviewed selected online portals and requested the full list of mining licenses from the Mining Office of Southern Bavaria.¹⁶⁹

¹⁶³ § 76(3) of the BBergG.

¹⁶⁴ Section 3.c.i.

¹⁶⁵ § 76(1) and § 75 of the BBergG.

¹⁶⁶ (Lower Saxony State Office for Mining, Energy and Geology, 2018)

¹⁶⁷ Section 3.c.iii of the 2016 D-EITI Report.

¹⁶⁸ (Bavarian Ministry of Economic Affairs, Regional Development and Energy, 2018)

¹⁶⁹ Correspondence between the International Secretariat and the authorities in Bavaria took place between 13-29

While it was not possible for the Secretariat to undertake a comprehensive review of all licenses, it appears that in some states information available online or provided upon request is incomplete.

Stakeholder views

The D-EITI and the MSG consider the requirement met, as license information is available at minimum upon request. Civil society representatives considered the 2017 amendment to BBergG that enables access to license information as an important improvement and success of D-EITI. It appears that license data is not widely used. A civil society representative noted that the MSG had discussed including all licenses in the NIBIS portal managed by the state of Lower Saxony. The D-EITI Secretariat noted that 98,2% of royalty revenue in 2016 originated from states which already have an online cadastre.

Stakeholders noted that some mining licenses were hundreds of years old and tracing the application dates was not feasible. It was highlighted that in some states there was a high number of licenses, but the mines were mainly in decommissioning stage.

Initial assessment

The International Secretariat's initial assessment is that Germany has made meaningful progress towards meeting this requirement. The Secretariat found the requirement challenging to assess. While an amendment to the Federal Mining Act requires that states grant access to the data points listed in the requirement (2.3.b.i-iv), the Secretariat could not locate evidence that the register or cadastre systems, or a public interface with the required information, are publicly available in all states. While information regarding individual licenses is made available upon request, the current systems do not enable access to an overview. The Secretariat's interpretation of the Standard is that access to license information upon request does not constitute a publicly available license register or cadastre and therefore does not meet Requirement 2.3.b.

In addition, the Secretariat was not able to obtain empirical evidence that the required data points on licenses are systematically available in all states. It is possible that authorities would provide information to address gaps identified in the spot check upon request, as this is required by law. The information request submitted to the authorities in Bavaria and following correspondence demonstrates that the application of the law is not necessarily clear to all mining authorities. To address Requirement 2.3, these states may wish to grant access to mining authorisation books without requiring proof of legitimate interest or include license information in the NIBIS cadastre or a similar online portal.

In line 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

November. The Secretariat requested for a list of licenses and the information required in Requirement 2.3. The authority offered the possibility to view license information in person in Munich. After noting that an in-person visit was not an option, the authority shared a list of licenses. According to the correspondence, online access to the license register could not be provided as it requires proof of legitimate interest (§ 76(1) of BBergG).

pertaining to non-material companies, these should be explained in the EITI Report.

Contract disclosures (#2.4)

Documentation of progress

The EITI Report stipulates that in Germany, mineral or petroleum rights are not awarded through contracts, but through a licensing process directed by the law (BBergG). The report describes the policies and practices regarding access to licensing documents. However, the report does not explicitly state whether the full text of licenses is available. According to the report, approvals of license applications include the conditions related to the license. The approvals are made public, *if* the project in question requires an environmental impact assessment.¹⁷⁰

The EITI Report does not include a clear description of the government's policy on disclosure of full license texts. The policy, however, appears to be documented in legislation. The Federal Mining Act (BBergG) indicates that full license texts, as part of the mining authorisation book, do not need to be made publicly available unless the request is made by a person who can prove legitimate interest.¹⁷¹ BBergG largely stipulates the terms of exploration and extraction, including compensation of damage. The project-specific technical details are described in operating plans, which the competent authority must approve ahead of operations.¹⁷²

The EITI Report does note the possibility that there may be additional agreements between companies and specific government agencies, which would not be centrally recorded. The report notes that confidentiality clauses may prevent the publication of these agreements, where they exist.¹⁷³ The report does not clearly express, whether agreements between extractive companies and government agencies are publicly available in principle or in practice.

Stakeholder views

Stakeholders across constituencies highlighted that extractive contracts did not exist in Germany. They confirmed that agreements between companies and local authorities were not related to the terms of extraction (*see Requirement 6.1*). Rights to extract and explore resources are granted through a licensing process dictated by law.

A government representative noted that some states published license decision documents. For example, the NIBIS cadastre includes links to them. License decisions are published through the portal unless the company objects.

A government representative noted that public access to operating plans was granted under the Environmental Information Act (Umweltinformationsgesetz). Only information that made sites vulnerable

¹⁷⁰ Section 3.c of the English version of the 2016 EITI Report (removed from the updated version).

¹⁷¹ § 76(1) of the BBergG.

¹⁷² § 51-56 of the BBergG.

¹⁷³ Section 3.c of the English version of the 2016 EITI Report (removed from the updated version).

to sabotage would be blacked out. Civil society representatives noted that substantial information of interest to the public was removed before making the documents public. Another government representative clarified that the obligation to publish plans applied only to projects, which required an environmental impact assessment. In other cases, access requires legitimate interest.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress towards meeting this requirement. The EITI Report addresses the requirement, both policy and practice, rather superficially. However, the terms of exploration and extraction are strictly defined in legislation.

States appear to interpret the requirement for legitimate interest to accessing mining authorisation books in varying manners (*see Requirement 2.3*). To strengthen implementation of Requirement 2.4, D-EITI is encouraged to review state practices on granting access to mining authorisation books.

Beneficial ownership disclosure (#2.5)

Documentation of progress

Germany's approach to beneficial ownership builds upon the anti-money laundering directives of the European Union. The EITI Report includes the government's policy on disclosure of beneficial ownership, including details of relevant legal provisions, actual disclosure practices and reforms.

A Transparency Register including beneficial ownership information was established in June 2017 within the framework of the implementation of the Fourth Money Laundering Directive (EU) 2015/849. Currently, access to information about beneficial owners is subject to proving legitimate interest in the information.¹⁷⁴ The EITI Report explains what kind of cases this covers in practice. The report also notes that D-EITI has gained access to the register.¹⁷⁵ The report itself, or the D-EITI online portal, does not include beneficial ownership information. A link to the register is provided.¹⁷⁶

In an amendment to the Fourth Money Laundering Directive (EU) 2018/843 the EU decided in July 2018 that registers on beneficial ownership must be made publicly accessible by 10 January 2020. The EITI Report notes that Germany will transpose the directive into national legislation by the given deadline.¹⁷⁷ D-EITI's Beneficial Ownership Roadmap demonstrates that the MSG agrees with the approach.¹⁷⁸

The EITI Report does not disclose the legal owners of material companies or refer to a source where this information can be accessed.

¹⁷⁴ § 23(1) of the Money Laundering Act (GwG)

¹⁷⁵ Section 3.c.ii.

¹⁷⁶ www.transparenzregister.de

¹⁷⁷ Section 3.c.ii.

¹⁷⁸ (Germany EITI, 2016)

Stakeholder views

Government representatives confirmed that information about legal owners would be made publicly available in conjunction with the transposition of the 5th Anti-Money Laundering Directive into German law. Currently that information is also available to persons who can prove legitimate interest. They noted that existing (non-public) registers included information about the legal ownership of private legal persons (including corporate entities) and private registered companies. The Transparency Register contains a link to those existing registers where further information can be found, if the legal owner is identical with the beneficial owner. If the beneficial owner is not identical with the legal owner and therefore not yet contained in another register, the respective entity has the duty to notify the transparency register. This duty also applies if entities are not yet captured in any register which is the case for foundations with a legal personality, for example.

A civil society representative confirmed that information about legal owners is currently not publicly accessible. The representative noted that currently the Transparency Register was not only inaccessible due to the requirement of legitimate interest, but also incomplete and inadequate in the information it contained.

Initial assessment

Implementing countries are not yet required to address beneficial ownership and progress with this requirement does not yet have any implications for a country's EITI status. Germany is affected by EU legislation that requires beneficial ownership transparency by January 2020. Following transposition of an earlier Anti-Money Laundering Directive, Germany has already established a register that is accessible upon proof of legitimate interest.

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.

State participation (#2.6)

Documentation of progress

The EITI Report identifies one state-owned enterprise (SOE) that gives rise to material revenue payments. Südwestdeutsche Salzwerke AG¹⁷⁹ is a salt-producing company owned by the City of Heilbronn (46.6% of voting rights, 49% of ownership) and the State of Baden-Württemberg (45% of voting rights, 49% of ownership). The company paid nearly EUR 17 million in dividends in 2016. In addition, the scoping study found that the company RWE AG is minority-owned by municipalities and other public entities.¹⁸⁰

The EITI Report does not include information about the rules and practices regarding the financial

¹⁷⁹ The company is not actually named in the EITI Report, but a link to the website is provided.

¹⁸⁰ (PWC, 2015), p. 45.

relationship between the government and SOEs. The EITI Report documents that the MSG considers the requirement sufficiently addressed. While the dividends paid by Südwestdeutsche Salzwerke AG are material as individual payments, dividends are not considered a material revenue stream by the MSG (*see Requirement 4.1*).

There is no indication of changes in ownership by government entities in the reporting period (2016) or of the government or SOEs providing loans or loan guarantees to extractive companies. The EITI Report includes links to the ownership reports of the State of Baden-Württemberg and the City of Heilbronn.¹⁸¹

Stakeholder views

Civil society representatives were content with how the requirements on SOEs were covered in the EITI Report. They did not find disclosing further information relevant or necessary.

Initial assessment

The International Secretariat's initial assessment is the requirement is not applicable in Germany. As the scoping study and the Annex of the EITI Report note, state participation in the extractive sector is not significant in Germany. Technically Südwestdeutsche Salzwerke AG is a state-owned enterprise. However, while dividends from one company give rise to material revenues on the level of individual payments, state participation in the extractive sector is not material as a whole. The MSG is encouraged to revisit the issue of state participation regularly, to review the applicability of requirements 2.6 and 6.2.

¹⁸¹ Section 9.a.ii.

Table 2- Summary initial assessment table: Award of contracts and licenses

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Legal framework (#2.1)	All information under Requirement 2.1 is provided in the EITI Report, including reforms in the sector. Due to the federal structure, the EITI Report and the D-EITI online portal are useful tools for collating information and links to state-level sources.	Satisfactory progress
License allocations (#2.2)	The process and criteria for awarding and transferring licenses is defined in legislation. Awards and transfers of oil and gas licenses in 2016 are publicly available. The same information is not systematically published for mining licenses. The MSG does not appear to have considered possible deviations from the legal framework.	Meaningful progress
License registers (#2.3)	While an amendment to the Federal Mining Act requires that states grant access to the data points listed in the requirement, the Secretariat could not locate evidence that the registers or cadastres are publicly available in all states. This prevents accessing an overview of licenses. In addition, the Secretariat was not able to obtain empirical evidence that the required data points on licenses are systematically available in all states.	Meaningful progress
Contract disclosures (#2.4)	The EITI Report addresses the requirement, both policy and practice, only superficially. On balance, the terms of exploration and extraction are strictly defined in legislation.	Satisfactory progress
Beneficial ownership disclosure (#2.5)	Germany is affected by EU legislation that requires beneficial ownership transparency by January 2020. Following transposition of an earlier Anti-Money Laundering Directive, Germany has already established a register that is accessible upon proof of legitimate interest.	

State-participation (#2.6)	Technically Südwestdeutsche Salzwerke AG is a state-owned enterprise. However, while dividends from one company give rise to material revenues on the level of individual payments, state participation in the extractive sector is not material as a whole.	Not applicable
<p>Proposed corrective actions:</p> <ul style="list-style-type: none"> • In accordance with Requirement 2.2.a.iii, Germany is required to publish information about mining licenses awarded or transferred in the period covered by the EITI Report. • In accordance with Requirement 2.2.a.iv, 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. 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 line 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, this should be explained in the EITI Report. <p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> • 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. 		

3. Monitoring and production

3.1 Overview

This section provides details on the implementation of the EITI requirements related to exploration, production and exports.

3.2 Assessment

Overview of the extractive sector, including exploration activities (#3.1)

Documentation of progress

EITI Report:

The EITI Report includes an overview of the production of key commodities, including their history, economic importance and uses. The report includes information about the outlook of the industry, including remaining reserves and the phasing out of hard coal production.¹⁸² Significant exploration activities are not referred to. In addition to the extractive sector, the report provides an overview of renewable energy production and resources required by it.¹⁸³

Systematic disclosures:

Information about oil and gas production and exploration can be found in the annual Crude oil and natural gas in the Federal Republic of Germany report.¹⁸⁴ The commodity-specific information included in the EITI Report is also presented in the D-EITI online portal.

Stakeholder views

Government representatives confirmed that no significant exploration activities were taking place.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress towards meeting this requirement.

¹⁸² Section 2.a.

¹⁸³ Section 9.

¹⁸⁴ (Lower Saxony State Office for Mining, Energy and Geology, 2018b)

Production data (#3.2)

Documentation of progress

EITI Report:

The EITI Report includes production volumes and values by commodity for the fiscal year covered by the report (2016), as well as references to data sources.¹⁸⁵ The volumes and values are sourced from different government agencies. The report explains that values are not included in official statistics and specifies where the values for each commodity were sourced from. The report notes that the reliability of production data was not verified.¹⁸⁶

Systematic disclosures:

The D-EITI online portal features an interactive map, which shows production levels by commodity and by state.¹⁸⁷ The underlying data on production volumes and values is already publicly available, although scattered in a number of sources, for example, in annual publications by the Federal Ministry for Economic Affairs and Energy (BMWi)¹⁸⁸, the Institute for Geosciences and Natural Resources (BGR)¹⁸⁹, the Federal Statistics Office (Destatis) and the Lower Saxony State Office for Mining, Energy and Geology (LBEG)¹⁹⁰, as well as a coal statistics association (Statistik der Kohlenwirtschaft E.V.)¹⁹¹ The D-EITI online portal includes links to the original data sources, but at the time of Validation, they referred to data from 2015.

Commented [A13]: Updated to 2016 sources in the updated version of the portal (German language only)

Stakeholder views

Stakeholders did not express concerns about the reliability or comprehensiveness of the production data.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress towards meeting this requirement. The EITI Report and the D-EITI online portal provide clear and comprehensive production data.

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.

¹⁸⁵ Section 2.b.

¹⁸⁶ Final Notes.

¹⁸⁷ <http://www.rohstofftransparenz.de/en/daten/federal-production/>.

¹⁸⁸ (BMWi, 2018)

¹⁸⁹ (BGR, 2017)

¹⁹⁰ (Lower Saxony State Office for Mining, Energy and Geology, 2018b)

¹⁹¹ (Statistik der Kohlenwirtschaft E.V., 2017)

Export data (#3.3)

Documentation of progress

The EITI Report includes the volumes and value of exports by the following four commodity groups: coal, crude oil and natural gas, quarried natural resources, and ores. The report includes references to the data source.¹⁹² Data disaggregated by each commodity is publicly available in the database of the Federal Statistics Office.¹⁹³

Germany is a heavy net-importer of natural resources, and almost all resources extracted in Germany are consumed domestically. The EITI Report notes that export data includes re-exports, which are likely to constitute most of the value of exports. The total value of extractive exports was EUR 6.6 billion in 2016, representing 0.54% of total exports. Without crude oil and natural gas, where the figures consist mainly of re-exports, the total value of extractives exports is EUR 1.6 billion. This represents roughly 0.13% of total exports from Germany.

Stakeholder views

Stakeholders did not express concerns about the reliability or comprehensiveness of the export data.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress in meeting this requirement.

¹⁹² Section 5.d.

¹⁹³ <https://www-genesis.destatis.de/genesis/online>

Table 3- Summary initial assessment table: Monitoring and production

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Overview of the extractive sector, including exploration activities (#3.1)	The EITI Report includes an overview of the production of key commodities and other public sources include further information. No significant exploration activities are taking place.	Satisfactory progress
Production data (#3.2)	The EITI Report and the D-EITI online portal provide clear and comprehensive production data.	Satisfactory progress
Export data (#3.3)	The EITI Report includes the volumes and value of exports by four commodity groups. Data disaggregated by each commodity is publicly available in the database of the Federal Statistics Office.	Satisfactory progress
<p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> 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. 		

4. Revenue collection

4.1 Overview

This section provides details on the implementation of the EITI requirements related to revenue transparency, including the comprehensiveness, quality and level of detail disclosed. It also considers compliance with the EITI Requirements related to procedures for producing EITI Reports.

4.2 Assessment

Comprehensiveness (#4.1)

Documentation of progress

Materiality threshold:

The EITI Report¹⁹⁴ documents the MSG's decision to follow the materiality threshold laid down in the EU Accounting Directive and the subsequent national legislation¹⁹⁵. If payments to a government agency in material revenue streams exceeded EUR 100,000, they were considered material. Documentation for payments below the threshold was also requested, but figures were not expected to be disclosed in the reporting templates. Trade taxes were reconciled in the updated EITI Report. A higher materiality threshold of EUR 2 million was set by the MSG for the reconciliation of these payments.¹⁹⁶ The EITI Board approved this approach in June 2018.¹⁹⁷

Material revenue streams:

The EITI Report covers the following revenue streams: corporation tax, minesite and extraction royalties, trade tax and lease payments. The revenue streams are described in the report. An annex to the EITI Report explains, why other revenue streams outlined in Requirement 4.1.b are not included in reporting. They are considered either inapplicable or immaterial. The report does point out that the company Südwestdeutsche Salzwerke paid dividends to the state of Baden-Württemberg exceeding the materiality threshold of EUR 100,000. The MSG has, however, does not consider dividends a material revenue stream.¹⁹⁸

The EITI Report does not include an assessment of the size of the material revenue streams relative to total revenues from the sector. The updated report explains that assessing total extractive revenue is not practically possible, as parent companies often make payments on behalf of their subsidiaries that are active in the extractive sector. In addition, trade taxes are collected by a large number of municipalities

¹⁹⁴ Section 9.a.

¹⁹⁵ German Accounting Directive Implementation Act (BilRUG) of July 23, 2015; pursuant to § 341q et seq. of the German Commercial Code (HGB).

¹⁹⁶ Section 9.c.iii.

¹⁹⁷ Board decision available at: <https://eiti.org/BD/2018-31>.

¹⁹⁸ ToR for the Independent Administrator.

and are not recorded centrally.¹⁹⁹ The report, however does include a rough estimate of total government revenue from extractives, which is EUR 490 million for 2016.²⁰⁰ A review by the Independent Administrator (IA) of mandatory payment reports shows that companies reported in total payments worth EUR 471 million. Three companies that reported for the EITI, did not publish mandatory disclosure reports.²⁰¹ If payments by these companies are added to the total disclosed in the mandatory payment reports, the total reaches EUR 506 million. Corporation taxes, royalties and trade taxes were reconciled for the EITI Report, while lease payments were unilaterally disclosed by companies. Corporation taxes, royalties and trade taxes amounted to approximately EUR 415 million. In addition, companies declared roughly EUR 647,000 worth lease payments. Based on the above, it can be estimated that the reconciliation exercise covered over 80% of total revenues.²⁰²

Mandatory payment reports covering 2016 demonstrate that in addition to the revenue streams covered by EITI reporting, two lignite-mining companies reported significant payments under the category “infrastructure improvement payments”. RWE AG and Lausitz Energie Bergbau AG (LEAG) reported payments of EUR 16.5 million and EUR 7 million, respectively. Both companies participated in EITI reporting but did not disclose these payments as it was not requested in the reporting template. The MSG tasked the IA to review these payments. The IA found that payments reported in the category consisted of several different revenue streams, as well as voluntary payments (see *Requirement 6.1*). RWE AG also reported payments of water abstraction levies totalling EUR 15 million.

Material companies:

The EITI Report documents that the selection of material companies also followed the Accounting Directive, which limits disclosures to large companies.²⁰³ According to the report, the Independent Administrator (IA) undertook a database analysis to identify large companies active in the extractive sector. As a result, 48 companies were identified. The report notes that the result may not be comprehensive, as data was insufficient. At the time the EITI Report was prepared, it was not known which companies would disclose payments under the Accounting Directive. The Independent Administrator estimates that coverage of free-to-mine resources in the EITI Report is comprehensive, while the same coverage could not be achieved for quarrying, as the sector is dominated by a large number of small and medium-size companies. The estimate is based on production volumes and royalty payments.²⁰⁴

Only 14 out of the 48 companies identified participated in reporting. The 14 reporting companies produced 96.0 to 99.4% of all lignite, crude oil, natural gas, potash and salt. The reconciliation covers 99.6% of total royalty payments. The report does not describe payments made by the reporting companies as a proportion of total government extractive revenues or specify the value of payments by non-reporting companies.

¹⁹⁹ Section 9.c.i.

²⁰⁰ Section 5.b.

²⁰¹ Dyckerhoff, Engie E&P Deutschland GmbH and Vermillion Energy Germany GmbH & Co. KG.

²⁰² The International Secretariat’s calculation.

²⁰³ The Accounting Directive defines a large company as one which exceeds two of the three following criteria: Turnover EUR 40 million; total assets EUR 20 million and employees 250.

²⁰⁴ Section 9.b.ii.

Based on the Independent Administrators review of mandatory payment reports covering 2016, eleven companies that did not participate in EITI reporting made material payments to the government. Six of these companies made payments worth over EUR 1 million and two out of these made payments of over EUR 10 million. The payments made by these two companies are equivalent to 6.1% of all revenue reconciled for the EITI Report (See table below). If dividends paid by Südwestdeutsche Salzwerte AG to government agencies are taken into account, the figure rises to 10.2% of reconciled revenue.

Table A. Effect on comprehensiveness of non-reporting companies making payments of over EUR 10 million.

Company	Total payments as reported in mandatory reports (EUR)	Payments in EITI material revenue streams (EUR)	Payments in EITI material revenue streams as % of all reconciled revenue (of all revenue in mandatory reports)
Quarzwerte GmbH, Frechen	10,872,000.00	10,872,000.00	2.6% (2.3%)
Südwestdeutsche Salzwerte Aktiengesellschaft, Heilbronn	14,614,000.00*	14,614,000.00	3.5% (2.7%)
In total	25,486,000.00	25,486,000.00	6.1% (5.0%)

* Südwestdeutsche Salzwerte did not report dividends to government entities as part of its mandatory payment report, as it did not consider these to be in the scope of the required disclosures. Other reports show that dividends paid in 2016 totalled EUR 17 million (See Requirement 4.5). If these are taken into account, the omissions of the 3 companies rise from 6.1% to 10.2% of all reconciled revenue.

Government entities and reporting:

The EITI Report outlines potential government entities receiving material revenues.²⁰⁵ These include regional tax offices, state-level mining authorities and municipalities. In practice, the agencies receiving material payments appear to have been identified through company reporting templates. The report, however, does not include a clear list of reporting government entities. Agencies receiving material minesite and extraction royalties and trade tax payments are clearly identified in reconciliation tables.²⁰⁶ For corporation tax, the agency or office submitting the data has not been specified. It appears from reconciliation tables that all government entities submitted the requested data.

²⁰⁵ Section 9.c.iii.

²⁰⁶ Section 9.c.ii (royalties) and Section 9.c.iv (trade tax).

Full government disclosure of the amount of total revenue received from each material revenue stream has not been provided. The practical barriers are explained in the report, namely the large number of government agencies receiving revenues and the payment of taxes by parent companies that are not involved in the extractive sector. The report does include an estimate of total government revenues from each material revenue stream. These are however largely based on tax statistics from the years 2010-2012. Comprehensive data is only available for extraction royalties, where total revenues are disclosed disaggregated by government agency.²⁰⁷

Discrepancies:

The reconciliation identified provisional discrepancies amounting to EUR 478,102. The discrepancies were fully resolved in the reconciliation process.

Stakeholder views

The Independent Administrator (IA) noted that the scoping for companies had been successful, as all companies that later published mandatory payment reports had been identified. The IA's view is that omissions are not material.

Following the review of the mandatory payment reports, the IA concluded that the only significant payments in 2016 that had not been included in the EITI Report were payments for infrastructure improvement (see *Requirements 4.6 and 6.1*) and water abstraction levies. Stakeholders did not express concerns about these payments not being included in EITI reporting, as they were already publicly available.

MSG meeting minutes demonstrate that the MSG discussed the comparison between data disclosed in mandatory payment reports and the EITI Report in March 2018.²⁰⁸ According to D-EITI, this included discussion about omissions by individual companies that had made large payments. The D-EITI secretariat noted that they considered the omissions to be less material as part of the trade tax payments were below the materiality threshold agreed by the MSG (EUR 2 million). The secretariat noted that the MSG did not attempt to reach comprehensive reporting on the quarrying sector due to its structure and that neither of the companies making payments of over EUR 10 million made royalty payments, which are the only revenue stream specific to the extractive sector.

Government and industry representatives noted that extensive efforts had been made to persuade material companies to participate in EITI reporting. This is supported by documentation provided to the International Secretariat.

Stakeholders noted that although the list of non-reporting companies was not published, the names of the companies could be easily deducted by comparing the list of reporting companies to the list of companies that disclosed mandatory payment reports. Some civil society representatives considered that the names of non-reporting companies should have been explicitly disclosed.

²⁰⁷ Section 5.b.

²⁰⁸ Minutes of the 11th MSG meeting, 21 March 2018.

Civil society representatives expressed concerns that a full overview of government revenue for the extractive sector or other industries was not available due to the de-centralised structure and tax secrecy. They did not consider this an issue that the EITI could overcome or suggest that the EITI Report would have missed any significant payments by extractive companies.

Initial assessment

The International Secretariat's assessment is that Germany has made meaningful progress towards meeting this requirement. The environment for comprehensive disclosures and reconciliation is challenging due to the federal structure and tax secrecy provisions. D-EITI was not able to define material companies based on data collected from government agencies or make unilateral government disclosures. Only 14 of the 48 companies identified by the Independent Administrator participated in reporting. Assessments based on production volumes, royalty payments and estimates of total government revenue suggest that reconciliation was comprehensive nevertheless, except for quarrying. However, the omission of two companies making significant payments has a material effect on the comprehensiveness of the report. Government agencies receiving material revenues appear to have disclosed requested information comprehensively. The EITI Report documents the discussions and logic behind defining materiality thresholds and selecting reporting companies.

Comprehensive reconciliation of payments and revenues related to quarrying was not achieved. This was due to the fact that scoping for material companies targeted large undertakings as defined by the Accounting Directive. Companies classified as large by the directive are required to disclose mandatory payment reports. Companies active in quarrying are mostly small and medium-sized and fall out of the scope. The International Secretariat finds that basing the selection of companies on the scope of the Accounting Directive is justifiable, even if this leads to a low coverage of revenue from quarrying. The MSG's decision to follow thresholds set in the directive is well documented.

Material payments that were not in the scope of EITI reporting were identified in the mandatory payment reports. Infrastructure improvement payments totalled nearly EUR 24 million in 2016. Considering that the category consists of several different revenue streams, as well as voluntary payments, it cannot be concluded that the omission of these payments materially affects the comprehensiveness of the EITI Report. The same applies to the exclusion of dividends (EUR 17 m) and water abstraction levies (EUR 17 m) from EITI reporting.

The report does not identify the companies that failed to participate in reporting. The scope of EITI reporting was aligned with the Accounting Directive, with the purpose that companies reporting for the EITI would be those required to disclose mandatory payment reports. Non-reporting material companies could thus be identified by comparing the list of reporting companies with the list of companies publishing mandatory payment reports. However, the mandatory payment reports are not available in open format and to assess the materiality of payments made by non-reporting companies, the user must open each report separately. In addition, three companies that participated in EITI reporting do not appear to have disclosed mandatory payment reports. Moreover, no reliable mechanism exists for ensuring that all companies within the scope of the Accounting Directive complied with the requirements. The comparison between companies in the scope of EITI and those publishing mandatory payment reports cannot be considered definitive.

A review of the mandatory payment reports demonstrates that payments made by two non-reporting companies in material revenue streams represent 6.1% of revenue reconciled in the EITI Report. The figure excludes the dividend payments by one company, which are not included in the mandatory payment report. With these included, the figure rises to 10.2%. The International Secretariat's assessment is that the omission of these companies making payments of over EUR 10 million affects the comprehensiveness of the EITI Report. On balance, the data is publicly available, and stakeholders largely consider company data reliable. The Secretariat is, however, concerned that this analysis is lacking from the updated EITI Report. Data in mandatory payment reports is in most cases less disaggregated than EITI data.

In accordance with Requirement 4.1, 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 order to comply with Requirement 4.1, 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.

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.

In-kind revenues (#4.2)

Documentation of progress

The EITI Report notes that in-kind revenues are not known in Germany.²⁰⁹

Stakeholder views

Government representatives confirmed that no revenue is collected in kind. Civil society representatives did not express views on the requirement.

Initial assessment

The International Secretariat's initial assessment is that the requirement is not applicable to Germany.

²⁰⁹ Annex, a.ii.

Barter and infrastructure transactions (#4.3)

Documentation of progress

The EITI Report notes that there is no indication of the existence of agreements involving direct exchange of goods or services against the granting of oil, gas or mining licenses.²¹⁰ A review of the Federal Mining Act supports this position.

Stakeholder views

Stakeholder consultations gave no indication of the existence of barter and infrastructure agreements. Stakeholders across constituencies expressed confidence that the legal framework was being followed.

Initial assessment

The International Secretariat's initial assessment is that the requirement is not applicable to Germany.

Transport revenues (#4.4)

Documentation of progress

The EITI Report notes that government agencies do not collect extractives-specific revenues from the transport of oil, gas and minerals. Operators of oil and gas pipelines that deliver these energy supplies to consumers are subject to corporate tax and not specific fees for transportation. State-owned transport companies do not levy special charges on the transport of minerals.²¹¹

Stakeholder views

Stakeholders did not express views about this requirement.

Initial assessment

The International Secretariat's initial assessment is that the requirement is not applicable to Germany.

Transactions between SOEs and government (#4.5)

Documentation of progress

The scoping study and the EITI Report identified a salt-producing company, Südwestdeutsche Salzwerke AG as being jointly owned by the State of Baden-Württemberg and the City of Heilbronn. The EITI Report includes links to reports documenting dividends (EUR 17 million) paid in 2016.²¹² Dividends were not considered a material revenue stream by the MSG and therefore they were not reconciled. There is no

Commented [A14]: The EITI report includes links to reports documenting the payment from company side (annual company report) as well as the income on government side (reports from the state and the city on state owned businesses).

²¹⁰ Annex, a.iii.

²¹¹ Annex, a.iv.

²¹² Section 9.a.ii.

indication that transfers to Südwestdeutsche Salzwerke AG from government agencies took place.

Südwestdeutsche Salzwerke AG did not participate in EITI reporting. Their mandatory payment report from 2016 demonstrates that they made material tax payments to the government (EUR 14 million in total), in addition to the dividend payments mentioned above (*see Requirement 4.1*). The dividends are not included in the mandatory payments report. In the report, the company explains that this is due to dividends paid out to all shareholders on equal terms.

Stakeholder views

Stakeholders did not express any concerns related to the coverage of transactions between Südwestdeutsche Salzwerke AG and the government. The issue does not appear to be of high interest to stakeholders. The MSG considers the requirement is addressed. Government representatives noted that they had been in contact with Südwestdeutsche Salzwerke and attempted to convince them to participate in EITI reporting.

Initial assessment

The International Secretariat's initial assessment is that Germany has made meaningful progress towards meeting this requirement. While the MSG's decision not to reconcile dividends is reasonable, it is problematic that Südwestdeutsche Salzwerke did not report payments in other material revenue streams. Total dividends paid by the company are available in the reports of the City of Heilbronn and the State of Baden-Württemberg. Accessibility to this information is however weakened by the fact that dividend payments were not included in the company's mandatory payment report.

In order to comply 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.

Subnational direct payments (#4.6)

Documentation of progress

The EITI Report notes that trade tax payments to municipal authorities are the only material revenue flows from extractive companies to subnational government entities.²¹³ D-EITI does not consider state-level authorities as subnational due to the federal structure. In the original version of the 2016 D-EITI Report, trade taxes were only unilaterally disclosed by companies. However, they were reconciled for the updated EITI Report. Trade taxes reported totalled EUR 106 million.

The updated EITI Report documents that following the publication of the mandatory disclosure reports, the MSG mandated the Independent Administrator (IA) to investigate infrastructure improvement

²¹³ Annex, a.vi.

payments and water abstraction levies to local authorities. The MSG concluded that these payments would not be added to the scope of EITI reporting, as they were already available in the public domain.²¹⁴

Documentation provided by the IA demonstrates that infrastructure improvement payments reported for 2016 totalled EUR 24 million. Companies reported payments belonging to several different revenue streams, as well as voluntary payments to municipalities, under the category of infrastructure improvement payments. The IA's documentation suggests that the most significant revenue stream reported is land transfer tax, which is related to land acquisition rather than extractive activities.²¹⁵ Land transfer tax is collected by the state, rather than the municipality. In addition, publicly-owned Südwestdeutsche Salzwerke AG paid roughly EUR 8 million in dividends to the city of Heilbronn. Dividends were excluded from the scope of EITI reporting by the MSG's decision.

Stakeholder views

Stakeholders did not express concerns about the comprehensiveness of disclosure of subnational payments. Stakeholders across constituencies did not consider reconciliation to have added value in the German context.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress towards meeting this requirement. The MSG's decision that trade taxes are the only material revenue stream paid to subnational (below state-level) government entities is justified, considering the relative overall insignificance of other revenue streams and the fact that material payments are unilaterally disclosed by companies through mandatory payment reporting, albeit not disaggregated to the level required by the EITI.

Level of disaggregation (#4.7)

Documentation of progress

EITI Report:

The EITI Report discloses data by company and revenue stream. The government agency providing the revenue data with which company disclosures are reconciled, is not specified. The report refers to "public authorities" instead of specific tax offices, royalty-collecting agencies or municipalities. In addition, for royalties a reconciliation of aggregated payments by all companies is provided by government agency. Data files available on the D-EITI website provide more granular data that is disaggregated by company, revenue stream and recipient agency.

The EITI Report documents that the MSG adopted the definition of project included in the law

²¹⁴ Section 9.c.i.

²¹⁵ Documentation from companies provided by the IA, not publicly available.

implementing the Accounting Directive. Companies were requested to submit data by project for royalties and lease payments. Corporation tax and trade tax payments were not reported by project, as these payments are not project-specific.²¹⁶

Systematic disclosures:

Mandatory disclosure reports by extractive companies are available in the Federal Gazette. The payments are disaggregated by project, revenue type and government entity. The revenue types in most cases include several different revenue streams.²¹⁷ Mandatory disclosure reports for 2016 demonstrate that some companies provided a finer level of disaggregation, while others followed the rough classification included in the law.

Stakeholder views

Government representatives noted that there were some concerns related to publishing granular data, as it could entail a breach of competition law. This applied mainly to quarrying companies. Company representatives expressed interest in further aligning EITI disclosures with mandatory disclosures.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress in meeting this requirement.

To strengthen the implementation of Requirement 4.7, the MSG is recommended to note in the EITI Report that the revenue data is available in a more granular form on the D-EITI website.

Data timeliness (#4.8)

Documentation of progress

EITI Report:

The 2016 D-EITI Report was originally published in August 2017. An updated version of the report, which this initial assessment is based on, was published in October 2018. The MSG agreed calendar year 2016 as the reporting period in September 2015.²¹⁸

The EITI Report documents the challenges resulting from the differences in timeframes of EITI reporting and mandatory disclosure reports. Data collection for the 2016 EITI Report took place in early 2017, before the deadline for mandatory disclosure reports. Mandatory disclosure reports are due between 6 to 12 months from the end of the year, depending on company type.

²¹⁶ Section 9.a.iv.

²¹⁷ § 341r of HGB.

²¹⁸ Minutes of the 3rd MSG meeting, 9 September 2018.

Data collection for the 2017 EITI Report is due to take place between December 2018 and March 2019.²¹⁹ Thus, data collection for the EITI is now in sync with the deadlines for mandatory disclosure reports, but EITI reporting will be less timely than for 2016. The ToR for the Independent Administrator foresees the publication of the 2017 EITI Report in mid-2019. The Independent Administrator recommends that the MSG considers moving from reconciliation to unilateral disclosures by companies, which are already mandated by the Accounting Directive.²²⁰

Systematic disclosures:

The Commercial Code requires that mandatory payment reports are disclosed within a year after the end of the reporting period. For capital market-oriented companies, the deadline is six months from the balance sheet date.²²¹

Stakeholder views

Stakeholders from all constituencies considered it positive that the EITI reporting cycle is aligned with the deadlines for mandatory payment reports for 2017. The effect on the timeliness of EITI reporting was not considered a concern by civil society, as the non-financial information was considered more relevant than reconciliation of payments and revenues.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress towards meeting this requirement.

In order to improve the timeliness of disclosures, Germany is encouraged to disclose non-financial data on government websites or the D-EITI portal as soon as it becomes available.

Data quality (#4.9)

Documentation of progress

Terms of Reference for the Independent Administrator:

The ToR for the Independent Administrator was approved by the MSG in September 2016.²²² The ToR follow the standard ToR approved by the EITI Board, with some context-specific adjustments. The ToR builds on the scoping studies and documents decisions made by the MSG regarding the scope of EITI reporting. The MSG chose to write the non-financial chapters themselves. The data reliability, comprehensiveness and confidentiality provisions outlined in the standard ToR are included in the ToR for the 2016 D-EITI Report.

²¹⁹ Independent Administrator ToR for the 2017 D-EITI Report, section 5.

²²⁰ Section 10.

²²¹ § 341w of the German Commercial Code (HGB).

²²² Minutes of the 7th MSG meeting, 21 September 2016.

Appointment of the Independent Administrator (IA):

The MSG discussed the candidates for Independent Administrator in December 2016 and made recommendations to GIZ, which under procurement rules made the final selection. MSG meeting minutes note that stakeholders were content with the procedure.²²³

Agreement on the reporting templates:

According to meeting minutes, the Independent Administrator presented the reporting templates for companies to the MSG for discussion in February 2017.²²⁴

Review of audit practices:

The EITI Report describes the legislation defining the accounting and auditing obligations of companies in Germany. The auditing of federal, state-level and local authorities is also described.²²⁵ It appears from the report that all participating entities are mandated by law undergo rigorous auditing processes. The EITI Report does not include an assessment of whether there were any deviations in practice.

Assurance methodology:

The EITI Report or MSG meeting minutes do not document discussions on assurances to be required from reporting entities. The reporting template requests companies to indicate whether the reported data is audited. The template, which includes the tax confidentiality waiver, required signatures from Board members. It is not documented in the EITI Report whether companies provided this information and to what extent the data is based on audited accounts.

Confidentiality:

The EITI Report documents measures undertaken by the Independent Administrator to safeguard confidential data. Data is stored in an ISO 7001 and ISO 9001-certified data centre.²²⁶ Tax secrecy was overcome through waivers from companies participating in EITI reporting. Data disaggregated by company was not disclosed by government agencies for companies that refused to participate and waive tax secrecy.²²⁷

Reconciliation coverage and omissions:

The EITI Report indicates the coverage of reconciliation in terms of royalties. Reconciled royalty payments represent over 99% of total royalties received by government agencies in 2016. Provisional figures of total revenues from the extractive sector suggest that reconciliation covers roughly 80% of all extractive revenues (See Requirement 4.1). Only 14 out of the 48 companies identified by the Independent Administrator reported. The non-reporting companies were not named due to possible legal constraints. The individual omissions by non-reporting companies were not assessed in the EITI Report.

²²³ Minutes of the 1st extra-ordinary MSG meeting, 9 December 2016.

²²⁴ Minutes of the 2nd extra-ordinary MSG meeting, 21 February 2017.

²²⁵ Section 9.a.vii.

²²⁶ Section 9 a.v.

²²⁷ Section 9 a.iv.

Data reliability assessment and recommendations:

The EITI Report describes company and government auditing obligations as rigorous and applying international auditing standards²²⁸ but does not include an explicit assessment of the reliability of data submitted by companies or government agencies. After adjustments, no discrepancies were found between payments made and revenues received. The Independent Administrator recommends that Germany considers moving away from reconciliation towards unilateral, systematic disclosure by companies, which is already mandated by law.²²⁹

Sourcing of information:

Non-financial information included in the EITI Report and featured in the D-EITI online portal is clearly sourced. In most cases, hyperlinks are provided. The MSG authored the non-financial information in the report, which is stated in the introductory chapter.²³⁰

Summary tables:

Electronic data files and summary data according to the format provided by the International Secretariat were sent to the international Secretariat and have been published.²³¹ Electronic data files in German were updated after the revised version of the EITI Report was published in October 2018.²³²

Stakeholder views

The Independent Administrator (IA) confirmed that all data provided was based on audited accounts, and all companies provided the requested additional assurances (signatures from Board members). Stakeholders did not doubt the reliability of data and considered the IA to be independent and credible. Reconciliation was not considered to add value to data reliability.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress towards meeting this requirement. While the EITI Report does not include a clear assessment of the reliability of financial data, the EITI Report is based on audited accounts and no discrepancies were identified. Stakeholders consider the data reliable. The Independent Administrator is considered credible and technically competent.

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.

²²⁸ Section 9.a.vii.

²²⁹ Section 10.

²³⁰ Section 1.

²³¹ For summary data, see: <https://drive.google.com/drive/folders/0B361RU22DTPfSUZRSVZsR25zWk0>. For EITI data in open format, see: <http://www.rohstofftransparenz.de/en/downloads/#zahlungsabgleich>.

²³² Situation on 7 November.

Table 4- Summary initial assessment table: Revenue collection

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Comprehensiveness (#4.1)	The MSG's decisions on materiality are well documented. While the overall comprehensiveness of reconciliation is over 80%, a review of the mandatory payment reports demonstrates that payments made by two non-reporting companies in material revenue streams represent 6,1% of revenue reconciled in the EITI Report. With dividend payments included, the number rises to 10,2%. The International Secretariat's assessment is that the omission of these companies affects the comprehensiveness of the EITI Report in a material way. The Secretariat is concerned that this analysis is lacking from the updated EITI Report.	Meaningful progress
In-kind revenues (#4.2)	There is no indication that in-kind revenues exist.	Not applicable
Barter and infrastructure transactions (#4.3)	There is no indication that barter and infrastructure agreements exist.	Not applicable
Transport revenues (#4.4)	There is no indication that material transport revenues exist.	Not applicable
Transactions between SOEs and government (#4.5)	While the MSG's decision not to reconcile dividends is reasonable, it is problematic that Südwestdeutsche Salzwerke did not report payments in other material revenue streams. Total payments reached EUR 31 million.	Meaningful progress
Subnational direct payments (#4.6)	Trade tax payments to municipalities are reconciled. The MSG's decision that trade taxes are the only material revenue stream paid to subnational government entities is justified.	Satisfactory progress
Level of disaggregation (#4.7)	Data is disclosed by company, revenue stream and government agency in the electronic data files published online.	Satisfactory progress

Data timeliness (#4.8)	The EITI Report was published within two years from the end of the reporting period. The MSG is seeking to further align the timing of EITI reporting with mandatory reporting deadlines.	Satisfactory progress
Data quality (#4.9)	The EITI Report is based on audited data and no discrepancies were identified. The Independent Administrator is considered credible and technically competent.	Satisfactory progress
<p>Proposed corrective actions:</p> <ul style="list-style-type: none"> In order to comply with Requirement 4.1, 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. In accordance with Requirement 4.1, 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 order to comply 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. <p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> 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 recommended 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.

5. Revenue management and distribution

5.1 Overview

This section provides details on the implementation of the EITI requirements related to revenue management and distribution.

5.2 Assessment

Distribution of revenues (#5.1)

Documentation of progress

EITI Report:

The EITI Report describes the allocation of extractive revenue.²³³ Extractive revenues are received by municipalities, states and the Federal Government. It is implicit in the report that all revenues are recorded in the budgets of these government entities. The report describes the distribution of different revenue streams among different levels of government. The report includes links to sources where information about the federal budget and other budgets can be accessed.

The EITI Report does not reference any national revenue classification systems or international standards. It notes that extractive revenues are not ear-marked. The summary data template following IMF Government Finance Statistics classification was submitted to the International Secretariat.

Systematic disclosures:

Information about the federal budget can be accessed on the website of the Federal Ministry of Finance.²³⁴ The EITI Report provides a link to a website maintained by Open Knowledge Foundation Germany, where information about state and municipality budgets can be accessed.²³⁵ However, the data is incomplete. For example, data is available and visualised for the state budget of Lower Saxony, but no information is available about the budgets of any of the 962 municipalities located in the state. These municipalities may publish budget data on their own websites, but a survey of this was not undertaken as part of this initial assessment.

Stakeholder views

Government representatives confirmed that all revenues entered municipal, state or federal budgets. Civil society representatives noted that there was a need to improve revenue transparency in Germany across sectors. Due to the federal structure and tax secrecy, it is not possible to track how much revenues each municipality and state collects from companies. They viewed this as a constitutional issue that EITI implementation could not address.

²³³ Section 4.e.

²³⁴ www.bundeshaushalt.de

²³⁵ <https://offenerhaushalt.de/>

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress in meeting this requirement. The federal structure affects the collection and allocation of revenues, which involves a complex re-allocation mechanism. The distribution of extractive revenues is briefly explained in the EITI Report and further information is available in other public sources.

To strengthen implementation of Requirement 5.1, all municipalities are encouraged to make budget information publicly available in open data format.

Subnational transfers (#5.2)

Documentation of progress

EITI Report:

Transfers of extractive revenues take place between the municipal, state and federal levels of government. The EITI Report describes the principle for re-distribution of each revenue stream and includes a reference to the applicable legislation, which includes the revenue-sharing formula.²³⁶ However, the report does not include information about material transfers taking place in the reporting period (2016). Subsequently, it does not assess deviations from the revenue-sharing formula.

Systematic disclosures:

Information about the financial equalisation mechanism, in which revenue is shared between rich and poor states, is available on the website of the Federal Ministry of Finance.²³⁷ The website includes detailed annual data about actual equalisation transfers, as well as the income calculations behind the equalisation, including royalties collected by each state.²³⁸ The financial equalisation mechanisms assess income from several different revenue streams. The population and special needs of states are taken into account when calculating which states should receive additional revenue or contribute to others. Royalties are considered in the calculation among other revenue streams. They are a marginal source of revenue even in states where oil, gas and mining production takes place.

Stakeholder views

A government representative clarified that tracking transfers was not possible in practice. Trade taxes and corporation taxes from extractive activities are not earmarked and cannot be distinguished from revenue collected from other sectors. Royalties enter the state budget and are taken into account when the total income of state is assessed to determine possible transfers to poorer states (financial equalisation). Royalties are not shared with the Federal Government, although it participates in financial equalisation by providing funds to states.

²³⁶ Section 4. e.

²³⁷ (BMWj, 2018c)

²³⁸ (BMWj, 2018d)

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress towards meeting this requirement. Royalties are a revenue stream generated solely by the extractive industries and they are included in the financial equalisation mechanism. Information about the basis of financial equalisation between states and the actual amounts transferred is comprehensively documented on the website of the Federal Ministry of Finance. Trade taxes and corporation taxes collected from extractive companies are blended with revenues from other sources, and it is not possible to track extractive-specific subnational transfers of these revenue streams.

To increase public understanding about subnational transfers, 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.

Additional information on revenue management and expenditures (#5.3)

Documentation of progress

The EITI Report includes links to publicly available sources of information on budgeting, expenditures and audit reports. The report also includes information about state subsidies and tax concessions to the extractive sector.²³⁹ In many aspects, the EITI Report is forward-looking. For example, it addresses the phasing out of hard coal production and includes projections about the minerals required for the production of renewable energy.²⁴⁰ Extractive revenues are not earmarked for specific programmes or revenues in Germany.²⁴¹

Stakeholder views

Stakeholders, especially from civil society and the government considered that the information the EITI Report provides on renewable energy, environmental compensation and subsidies was important for understanding the implications of extractive industries to public finances. As decommissioning of mines and subsidies for production entail significant costs, many civil society representatives considered it crucial that the EITI Report covers these topics. Company representatives were more reserved about broadening the scope of the EITI but considered it positive that the industry's contribution to environmental damage management was recognised and documented.

Initial assessment

The provisions of this requirement are encouraged. It is commendable that the EITI Report includes information about state subsidies and tax concessions for extractive companies, as well as environmental compensation. This provides citizens with a more complete view about the fiscal contribution of the extractive sector.

²³⁹ Section 7.

²⁴⁰ Section 8.

²⁴¹ Section 4.e.

Table 5 - Summary initial assessment table: Revenue management and distribution

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Distribution of revenues (#5.1)	The federal structure affects the collection and allocation of revenues, which involves a complex re-allocation mechanism. The distribution of extractive revenues is explained in the EITI Report and other public sources.	Satisfactory progress
Subnational transfers (#5.2)	Royalties are the only revenue stream generated solely by the extractive industries and they are included in the financial equalisation mechanism. Information about the basis of financial equalisation between states and the actual amounts transferred is comprehensively documented on the website of the Federal Ministry of Finance.	Satisfactory progress
Information on revenue management and expenditures (#5.3)	It is commendable that the EITI Report includes information about state subsidies and tax concessions for extractive companies, as well as environmental compensation.	
<p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> • 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. 		

6. Social and economic spending

6.1 Overview

This section provides details on the implementation of the EITI requirements related to social and economic spending (SOE quasi-fiscal expenditures, social expenditures and contribution of the extractive sector to the economy).

6.2 Assessment

Social expenditures (#6.1)

Documentation of progress

The EITI Report does not address social expenditure. It merely documents why social security payments are not included in reporting as a material revenue stream.²⁴² The scoping study recommends the exclusion of these payments.²⁴³ The report notes that companies may enter into agreements with government agencies and that these agreements may lead to payments for infrastructure improvement. These payments are not included in the EITI Report, but they are published as part of the mandatory disclosure reports. The MSG mandated the Independent Administrator to look into the mandatory disclosure reports and subsequently decided not to include the infrastructure improvement payments in EITI reporting. The EITI Report notes, however, that the classification of the mandatory disclosure reports includes both land transfer taxes and payments arising from agreements.²⁴⁴ The report does not specify whether the payment stream covers all potential social expenditures or whether these payments are made in cash or in kind. Discretionary social expenditures and transfers are not addressed in the EITI Report.

Stakeholder views

Stakeholders from all constituencies noted that there was a strong tradition of industrial companies providing services and infrastructure to the surrounding community. These payments were, at least partly, disclosed by companies in the mandatory payment reports classified as infrastructure improvement payments. Stakeholders considered this kind of social expenditure by companies as voluntary. It would typically involve an agreement with the local government authority, but the agreement was not a condition of or part of the licensing process.

The law does mandate compensation for economic losses. The Independent Administrator clarified that this involved, for example, compensation to households that were relocated due to a mining project. Companies would often compensate also the municipality to which the majority of the population would relocate. This could entail payments to the municipality or construction of public infrastructure. According to the Independent Administrator, these contributions are not part of the operating plan but based on

²⁴² Annex, a.i.b.

²⁴³ p.66.

²⁴⁴ Section 9.c.i.

separate agreements with local authorities.

Initial assessment

The International Secretariat's initial assessment is that the requirement is not applicable to Germany. Based on a review of the Federal Mining Act and on stakeholder consultation, it appears that while social expenditure is common, it is not mandated by law or the contract with the government that governs the extractive investment. There is strong indication that the only mandatory payments that bear resemblance to social expenditure are in fact compensation for economic loss due to extractive activity.

To strengthen implementation of Requirement 6.1, the MSG is encouraged to cover voluntary social expenditures in EITI reporting.

SOE quasi fiscal expenditures (#6.2)

Documentation of progress

The EITI Report notes that there are no known quasi-fiscal expenditures.²⁴⁵ The scoping study and EITI Report identified only one majority government-owned company operating in the extractive sector (*see Requirements 2.6. and 4.5*). There is no indication that quasi-fiscal expenditures take place.

Stakeholder views

Civil society representatives noted that they were content on how that requirements regarding SOEs was addressed in the EITI Report. No stakeholders indicated the existence of quasi-fiscal expenditure.

Initial assessment

The International Secretariat's initial assessment is that the requirement is not applicable to Germany.

Contribution of the extractive sector to the economy (#6.3)

Documentation of progress

The EITI Report includes all the information required in Requirement 6.3, including extractive sector contribution to GDP, an estimate of total government extractive revenues, export data and employment figures.²⁴⁶ The data is clearly sourced and presented both in absolute terms and as a percentage of the total. Total government revenues from the extractive sector are estimates that based on data from 2010-2012. Data from 2016 is only available for royalties.

²⁴⁵ Section 9.a.ii.

²⁴⁶ Section 5.

The report describes the key areas where each commodity is produced.²⁴⁷ The D-EITI online portal features an Interactive natural resource map that includes production and royalty data by state. In addition to the required data, the EITI Report includes information about the total turnover of extractive companies disaggregated by sector.²⁴⁸

Total government revenue from extractives is presented for years 2010-2016 and export data and total extractive company turnover for 2012-2016. These figures demonstrate well the declining economic importance of extractive industries, at least for Germany as a whole.

Stakeholder views

Company representatives noted that the EITI Report was useful for highlighting that the extractive sector was a significant industry and employer in Germany.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress towards meeting this requirement.

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.

Table 6- Summary initial assessment table: Social and economic spending

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Social expenditures (#6.1)	There is no indication that mandatory social expenditures exist.	Not applicable
SOE quasi fiscal expenditures (#6.2)	There is no indication that SOE quasi fiscal expenditures exist.	Not applicable
Contribution of the extractive sector to the economy (#6.3)	The EITI Report includes all the information required in Requirement 6.3, including extractive sector contribution to GDP, an estimate of total government extractive revenues, export data and employment figures.	Satisfactory progress

²⁴⁷ Section 2.

²⁴⁸ Section 5.c.

Secretariat's recommendations:

- 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.

Part III – Outcomes and Impact

7. Outcomes and Impact

7.1 Overview

This section assesses implementation of the EITI Requirements related to the outcomes and impact of the EITI process.

7.2 Assessment

Public debate (#7.1)

Documentation of progress

Comprehensibility:

The MSG produced the EITI in German and English, both in print and in digital format under www.rohstofftransparenz.de. The report is written in clear and accessible language²⁴⁹. Issuing a comprehensible report is objective 1.4 in the current work plan. To increase the understanding and visibility of the extractives sector in a politically fragmented landscape is one areas where MSG sees an added value of the EITI²⁵⁰. Much of the sector is regulated and managed on state-level, and EITI reporting in Germany provides an entry point for an overview on the sector in Germany, and links and information on competences on state-level.

Promotion:

The D-EITI Secretariat leads supports communications efforts on the basis of the communication strategy, decisions of the MSG and individual requests by MSG members, both in preparing the communications strategy, information packages and speaking points. There is evidence that all three stakeholder groups have been actively engaged in EITI-related outreach – both in disseminating findings from reporting and raising German EITI implementation in meetings with diplomats from resource rich countries²⁵¹. A review of the communications strategy finds that most messages deal with explaining what the EITI is and why Germany participates, and less on substantive findings of the EITI Report. All organisations participating in EITI implementation have issued a press release on the launch of the report²⁵². The BMWi held a launch event with over 130 national and international participants. Civil society organised a report launch event

Commented [A15]: The strategy was drafted before the publication of the first report. Priorities in the strategy are based on the extensive consultation of stakeholders.

²⁴⁹ In October 2018 an updated version of the Report was released in German to address some gaps identified in a pre-Validation exercise.

²⁵⁰ (Germany EITI, 2016, s. 7)

²⁵¹ The International Secretariat has received minutes from meetings of the Champion with country representatives from Chile and Peru.

²⁵² The press releases can be viewed online here: <https://www.d-eiti.de/mediathek-news/>

with discussion roundtable in which MSG members of other constituencies participated in²⁵³. The review of the social media campaign around the launch of the first report notes that more followers could be won as part of the campaign.

The latest communications strategy was adopted by the MSG in its meeting on 21 September 2016²⁵⁴, preceding [an extensive consultation of all stakeholders](#), a discussion in the MSG meeting and possibility for comment. An adjustment to the strategy was discussed as a follow-up to the outcomes of the strategy working group convened in December 2017. The reviewer suggested in the final report to adjust the narrative of the EITI implementation in Germany to address the sector from a resource *use* perspective rather than the governance narrative²⁵⁵. The discussion in the MSG meeting reflects that while it is understood that a resource-user perspective would allow for wider relevance in the public discussion there was no consensus on how to treat subjects such as e-mobility. Rather, the inclusion of a new topic (recycling of raw materials / urban mining) was agreed for the second EITI Report²⁵⁶.

The communications strategy has three core objectives: (1) raising awareness on EITI reporting requirements with stakeholders included in the reporting process, such as reporting companies and public authorities; (2) external communication with a focus explaining how the extractive industry works and its importance to the economy, and (3) external communication on international level on lessons learned in the national implementation, in particular related to MSG governance, reporting in a federal country and treating innovative topics as part of EITI reporting. It contains suggestions to several activities and specific target groups, some of which have been integrated into the work plan²⁵⁷ and documented in the annual progress report. Documentation to the International Secretariat show that several MSG members have included EITI in their professional roles.

The secretariat provides communication packages (including Logo-pack, FAQ's, Images, PowerPoint, short texts for websites) for MSG members, mainly addressing what the EITI is. The reception of the first report in mainstream media was low. The communications strategy was reviewed on its key deliverables in November 2017²⁵⁸ and sent to the MSG ahead of its meeting in March 2018 as annex²⁵⁹.

Public accessibility:

The complete EITI Report was made available on a website branded "resource transparency" (Rohstofftransparenz). The website was launched with the publication of the first report. In the past year (November 2017 – November 2018) the website had around 2000 unique visitors which remained on the website for an average 4 minutes. The financial data is available on the website in machine readable

²⁵³ The event was called "Mehr Durchblick beim Rohstoffabbau? Der erste EITI-Transparenzbericht in Deutschland" and was held on 19.10.2017, hosted by four of the five CSOs

²⁵⁴ The communications strategy timeline covers activities up to Q4 2017 (Germany EITI, 2016)

²⁵⁵ (LNB Strategies, 2017, S. 27)

²⁵⁶ Third extraordinary MSG meeting minutes, 4 December 2017.

²⁵⁷ For example, motivating more companies to report is work plan activity nr 1, dissemination on Germany's membership of the EITI on conferences in speeches and print material is activity nr 25 of the 2018 work plan.

²⁵⁸ (D-EITI, 2017)

²⁵⁹ The minutes of the 11th MSG meeting don't indicate that the evaluation was discussed.

format²⁶⁰ (excel and .csv format) as encourage by the Standard. All tables on contextual information in the print report are available in excel as well. There is a separate menu tab dedicated to data²⁶¹

The release of the data under the creative commons license CC BY 4.0 ensures the free access, release and reuse of EITI data. The website itself is open source. The code is accessible on GitHub²⁶². The MSG adopted the open data concept underpinning the practice²⁶³.

The Germany EITI website (www.d-eiti.de) contains all documents related to EITI implementation, such as the EITI Report in PDF, work plans, annual progress reports, communication strategy and the open data policy²⁶⁴. The available material online is comprehensive.

Contribution to public debate:

EITI data has not contributed to public debate. Stakeholders expressed that despite this being the first time (to their knowledge) that the total financial contribution of one company to different levels of government can be traced, the data itself is not of great interest. There is some potential that tax and non-tax payments could be of interest to some of the local communities where larger extraction takes place. So far EITI data does not seem to have been utilised by the media.

Following EITI implementation, the Federal Mining Act (BBergG) was amended in 2017 to provide for public access to license information detailed in Requirement 2.3.b. There is no evidence of any use of this newly publicly available license data. Before the amendment public access was limited to a proven "legitimate interest". Generally this includes journalistic activities. The amendment therefore in the first place benefits the wider public.

Stakeholder views

All stakeholders underlined that “comprehensibility” is a core value for the EITI process. To increase the understanding and visibility of the extractives sector in a politically fragmented landscape is one areas where MSG sees a clear added value of implementing the EITI²⁶⁵. Many stakeholders highlighted the effort made to bring the EITI Report online and implementing the open data concept.

Several stakeholders did not see great use of the D-EITI communications strategy. Some felt it was very detailed and more process oriented. Stakeholders acknowledged the challenge of promoting the EITI Report. Stakeholders from all constituencies expressed that there is little new in EITI data, other than being brought into one place, no value added of reconciliation aside of confirming that there are no discrepancies. Even though the MSG included chapters addressing issues that are of public interest

²⁶⁰ The sheets with disaggregated data on payments is only available after several clicks:

<http://www.rohstofftransparenz.de/en/downloads/#zahlungsabgleich> and <http://www.rohstofftransparenz.de/en/downloads/#daten-zum-deiti-bericht> .

²⁶¹ See <http://www.rohstofftransparenz.de/daten/>

²⁶² The codebase is the same as for the US EITI page. Accessible here: <https://github.com/pfeffermind/doi-extractives-data>

²⁶³ Minutes of the 7th MSG meeting, 21 September 2016, agenda item 6. The open data concept is available here: <https://www.d-eiti.de/mediathek-dokumente/>

²⁶⁴ See <https://www.d-eiti.de/mediathek-dokumente/>

²⁶⁵ (Germany EITI, 2016, s. 7)

(obligations for mining companies to deal with human intervention in nature, how the state subsidises some of the extractive industry and granting of tax concessions and the impact of the energy transition on the demand for extractive resources to produce enabling technologies), the publication of the report itself did not bring any new information into the public domain.

Another reason for limited interest is that the public does not see corruption as a problem in the extractive industry. Stakeholders expressed a high degree of trust in public institutions and administrative procedures.

All stakeholders pointed to the efforts of the MSG to increase the relevance of the EITI Report by including topics that go beyond the Standard.

Some stakeholders (mainly company and industry) noted that there is potential to draw in the EITI more on the global public debate on environmental standards and social standards for extraction. Showing examples of how regulation and administrative procedures can safeguard the environment and health and safety of workers and can contribute to establishing a level-playing field for companies who operate in different countries.

Civil society members stated that they do not see much interest in disseminating the EITI Report, because there is already a healthy discussion around many of the topics related to resource extraction in Germany²⁶⁶. Civil society sees less the value of giving access to the data than contextualising the extractives sector in a larger picture of raw materials dependency and the energy transition.

Civil society members highlighted that the EITI could only have an impact on the public debate if it dealt with the financial implications of a lignite phase-out and / or the climate risks and costs associated with continued extraction. Other constituencies reject this idea and point to the EITI being about publishing existing payment flows.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress in meeting this requirement.

Germany EITI has brought the EITI Report content online, in different formats, and linking content sources. It has written a report that is comprehensible and accessible to the general public. It has brought together information on the regulation and governance of the sector that is otherwise very fragmented due to the political landscape (federal system). Despite these efforts, **EITI has not managed to contribute to public debate, which is focused on coal phase-out.**

The outreach on the EITI has largely focussed on what the EITI is, and less on the data that is published as

²⁶⁶ To mention a few: the debate around lignite extraction and the destruction of forest "Hambacher Forst": <https://www.dw.com/en/germany-thousands-protest-to-save-hambach-forest/a-46060826>

Commented [A16]: Regarding public debate in general, the MSG discussed very intensively and thoroughly options to address actual public debate including the general debate on lignite extraction in Germany. Based on these discussions the MSG (on initiative of the civil society) has included a wide range of new and innovative topics in the report such as subsidies, renewable energy, and dealing with human intervention in nature addressing these debates and is committed to continue doing so in future reports. This commitment is well documented. The numerous "positive" aspects seem to be mitigated by the omission of one current public discussion. In light of this, the D-EITI would like to point out that the actual specific discussions on the phasing out of the use of lignite peaked only in 2018 when the first report was already published and decisions about the second report were almost finished. Furthermore, the issue itself is not a mere extractive topic but highly political and more related to general questions about climate policy and management of structural change. To address related aspects to the phasing out of lignite, the Federal Cabinet has decided to establish the coal exit commission. This commission among others drafted recommendations for the closure of hard coal power plants, running on imported coal as well.

result of the process. It is perceived, however, that there is limited interest in that information.

To strengthen the implementation of the EITI, the MSG is encouraged to review the communications strategy in view of identifying potential interest in revenue data on the local level and to consider taking a role of assessing emerging data on beneficial ownership and licenses on its comprehensiveness and user friendliness.

Data accessibility (#7.2)

Documentation of progress

As mentioned under #7.1, the EITI Report was made available online, in both German and English, on an open source platform which other countries can use if they wish. The data from the report is published in excel and .csv files, thus in machine-readable format. Action 26 of the 2018 work plan states that the data sets are to be uploaded to the German government open data portal²⁶⁷, so that the data can be found without direct knowledge of the EITI process.

Germany EITI has not produced a summary report. The EITI's summary data file, which uses IMF GFS coding, was submitted to the EITI International Secretariat, but is not disaggregated by receiving agency²⁶⁸.

The issue of mainstreaming was discussed on several occasions by the MSG²⁶⁹. In its 5th meeting in March 2016, the MSG agreed to apply mainstreaming to the contextual data and reconciliation, meaning publishing the more extensive information online and keeping the print version of the EITI Report short. It became apparent soon that mainstreaming could be applied to reconciliation due to tax confidentiality issues in Germany (i.e. the automatic publication by government agencies and companies on tax and non-tax payments). In December 2017 (third extraordinary meeting) the MSG decided that more clarification on what mainstreaming entailed was needed. Section 7.1 of the 2018 work plan contain several activities related mainly to getting a better understanding of mainstreaming (actions 44-46). The meeting minutes document that there is some uncertainty about the role of the MSG in a mainstreamed EITI.

There are mainstreaming efforts under way in Germany, one of which was initiated by EITI implementation. Following EITI implementation, the Federal Mining Act (BBergG) was amended in 2017 to provide for public access to license information detailed in Requirement 2.3.b. This requires state ministries to make information on licenses "available without proving legitimate interest". License information is becoming more widely published on state-level, where this data is held. The report website

²⁶⁷ See <https://www.govdata.de>

²⁶⁸ The excel file including full disaggregation is available on the rohstofftransparenz.de website. The file submitted to the international secretariat aggregates receiving agencies to their type, i.e. "municipalities"

²⁶⁹ Mainstreaming was substantially discussed at the following MSG meetings: 5th (16 March 2016), 6th (13 July 2016), 3rd extraordinary meeting (4 December 2017), 11th (21 March 2018)

lists the responsible agencies²⁷⁰.

Beneficial ownership data is another example for mainstreaming. The report and online portal²⁷¹ refer and link to the Transparency Register, which has been implemented as part of the Fourth Money Laundering Directive (EU) 2015/849.

The report website itself can be understood as an example of how mainstreaming can be implemented. The website brings together information already present in the public domain, organises the content, reviews it in light of the requirements of the Standard and consistently links to the sources of information. Furthermore, and in line with mainstreaming, Germany EITI has an action item on the work plan to publish D-EITI specific data on the government's central open data platform²⁷².

Stakeholder views

All stakeholder groups conceive that they Germany EITI has a good understanding of open data and access to information. Much of capacity-building on open data occurred due to an open data organisation being represented in the MSG. Stakeholders from all constituencies referred to their gain in understanding ways and the importance of making data available in open format. Civil society commented that it was thanks to EITI's actions on making data public in open format that the government is gaining understanding of what open government data means in practice.

Opinions and views on mainstreaming are divided. Whereas the company constituency sees in mainstreaming an opportunity to streamline the EITI reporting process, civil society in particular is concerned about the loss in contextualising information on the extractives for the broader public. In their view, this would jeopardise a core pillar of EITI implementation, which is explaining to the public how the industry works in Germany. It is unclear to stakeholders what effect mainstreaming could have on the role of the MSG. The government has expressed interest but also hesitation on mainstreaming, since much of EITI implementation happens on state-level.

Initial assessment

The provisions of EITI Requirement 7.2 are encouraged and will not be considered when assessing compliance with the EITI Standard.

The International Secretariat commends Germany EITI for its actions to implement the open data concept. It brought the EITI Report online, linking it to original sources, supplied the website code for free and made data available in machine-readable format.

Building on an existing good website on resource governance in Germany, the MSG may wish to consider

²⁷⁰ The names of the government ministries holding license registers can be found here:

<http://www.rohstofftransparenz.de/rohstoffgewinnung/rechtlicher-rahmen-und-staatliche-stellen/>

²⁷¹ See http://www.rohstofftransparenz.de/rohstoffgewinnung/wirtschaftlich_berechtigter/

²⁷² <https://www.govdata.de>, see action item 26.

exploring other content forms to present information on their website, to make it more engaging, and consider adding a search function to the page.

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.²⁷³ The MSG may wish to consider, as part of mainstreaming, to review emerging data disclosure in terms of the data quality and openness as part of EITI reporting.²⁷⁴

Lessons learned and follow-up on recommendations (#7.3)

Documentation of progress

MSG input:

According to MSG minutes, the group has on several occasions discussed follow-up on recommendations arising from EITI reporting, some of which have been addressed in the 2018 work plan. The third extraordinary MSG meeting on 4 December, [which was based on a previous internal evaluation process in a working group with representatives of all constituencies](#), addressed all of the recommendations from the EITI Report and the strategic review.

A key weakness in the 2016 EITI Report is the number of participating companies. Of the 48 identified companies, only 12 reported in the first 2016 EITI Report. The IA recommended improving company participation in reporting. Besides aligning EITI reporting cycles to mandatory financial reporting, the IA recommends engaging further with companies identified as making payments to governments (BilRUG), with the company constituency playing an active role in outreach. With the second release of the report in October 2018, two more companies were added to reconciliation²⁷⁵.

The IA recommends considering adding a member to the MSG that represents the municipal level, given it collects a good share of the taxes from companies. This question was explored in the Federal-State working group. A greater use of working groups to ease the work load was also recommended. Finally, the IA suggested that the MSG may consider exploring unilateral disclosure (by government agency) since the reconciliation did not present any inconsistencies and might not be necessary, with the possibility of regular review.

Discrepancies:

There were no significant discrepancies in financial data.

²⁷³ For example, if there are production figures that are published in the public domain more recently than the reporting year, the website may wish to pull that data directly or to update and link to the latest available data.

²⁷⁴ For example, the MSG could review if information on beneficial owners is being published by Germany in an open data format, such as the BODS (Beneficial ownership data standard) and if the information is accurate and comprehensive.

²⁷⁵ This is activity 1 and 2 in the 2018 work plan.

Reforms:

Prior to the publication of the first report the MSG identified that the current law (Federal Mining Act (BBergG)) required legitimate interest to view information that the Standard requires regarding license holders. The government thus in 2016 initiated an amendment to provide for public access to license information detailed in Requirement 2.3.b. The law came into effect in July 2017.

Stakeholder views

Stakeholders from all constituencies expressed confidence in more companies reporting for the second EITI Report, mainly because the EITI in Germany is aligned with EU mandatory reporting on payments to governments and companies now can actually see what reporting for the EITI implies.

Stakeholders confirmed the limited value of reconciliation. The government has expressed support to review reconciliation. However, there is no documentation on the follow-up to the IA's recommendation to consider unilateral disclosure and the MSG has decided to continue with reconciliation in its second report²⁷⁶.

The follow-up on the recommendation to expand MSG representation to include the municipal level resulted in a decision not to implement the recommendation. The government had already established a good rapport with the Association of Towns and Municipalities ("Städte- und Gemeindebund") which allowed the government constituency to get access to the relevant actors when needed.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress in meeting this requirement.

The follow-up on recommendations is well documented in the MSG minutes, annual progress report and the subsequent work plan.

Outcomes and impact of implementation (#7.4)**Documentation of progress**

Germany EITI has published two annual progress reports to date (as required). The 2016 annual progress report (APR) was submitted to the MSG for comment in August 2017²⁷⁷. The 2017 APR was submitted for comment and approval on in September 2018. The work plan contains the APR as an action point (nr 12).

The 2017 annual progress report includes a general assessment of performance against the requirements and the objectives set in the 2017 work plan. In terms of impact the 2017 APR identifies the change in legislation (as mentioned under #7.3), which gives the general public access to license information, as main achievement. The 2017 APR follows the template provided by the International Secretariat and

²⁷⁶ Minutes of the 12th MSG meeting, 19.6.2018, point 5

²⁷⁷ Minutes of the 10th MSG meeting, point 8

contains all the required elements.

Activities in 2017 focused mainly on producing the first EITI Report. The outcomes of the objectives were partially more inward facing, such as the harmonisation of reporting deadlines to that of the Transparency and Accountability Directives, in order to ease the burden of EITI reporting towards companies.

The APR includes an account of extending the scope of EITI reporting - contextualising resource extraction with information on subsidies, tax concessions, environmental standards and renewable energies – to increase the relevance of the report and increase engagement with stakeholders. MSG minutes document the continued discussions around extending the topics covered in the second report to further create relevance to the understanding of extractive industry in Germany.

The MSG convened a working group to lead on a strategy process, which aimed at evaluating compliance with the Standard and increasing the relevance of the EITI. The report's ²⁷⁸ section 3.3.3 focuses on how the EITI can increase its impact. One of the measures was to include new topics to be covered in the report, such as recycling, social standards, deep sea mining and water abstraction payments, and to consider a resource-user perspective to frame the EITI Report²⁷⁹. The document clearly states²⁸⁰ that the members of the working group do not see that there would be a consensus in the MSG to address any of the hot topics being discussed in the public, such as protests against lignite extraction, fracking and fossil-fuel phase out.

The strategy process furthermore identified that the influence of other countries to either implement the EITI or to expand EITI reporting as a way to generate impact on the global level, in line with national objectives and objectives of the work plan. The APR states that outreach efforts are ongoing.

Stakeholder views

All constituencies confirm that they had the possibility to comment on the APRs. The strategy working group contained representatives of all three constituencies and the Germany EITI Secretariat.

All constituencies felt that there has been an adequate follow-up on reviewing the objectives and impact of the EITI. The strategy process after the publication of the first EITI Report allowed all stakeholders to comment on the existing results and contribute on defining the way forward.

Initial assessment

The International Secretariat's initial assessment is that Germany has made satisfactory progress in meeting this requirement. The 2017 Annual Progress Report includes an assessment of progress against objectives, EITI Requirements and recommendations. The MSG has discussed measures to increase the impact of EITI implementation. All constituencies have contributed to the work.

²⁷⁸ (LNB Strategies, 2017)

²⁷⁹ Ibid, p. 9.

²⁸⁰ Ibid, p. 27.

Table 7 - Summary initial assessment table: Outcomes and impact

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Public debate (#7.1)	Germany EITI has brought the EITI Report content online, in different formats, and links to related information in the public domain. It has written a report that is comprehensible and accessible to the general public. It has brought together information on the regulation and governance of the sector that is otherwise scattered due to the political landscape (federal system).	Satisfactory progress
Data accessibility (#7.2)	The data of the report has been made available in machine-readable format. The open data concept has been put into practice and the website code is freely available. Systematic disclosure has been addressed and continues to be a topic of debate.	
Lessons learned and follow up on recommendations (7.3)	Germany EITI has followed-up on recommendations from reporting and have included next steps in the work plan.	Satisfactory progress
Outcomes and impact of implementation (#7.4)	The annual progress report captures activities and follow-up on recommendations and an evaluation of impact. A strategy working group has dealt with the question on how to increase impact of EITI implementation in Germany and internationally.	Satisfactory progress
<p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> • To strengthen the implementation of Requirement 7.1, the MSG is encouraged to review the communications strategy in view of identifying potential interest in revenue data on the local level and to consider taking a role of assessing emerging data on beneficial ownership and licenses on its comprehensiveness and user friendliness. • Building on an existing good website on resource governance in Germany, 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. • 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. 		

8. Impact analysis

Impact

Stakeholders in Germany are not concerned about combatting corruption or addressing weaknesses in governance. They expressed a high degree of trust in government institutions' and companies' compliance with the laws governing the sector. There is limited domestic demand for EITI data, which is bound to lead to limited impact.

There is potential for the EITI to contribute to ensuring that mandatory payment reports and beneficial ownership data are accessible and user-friendly. The disclosure of these data is required under EU directives. The MSG has an opportunity to highlight the importance of publishing data in open format and aligning disclosures with EITI Requirements.

EITI implementation does not currently touch upon the most pressing issue in public debate, the phasing out of coal mining. Stakeholders, however, see value in using domestic implementation as a means to encourage other resource-rich countries from which Germany imports raw materials 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.

Constructive engagement:

All stakeholders expressed that work in the MSG had led to better communication and understanding between constituencies. Participation in the MSG has also led to capacity building on the regulative framework governing the extraction of oil, gas and mining, on social and environmental standards, understanding on payment types and on open data. Misunderstandings have been clarified and understanding for particular concerns of some constituencies has grown. All constituencies confirmed that the setting of the MSG enabled a unique setting for debate and building consensus and that it allowed for better mixing and easier access to each other's constituency outside of the MSG meeting rooms.

Civil society noted that its constituency composition has brought new cooperation and strengthened their networks beyond the traditional areas. Civil society also said that they feel they have the same access to government as companies do, and that they feel they can shape the way the BMWi conceives of its raw materials strategy. Civil society organisations not participating in the MSG noted that the strategy is currently under review and the fact the lead Ministry is in direct contact with civil society is useful in shaping that strategy.

Public understanding and economic contributions:

Information on Germany's extractives sector is scattered on different government websites and governmental levels, due to the federal political system. German EITI has brought together this information in one place. It appears to be the first time that company payments to governments on different political levels has been collected and published and could contribute to a more fact-based discussion on the economic contributions of a company to the municipality, region and country. In its aggregated form, EITI payments data could translate into a better understanding of the sector's national financial importance and contribution. So far, there has been no to very little interest in the financial data.

Commented [A17]: Regarding public debate in general, the MSG discussed very intensively and thoroughly options to address actual public debate including the general debate on lignite extraction in Germany. Based on these discussions the MSG (on initiative of the civil society) has included a wide range of new and innovative topics in the report such as subsidies, renewable energy, and dealing with human intervention in nature addressing these debates and is committed to continue doing so in future reports. This commitment is well documented. The numerous "positive" aspects seem to be mitigated by the omission of one current public discussion. In light of this, the D-EITI would like to point out that the actual specific discussions on the phasing out of the use of lignite peaked only in 2018 when the first report was already published and decisions about the second report were almost finished. Furthermore, the issue itself is not a mere extractive topic but highly political and more related to general questions about climate policy and management of structural change. To address related aspects to the phasing out of lignite, the Federal Cabinet has decided to establish the coal exit commission. This commission among others drafted recommendations for the closure of hard coal power plants, running on imported coal as well.

Strengthening government systems:

EITI implementation has led to access to license data without the need to show legitimate interest. The development and implementation of the open data concept has led to building the understanding of open data in government.

Domestic recognition:

Company representatives felt that the EITI was allowing them to showcase the environmental and social responsibilities companies need to follow for the right to extract, to show the international community that such requirements go beyond other countries' and encouraging them to learn from the practice in Germany. Some company representatives also felt that by being included in EITI reporting, their respective industry was more widely recognised. They have received more visibility as domestic resource providers and for their contribution to the domestic economy.

International recognition:

Government representatives felt that implementing the EITI gave them more credibility when encouraging resource-rich countries for EITI implementation. It has also helped building recognition for Germany's high standards in environmental and social obligations for resource extraction and hoped to see more impact in other implementing countries addressing these issues through the legal framework and administrative procedures.

Business development:

Some companies felt that being part of EITI reporting had a positive impact on the "license to extract"²⁸¹, in particular in their overseas businesses.

While CSO actors welcomed the increasing of the scope of the report, they felt that as long as it does not deal with the question of lignite phase-out German EITI is rather a waste of time and money. According to them, more work has been done to reduce the work load on companies for reporting and too little to make the EITI relevant to the domestic context.

Sustainability

Funding:

EITI implementation is funded by the BMWi, covering the costs of the Secretariat, [the workplan](#), EITI outreach and the cost of producing the EITI Report. Consultations with the government found that the financial commitment for implementation beyond the first Validation is secured. According to proposal for 2019 federal budget act²⁸², the EITI in Germany will be funded with EUR 800,000 in 2019²⁸³ (2018: EUR 850,000²⁸⁴) and government stakeholders have indicated that funding over the next three years is secured until at least 2020²⁸⁵.

Institutionalisation:

²⁸¹ The term refers to the social acceptance of extraction activities by the affected population.

²⁸² (Deutscher Bundestag, 2018)

²⁸³ Ibid, p. 1132

²⁸⁴ (Deutscher Bundestag, 2017, S. 1154)

²⁸⁵ For more information, see section Government engagement in the EITI process (#1.1)

The Federal Ministry for Economic Affairs and Energy (BMWi) leads EITI implementation, but currently only has one employee following EITI implementation. The national secretariat is currently staffed with four people and is located at the GIZ, which implements development project for the Ministry for Economic Cooperation and Development (BMZ). The contract for housing the D-EITI secretariat has not been extended beyond May 2019 yet. It is unclear at the time of writing this initial assessment where the national secretariat will be housed.

Commented [A18]: That situation was due to temporary vacancy during validation - a second employee started at 02.01.2019.

Commented [A19]: The government has taken concrete actions to prepare for a future housing of the secretariat in the present set up.

Annexes

Annex A - List of MSG members

Contact information on individuals can be requested from the German EITI Secretariat:
sekretariat@d-eiti.de

Government

Changes: 3

Full member	Alternate
Dr. Winfried Horstmann, Federal Ministry for Economic Affairs and Energy (BMWi) (since 04/2018) Dr. Wolfgang Scheremet, (BMWi) (04/2015 – 04/2018)	Andrea Jünemann, Federal Ministry for Economic Affairs and Energy (BMWi) (since 05/2017) Dr. Sonja Eisenberg, BMWi (04/2015 – 05/2017)
Torsten Arnswald, Federal Ministry of Finance (since 04/2016) Dr. Rüdiger von Kleist, BMF (04/2015 – 04/2016)	Dr. Christian Schleithoff, Federal Ministry of Finance (since 04/2015)
Friedrich Wilhelm Wagner, Arnsberg District Council, North Rhine-Westphalia (since 04/2015)	Dr. Klaus Freytag, State Ministry of the Economy, State of Brandenburg (since 04/2015)
Norbert Conrad, Ministry for Economic Affairs, Labour and Transport, Lower Saxony (since 04/2015)	Thomas Bode, Ministry for Agriculture, Forestry and Environmental Affairs, Thuringia (since 04/2015)
Torsten Falk, Ministry of Finance, Hesse (since 04/2015)	Petra Jost, Ministry of Finance, Lower Saxony (since 04/2015)

Coordinator: Andrea Jünemann

Industry

Changes: 4

Full member	Alternate
Matthias Wachter Federation of German Industries (Bundesverband der Deutschen Industrie e.V.) (since 04/2015)	Hauke Dierks, Association of German Chambers of Industry and Commerce (Deutscher Industrie- und Handelskammertag e.V.) (since 07/2016) Katja Frey, Association of German Chambers of Industry and Commerce (04/2015 – 07/2016)
Britta Sadoun, K+S Aktiengesellschaft (since 04/2015)	Hans-Jürgen Müller, K+S Aktiengesellschaft (since 04/2015)
Dr. Martin Wedig, Geschäftsführer Vereinigung Rohstoffe und Bergbau e.V. (since 04/2015)	Kay Stelter, Deutscher Braunkohlen-Industrie-Verein e.V. (since 04/2015)

Michael Basten, German Commodities and Mining Federation (Bundesverband Baustoffe - Steine und Erden e.V.) (since 04/2015)	Christian Haeser, German Building Materials Associatio (Bundesverband Mineralische Rohstoffe (MIRO) e.V.) (since 04/2015)
Ludger Radermacher, Wintershall Holding GmbH (since 06/2017) Christian Matthias Jutzi, Wintershall Holding GmbH (05/2016 – 06/2017) Dr. Marc Peter Muff, Wintershall Holding GmbH (04/2015 – 05/2016)	Dr. Peter Westhof, Wintershall Holding GmbH (since 06/2017) Ludger Radermacher, Wintershall Holding GmbH (04/2015 – 06/2017)

Coordinator: Henry von Klencke, BDI

Civil society

Changes: 14

Full member	Alternate
Prof. Dr. Edda Müller, Transparency International Deutschland e.V. (since 04/2015)	Thomas Kastning, Transparency International (TI) Deutschland e.V. (since 04/2017) Moritz Boltz, TI Deutschland e.V. (11/2016 – since 04/2017) Izabela Grzywacz, TI Deutschland e.V. (04/2016 – 11/2016) Sylvia Schwab, TI Deutschland e.V. (08/2015– 04/2016) Tobias Hecht, TI Deutschland e.V. (04/2015 – 08/2015)
Dr. Ralf Bartels, Trade Union (Industriegewerkschaft Bergbau, Chemie, Energie, IG BCE) (since 04/2015)	Malte Lückert, Trade Union (Industriegewerkschaft Bergbau, Chemie, Energie, IG BCE) (since 03/2018) Alexander Bercht, IG BCE (04/2017– 03/2018) Xaver Schmidt, IG BCE (11/2016 –04/2017) Michael Linnartz, IG BCE (04/2015 – 11/2016)
Jürgen Maier, Forum on Environment & Development (since 04/2015)	Josephine Koch, Forum on Environment & Development and AK Rohstoffe / Forum Umwelt und Entwicklung (since 01/2018) Cathrin Klenck, Forum Umwelt und Entwicklung (08/2017 – 01/2018) Josephine Koch, AK Rohstoffe / Forum Umwelt und Entwicklung (07/2016 – 08/2017) Cathrin Klenck, Forum Umwelt und Entwicklung (04/2015 – 07/2016)
Daniel Dietrich, Open Knowledge Foundation Deutschland e.V. (since 04/2015)	Walter Palmethofer Open Knowledge Foundation Deutschland e.V. (since 09/2015) Kristina Klein, Open Knowledge Foundation Deutschland e.V. (04/2015 – 09/2015)

Swantje Fiedler, Green Budget Germany (Forum Ökologisch-Soziale Marktwirtschaft e.V. (FÖS)) (since 04/2016) Damian Ludewig, FÖS (04/2015 – 04/2016)	Florian Zerzawy, Green Budget Germany (Forum Ökologisch-Soziale Marktwirtschaft e.V. (FÖS)) (since 04/2017) Rupert Wronski, FÖS (04/2016 – 04/2017) Swantje Fiedler (geb. Küchler), FÖS (04/2015 – 04/2016)
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Coordinator: Florian Zerzawy

Annex C – Cost of EITI Reports

Overall cost of the first D-EITI report, including the update, is EUR 540,291. This includes the Independent Administrator's contract for the reporting period, printing, layout, translation, editorial revision and the web portal.

Annex D - List of stakeholders consulted

Government

Thomas Bode (Ministry for Agriculture, Forestry and Environmental Affairs, State of Thuringia); **Boris Raeder** (D-EITI Secretariat); **Friedrich Wilhelm Wagner** (Arnsberg District Council, North Rhine-Westphalia); **Oliver Wittke**, **Winfried Horstmann** and **Andrea Jünemann** (Federal Ministry for Economic Affairs and Energy).

Industry

Hauke Dierks (Association of German Chambers of Industry and Commerce); **Tanja Lenz** (German Building Materials Association); **Britta Sadoun** (K+S Aktiengesellschaft); **Matthias Wachter** and **Henry von Klencke** (Federation of German Industries); **Ludger Radermacher** (Wintershall Holding GmbH).

Civil Society

Lili Fuhr (Heinrich Böll Foundation); **Jürgen Maier** and **Josephine Koch** (Forum Environment and Development); **Edda Müller** and **Thomas Kastning** (TI Germany); **Walter Palmeshofer** (Open Knowledge Foundation Germany); **Michael Reckordt** (AK Rohstoffe); **Florian Zerzawy** (Green Budget Germany).

Independent administrators

Christoph Heinrich and **Rolf Rombock** (Warth & Klein Grant Thornton).

Annex E - List of reference documents

Work plans and annual progress reports:

- 2016-2017 work plan: https://www.d-eiti.de/wp-content/uploads/2015/12/Arbeitsplan-D-EITI_22-12-2015.xlsx
- 2018 work plan: <https://www.d-eiti.de/wp-content/uploads/2018/09/D-EITI-Arbeitsplan-2018.pdf>
- 2016 Annual Progress Report: https://www.d-eiti.de/wp-content/uploads/2017/12/D-EITI-Fortschrittsbericht_2016.pdf
- 2017 Annual Progress Report: <https://www.d-eiti.de/wp-content/uploads/2018/10/D-EITI-Fortschrittsbericht-2017.pdf>

EITI Reports:

- 2016 D-EITI Report, updated in October 2018. Available at: https://www.d-eiti.de/wp-content/uploads/2018/11/D_EITI_Bericht_2016.pdf.
- D-EITI online portal. Available at: <http://www.rohstofftransparenz.de/en/rohstoffgewinnung/>.

Legal documents and ToRs related to EITI implementation:

- Independent Administrator ToR for the 2017 D-EITI Report. Dated 23 July 2018.
- Independent Administrator ToR for the 2016 D-EITI Report. Dated 21 September 2016.
- German Accounting Directive Implementation Act (BilRUG) of July 23, 2015; pursuant to § 341q et seq. of the German Commercial Code (HGB).
- Federal Mining Act of 13 August 1980, last amended by Article 2 (4) of the Act of 20 July 2017. Available at: http://www.gesetze-im-internet.de/englisch_bbergg/.

Meeting minutes:

- Minutes of the founding meeting of the MSG, 10 March 2015.
- Minutes of the 2nd MSG meeting, 10 June 2015.
- Minutes of the 3rd MSG meeting, 9 September 2015.
- Minutes of the 4th MSG meeting, 9 November 2015.
- Minutes of the 5th MSG meeting, 16 March 2016.
- Minutes of the 6th MSG meeting, 13 July 2016.
- Minutes of the 7th MSG meeting, 21 September 2016.

- Minutes of the 1st extra-ordinary MSG meeting, 9 December 2016.
- Minutes of the 2nd extra-ordinary MSG meeting, 21 February 2017.
- Minutes of the 8th MSG meeting, 23 March 2017.
- Minutes of the 9th MSG meeting, 28 June 2017.
- Minutes of the 10th MSG meeting, 9 August 2017.
- Minutes of the 3rd extra-ordinary MSG meeting, 4 December 2017.
- Minutes of the 11th MSG meeting, 21 March 2018.
- Minutes of the 12th MSG meeting, 19 June 2018.
- Minutes of the 13th MSG meeting, 18 October 2018.

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Appendix F – Sample of oil, gas and mining licenses used for spot checks of requirement 2.3

Field	State	License-holder(s)	Information source	Coordinates	Dates	Commodity
Rotenburg / Taaken	Lower Saxony	ExxonMobil Production Deutschland GmbH and DEA Deutsche Erdoel AG	NIBIS: https://www.nibis.lbeg.de/car_domap3/	Yes	Yes	Yes (gas)
Reitbrook-Alt	Bremen	Neptune Energy Deutschland GmbH (not a material company)	NIBIS: https://www.nibis.lbeg.de/car_domap3/	Yes	Award and expiry yes, application no	Yes (oil)
Wolfram der Sänger, Daniels Grube, Alexanders Lager	Baden-Württemberg	Südwestdeutsche Salzwerke AG	LGRB online portal: http://www.maps.lgrb-bw.de/	No (zoom-in possible)	No	Yes (salt)
Welzow	Brandenburg	Lausitz Energie bergbau AG	LBGR online portal: http://www.geo.brandenburg.de/lbgr/bergbau	Yes	Yes	Yes (lignite)
Schwaben	Bavaria	Wintershall Holding GmbH, Barnstorf	List of licenses provided by state authorities upon request	Yes (upon request)	Award and expiry yes, application no	Yes (hydrocarbons)