

Germany Validation 2018 comparison matrix

Requirement	International Secretariat's initial assessment (December 2018)	Comments from the MSG (February 2019)	Independent Validator's final assessment (March 2019).	For consideration by the Validation Committee
<p><a href="#">2.2 License allocations.</a></p>	<p>"The International Secretariat's initial assessment is that Germany has made <b>meaningful progress</b> towards meeting this requirement.</p> <p>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.</p> <p>---</p> <p>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."</p>	<p>"The D-EITI sees <b>satisfactory progress</b> for Requirement 2.2.</p> <p>Both the German Federal Government and the Länder have shown their willingness to grant public access to the information on licensing by changing the mining law according to Requirement 2.2. and 2.3 of the EITI-Standard.</p> <p>---</p> <p>The amendment of the mining law was explicitly made with regard to the EITI implementation and has been regarded as a major success by all stakeholders.</p> <p>Due to the EITI implementation (especially the amendment to the mining law), there is now public access to all information related to the awarding or transferring of licenses in the relevant sectors. In accordance with the EITI-Standard, the D-EITI report references and/or links the sources for desired information (cf. Requirement 2.2 d). Information for the economically most important sector in terms of total worth of extracted volumes and in terms of more than 99% of all royalties (petroleum licenses) is even available online. By that means all companies making material payments according to the scope defined by the MSG are covered to the understanding of the MSG and the D-EITI.</p> <p>The same applies for information on the sectors lignite, salt and kali, which is available online in the 11 Länder with significant extraction. Therefore, public as well as business interests and needs are fully met, which, in turn, leads to the fulfilment of the broader objective of this requirement.</p>	<p>"The Validator notes the comments from the MSG, specifically that the majority of licence allocation information is already available online especially for economically significant licences in the mining sector, that allocations and transfers seldom take place in the mining sector due to its maturity, and also that there is now a link to a report containing a comprehensive list of allocations and transfers in the petroleum sector added to the D-EITI report.</p> <p>The Validator also notes the subsequent publication of all licence allocations on the D-EITI website following on from the commencement of validation and the great efforts expended to amend the law. The Validator also notes that the interest in the award of licences in Germany is generally very low, and that all licence allocation information that is in the public interest is already available.</p> <p>The Validator also notes the comments from the MSG meetings which conclude that there were no non-trivial deviations from the applicable legal and regulatory framework governing licence transfers and awards in the reporting year of 2016.</p>	<p>The International Secretariat considers the information provided by the MSG to meet the <a href="#">criteria for considering developments after the commencement of Validation</a>. The new information (1) has the support of the MSG, (2) is specific and verifiable, (3) has potential to materially impact the assessment of the requirement, and (4) was presented in a reasonable timeframe.</p> <p>The list of licenses awarded or transferred in each state in 2015-2017 that was published in February 2019 contains some gaps. MSG comments note that all states could not provide a distinction between awarded and transferred licenses, but further information is available upon request.</p> <p><b>The International Secretariat's view is that remaining gaps are not material and progress on Requirement 2.2 can be considered 'satisfactory' if information published after the commencement of Validation is taken into account.</b></p>

		<p>Moreover, with material companies/sectors and the majority of Länder covered, the MSG interprets “available upon request”, as guaranteed by the change to the mining law, to be a sufficient interpretation of “publicly available” for the remaining sectors and/or Länder. The MSG further regards this as the optimal and most efficient solution to address Requirement 2.2 against the heterogeneity of the Länder and low general interest in licensing procedure. Alternative options, namely to exclude sectors and /or Länder via adapted implementation, are considered to be leading to a less comprehensive D-EITI report.</p> <p>Additionally, with effect of the 08.02.2019, the D-EITI published a comprehensive list in open format containing all licenses awarded or transferred in 2015-2017 on the D-EITI web portal. The MSG kindly requests this action to be considered by the board.”</p> <p>“The MSG did not identify any reasons or facts hinting to non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards neither in general nor for the reporting year 2016.”</p>	<p>However, the Validator disagrees with the interpretation that “available upon request” equates to “publicly available”, based on precedent across EITI implementing countries.</p> <p>The Validator also notes that subsequent to the commencement of Validation, a comprehensive list of all licences transferred or awarded between 2015 and 2017 was published in open data format on the D-EITI portal.</p> <p>The Validator there still views the correct assessment to be <b>meaningful progress</b> as at the time of the Validation assessment, notwithstanding subsequent efforts. <b>However, the Validation sub-committee may wish to take subsequent actions by D-EITI into account in assessing this file.”</b></p>	
<p><a href="#">2.3 Register of licenses.</a></p>	<p>“The International Secretariat’s initial assessment is that Germany has made <b>meaningful progress</b> towards meeting this requirement.</p> <p>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</p>	<p>“The D-EITI sees <b>satisfactory progress</b> for Requirement 2.3.</p> <p>Both D-EITI and the German Government have proven their willingness and ability to ensure access to all relevant information and even change federal law. Additionally, 11 out of 16 Länder (states) provide online information on licenses to the public, in some cases in a very advanced and comprehensive format, as explained in the D-EITI report. The different forms of presentation of that information do reflect on the one hand the federal system of Germany that transfers the implementation of the mining law and the general resource governance to the Länder. On the other</p>	<p>“The Validator notes the comments from the MSG that there is little or no public interest in accessing this information, and that the associated costs (for either sub-national or a central register) are not justifiable. The Validator also notes the MSG’s comments that licence information for 98% of total royalty payments to government are available online, mostly via mapping applications.</p> <p>The Validator also notes that subsequent to the commencement</p>	<p>The International Secretariat considers the information provided by the MSG to meet the <a href="#">criteria for considering developments after the commencement of Validation</a>. The new information (1) has the support of the MSG, (2) is specific and verifiable, (3) has potential to materially impact the assessment of the requirement, and (4) was presented in a reasonable timeframe.</p>

	<p>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.</p> <p>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. ---</p> <p>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, these should be explained in the EITI Report.”</p>	<p>hand, the format of presentation reflects the relevance of extraction in each Land and the general public interest, the public demand for a specific kind of information which is rather related to regional and local extractive activities than in German wide comprehensive lists. In case such an interest may occur, the mining law guarantees the access to such information.</p> <p>Moreover, with majority of information for the most relevant cases available online, the EITI MSG interprets “available on request”, as guaranteed by the change to the mining law, to be a sufficient interpretation of “publicly available” for the remaining sectors and/or Länder. The MSG further regards this as viable solution to address the Requirement 2.2 [sic] under existing political and administrative circumstances and against generally low interest in licensing procedure. Alternative options, namely to exclude sectors and /or Länder via adapted implementation, are considered to be leading to a less comprehensive D-EITI report.</p> <p>Additionally, the D-EITI has invested a lot of resources and efforts in topics identified as relevant by the stakeholders in the MSG.”</p>	<p>of Validation, D-EITI published a comprehensive list of all existing licences per Land on their portal, noting that in some cases, not all information required can be captured, for example not all dates of application are recorded.</p> <p>As with requirement 2.2, the MSG interprets “available upon request” to equate to “publicly available”, which is not the precedent across EITI implementing countries. There is also no precedent in EITI for national public interest arguments to outweigh EITI requirements.</p> <p>For these reasons, the Validator recommends that the <b>assessment remains meaningful progress. However, the Validation sub-committee may wish to take subsequent actions by D-EITI into account in assessing this file.”</b></p>	<p>The list of all licenses, published in February 2019, contains some gaps. MSG comments note that some required data points (mainly dates) could not be obtained, and the list does not include coordinates. According to the MSG, missing data points are available from the mining authorities upon request.</p> <p><b>The International Secretariat’s view is that remaining gaps are not material and progress on Requirement 2.3 can be considered ‘satisfactory’ if information published after the commencement of Validation is taken into account.</b></p>
<p><a href="#">4.1 Comprehensive disclosure of taxes and revenues.</a></p>	<p>“The International Secretariat’s assessment is that Germany has made <b>meaningful progress</b> 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</p>	<p>D-EITI regards Requirement 4.5 to be implemented with <b>satisfactory progress</b>.</p> <p>1) <u>Omissions by material companies</u></p> <p>“First of all, the D-EITI would like to highlight that the MSG set a clear focus on royalty payments as an indicator for the comprehensiveness of the D-EITI report in combination with production volumes in Germany. ---</p> <p>Both companies identified in the initial assessment as allegedly missing with regard to the Requirement of comprehensiveness of the D-EITI</p>	<p>“The Validator notes the response from MSG about comprehensiveness of material and non-reporting companies. Comprehensiveness under requirement 4.1 includes identification of material and non-reporting companies and reporting by them.</p> <p>Comparing the facts in the initial assessment and clarifications with MSG with requirements under 4.1, it is noted that although D-EITI is on</p>	<p>The International Secretariat suggests that the Validation Committee considers two issues:</p> <p>(1) whether it considers the non-participation by companies making material payments to be of material significance in assessing progress on Requirement 4.1.</p> <p>(2) whether the MSG’s position on disclosing the names of non-</p>

	<p>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.</p> <p>---</p> <p>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.</p> <p>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</p>	<p>report, have not paid royalties in the year of interest.</p> <p>--</p> <p>Corporate and trade tax are not an adequate indicator for the comprehensiveness of reporting in Germany (cf. above and chapter 9 c. of the report). The economic activities of both Quarzwerke and Südwestdeutsche Salzwerke ("SWS") are covering not only mining/ extraction but also high end refining and further processing.</p> <p>---</p> <p>Information on payments is publicly available online and linked with their report. It is only the reconciliation, leading to no discrepancies for all other companies, which is missing.</p> <p>--</p> <p>A companies' independent auditor is obliged to report in the long-form auditor's report violations about facts that indicate serious violations of law. This would include the question of whether or not a company complied with its obligation to prepare a mandatory payment report."</p> <p>Südwestdeutsche Salzwerke (SWS) and Quarzwerk have committed to participate in the 2017 EITI Report and submit data for 2016.</p> <p>"Against the background of the above-said, the D-EITI report does not show any material omissions and meets the Requirement of comprehensiveness as set out in Requirement 4.1. If one includes the reconciled payments of the above mentioned two companies the effect of the omission of non-reporting companies totals to 2.5 % of the reconciled payments. The MSG considers this as being not material to the comprehensiveness of the reconciliation."</p> <p>2) <u>List of non-reporting companies</u></p>	<p>right track (companies agreeing to participate in the process from 2017 onwards, overcoming legal impediments to publish the list of material payments), however, the implementation still falls short of completion of the requirements.</p> <p>For example, consideration of non-reporting of material payments by two companies, non-reconciliation, consideration of revenue streams including corporate and trade profit taxes, non-existence of reliable mechanism to ensure that three participating companies complied with requirements.</p> <p>Corporate and trade tax payment streams are one of the indicators of comprehensiveness to be viewed broadly under this requirement, although MSG doesn't agree with this.</p> <p>Participation of both companies Quarzwerke and SWS from 2017 with efforts of MSG will be considered in the next validation exercise.</p> <p>Considering only EITI Provision 4.1, mandatory payments need to be disclosed, which was not done. If these disclosures pose legal conflicts/impediments then these need to be resolved.</p> <p>In view of above points, the original assessment of <b>meaningful progress is retained.</b>"</p>	<p>reporting companies is sufficient.</p>
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	<p>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.</p> <p>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.</p> <p>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. --- 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.”</p>	<p>“Discussion in the MSG led to the conclusion that a publication of company names in the German case would be an impediment to convincing more companies to participate.</p> <p>---</p> <p>To help make the public information on mandatory payment reports more accessible, the D-EITI MSG agreed to publish a comprehensive list in open format on the D-EITI web portal containing all information on payments made public by companies in mandatory payments reports for 2016 with the effect of 08.02.2019.</p> <p>---</p> <p>The Federal Ministry of Justice and Consumer Protection subsequently assessed the legitimacy of this list and concluded that there were serious legal impediments of publishing said list. In addition, serious legal impediments for the D-EITI Secretariat to publish the list as administrator of the website are still under assessment. Therefore, the list was removed from the online portal.”</p> <p>3) <u>Conclusion</u></p> <p>“The MSG considers its agreed on solution, to allow for an identification of non-reporting companies by comparison, to be a non-material deviation from Requirement 4.9.b.iii. Further, the MSG sees no limitation on the comprehensiveness of the EITI report as the relevant information is publicly available in the mandatory payment reports.</p> <p>Against the unique challenges in terms of severe legal impediments, the MSG is convinced to have identified the best possible way to address the EITI-Standard Requirements and to provide the relevant information to the public.”</p>		
<p><a href="#">4.5 Transactions</a></p>	<p>“The International Secretariat’s initial assessment is that Germany has made</p>	<p>“The D-EITI regards Requirement 4.5 to be implemented with <b>satisfactory progress</b>.</p>	<p>“The Validator notes points made in its response. However SWS did</p>	<p>The International Secretariat suggests that the Validation</p>

<p><a href="#">related to state-owned enterprises.</a></p>	<p><b>meaningful progress</b> towards meeting this requirement.</p> <p>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.</p> <p>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>	<p>There is extensive information available online on the SWS including the information from the mandatory payment reports and the annual financial reporting. In combination with the reports from government side disclosing all financial aspects (among others this includes the salary of the management) on the relationship with SWS, the information available goes beyond the Requirement of the EITI-Standard. The D-EITI report refers to this information. The receipt of the dividend payments (stated in the audited financial reporting of the company, which is linked in the D-EITI report) is confirmed in governmental reporting (linked to the EITI report). The only aspect that is missing is the reconciliation of further payments made. The additional facts provided show that relevant payments are of a smaller size than calculated in the initial assessment."</p> <p>"The economic activities of SWS are covering not only mining/ extraction. --- According to financial reporting of the SWS for 2016, the EBIT of the salt activities (including non-extractive activities of refining and processing) was € 15.2 million; an EBIT of € 10.8 million was generated with waste disposal activities and another € 1.0 million with other activities."</p> <p>SWS has committed to participate in the 2017 EITI Report and submit data for 2016.</p>	<p>not report material payments, dividends were not included in mandatory payment report. It is reported that SWS has agreed to participate in the EITI 2017 and provide data for 2016 which will be added to payment/reconciliation table (which will be considered in the next validation exercise).</p> <p>Under this requirement 4.5, validator is expected to describe role of SOEs, document financial transactions between SOEs and Government entities and their disclosures. Data relating to dividend being available and linking that to report may not be "full disclosure" as is the intent of requirement 4.5.</p> <p>The MSG response doesn't address these points in full. To be qualified as "satisfactory progress" it needs to be demonstrated that ALL aspects of the requirement have been implemented and that the broader objective of the requirement has been fulfilled which doesn't seem to be the case and thus the original assessment <b>meaningful progress is retained.</b>"</p>	<p>Committee considers whether Requirement 4.5 should be considered not to apply in Germany, considering the low importance of SWS as a state-owned enterprise and the fact that the reporting omission is also reflected in the assessment of Requirement 4.1.</p>
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