

# Validation of Requirement 2.5 – Germany: Assessment by the EITI International Secretariat

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## 1. Summary

The International Secretariat’s assessment is that Germany has made “satisfactory progress” in meeting the initial criteria for implementing Requirement 2.5 on beneficial ownership.

Since November 2015, the D-EITI MSG have regularly discussed beneficial ownership disclosure, including agreeing a beneficial ownership road map, regular discussion at MSG meetings, and technical discussions in the MSG’s systematic disclosure working group.

The MSG’s approach to beneficial ownership disclosure is aligned with the German government’s implementation of the EU’s anti-money laundering directives. D-EITI Reports have included an overview of the government’s policy on the disclosure of beneficial ownership, including details of relevant legal provisions, actual disclosure practices and reforms. At the beginning of 2020, the MSG set up a working group on the subject of systematic disclosure, which also deals with requirements 2.5 on beneficial ownership.

In early 2021, the Independent Administrator working on the 2018 EITI Report undertook a review of the availability of beneficial ownership information for companies within the scope of EITI Reporting. The Independent Administrator’s preliminary assessment is that “all companies are in the register with plausible information”. A comprehensive and definite verification was not practicable, especially given the existing assurance mechanisms. The results have been presented to the MSG for further discussion.

To the International Secretariat’s knowledge, there are no concerns about the accuracy and reliability of the data available in the register. However, the International Secretariat encountered some difficulties in accessing and searching the register, in particular with regard to information on legal ownership. The MSG may wish to consider whether to provide feedback to the Transparency Register on: (1) the adequacy of the approach to beneficial ownership disclosure, including the 25% threshold; (2) opportunities to improve access to the data. The MSG may also wish to consider opportunities to utilise the data to strengthen sector governance.

## 2. Background

Germany is a long-time supporter of the EITI at the international level and has been implementing EITI since the beginning of 2016. The objectives of the German MSG include:

1. Produce timely reports that are understandable and accessible to the general public and based on a transparent, open and innovative EITI process in Germany.
2. Process 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. Engage 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. Concomitantly, additional value shall be generated.
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. Share 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 enhance Germany's credibility as regards its political and financial support for EITI.
7. Ensure ongoing implementation of the D-EITI with the intended multi-stakeholder model while building capacity for broad-scale public debate.

Germany has produced three EITI Reports. The first report covering FY 2016 was published in August 2017 and updated in October 2018. The MSG published the second D-EITI report on 23 December 2019 covering FY 2017 and a third Report in late 2020 covering FY 2018. The third report has been prepared under the auspices of the EITI Board's pilot of alternative reporting<sup>1</sup>, and is intended to improve the efficiency and effectiveness of EITI Reporting.

On 8 May 2019, Germany was found to have made satisfactory overall progress in implementing the EITI Standard.<sup>2</sup> The EITI Board commended Germany's efforts to increase the relevance of EITI implementation by addressing environmental aspects, subsidies and renewable energy. The Board recognised Germany's efforts to overcome challenges to implementation posed by the federal system and legal constraints relating to tax confidentiality. The Board encouraged the MSG to undertake further efforts to consider a mainstreamed approach to implementation and to ensure that implementation is proportionate considering the size of the sector and stakeholder interest. The Board also noted that Germany is required to ensure that beneficial ownership data is made publicly available by 1 January 2020.

In June 2019, the EITI Board agreed a framework for assessing Requirement 2.5 on beneficial ownership.<sup>3</sup> To ensure that progress on Requirement 2.5 would be assessed in all countries within a reasonable timeframe, the Board agreed that any country that had achieved overall "satisfactory progress" in Validation that commenced or was concluded in 2019 would undergo a beneficial ownership Validation on 1 January 2021. The Board upheld this decision when agreeing on the transition to a new Validation model.<sup>4</sup>

<sup>1</sup> <https://eiti.org/board-decision/2019-48>

<sup>2</sup> <https://eiti.org/document/germany-validation-2018>

<sup>3</sup> Board decision 2019-48/BM-43: <https://eiti.org/board-decision/2019-48>.

<sup>4</sup> Board decision 2020-83/BM-48: <https://eiti.org/board-decision/2020-83>.

This assessment follows the Board-agreed framework for phase 1 of assessing beneficial ownership disclosures. The Board agreed that between January 2020 and December 2021, the Validation would focus on whether the implementing country had met a set of initial criteria and provide recommendations for strengthening beneficial ownership disclosures.

The draft assessment was sent to the MSG for comment on 11 March 2021. The D-EITI MSG reviewed and discussed the assessment and sent comments on 31 March 2021. The assessment was then be finalised for review by the EITI Board.

### 3. Assessment of Requirement 2.5 on beneficial ownership

Adherence to Requirement 2.5 on beneficial ownership is assessed in Validation as of 1 January 2020 as per the framework agreed by the Board in June 2019.<sup>5</sup> The assessment consists of a technical assessment focusing on initial criteria and an assessment of effectiveness.

#### Technical assessment

The technical assessment is included in Annex A.

It demonstrates that Germany has established a legal basis for collecting and disclosing beneficial ownership information.

#### Assessment of effectiveness

In early 2021, the Independent Administrator working on the 2018 EITI Report<sup>6</sup> undertook a review of the availability of beneficial ownership information for companies within the scope of EITI Reporting. The work undertaken by the IA was twofold:

1. An in-depth analysis of two extreme types of ownership structures using two examples taken from the sample of D-EITI companies within the scope of the 2018 Report. The reference points for this analysis were general information taken from the Bureau van Dijk BvD<sup>7</sup> (Bureau van Dijk - Wikipedia) databases.

One example is LEAG AG (the second largest lignite producer in Germany) which is a listed company, nevertheless (finally) owned by 2-3 Czech investors via a complex international structure of companies. For this example, the transparency register not only includes all BvD information, but also a third person with voting rights not mentioned in the BvD Database. The other example is Heidelberg Cement a listed company with free floating shares.

2. An overall analysis whether all participating companies are listed in the register with plausible information.

The Independent Administrator's preliminary assessment is that "all companies are in the register with plausible information". A comprehensive and definite verification was not practicable, especially given the existing assurance mechanisms. The results have been presented to the MSG for further discussion. To the International Secretariat's knowledge, there are no concerns about the accuracy

<sup>5</sup> <https://eiti.org/document/assessing-implementation-of-eitis-beneficial-ownership-requirement>.

<sup>6</sup> The 2018 Report was conducted under the auspices of the EITI's pilot on alternative reporting <https://eiti.org/board-decision/2020-07> and available (in German) here: <https://d-eiti.de/mediathek-dokumente/>

<sup>7</sup> <https://www.bvdinfo.com/en-gb/>

and reliability of the data available in the register. Further investigation is needed to assess the extent to which the data is now being used by stakeholders to improve sector governance.

### Secretariat's assessment

Noting the feedback received from the D-EITI MSG, the International Secretariat's assessment is that Germany has made "satisfactory progress" in meeting the initial criteria for implementing Requirement 2.5 on beneficial ownership.

To strengthen implementation ahead of the second phase of Validation of Requirement 2.5 from January 2022 onwards, Germany is encouraged to improve the accessibility of public information on the legal and beneficial owners of all companies holding or applying for extractive licenses.

## Annex A: Technical assessment

| EITI Requirement: Beneficial ownership disclosure (#2.5)  |   |  |  |
|---|---|--|--|
| EITI sub-Requirement  | Summary of main findings  | Source(s) of information   | Summary of stakeholder views (if applicable) |
| <p>The MSG has agreed an appropriate, publicly available definition of the term beneficial owner (#2.5.f)</p> | <p>The MSG's approach to beneficial ownership disclosure is aligned with the German government's implementation of the EU's anti-money laundering directives. The German Government has established a Transparency Register: The official platform of the Federal Republic of Germany for data on beneficial owners.</p> <p>Pursuant to section 3(1) of the Geldwäschegesetz (GwG, Money Laundering Act), beneficial owner means:</p> <ol style="list-style-type: none"> <li>1. The natural person who ultimately owns or controls the contracting party, or</li> <li>2. the natural person at whose instruction a transaction is ultimately carried out or a business relationship is ultimately established.</li> </ol> <p>In particular, beneficial owners include the natural persons listed in subsections (2) to (4).</p> | <p><a href="https://www.transparenzregister.de/treg/en/ueberuns?9">https://www.transparenzregister.de/treg/en/ueberuns?9</a></p> <p><a href="https://www.gesetze-im-internet.de/gwg_2017/">https://www.gesetze-im-internet.de/gwg_2017/</a></p> <p><a href="https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsr echt/Gesetz/GwG_en.html">https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsr echt/Gesetz/GwG_en.html</a></p> |  |

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|  | <p>Subsection (2) states that “In cases of legal persons other than foundations with legal capacity and of other corporate entities that are not listed on an organised market as defined in section 2 (5) of the Securities Trading Act and that are not subject to transparency requirements with regard to voting rights consistent with Community laws or to equivalent international standards, beneficial owners include any natural person who, directly or indirectly:</p> <ol style="list-style-type: none"> <li>1. holds more than 25 percent of the capital stock,</li> <li>2. controls more than 25 percent of the voting rights or</li> <li>3. exercises control in a comparable manner.</li> </ol> <p>Beneficial owners of companies and associations, further specified in the GwG, have to be reported to the Transparency Register. This includes legal persons under private law and registered partnerships (see Section 20 (1)), as well as foundations. Exceptions of the obligation to notify the Transparency Register pursuant to Section 20 (2) GWG are made if the information about the beneficial owner can electronically be retrieved from registers specified in the GwG, like the commercial register or other listed public registers. The obligation to notify</p> |  |  |
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|   | <p>the Transparency Register is also deemed to be fulfilled for companies that are listed on a regular market that is subject to transparency obligations or comparable international standards.</p>  |  |  |
| <p><i>There are laws, regulations or policies in place to back establishing and maintaining a public register of beneficial owners (#2.5.a)</i></p> | <p>The Geldwäschegesetz (GwG, Money Laundering Act) establishes an obligation to report beneficial ownership information.</p> <p>The register was set up as part of the implementation of the 4th Anti-Money Laundering Directive (EU) 2015/8494 in 2017 in addition to the existing registers such as the commercial, cooperative, partnership, association or company register. The aim was to make money laundering and terrorist financing more difficult.</p> <p>With the implementation of the requirements of the amending directive for the 4th EU Money Laundering Directive (2018/843), access to the transparency register is granted to "all members of the public".</p> <p>Access to the Transparency Register is staggered depending on the role of the inspecting persons. Certain authorities have full access to the database. In other cases, access is limited within their due diligence obligations.</p> | <p><a href="#">Details on the registration process</a></p> <p><a href="#">Instructions for Inspection by obliged entities</a></p> <p><a href="#">Instructions for inspection by authorities</a></p> <p><a href="#">Instructions for inspection by members of the public.</a></p> |  |



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| <p>The government’s policy and multi-stakeholder group’s discussion on disclosure of beneficial ownership is documented (#2.5.b)</p>  | <p>The government’s policy and multi-stakeholder group’s discussions on these topics are well documented, including summaries of the latest developments in Germany’s annual EITI Reports.</p>  |  |  |
| <p>The implementing country has requested beneficial ownership information to be publicly disclosed (#2.5.c)</p>  | <p>Yes. As described above.<br/><br/>The Transparency Register conducts free webinars on how to access the register.</p>  | <p>On <a href="#">webinars</a></p>   |  |
| <p>The requested information includes the identity(ies) of their beneficial owner(s), including nationality, country of residence, and identification of politically exposed persons, the level of ownership and details about how ownership or control is exerted (#2.5.c-d)</p> | <p>The following information concerning the beneficial owner has to be reported:</p> <ul style="list-style-type: none"> <li>• First and last name,</li> <li>• Date of birth,</li> <li>• Place of residence,</li> <li>• Type of beneficial ownership,</li> <li>• Nature and extent of the beneficial interest (see Section 19 (1) GwG)</li> <li>• (in some cases) nationality (see Section 21 (1) GwG).</li> </ul> <p>Changes to the information on the beneficial owner also have to be reported.</p> | <p><a href="https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsr echt/Gesetz/GwG_en.html">https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsr echt/Gesetz/GwG_en.html</a></p> |  |

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|  | <p>Identification of politically exposed persons is not required in the UBO register. However, As an EU member state, Germany implements the EU’s Money Laundering Directives as part of the continent-wide risk-based approach to AML/CFT. In Germany, politically exposed person screening requirements are enforced by the Federal Financial Supervisory Authority (BaFin) and set out in the Money Laundering Act.</p>   |  |   |
| <p>Any corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract have disclosed the information.</p> | <p>The International Secretariat’s understanding is that all corporate entities that apply for, or hold a participating interest in an exploration or production oil, gas or mining license in Germany are required to disclose beneficial ownership information in accordance with the procedure outlined above.</p>  |  |   |
| <p>The MSG had assessed and documented gaps or weaknesses in disclosure of beneficial ownership information (#2.5.c)</p>   | <p>At the 18<sup>th</sup> MSG meeting on 9 July 2020, the government provided an update on the transparency register, and proposed that a summary be included in “chapter 3, Legal Framework” in the 2018 EITI Report. A description of the public access to information in the transparency register was added.</p> <p>In early 2021, the Independent Administrator working on the 2018 EITI Report undertook a review of the availability of beneficial ownership information for companies within</p> | <p>Minutes (in German) from the meeting between the MSG and the IA on 18 March 2021 have been made available to the International Secretariat.</p> | <p>The MSG comments noted that: “The 25% threshold has been adopted from the EU’s Money Laundering Directives and is thus in line with the EU-wide risk-based approach to AML/CFT”.</p> |

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|  | <p>the scope of EITI Reporting. The Independent Administrator’s preliminary assessment is that “all companies are in the register with plausible information”.</p> <p>The IA was able to find a message in the transparency register for all of the 16 companies participating in the D-EITI process. As a next step, the IA checked the plausibility of the data in the transparency register with company information from the fee-based database of the provider Bureau van Dijk (BvD). The IA points out, however, that a discrepancy between the data in the transparency register and the company database does not necessarily mean that the report in the transparency register is incorrect. Deviations can have various causes. For companies that do not have a beneficial owner in terms of the criteria of the transparency register (e.g. shares in free float), a negative report is made in the register. The legal owners of the company are then publicly accessible in the commercial register.</p> <p>The results were presented to the MSG for further discussion. To the International Secretariat’s knowledge, there are no concerns about the accuracy and reliability of the data available in the register. However, the International Secretariat encountered some difficulties in accessing and searching</p> |  |  |
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|  | <p>the register, in particular with regard to information on legal ownership. The MSG may wish to consider whether to provide feedback to the Transparency Register on: (1) the adequacy of the approach to beneficial ownership disclosure, including the 25% threshold; (2) opportunities to improve access to the data. The MSG may also wish to consider opportunities to utilise the data to strengthen sector governance.</p>  |  |  |
| <p>The relevant government entity or the MSG has established an approach for participating companies to assure the accuracy of the beneficial ownership information (#2.5.e)</p> | <p>“Obligated parties”, under Section 23 (1) of the GwG, must immediately report to the registration authority any discrepancies within the meaning of Section 23a (1) that they discover between the information on the beneficial owners accessible in the transparency register and the information and findings available to them on the beneficial owners.</p> <p>“Authorities”, pursuant to Section 23 (1) of the GwG, must report discrepancies within the meaning of Section 23a (1) to the registration authority without delay, provided that this does not impair the performance of the authorities' duties.</p> <p>The Transparency Register has a procedure for “Reporting of discrepancies” via <a href="http://www.transparenzregister.de">www.transparenzregister.de</a>.</p> | <p><a href="https://www.transparenzregister.de/treg/en/Transparenzregister_NutzungsbedingungenEN_20200128.pdf">https://www.transparenzregister.de/treg/en/Transparenzregister_NutzungsbedingungenEN_20200128.pdf</a></p> |  |

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|   | <p>Once data has been entered in the Transparency Register, it is possible to correct the entry but not delete it. The original entries remain in the Transparency Register and the amended entry is entered with reference to the original entry. Accordingly, deletions or partial deletions are not possible even in the event that content is submitted and entered beyond statutory requirements.</p>   |  |  |
| <p>For publicly listed companies, including wholly-owned subsidiaries, the name of the stock exchange has been disclosed and a link included to the stock exchange filings where they are listed (#2.5.f)</p> | <p>The obligation to notify the Transparency Register is deemed to be fulfilled for companies that are listed on a regular market that is subject to transparency obligations or comparable international standards. The other relevant registers disclosing the beneficial owner are also accessible.<sup>8</sup> Based on the reviews undertaken by the International Secretariat, this includes the stock exchange where the company is listed and, in turn, links to the company's stock exchange filings.</p> |  |  |
| <p>Information about legal owners and share of ownership of applicable companies is publicly available (#2.5.g)</p>   | <p>Information about legal ownership is publicly available. In the sample of cases reviewed by the International Secretariat, the legal ownership was sometimes not available in the documentation available through the Transparency Register. However, in each</p>   |  |  |

<sup>8</sup> See: <https://www.transparenzregister.de/treg/en/ueberuns?0>

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|  | <p>case this information was publicly available through other sources, e.g., company annual reports or stock exchange filings. The Independent Administrator’s review of the quality of beneficial ownership disclosure included several publicly listed firms.</p> |  |  |
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