

CMSI Consultation Response

Respondent Details

NAME

Christina Saulich

COUNTRY

Germany

PERMISSION

Yes, CMSI can disclose my feedback, name, and organisation.

STAKEHOLDER

Government (local / regional / national)

ORGANISATION

Federal Ministry for Economic Cooperation and Development (BMZ)

COMMENTS & QUESTIONS BY DOCUMENT

Document:
Governance

2. What is the mandate of the Legal Entity to deliver this vision?

COMMENT:

Document states that CMS should meet needs of regulators. How is the secretariat planning to engage with governments along mineral supply chains?

4. What are some of the key features the governance model needs to include?

COMMENT:

How is the explanation following under this feature of the governance model connected to "embracing a life cycle approach"?

5. What does the overall governance model look like?

COMMENT:

align colouring of the spots in the Mining Committee

Document:
Assurance

General comment

COMMENT:

The Assurance Process should consider the ISEAL's Code of Good Practice for Sustainability Systems (see also ISEAL Website).

3. Who Can Conduct External Assurance?

COMMENT:

It is recommended to work with entities and not individuals. Entities have internal quality processes and division of roles which individuals do not have. This internal control increases the integrity and accountability of the assurance providers.

COMMENT:

In our view, it would be very important to obtain accreditation for the standard from independent third-party bodies rather than relying solely on internal accreditation by the Secretariat. Notably, third-party bodies accredited by national accreditation authorities ensure a more transparent, independent, and impartial assurance process.

4. Consolidated Standard External Assurance Process

COMMENT:

We suggest excluding a "participation claim" as the applicant has so far only applied for the assurance process but not delivered any actions or made any tangible commitments.

Appendices

SECTION: Appendix A

COMMENT:

Expand the definition to include all important terms.

Document:
Standard

General comment on Performance Area

COMMENT:

Costs of certification: What will the expected cost of certification be? Is there a risk that getting CMS certification will be a challenge for small- and medium sized companies, giving them a disadvantage on markets?

COMMENT:

Risk analysis: Which data sources need to be used for the risk analysis required (e.g. in specific ASM (16), Water Stewardship (18), Biodiversity, Ecosystem Services and Nature (19), Pollution Prevention (22), and others)? Do companies need to conduct the risk analysis in a participatory manner?

SECTION: Overarching Glossary

COMMENT:

Identification of affected stakeholders: We suggest to clarify the methodological approach that will be used to identify affected stakeholders. In the best case, every group viewing itself as "affected" will be initially considered for assessing (potential) adverse impacts on them.

COMMENT:

Adverse impacts: When identifying a facility's possibly adverse impacts (e.g. Pollution Prevention (22), and others), what is the considered time frame? Will past impacts also be under investigation? Under what conditions will a facility be held accountable for past adverse impacts?

Performance Area 1: Corporate Requirements

SECTION: 1.5 Crisis Management and Communications, Good Practice, 1

COMMENT:

Specifically include civil society organisations for emergency communications.

Performance Area 13: Community Impacts and Benefits

SECTION: 13.1 Identify and Address Community Impacts, Foundational Practice, 1

COMMENT:

At the foundational level, different CSO and stakeholders should be consulted and en-gaged in the process of identifying risks and direct but also indirect impacts.

SECTION: 13.2 Community Development and Benefits, Foundational Practice, 4

COMMENT:

Please define the scope of "local" when speak-ing of local procurement, local businesses, lo-cal economic opportunities etc. In our under-standing, the local community is a smaller group than the society that is meant to benefit when we think about local content. Also, the definition should consider a balance between the local and the regional level.

SECTION: 13.2 Community Development and Benefits, Good Practice, 9

COMMENT:

Regarding transparency in (local) procurement the Local Procurement Reporting Mechanism (LPRM) supports mining businesses in expec-tation management with local communities and reporting transparently about local pro-curement opportunities. The LPRM could be mentioned here as an additional tool for com-munity benefits.

Performance Area 17: Grievance Management

SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights, Holders, Good Practice

COMMENT:

Who will decide upon the accountability for an alleged adverse impact and upon the appropriate remediation measures? There is a risk that a facility rejects any link of adverse impacts to its operations -is an independent investigation mandatory? Same with remediation: If a facility's adverse impact is determined, who will decide, what is to be considered an appropriate remediation? Will affected stakeholders have the possibility to reject offered remediation measures as inappropriate? Will there have to be a consensus on remediation from all sides?

SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights

COMMENT:

Please, specify the scope of application: For already running operations (or even for already closed operations), will it be possible for stakeholders/rights-holders to raise concerns about adverse effects that happened in the past? For which time period in the past will the grievance mechanism apply?

In the case of recent change of ownership, will new facility owners account for adverse effects caused by the past owners?

Performance Area 19: Biodiversity, Ecosystem Services and Nature

SECTION: Glossary

COMMENT:

We suggest to mention in the glossary or in the standard that the company supports the development of methodologies and processes to improve the identification of populations that are potentially affected by a project as well as the identification of impacts. That includes also a statement that in case of doubt about whom to include in defining the area of influence/whom to consult/whom to consider as "affected community", processes should entail preparatory scoping, field research and dialogue with populations that request inclusion or do regard themselves as "affected". Defining the area of influence, and thus, who is affected, and consequently, who will be included in any consultation and in any benefits resulting from the project often emerges as a point of permanent conflict.

Performance Area 2: Business Integrity

SECTION: 2.1 Legal Compliance, Leading Practice, 1

COMMENT:

The beneficial ownership of the operating company shall be publicly accessible to acquire this level.

Performance Area 20: Climate Action

SECTION: 20.1 Corporate Climate Change Strategy (Corporate Level), Good Practice, 2

COMMENT:

The section seems to differentiate between “material GHG emissions” and just “GHG emissions” (e.g. 20.1. good practice 2): Please, clarify the difference, or if there isn’t any, chose one consistent term.

SECTION: 20.1 Corporate Climate Change Strategy (Corporate Level), Leading Practice, 5

COMMENT:

How will the carbon price be raised? Who at what stage exactly will pay the price to whom?

Performance Area 22: Pollution Prevention

COMMENT:

No comments, other than what is stated in Performance Area 19 with regard to the definition of “affected stakeholders”

Performance Area 24: Closure

SECTION: 24.1 Closure Management, Good Practice, 7

COMMENT:

Including cost estimations and financial assurances should be part of “Foundational Practice”

Performance Area 3: Responsible Supply Chains

SECTION: 3.1 Responsible Supply Chain (applicable to all facilities), Good Practice, 2

COMMENT:

Please specify, that this action should not be abandonment of business relations, or at least engagement before abandonment

SECTION: 3.1 Responsible Supply Chains (applicable to all facilities), Foundational Practice

COMMENT:

In general: Even if the criteria for mineral sourcing facilities are defined under 3.2, the OECD Minerals Guidance should also be included for 3.1 as a basis for all other facilities. Otherwise, the more general OECD Guidance for responsible business conduct, whose 6-stage framework is comparable, should be used.

The requirements for the level of “Foundational Practice” seem too weak. They fall short of the 5-step Framework for risk-based due diligence in the mineral supply chain of the OECD Guidance for Mineral Supply Chains. The creation and publication of a corporate management system is only step one in this framework. This also includes engagement with business partners and the establishment of a grievance mechanism. The requirements listed here under 1-3 even fall far short of the requirements of only the first step of the OECD framework and cannot be sufficient for the foundational practice

SECTION: 3.1 Responsible Supply Chains (applicable to all facilities), Good Practice

COMMENT:

It is insufficient for the good practice level to only provide complaints and grievance mechanisms to business relations, excluding other stakeholders.

SECTION: 3.1 Responsible Supply Chains (applicable to all facilities), Leading Practice

COMMENT:

The structure of the chapter should be adapted to the requirements of the OECD guidance to facilitate the assessment whether the levels of practice comply with the OECD guidance. This is also important for companies, as laws such as the EU Batteries Regulation also refer to the OECD guidance.

Performance Area 4: New Projects, Expansions and Resettlement

SECTION: 4.1 Risk and Impact Assessments of New Projects and Expansions, Good Practice, 1

COMMENT:

General: Besides direct impacts indirect impacts that new activities might cause should also be considered.

Regarding the engagement and consultation of affected stakeholders a representation of different stakeholders reflecting the diversity of the communities affected should be ensured, including representatives of marginalized groups.

Performance Area 5: Human Rights

SECTION: 5.1 Human Rights

COMMENT:

Include the rights of women and girls and aspects of gender equality and mainstream these for all requirements mentioned (e.g. the consideration of gender-specific human rights violations, or the inclusion of women and girls in all levels of stakeholder consultations, etc.).

Performance Area 7: Rights of Workers

SECTION: 7.1 Workers' Rights Risk, Mitigation and Operational Performance, Foundational Practice

COMMENT:

The requirements mentioned are not enough. Only "commitments" are mentioned and not a single measure that actually has to be implemented.

SECTION: 7.1 Workers' Rights Risk, Mitigation and Operational Performance, Leading Practice, 3

COMMENT:

This should be one of the most important requirements and should be included for the foundational level.

SECTION: 7.2 Grievance Mechanism for Employees and Contractors (Workers), Foundational Practice, 1

COMMENT:

For the level of foundational practice, a basic access to remedy should be guaranteed. The aspect of remedy is missing from this section.

COMMENT:

The role of trade unions is missing from the section: collective labour rights should be addressed, in particular the granting of the right to form a trade union and exercise the right to strike.

Performance Area 8: Diversity, Equity, and Inclusion

SECTION: 8.1 Governance of Diversity, Equity, and Inclusion (Corporate Level), Foundational Practice

COMMENT:

A public commitment to foster a diverse work-place is not sufficient and should be followed by actions to avoid "social washing".

SECTION: 8.2 Diversity, Equity, and Inclusion Management (Facility Level), Good Practice, 6

COMMENT:

The public disclosure of information on worker diversity metrics should be handled very sensitively and context specific. This information might harm individuals of marginalized or vulnerable groups.

Document:
Claims

General comment

COMMENT:

In the case of a facility that produces different metals, it should be highly transparent which metals and production routes exactly have undergone certification and which not. We see a risk of a negative "spill-over" effect of certification -if a company certifies one metal it produces and uses the logo, it might not be obvious to buyers that other metals produced by this company are not covered by the certification. This could create unreasoned market advantages and undermine the purpose of certification.

3. Types of Reporting & Claims

COMMENT:

Please elaborate, how will the self-assessed report will be used for the actual assurance process? How will its credibility be assessed before usage?

COMMENT:

As noted above, what will be the fees? Will they differ along company size?

4. Submission, Review and Approval of Reporting and Claims

COMMENT:

We recommend to specify that for its review and approval of reporting and claims the secretariat will consult the assessment results through a participatory consultation giving the relevant stakeholders an opportunity to express caveats or objections. Or if the secretariat does not approach stakeholders actively, provide a easily accessible and properly announced channel for feedback and objections, and allow for stakeholders to trace how their feedback is considered.
