July 25, 2017

Market Entry Standard for Artisanal and Small-scale Producers of Gold and Associated Precious Metals

Terms of Reference

Note: The denomination "Market Entry Standard" is a working title. Prior to announcement of the Standard, the name may (or may not) be changed to a term that better describes the instrument.

Introduction

Recent years have seen the emergence of a strong body of frameworks applicable to tin, tungsten, tantalum (3T minerals) and gold originating from Conflict and High Risks Areas. The OECD Due Diligence Guidance (DDG), Section 1502 of the Dodd-Frank Act, and the recent EU Conflict Minerals Regulation encourage or require downstream actors to further understand and "de-risk" their supply chains, as well as to develop compliance processes and protocols for implementing risk-based due diligence and chain of custody or traceability systems.

Supply chains of 3T minerals have relatively clear "choke points" at the interface of the upstream and downstream segments of the supply chains, i.e., the smelters. The supply chain of gold, however, particularly from Artisanal and Small-scale Mining (ASM), is very complex, without clear "choke points" determined by technology (refining to a certain extent can be accomplished without an industrial facility). ASM gold is usually transformed several times on its journey from mine to market. Given the high value of gold, buying networks have in some places instigated undocumented, if not illicit, trade. Despite downstream due diligence pressures, there are currently few ASM gold markets for which there is sufficient incentive or awareness of alternatives to overcome the status quo.

Complex supply chains require complex due diligence processes that currently are costly. The situation is exacerbated by legal and reputational risks of sourcing from legitimate but still predominantly informal ASM mines. Thus, many downstream supply chain actors have consequently become reluctant to source gold from ASM or otherwise accept it in their supply chain. However, the logical response of many companies to avoid sourcing ASM gold altogether further marginalizes the ASM sector and makes it easy prey for illegal supply chain actors.

In response to this critical challenge, the Alliance for Responsible Mining (ARM) and RESOLVE, with initial funding support from the European Partnership for Responsible Minerals (EPRM), aim to develop – under open source terms – a Market Entry Standard (MES), enabling OECD-conformant ASM to deliver into legal supply chains at a much earlier stage in their development. The MES is intended to serve as an instrument for ASM and the industry to demonstrate eligibility to sell and source gold in conformance with the OECD DDG and legislations or other standards and sourcing initiatives that derive from and align with the DDG. The MES is further intended to be responsive to reputational challenges and market opportunities of responsible supply chains.

Needs assessment for the Market Entry Standard

Aligned with and inherent to due diligence requirements, most industry standard schemes promoting compliance with responsible sourcing start out from the downstream end of the supply chain.

With the exception of best performance standards (e.g. Fairmined or Fairtrade specific to ASM gold mining, or RJC for all segments of the mining sector) and a number of proprietary closed pipe supply chain schemes, no ASM standard with global scope exists that operationalizes responsible sourcing of gold at the upstream end of the supply chain.

ASM produces between 15 – 20% of the global supply of mined gold and employs approximately 15 million people worldwide. While probably most of this gold is produced by artisanal miners not involved in or affected by conflicts, only a small fraction of the ASM producers can proactively demonstrate their conformity with the expectations of the DDG. ASM producers depend on the voluntary engagement of responsible downstream actors to carry out such due diligence and yet also incur time-consuming and costly administrative burdens associated with participating in due diligence processes that vary from customer to customer. Although committed ASM producers have expressed their aspiration to sell into legal supply chains, those ASM producers not covered by due diligence efforts of the downstream sector can only sell into informal supply chains, often controlled by illicit networks. These linkages have been widely reported and have garnered the attention of international civil society and diplomatic networks. This visibility has detracted from downstream willingness to engage with artisanal gold miners. Additionally, the cost of due diligence in remote ASM regions is high and an additional deterrent for many gold supply chain operators to engage with ASM and to source gold produced by ASM.

At the same time, there is growing consensus around the importance and value of risk mitigation – through progressive improvement – as opposed to total risk avoidance. LBMA, CFSI, and OECD counsel that risk identification should not result in discontinuing a relationship (except for a few non-mitigable risks) but rather should result in efforts to plan and monitor improvements. This pairs also with a growing sense that due diligence and sourcing efforts should contribute to improvement and the generation of positive impacts on the ground, and to implement the "Suggested Measures to create economic and development opportunities for ASM" enumerated in the Appendix to the Supplement on Gold to the OECD DDG. Within this context, downstream supply chain actors have expressed interest in counting on an instrument that would permit engaging with ASM at the point where the risks listed in the OECD DDG can be mitigated, enabling a positive outcome of Due Diligence and opening up possibilities of their inclusion into legal supply chains while also gathering a baseline to support ongoing risk management.

The above aspects provide reasonable certainty that the development of the MES responds to a joint need of the upstream and downstream supply chain with good probability of broad uptake. This need is further confirmed by a number of successful schemes of supply chains initiatives, but efforts to up-scale these initiatives into a generally applicable standard have not yet progressed much beyond expressions of intent.

Objective

The MES scheme aims at facilitating engagement of the downstream gold industry with upstream ASM gold producers at the point where the risks listed in the OECD Guidance Supplement on Gold are mitigable. The overall intent of the standard is to promote sustainable social, environmental and economic development of the ASM sector, by leveraging demonstrable compliance with due diligence requirements as an instrument for generating a positive development impact for ASM gold producers. The MES expects to be a tool principally for the miners, to empower them in understanding and complying with the market expectations and due diligence needs. To achieve this, there is a need for a clear and simple language, and a format that supports clear communication and ease of use, providing a route to achieve improvements.

Scope and envisaged characteristics of the standard

The MES is a standard for **upstream ASM gold producers**. Adherence to the MES shall enable upstream ASM producers to demonstrate their ability to supply gold to downstream buyers operating in conformity with the OECD Five-Step Framework for Risk-Based Due Diligence.

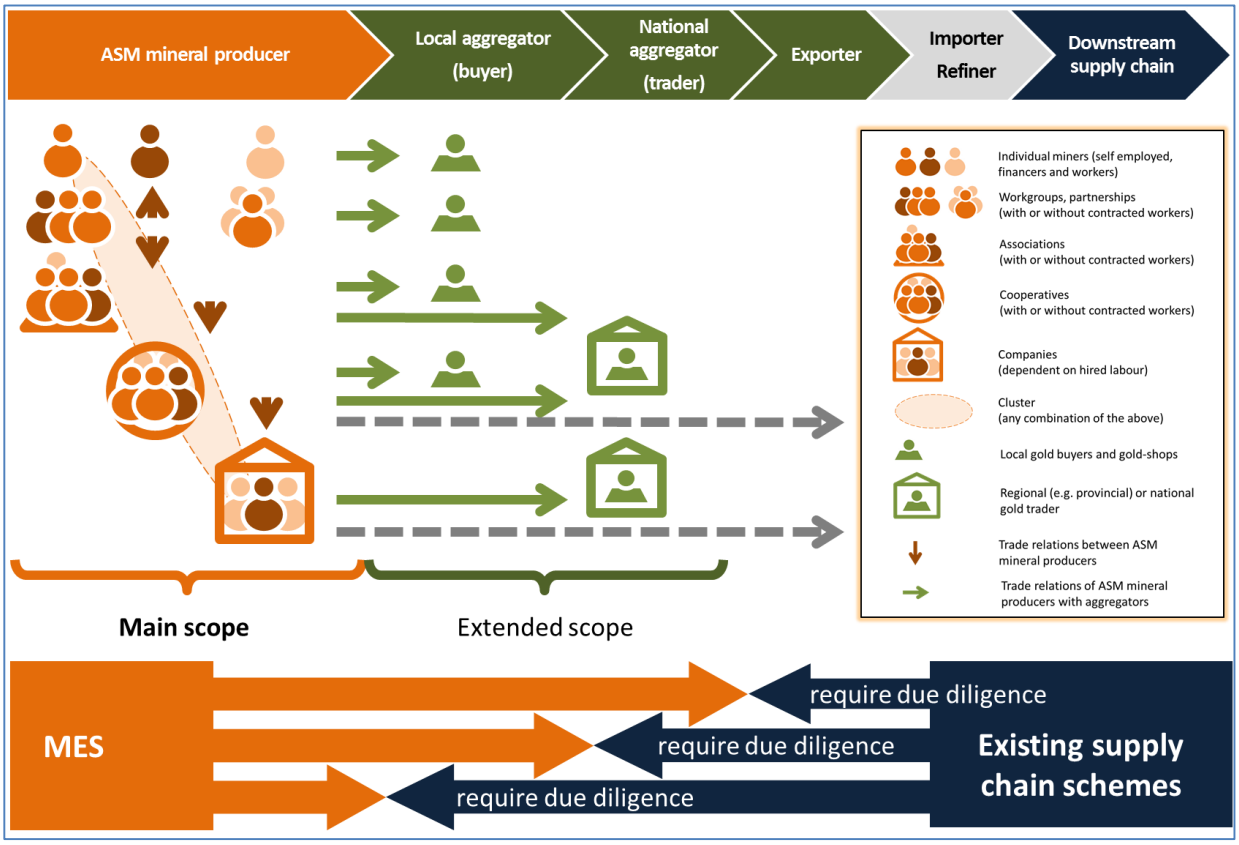


Figure: Proposed scope of the MES

The MES is open for **all organizational structures of ASM producers** (individual, associative, cooperative, or corporate, as well as heterogeneous groups thereof; including involved aggregators in case of "supply chain based groups"). It shall be applicable to the vast diversity of organisational forms covered by the definition of ASM in the OECD DDG. ASM producers claiming compliance with the MES shall be responsible to implement an appropriate internal control mechanism. The organizational scope of the MES may extend downstream to local or national aggregators, if they can ensure that their upstream suppliers are covered by an appropriate internal control mechanism and management systems.

Upstream producers and downstream buyers shall be **free to choose and implement the chain of custody or traceability schemes** of their choice.

The MES is intended to have a **global scope**. In alignment with the OECD DDG, special emphasis will be on risks prevalent in conflict and high risk areas. However, the standard's principles and requirements shall be universally applicable in any ASM context.

The MES scheme is intended to be accessible to all **ASM producer structures not subject to risks that require disengagement** according to the OECD DDG. The scope includes all **ASM** regardless of their current formalization status (i.e., informality is a mitigable risk, as it can be mitigated by formalization). As a global standard, the MES will contribute to progressive compliance with enforced

national laws, but as a practical measure will not directly incorporate any specific regulatory or legal regimes.

It is anticipated that **compliance criteria will be based on the OECD Five-Step Framework**. MES Standard compliance should not be reflected by pass/fail criteria (with the exception that they must be absent of those risks identified by OECD as requiring disengagement), but by 1) management systems established, 2) risk assessments undertaken, 3) risks mitigated, 4) outcomes audited, and 5) progress reported.

The MES shall be a **progressive performance standard** for ASM gold producers. Consistent application of the five-step framework shall enable ASM gold producers to enter the standard scheme at the point where risks requiring disengagement are absent and to progressively mitigate existing mitigable risks up to the point where producers meet best practice standards fulfilling social, environmental and economic sustainability goals.

Development of version 1 of the MES shall start out from covering the most critical risks, and might eventually not yet cover the entire pathway of evolution of ASM producers towards compliance with best practice standards. Future development of the MES will/may close this gap.

The MES will empower miners to **identify risks** and seek downstream support in addressing them. It also gives both parties a means of communicating their relative sense of **priority**.

In order to accommodate the vast variety of upstream producer setups, governing legal frameworks, sourcing models, corporate policies of downstream supply chain actors, etc., the MES will be developed from the outset under **Open Source** license terms, such as "*Creative Commons Attribution Share-Alike 4.0*".[1]

Open Source implies that there may co-exist many **non-exclusive ways to determine standard conformance**; assurance schemes of supply chain initiatives can co-exist under the MES with due diligence procedures of supply chain operators, certification bodies, etc. Open Source also implies that other organizations or supply chain initiatives may **customize the MES for their needs and operating context** (i.e., good practice in open source development, known as creating "branches" or "forks", e.g. to incorporate national standards), and that such branches (or successful elements thereof) may at any moment be merged back into the core body of the MES as part of future standard development.

Potential risks or unintended consequences of the MES and possible mitigation measures

ARM and RESOLVE are aware of the following potential risks and have identified potential mitigation measures.

Risk of due diligence cost burden on ASM producers: Due diligence has a cost. The MES can only contribute to lowering this cost, not to eliminating it. Assurance schemes (by supply chain initiatives, certification bodies or proprietary procedures of supply chain operators) will need to cover their costs. For a commodity with a clearly defined market price such as gold, ASM producers compete with gold supply from large-scale mining or recycled gold, which demands much lower due diligence efforts.

- ➔ The MES needs to plan for and avoid the risk of placing an unfair burden of implementing the MES solely upon the ASM producers.

[1] "CC-BY-SA": https://creativecommons.org/licenses/by-sa/4.0/

➔ A risk-based approach, and a combined scheme of first, second and risk based third party verification is envisaged.

Risk of excluding ASM producers with mitigable risks: To reduce their risk exposure, downstream supply chain actors might decide to source only from ASM producers that have already mitigated most of the mitigable risks (ASM producers with performance levels close to best practice standards). A risk of disengagement exists that might lead to marginalization and exclusion of ASM producers close to the entry level, for whom inclusion and support is most important.

➔ It is envisaged that Key Performance Indicators for ASM producers focus less on performance levels achieved but stronger on efforts and progress towards achieving improved performance levels.

Risk of stalling industry engagement with high performers: There is some risk that the industry at large could feel that meeting the market entry criteria is "good enough" and that no further improvement is needed.

➔ The MES is an instrument to facilitate B2B (business to business) engagement between the upstream and downstream supply chain. The MES is not foreseen to evolve into a competing consumer facing "label" for promotion of outstanding products from best performing ASM.

Perceived conflicts of interest: ARM has developed and owns the Fairmined standard. Development of the MES (for an, in principle, similar target group: ASM miners), could represent a conflict of interest if ARM uses the MES to directly promote Fairmined at the expense of other programs or certification systems.

➔ The MES will be developed from the outset under Open Source licensing terms. The CC-BY-SA open source license allows anyone to use the standard and to "*adapt, remix, transform, and build upon the material for any purpose, even commercially*". Under open source terms, there is no "standard owner" and ARM will therefore only act as "standard maintainer".
➔ An additional level of governance has been established through the MES Advisory Group, led by RESOLVE to balance and mitigate any unintentional orientation of the standard towards any existing proprietary standard.[2]

Risk of minimal impact due to resource gaps: Despite the desire of many artisanal miners to improve practices and conditions, there is a risk that some miners will not have the resources or capacity to improve to the point of reaching the entry level criteria.

➔ By the open source terms of the MES Standard, no barriers exist to its incorporation (and adaptation where required) in any producer support program supported or carried out by multilateral, bilateral, non-governmental or private actors.
➔ The envisaged combined scheme of first, second and risk based third party verification, aims at reducing assurance costs for ASM producers, so that resources remain available for improvements.
➔ In many cases, the prices and terms of trade of selling gold into formal supply chains are more favourable compared to those of selling in informal conditions, creating additional resources that may be invested in continuous improvement.

[2] Because ISEAL requires a "standard setting organization" to take responsibility for the consultations, release, publishing, point of contact, and other elements of maintaining a standard (and because the MES Advisory Group is not a legal organization), ARM has assumed this responsibility. There is thus a technical requirement that the ARM Board must approve the final standard emerging from the MES Advisory Group and MES Standard Committees; however, the ARM board may not make any substantial, unilateral amendments without consultation with the Advisory Group or Steering Committee.

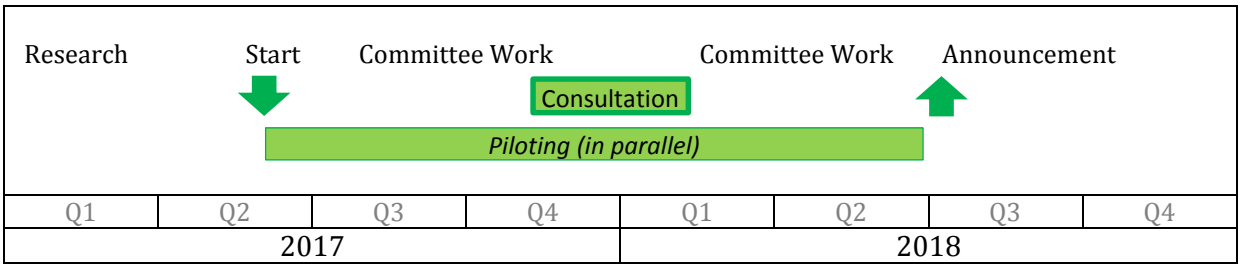
Further possible risks and unintended consequences shall be identified and addressed during MES development.

Standard development process and timeline

The Standard development process will follow the Standard settings procedures of ARM (version 3.0, published at http://www.responsiblemines.org/en/our-work/standards-and-certification/standarsd-governance/). These procedures are aligned with ISEAL's Code of Good Practice for Setting Social and Environmental Standards.

The design of the standard development process aims at announcing a working version of the standard at the earliest possible. For that purpose and building upon experience with the development of ARM's Standard Zero, the standard development process is accompanied by a parallel pilot testing program on the ground (as part of the CAPAZ project implemented in Colombia). Feedback from pilot testing is considered part of the consultation process.

Unless it proves impossible for reaching a consensus, the standard development process for version 1 of the MES will rely on one single round of public consultation. A second round of consultation (and possible further rounds as needed) will form part of a standard revision for version 2, planned to be finalized not later than two years after announcement of version 1.



The specific details of these Terms of Reference, particularly scope and characteristics of the standard are subject to changes as deemed appropriate by the MES Standard Committee and the MES Advisory Group.

Contact

Comments or suggestions regarding these Terms of Reference may be submitted at any time by email to ARM (standards@responsiblemines.org) or RESOLVE (tkennedy@resolv.org).