

# CMSI Consultation Response

## Respondent Details

NAME

Anonymous

COUNTRY

France

PERMISSION

Yes, CMSI can disclose my anonymous feedback.

STAKEHOLDER

Intergovernmental / multi-lateral organisation

ORGANISATION

Anonymous

## COMMENTS & QUESTIONS BY DOCUMENT

Document:  
Governance

### 6. What will the composition of the Board look like?

COMMENT:

*A multi-stakeholder governance approach involving balanced representation from industry (upstream, mid-stream and downstream) and non-industry (mining-affected and value-chain stakeholders) has been proposed in the Standard. It would be useful to understand the extent to which government and civil society representatives will participate or not as board members in view of ensuring enhanced accountability and inclusive governance.*

Document:  
Assurance

### 4. Consolidated Standard External Assurance Process

COMMENT:

*On the assurance process: we understand that re-assurance is required every three years under the Consolidated Standard. It would be useful to understand how the CMSI Secretariat will ensure continuous risk management by companies during the periods between audits, and how facility-level assurance will relate to independent due diligence audits undertaken under Performance Area 3. In this regard, it would be useful to add one or more requirements for cooperation with supply chain due diligence verification and audits. This entails for mineral exporters to allow safe access to company sites and all documentation relating to supply chain due diligence, for on-the-ground assessment as well as audit teams (see Step 4, B.1 of OECD Minerals Guidance).*

## General comment on Performance Area

COMMENT:

*As a general comment, the supply chain scope covered by the Standard would benefit from more precision. For example, the provided definition of “facility” refers to mines and ancillary facilities including smelters but does not specifically mention whether supply chain segments located further downstream would also be in-scope if operating independently from a mining operation.*

---

COMMENT:

*Furthermore, if you decide to specify fundamental due diligence principles and chain of custody requirements either under the Standard or as part of the separate recognition document, you may want to describe how these requirements will interact with the various risk categories and supply chain segments that you intend to cover, knowing that they may extend beyond the scope of the OECD Minerals Guidance.*

---

COMMENT:

*Overall, the Standard could benefit from devoting closer attention to the dynamics of conflict and how they can relate to responsible mining and mineral sourcing. For example, the concept of CAHRAs is defined in the glossary but not contextualized in the various performance areas.*

---

COMMENT:

*We observe that you do not reference the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. However, the updated 2023 version of the MNE Guidelines on RBC covers key areas of business responsibility including on climate change, biodiversity and business integrity and serves as an authoritative, overarching RBC framework alongside the UNGPs. The OECD Guidelines are the most comprehensive government-backed standard on responsible business conduct globally.*

*The Standard sometimes references fundamental due diligence principles and concepts (e.g. risk-based due diligence) without direct citing the OECD RBC instruments they originate from but rather referencing industry standards that are using these principles in their adapted standards (e.g. the Copper Mark). You might consider referencing OECD standards in this regard as the authoritative sources of such concepts.*

---

COMMENT:

*Under performance area 2 or 3, you may want to consider inserting a reference to FAQ: How to address bribery and corruption risks in mineral supply chains.*

---

COMMENT:

*You may want to assess the extent to which integrating a due diligence perspective can be relevant to these performance areas suggested by OECD Handbook on Environmental Due Diligence in Mineral Supply Chains.*

*Performance Areas: 18 Water Stewardship, 19 Biodiversity, Ecosystem Services and Nature, 20 Climate Action, 22 Pollution Prevention*

---

## Overarching Glossary

COMMENT:

*P. 6 - adverse impacts: should include also governance, corruption and integrity-related impacts in addition to human rights and environmental impacts.*

---

COMMENT:

*P.9 - risks: we suggest aligning the definition of harm with the OECD RBC Guidance pp.42 "The significance of an adverse impact is understood as a function of its likelihood and severity. Severity of impacts will be judged by their scale, scope and irremediable character. [...]"*

---

COMMENT:

*P.9 - sustainability risks: the second bullet point related to the OECD Minerals Guidance only mentions armed conflict, while the OECD Minerals covers multiple severe risks. Generally, integrity risks are not adequately captured in the bullet points as none of the sources (apart from the OECD Minerals Guidance) covers corruption.*

---

### Performance Area 1: Corporate Requirements

SECTION: 1.1 Board and Executive Accountability, Policy and Decision, Making, Good Practice

COMMENT:

*we suggest that commitment covering the applicable performance areas in this standard refer to internationally negotiated standards (e.g. OECD, UN and others)*

---

SECTION: 1.2 Sustainability Reporting, Foundational Practice

COMMENT:

*you may want to ensure that sustainability reporting requirements cover all relevant performance areas.*

---

SECTION: 1.2 Sustainability Reporting, Good Practice

COMMENT:

*you may want to insert a new requirement for the achievement of "good practice" to require companies to disclose publicly the beneficial ownership at least on an annual basis.*

---

SECTION: 1.3 Transparency of Mineral Revenues, Good Practice

COMMENT:

*you may want to insert a new requirement for the achievement of "good practice" to require companies to disclose publicly the beneficial ownership at least on an annual basis.*

---

SECTION: 1.3 Transparency of Mineral Revenues

COMMENT:

*On disclosure: you could consider adding requirements for disclosure of relevant information down the supply chain. In line with the OECD Minerals Guidance (Step 1.C) and in addition to disclosure of taxes and payments as already required by the draft Standard, this would include disclosure of details of mineral origin and transportation by all upstream companies (see also additional disclosure requirements for international traders and mineral re-processors).*

---

SECTION: 1.4 Risk Assessment, Good Practice, 3

COMMENT:

*the update of the risk register should be on a continuous basis and more often than once a year.*

---

### **Performance Area 11: Security Management**

COMMENT:

*While you clearly integrate the voluntary principles and refer to ICoCA, you could possibly strengthen the requirement to avoid support to non-state armed actors (NSGA) in line with the recommendations of the OECD Minerals Guidance. Beyond the illegal control of mine sites, the Guidance recognizes the risk of NSGA support through the control of transportation routes, illegal taxation or extortion of money or minerals at points of access to mine sites, along transportation routes or of affiliates.*

---

COMMENT:

*You could explain in more detail how this performance area links up with related criteria on responsible sourcing in performance area 3.*

---

### **Performance Area 12: Stakeholder Engagement**

COMMENT:

*You may want to integrate and reference the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractives Sector*

---

### **Performance Area 13: Community Impacts and Benefits**

COMMENT:

*The disclosure of social and environmental expenditures should be done in accordance to EITI, 4.6, 5.2 and 6.1 where applicable.*

---

COMMENT:

*There could be a point on dealing with customary authorities and requests for payments -in particular as this relates to the risk of corruption being disguised as payments made towards community stakeholder engagement. There is an important nuance as to the nature of these payments when it comes to payments to traditional authorities (individuals) as opposed to payments to communities. Where the parameters for these funds are not explicitly dictated by law, companies should make every effort to publicly consult with local stakeholder representatives to determine and disclose, at a minimum, the following elements:*

- *The amount of payment requested;*
  - *How these payments are made and to whom, and, where applicable, who has oversight over the disbursement of the funds;*
  - *The intended use of the funds, how the intended use was determined, and resulting projects (which should also be monitored).*
- 

## **Performance Area 14: Indigenous Peoples**

### COMMENT:

*You may want to explore the extent to which you would like to integrate recommendations of Annex B of the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractives Sector which provides recommendations for engaging with indigenous people.*

---

## **Performance Area 16: Artisanal and Small-Scale Mining**

### COMMENT:

*It is positive to see language on legitimate ASM in line with the OECD Minerals Guidance.*

---

## **Performance Area 2: Business Integrity**

SECTION: 2.2 Business Ethics and Accountability, Foundational Practice, 1

### COMMENT:

*you may want to ensure that the policy goes into sufficient level of detail (including but not limited to example banning the use of small facilitation payments; limits on/record of the use of gifts, hospitality, entertainment, and expenses; commitment to manage risks of conflict of interest; use of intermediaries and agents). Some of these requirements may of course be covered by the code of conduct under 2.2. Good practice n°1 but codes of conducts are not always publicly available.*

---

SECTION: 2.2 Business Ethics and Accountability, Good Practice, 7

### COMMENT:

*the protection of whistle blowers from discrimination and retaliation should be moved to a foundational practice (currently protection under foundational practice 4 would be considered not strong enough).*

---

SECTION: 2.2 Business Ethics and Accountability, Good Practice

### COMMENT:

*consider inserting a new requirement on public disclosure of lobbying activities.*

---

## **Performance Area 23: Circular Economy**

SECTION: 23.2 Additional Requirements for Smelters, Good Practice, 4

COMMENT:

*Given the risks linked to scrap (and generally recycled sources, especially in precious metals), 23.2 Good practice 4 could be further strengthened (for example including some factors to ascertain that the material is coming truly from recycled sources). This may entail undertaking visits at the trading/recycling facility and doing checks on a sample of the recycled material. The OECD Minerals Guidance lists a series of factors that can be taken into consideration when prioritizing the sources that need more scrutiny (e.g. anomalies related to value and location of transactions, type of material, supplier, etc.).*

---

### **Performance Area 3: Responsible Supply Chains**

SECTION: 3.2 Responsible Mineral Sourcing, Foundational Practice, 3

COMMENT:

*to make sure that foundational practice goes beyond mere commitment to responsible sourcing, you could add requirements relating to the mapping of the supply chain as well as risk identification and mitigation.*

---

COMMENT:

*you could require the public disclosure of the Step-5 report in alignment with the OECD Minerals Guidance.*

---

SECTION: 3.2 Responsible Mineral Sourcing, Good Practice, 1

COMMENT:

*regarding disclosure of the independent audit report, it may be worthwhile to specify whether this requirement extends to the audit summary or the full audit report.*

---

SECTION: 3.2 Responsible Mineral Sourcing, Leading Practice, 1

COMMENT:

*It would also be beneficial to understand how you define "all sustainability risks" under performance area n°3. We understand that they shall cover, at a minimum, human rights risk as defined by UNGPs, Annex II risks outlined in the OECD Minerals Guidance, as well as risks listed in EU CS3D and EUBR. However, with some of these risk categories being broadly defined, a more detailed definition of "sustainability risks" as understood under the Standard would be valuable for a better understanding of the risk scope.*

---

COMMENT:

*the achievement of this criterion is presupposing the existence of industry programmes that implement due diligence beyond the current risk scope of the OECD Minerals Guidance, and them being "OECD-aligned". It would be interesting to understand your thinking on the practical prerequisites surrounding this criterion.*

---

COMMENT:

*Performance Area 3 on responsible supply chains: note that in the absence of a separate recognition document detailing the requirements for the Consolidated Standard to recognise a programme as "OECD-aligned", the information in the draft Consolidated Mining Standard is too general to be used as part of a clear, transparent and credible process for cross-recognition. Importantly, it only considers the way a prospective standard*

*integrates the topic of responsible mineral supply chains, not its implementation or governance. If of interest to you, we would welcome the opportunity to provide additional feedback on cross-recognition and any separate recognition document once it becomes available.*

*The term “OECD-aligned” refers to a finding of “fully aligned” resulting from an assessment using the OECD alignment assessment methodology. The methodology is widely used across different mineral supply chains. Both the European Commission and the London Metal Exchange (LME) use the OECD alignment assessment methodology to assess due diligence schemes that are recognised under the EU Conflict Minerals Regulation (EU) 2017/8211 or approved under the LME’s Track A standards. In addition, some schemes have used the OECD assessment methodology independently for different reasons including to achieve recognition by assurance schemes such as RMI/RMAP. We would strongly advise maintaining precision around the term “OECD-aligned” due to its existing meaning, although it is unclear if this is the meaning of the term in the CMS, or how the OECD assessment methodology will be used by the CMSI. If the Consolidated Mining Standard Secretariat decides to use the OECD methodology to determine whether programmes can be recognised, we encourage you to promote transparency around the use of the OECD methodology including on scoping of the alignment assessment, assessing implementation and governance and by ensuring full disclosure of the results (tool and report).*

---

## **Performance Area 5: Human Rights**

### **COMMENT:**

*Beyond the current focus on UNGPs, you may want to explore the extent to which the involvement framework (caused by, contributed to, linked to) of the OECD Due Diligence Guidance for Responsible Business Conduct can underpin some of the criteria in this performance area.*

*The updated 2023 version of the OECD Guidelines for Multinational Enterprises on RBC may serve as another useful framework for this performance area alongside the UNGPs*

---

## **Performance Area 6: Child Labour and Modern Slavery**

### **COMMENT:**

*You may want to make clearer how this performance area connects with performance area 3 on responsible sourcing, especially since forced labour and child labour are listed as Annex II risks in the Minerals Guidance.*

---

### **COMMENT:**

*You could consider referencing the OECD Minerals Guidance for due diligence related aspects to forced and child labour, including the Practical Actions for Companies to Identify and Address the Worst Forms of Child Labour in Mineral Supply Chains*

---