The *European Centre for Development Policy Management (ECDPM)*
and the *World Gold Council (WGC)*

Consultative Roundtable on the draft World Gold Council Conflict-Free Gold Standard

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Summary of discussions

On the 12th June 2012, the European Centre for Development Policy Management (ECDPM) and the World Gold Council (WGC) held a round table discussion in Brussels to discuss the WGC draft Conflict-Free Gold Standard ('the Standard'). The purpose of the meeting was to gather a broad range of inputs, share perspectives and provide practical comments with a view to finalising the Standard. A wide range of stakeholders, including representatives of the private sector, European institutions, African countries and NGOs attended the event. The round table discussion, facilitated by ECDPM, was held under Chatham House rules.

The WGC introduced the Standard and gave a brief historical overview of the origin of the Draft as well as the global intent of the initiative. More broadly, the Standard is based on the principle that responsible mining and its related activities is crucial in helping resource-rich countries to achieve sustainable development and to alleviate poverty. Where gold mining companies operate in countries affected by conflict, such a Standard is meant to provide a pragmatic mechanism through which producers can show that their gold is extracted in a way that does not contribute to fuelling conflict or to abuses of human rights, generally associated with such conflict. At the same time, the Standard is developed in a way that would be implementable and manageable by mining companies.

Legislative, normative and industry drives

It was highlighted that the Standard was intended to be an industry-led initiative and not an industry dominated initiative, and was based on existing multilateral good practices and internationally recognised benchmarks.

Legislative drives such as Section 1502 of the Dodd Frank Act and voluntary guidelines such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas and its related Supplement on Gold and the Voluntary Principles on Security and Human Rights were key elements in developing the Standard. Furthermore, the initiative is seen to be complementary to a number of other industry led, gold supply chain initiatives (e.g. the London Bullion Markets Association responsible gold guidance for refiners and the Responsible Jewellery Council's Chain of Custody) that are all focused on conflict free and responsible practices.

In this regard, as the market organisation for gold miners, the WGC took a proactive lead approach to developing a standard linked to gold mining in conflict affected areas, with a view to cutting the link with gold that was related to conflicts. Despite the complexity of challenges around the role that misuse of gold could play in fuelling conflict, the Standard stand to give the signal that gold companies will promote responsible mining, a key driver to social and economic development.

Geographical coverage and specific focus

There was considerable discussion around the geographical coverage as well as the specific focus of the Standard. It was pointed out that while Section 1502 of Dodd Frank Act of July 2010 has a special focus on the Democratic Republic of Congo (DRC) and 9 adjoining countries, the WGC Conflict-Free Gold Standard has a global coverage with no specific focus on a particular geographical area or region, in line with the OECD Guidance. This is meant to reduce the risk of a significant drop in trade – as has happened in relation to some minerals from the DRC as a result of the passing of the Dodd Frank Act - due to market responses to country stigmatisation. In addition, the Standard focuses on the formal gold mining industry rather than on the supply chain. The link and complementarity to the supply chain is assured by other similar initiatives such as the London Bullion Market Association (LBMA) conflict free standard for refiners which provided guidelines to ensure that sourcing of gold for refining, from newly mined gold, recycled gold and from artisanal and small scale miners is also conflict free through the application of due diligence approaches based on Know Your Customer and Anti-Money Laundering procedures.

While on the supply-side, the argument for responsible mining speaks for itself, discussants wondered whether there is any specific request on the demand side. It was observed that there is indeed limited consumer pressure for responsible mineral sourcing, with the exception, perhaps, of the electronics industry in the US. The domestic pressure comes mainly from NGOs/advocacy groups. It was noted however that there is considerable appetite, on the contrary, notably from non-OECD countries, to purchase minerals on a non-discriminatory basis, from any source, irrespective of its potential connection to conflict. Therefore, the challenge is to promote responsible practices for mining companies, in particular when over 50% of the gold market resides in non-OECD countries some of which have interests in sourcing from the cheapest suppliers, irrespective of mining behaviours.

While promoting responsible practices, it is also important to prevent undue discrimination against artisanal and small scale miners (ASM), some participants suggested the desirability of building stronger links between artisanal, small-scale and large-scale miners including through the Standard.

However, beyond the Standard, a point was made that responsible mining could become part of accountability for industries should financing institutions decide that repute and good governance would be part of their conditions to provide financial support to responsible mining companies. The same would apply for countries, if donors would tie their development support to governance practices. Socially responsible investment funds are increasingly giving attention to such initiatives.

Scope and Structure of the Standard

The WGC indicated that the Standard has been tested at different industry sites where it has proved to be useful and workable despite the fact that it requires some significant effort and cost.

It was stressed that the Standard would be externally assured to ensure that companies would meet the criteria. Conformance documentation would then be publicly declared. This is expected to provide a real sign to external stakeholders to make sure that participating mines do not fuel conflict.

It was however outlined that the WCG would not be the certifying organisation and was not currently planning to provide a repository for the annual disclosure of participating companies as it could be seen as a potential conflict of interest should the WGC certify the companies themselves. However, it would continue to maintain oversight over the Standard.

There was a key question regarding *who would make the assessment of the company and who would certify conformance*. In this regard, it was stressed that individual companies would have to work with external assurance providers, whose role would be to assess companies on their performance and conformance with the Standard. A separate framework for the assurance providers to guide how they will assess companies is being prepared, to provide consistent guidance to external assurance providers; the WGC is organising parallel consultations with assurance providers to discuss this more technical framework. The intent is to have enough consistency in the assessments for the Standard and to provide a coherent framework for reporting, to facilitate comparison, while providing some flexibility for companies in terms of the information disclosed.

Assurance providers would have to sign their names to the report. However, no mechanism is foreseen to validate a specific list of assurance providers, in part because it would be quite complex and that there is no intention to restrict the list of assurance providers as long as they meet the criteria for independence and expertise set out in the Standard. This raised some concerns and it was recognised that it could cause some credibility issue. It was proposed that the WGC should consider setting-up a panel of assessors, based on what the International Council on Mining and Metals (ICMM) or the International Cyanide Management Code are doing. That triggered further discussions as to who would be entitled to accredit the providers and how this would work, bearing in mind that this should not ultimately restrict competition.

Regarding the feasibility for companies to *assess purchases from ASM*, one of the challenges raised was the need to ensure that the standards put in place are not so rigorous that it would be hard for ASM and in particular for artisanal miners to comply. While the Standard is tailored towards large miners, there is a clear link to ASM, in particular in the context of externally sourced gold assessments. In that case, OECD definition of ASM would apply.. The intention, though, is not to exclude ASM but rather to promote good practice. In this regard, it was remarked that donor programmes could be sought to support ASM to conform to such standards. This is already being done in some cases by the World Bank (the Communities and Small-scale Mining initiative - CASM), US led initiatives in the Great Lake region (the Public-Private Alliance), the French Government in West Africa and the Swiss Government in Peru, to build up capacity and finance external assistance to provide compliance support.

While the issue of chain of custody was an important one, it is however important to make the distinction between what mining companies can do at their level in terms of contributing to conflict free gold mining and what other stakeholders, working further down along the value chain, could be doing at their end. Therefore, taken from this angle, it is pertinent to acknowledge that conformance assessment is an issue that is relevant beyond the production process, and that it would be preferable to have an initiative to assess all conflict minerals, and not only gold. But that issue is beyond the scope of the WGC and therefore should be taken at a higher level.

Definition and recognition of conflict

There is no agreed definition regarding specific indicators to define 'conflict affected or high risk' areas, although international benchmarks are very useful in identifying conflict zones. Furthermore, it was pointed out that it is also difficult to ascertain in many cases when and where natural resources contribute directly to conflict. The conflict status of a given country or region is a sensitive issue with political and investment implications; but the onus would be on gold producers to prove that they would not contribute to fuelling conflicts in any sense. Although it might be quite challenging for companies to assess objectively conflict situations, given potential tensions with their host Government, the framework provides nevertheless the framework to guide country assessment.

Regarding *benchmarks* used to define conflict areas, questions were raised as to whether the framework should provide some degree of automaticity in the definition of conflict zones or whether there should be more room for NGOs or public opinion to be able to put the case for other regions to be recognised as 'conflict affected' even if they are not identified as such in generally agreed documentations.

This was seen as a particularly sensitive issue, and while there was wide support and recognition for international benchmarks and guidelines, it was pointed out that any list should not absolve companies from exercising due diligence. In addition, companies along the supply chain will need to agree on the delimitation of conflict zones. Yet, it remains necessary to keep reference points to maintain some degree of consistency and confidence in the system and to have some flexibility for companies to eventually use other criteria to justify their decisions, should they be in situation where the conflict zone was not defined though the benchmarks.

Regarding ASM, Annex 1 of the OECD guidance provides a good framework to minimise risks and provide some steps to help ASM to go into formality. It was pointed out that ASM is associated with a higher risk of financing armed groups because of their lack of scale, informality and frequent illegality but do not generally have the capacity to fulfil many of the requirements of the OECD Guidance. The only way in which this tension can be addressed is through a longer-term focus on formalisation.

Company Assessment

This issue is relevant only for gold companies found to be operating in conflict affected or high risk zones. The purpose is to ensure the robustness of the management systems in place to avoid mining operations fuelling the conflict. It also builds on internationally recognised frameworks based on five key assumptions, namely that companies have obligations towards (i) human rights commitments, (ii) corporate engagement in terms of payment disclosure, (iii) security in terms of engagement with other agents, (iv) the governance of payments and benefits in kind and (v) ensuring that companies have in place processes for employee whistle-blowing, regular community engagement and for the handling of grievances – each of which constitutes some form of warning system. The Voluntary Principles on Security and Human Rights were a key benchmark although it was noted that they do not currently have an international audit protocol.
During the discussions, it was remarked that while this section crystallised the key voluntary codes, the issue of corruption might not be adequately reflected, in particular regarding payments to government. However, it was pointed out that the issue of the legacy of corruption linked to the acquisition of mining title was beyond the scope of the Standard and therefore would not be addressed.

There was a concern however as to what *degree of disclosure* would be required from companies. It was argued that it is sometimes difficult for some companies to disclose payments disaggregated as between projects since some payments are calculated and made at a corporate or country level. Disaggregated payments are viewed as particularly important by some, in particular in cases where payments are made to local governments. Although transparency in reporting is generally a practice in most large companies, the methods of payment reporting and the level of disaggregation vary depending on companies. It was suggested that the Standard should be clearer in setting out what good practice expectations are in relation to disclosure and reporting.

Conformity assessment of externally sourced gold and interfaces with ASM

Due diligence on acquired gold was seen as a critical issue to maintain the confidence in efforts made towards responsible mining operation, so that companies do not end up bringing in gold from elsewhere that has been fuelling conflict. This is particularly relevant for the interface between ASM and large-scale mining, although it is not the intention of the Standard to provide a general framework for the management of due diligence and risks associated with ASM.

It was felt that there is a need to clearly mark the assessment of risk along the supply chain, in particular in terms of identifying the red flags in the Standard, along the lines of the OECD Supplement on Gold. Although this is incorporated at all levels of assessments in the Standard, it was argued that the risk assessment elements could be better sign-posted and made more prominent.

Assurance, non-conformity and remediation

In case of a breach to the Standard, remedial action would be required. Companies would have to follow a process whereby once a breach is identified actions are taken to implement a remedial action plan with the involvement of an external assurance provider. It was pointed out that there might be some adaption period at the beginning of the process (first time implementation) and until companies have been assured externally, they would not be declared to be in conformance.

The Standard requires two levels of disclosure, namely an annual corporate level conflict-free report and one when batches of gold are dispatched to the refiner. As with the approach of the OECD Guidance, the assurance relates to the processes in place rather than product assurance. However, it was felt that there was a need to be clearer about where disclosure was needed, the broad format of the reporting and which best practice to use.

There was a question relating to the role of WGC once the Standard would be produced. While it is clear that it would have an oversight and a role in the management of Standard, it was felt that it would be helpful to monitor reports, preferably in one place, so that these can be easily accessed, for comparison purposes as well as a means to assess whether the Standard is effectively operational. The intention though would not be to create a bureaucratic process that would be time consuming to put in place. There was also a fear that should the WGC become a repository, it would give a perception it approved the reports.