

Public Consultation Summary Report

Joint Due Diligence Standard for Copper, Lead, Nickel and Zinc

August – September 2020



1 Overview

The Copper Mark, the International Lead Association (ILA), the International Zinc Association (IZA), the Nickel Institute and the Responsible Minerals Initiative (RMI) are collaborating to develop the Joint Due Diligence Standard for Copper, Lead, Nickel and Zinc (the Standard) to enable compliance with the London Metal Exchange (LME) Responsible Sourcing requirements, which build on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance). With this collaboration, partner organizations expect to significantly reduce administrative burdens, minimize costs and provide a mechanism for brands to meet LME requirements using a single framework.

The organizations published the draft standard for public consultation from 27 August 2020 to 30 September 2020. Stakeholders were provided access to a feedback form to complete and send.

All five organizations shared the information with their networks via newsletter and other announcements (see for example [here](#)). In addition, the partner organizations held 2 live informative webinars to introduce the Standard, explain the focus of this public consultation and provide further details on the support available to brands to comply with the LME's requirements. These webinars were recorded and made publicly available ([here](#)).

2 Purpose

The objective of the consultation was to ensure the Standard is practical and achievable for companies producing and / or trading copper, lead, nickel and zinc metal products.

The consultation outlined in the feedback form four general areas for feedback:

- Applicability and scope of the Standard, in terms of materials and supply chain coverage.
- Clarity and achievability of the conformance requirements.
- Ability to leverage existing management systems.
- Practicality of the Standard.

In addition, feedback was encouraged on specific elements of the Standard, in particular:

- The Standard interpretation of the OECD Guidance red flags, and their ability to capture the risks listed in the OECD Guidance Annex II (Annex II risks) in copper, lead, nickel and zinc supply chains.
- The information for the red flags identification and risk assessment processes, and whether such information is accessible, appropriate and sufficient to identify and assess Annex II risks in companies' supply chains.
- The Standard interpretation of the on-the-ground assessment and the circumstances that would trigger such assessment.
- The Standard approach to risk management.

- The Standard interpretation of the “identified-point” for the copper, lead, nickel and zinc supply chains.

This document summarizes the process and comments received.

3 Stakeholders



Feedback has been received from the following categories of stakeholders: companies (67%), industry associations (27%) and consultants (7%). Stakeholders participating in the consultation represented a wide geographical coverage, thanks to the contribution of companies headquartered in Asia (India, Japan, South Korea), Europe (Germany, Poland, Sweden, Switzerland) and the United States. Many companies that commented operate globally.

4 Summary of Comments

Most comments received covered the following concerns:

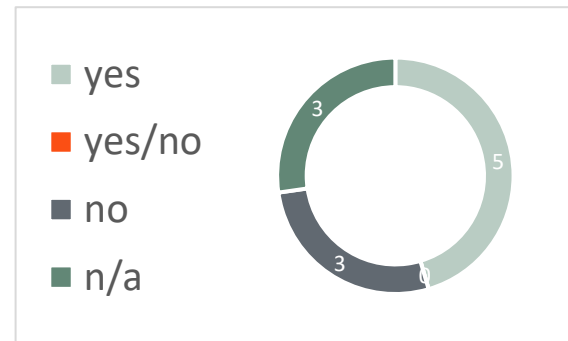
- Definitions of materials in scope and associated definitions (e.g. “origin” of materials, “byproduct,”).
- Lack of a pre-defined CAHRA list.
- Difficulty in obtaining / providing information needed for due diligence due to confidentiality concerns.
- Interpretation of the supplier red flags as they relate to materials which have not entered the company’s external material inputs.

Stakeholders suggested creating a central approach/tool to reduce suppliers’ burden of having to compile multiple questionnaires for due diligence purposes.

Below is a summary of comments received by question.

Section 3: Scope

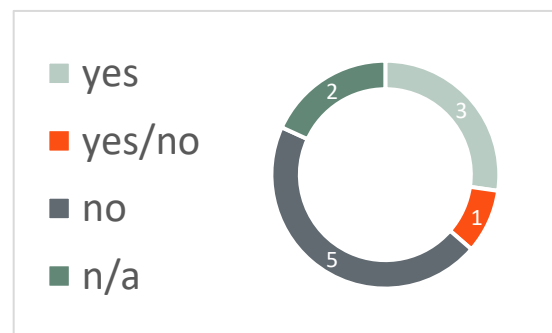
3.1 Companies within the Scope of the Standard: *Are there any companies in the copper, lead, nickel or zinc supply chain between the mine site and the final metal product entering the downstream manufacturing process that are not included in the scope?*



Key feedback from stakeholders selecting 'yes':

- Stakeholders requested further clarifications on the applicability of the Standard for companies involved in deepsea mining (consequently, applicability of the definitions of 'materials' and 'by-products' to polymetallic nodules and clarifications on the expectations for "on-the-ground" assessments). Such request has been addressed by clarifying that the Standard applies to companies in their operational phase. For the avoidance of doubt, companies in the exploration phase are not covered by the Standard.
- The lack of a definition for 'downstream' companies (term which is used in the question) may have led to misunderstanding of the scope of the Standard. Such misunderstanding has been clarified with the introduction of a definition of "downstream" and "downstream companies", which, for the avoidance of doubt, are not covered by the Standard.

3.2 Materials within the Scope of the Standard: *For sites receiving and / or producing multiple metals, is the Standard clear which materials are in scope?*



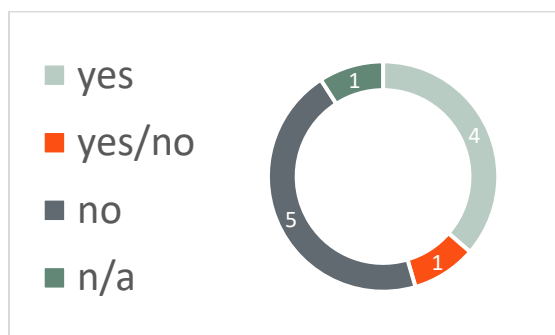
Key feedback from Stakeholders selecting 'no':

- Stakeholders requested further clarifications on the definitions used for "material"; and to consider the implications of the definitions used for "origin" and "byproduct". The definition of "material" has been reviewed to ensure further clarity on what it includes and on how it interacts with associated terms. In particular, it has been clarified that the definition used for "material" includes both "mined material" and/or "recycled material", both "minerals" and "metal products", unless otherwise specified throughout the Standard. The definitions of "origin" and "by-product", based on definitions used by the OECD Guidance and existing Standards, will be tested during the implementation phase of the Standard.
- No specific materials were presented as missing from the materials in scope.

- Stakeholders asked to clarify to what extent materials that are not part of the “principal covered metals” are covered by the scope of the Standard. Such request has been addressed by clarifying that producers of multiple metals will be able to adopt the Standard to cover all materials received, held, or produced at their site. Guidance has been introduced on additional standards that may be applicable to those materials; it will be the responsibility of the company to choose whether to adopt the Standard and/or additional available standards for their materials, based on specific market or regulatory requirements that they might be subject to.
- Stakeholders asked to clarify whether sample lots would be in scope. It has been clarified that material samples are not in scope.

Section 4

Are the conformance criteria clear



Key feedback from stakeholders selecting ‘no’:

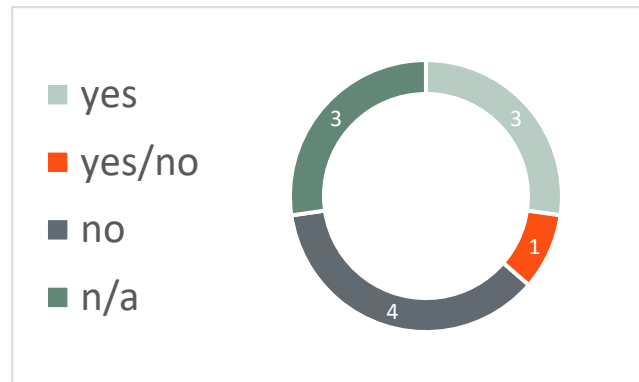
- The high-level conformance criteria are clear, but more guidance is needed for implementation. More guidance has been provided for specific areas of concern (see below on red flag review process). Further guidance will be developed and made available by the partner organisations in 2021.
- Further guidance is needed on what constitutes a “non-conformance,” and on whether sourcing from artisanal and small-scale mining (ASM) operations constitutes a “non-conformance”. The Standard will use the conformance rating system defined in the Criteria Guide developed by the Copper Mark. The Criteria Guide will be reviewed in 2021, providing an opportunity to further clarify the conformance rating system as it applies to the Standard. Regarding ASM, it has been clarified in the Standard that sourcing from ASM does not constitute a “non-conformance.”
- Stakeholders asked for further clarifications on conformance criteria for recycling companies. Recycling companies have been added in the scope of the Standard based on initial feedback received from stakeholders, which raised it as a market expectation. It has been clarified that, at this stage, recycling companies are excluded from further due diligence requirements beyond steps 1 and 2

(specifically, sections 5.2.1. Supplier Information and 5.2.2. Determination of material type). However, they are encouraged to undertake all steps of the due diligence process.

Are the conformance requirements achievable?

Key feedback from stakeholders selecting 'no':

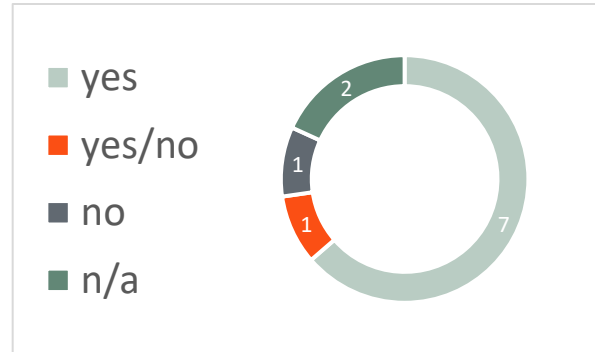
- Concerns have been raised over the company’s ability to collect / provide information due to confidentiality concerns and/or due to lack of visibility over upstream suppliers. The implications of such concerns and feasibility of due diligence will be tested in the implementation phase.



- If the concern sits with companies that need to share information with their customers, it is recommended that such companies undertake a third-party assessment and share the assessment report, which will build confidence in the information collected and shared with the companies downstream.
- Should the concern derive from a lack of visibility and information collected from the companies upstream, companies should encourage their suppliers to adopt a similar approach, i.e. to undertake a third-party assessment. A specific encouragement has been introduced in the Standard in reference to companies at “additional identified points” in the supply chain.

Do the performance criteria allow companies to leverage existing management systems?

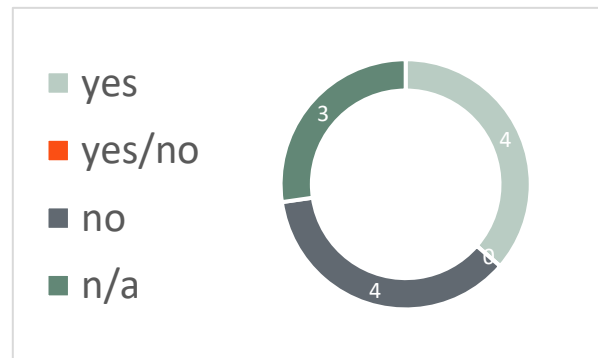
Key feedback from stakeholders selecting 'no':
n/a



Section 5

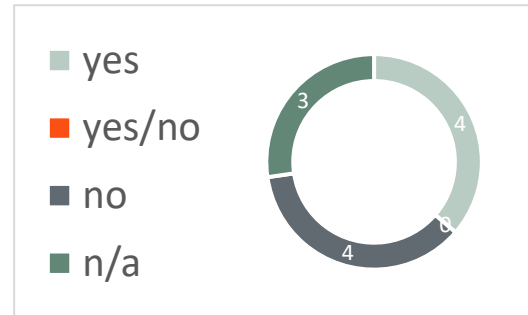
5.2.3 Red Flags Identification: *Are the red flags, as interpreted in the Standard, appropriate and effective in facilitating their intended purpose to identify the risks listed in the OECD Guidance Annex II in copper, lead, nickel and zinc supply chains?*

Key feedback from stakeholders selecting 'no':



- Stakeholders asked for clarifications on CAHRA determination, raising concerns of potential discrepancies among the methodologies adopted by companies, authorities and auditors. The partner organizations acknowledge these concerns and reconfirm that the responsibility to determine a CAHRA lies with the company implementing the Standard. The Standard intends to align with the indicative list of CAHRAs under development by the European Commission and points companies to available resources in this regard.
- Stakeholders commented that red flags should only be triggered for materials in scope of the assessment. The partner organizations conducted in-depth discussions on this issue, including consultations among the memberships of the partner organizations and introduced a "red flag review" process that is aligned with guidance developed by the LME. Following red flags identification, companies should determine whether a supplier red flag has been triggered in relation to a supplier's sourcing practices for materials which have **not entered the company's external material inputs**. In such cases, the company shall undertake additional checks to verify that the company's external material input is in fact segregated, conduct corporate level due diligence and undertake bilateral engagement. The review process, results in the company confirming or not confirming the red flag.
- Stakeholders asked for clarifications regarding sourcing from ASM. As mentioned above, it has been clarified that sourcing from ASM does not constitute a red flag and language has been added to clarify that engagement with ASM operators is encouraged.

5.1.6, 5.2.1 – 5.2.4 System of control and transparency / risk identification: *Is the information required to be collected and retained for the red flags identification (5.2.3) and risk assessment (5.2.4) accessible, appropriate and sufficient to identify and assess Annex II risks in companies' supply chains?*



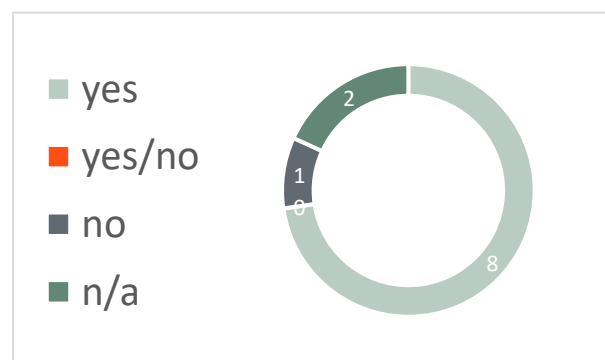
Key feedback from stakeholders selecting 'no':

- Stakeholders raised concerns that payment records of suppliers where red flags have been confirmed are not readily accessible, especially without proper context. Specific circumstances will be tested during the implementation phase and further guidance will be provided on how to manage business confidentiality concerns. Companies should engage suppliers to provide the context needed to facilitate the sharing of information which is relevant for the due diligence process.
- Stakeholders asked for clarifications on how to approach instances where the country of origin or other information cannot be disclosed or obtained due to business confidentiality. Companies should make good faith and reasonable efforts in their implementation of the due diligence process, recognising and making accommodation for the differing size, complexity, circumstances, capacity, location, sectors and the nature of products or services. Specific circumstances will be tested during the implementation phase and further guidance will be provided on how to manage business confidentiality concerns

Are the methods to collect this information described in the Standard (5.1.6) reasonable and efficient?

Key feedback from stakeholders selecting 'no':

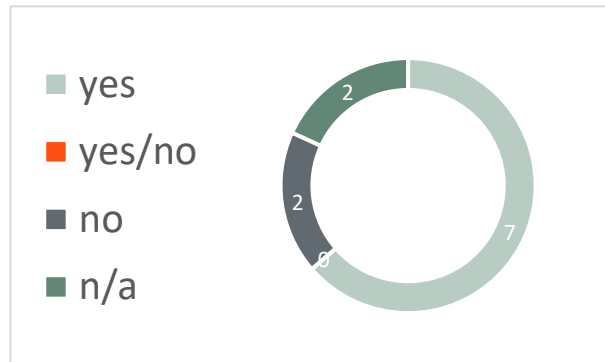
- One stakeholder asked for further clarification on the difference between information for red flag identification and information for risk assessment. Such comment is believed to be addressed with the introduction of the red flag review process and the overall structure of the Standard.



Are the factors companies should consider to determine the need for an on-the-ground assessment of red flagged supply chains appropriate and sufficient to enable the identification and assessment of Annex II risks?

Key feedback from stakeholders selecting 'no':

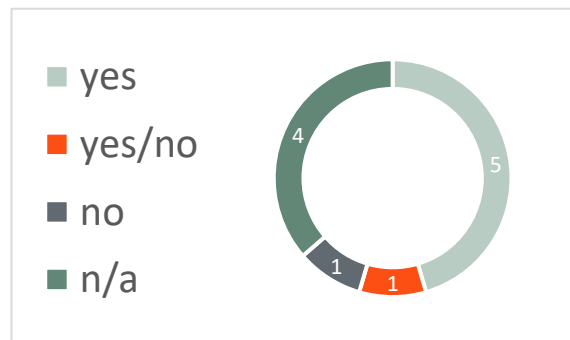
- One stakeholder recommended that, for instances where ASM operations are identified in the supply chain, the Standard should align with the RMI-CCCMC-RCI cobalt refiner standard requirements for permanent on-site monitoring of ASM sites. The partner organizations have placed great importance on ensuring that the joint Standard builds on and complements existing systems. Definitions of existing standards for other metals were regularly consulted in an effort to minimize differences. This includes standards applicable to gold, silver, cobalt as well as the 3Ts. The partner organizations are aware that differences exist between all OECD-aligned standards that are currently implemented. As such, the joint Standard uses the OECD Alignment Assessment Tool to ensure it is fully aligned with the core expectations of the OECD Guidance and does not seek to harmonize with a single existing standard.



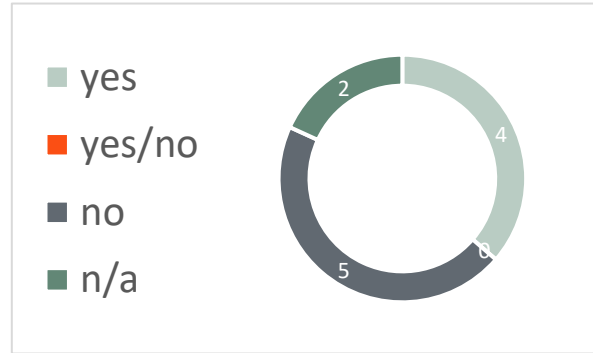
Aware of the fact that the elimination of Annex II risks may require more time, is the way the Standard approached this OECD recommendation achievable / practical?

Key feedback from stakeholders selecting 'no':

- Stakeholders emphasised that suspending trade should be the option of last resort, as is the case in the Standard.



Are the identified points for copper, lead, nickel and zinc appropriately defined? For this question, please also consider the definition of “identified point” in the Glossary.

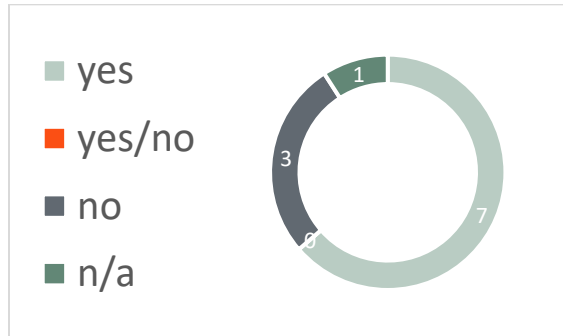


Key feedback from stakeholders selecting ‘no’:

- Stakeholders asked for further clarifications of specific criteria that constitute the definition of the identified point, i.e. “transformation” process, which can be undertaken at the mine site. As per the definition in the glossary, "transformation" includes both physical or chemical transformation. Although transformation may be conducted at a mine site level, being a point of transformation is only one of four criteria of the identified point.
- Stakeholders asked for clarification regarding the relations between the audit report and reporting as per step 5. It has been clarified that companies undergoing a Step 4 assessment shall publish a summary of their assessment reports, with due regard taken of business confidentiality and other competitive concerns. Such report is separate from the Step 5 report, which constitutes a criteria of the assessment itself. The Standard has also been revised to further clarify the difference between a Step 4 assessment and an on-the-ground assessment in the context of confirmed red flag(s).
- Stakeholders again raised concerns over the lack of a uniform CAHRA list.

General

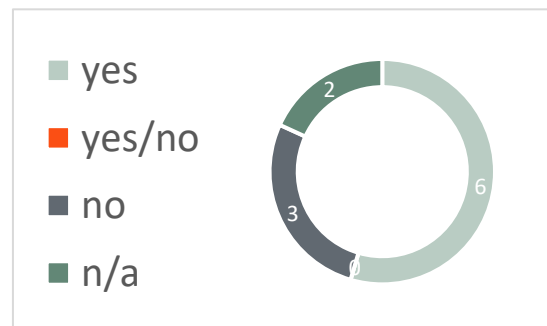
Is the structure and flow of the Standard clear and easy to follow?



Key feedback from stakeholders selecting 'no':

- A stakeholder suggested for the glossary to be placed at the beginning of the Standard.
- Stakeholders asked whether support would be provided to companies for navigating the different paths presented in the Standard. Further guidance will be developed and made available by the partner organisations in 2021.

Is the Standard sufficiently detailed to ensure consistent implementation of the OECD Guidance without creating unnecessary administrative burden?



Key feedback from stakeholders selecting 'no':

- One stakeholder raised concerns over the lack of complete alignment of the Standard with the 3T Supplements. The Standard's core objectives are to enable compliance for copper, lead, nickel and zinc brands with LME's Responsible Sourcing Rules as well as to enable the implementation of the OECD Guidance for producers and / or traders of those metals. The importance to consider the specific context of copper, lead, nickel and zinc is recognized by the LME in the Overview of LME Responsible Sourcing, explicitly stating that LME does not require the use of the 3T Supplement for non-3T brands.

The partner organizations acknowledge, and fully support, both LME and OECD's position that the 3T Supplement text provides relevant guidance and helpful interpretations of corresponding sections of the OECD Guidance Annex I.

Consequently the Standard relies heavily on the 3T Supplement for interpretations of the OECD Guidance Annex I but does not seek to implement the 3T Supplement in its entirety.

To ensure the Standard is OECD-aligned, and thus will meet LME's Responsible Sourcing Rules, the partner organizations consider the OECD Alignment Assessment Tool to provide the authoritative interpretation of any expectations from the 3T Supplement that go beyond the core body of the OECD Guidance Annex I and that the Standard should include. This includes all criteria with the exception of "gold only".

- Other 'no' answers did not include a comment.

5 Next Steps

The comments received was reviewed and discussed with the partner organizations developing the Standard, the Due Diligence Working Group facilitated by the Copper Mark as well as through a targeted engagement of members of the partner organizations on major issues raised. Feedback was incorporated in the Standard revisions and over 70 comments, approximately 40% of comments received, were adopted.

The revised Standard has been shared for a limited consultation among the memberships of the partner organizations between 10 December 2020 and 10 January 2021. Following the limited consultation the Standard will be finalized and published early 2021 and will be independently reviewed as part of a pilot OECD Alignment Assessment for non-3TG metals in 2021.