

30th December 2023

OVERVIEW

From the [Memo](#) issued by RMI on 18th December 2023 '*Status of ITSCI application for upstream recognition and support for smelter RMAP*' it has become evident for the first time that RMI does not consider our common January 2023 [Understanding](#) of the recognition process to prevail. The RMI approach now appears to be variable.

The RMI Memo also includes a section apparently questioning the current alignment assessment methodology established by the OECD. This is materially significant and impacts all industry initiatives. RMI views cannot be reasonably assessed, consulted on, or resolved in the period between their issue on 18th December and the 31st December.

RMI's view of limitations of the OECD alignment assessment methodology appears to be the basis for imposing new recognition 'terms'. While ITSCI received for the first time recognition 'terms' from RMI on 28th September, the basis for 'terms' as set out in the RMI Memo, i.e. their justification and how these 'terms' fit in the published RMI recognition Process (v1.4), was not provided and has only become available through the Memo.

ITSCI has provided feedback to RMI regarding 'terms' and how topics of interest to RMI can be addressed through steps laid out in the Understanding yet has not received substantive feedback. ITSCI also requested the opportunity to present information to the RMI Steering Committee which was not granted without pre-conditions.

Both the January 2023 Understanding and the RMI [Recognition Process](#) document¹ confirm that the threshold for RMI recognition is in accordance with OECD Alignment Assessment Methodology. Neither document provides for RMI to issue additional 'terms'. Both documents accept that progressive improvements of ITSCI systems such as recommended in the alignment assessment will be understood through annual reporting by ITSCI.

The RMI Memo raises renewed uncertainty over the RMI Recognition process, leading to questions on the role of ITSCI, RMI and companies in due diligence. The RMI [FAQ](#) aims to clarify RMAP requirements for smelters however it remains challenging to define roles or requirements by benchmarking RMAP, the OECD five steps, and ITSCI activities when no recent Alignment Assessment of RMI is available. RMI feedback on questions on the FAQ remains pending.

ITSCI has now paused the process while critical re-clarifications on alignment and recognition are achieved. In order to limit continued disruption on upstream business planning, in particular for smelters, ITSCI has also requested that RMI further extends the timeline regarding associated impacts on RMAP conformance thresholds.

Considering recent developments, we believe that a pause is the only reasonable and logical action. Discussion of due diligence infrastructure such as schemes, alignment, recognition, and audits is expected in the next OECD annual forum in May 2024. We note that focus of alignment methodology likely differs between upstream and downstream systems.

ITSCI is 'fully aligned' and ITSCI is committed to the general principle of progressive improvements and will, in any case, continuously aim to increase its alignment rate, taking local context, conditions, and available funding into account.

RMI and ITSCI underscore that companies remain responsible for their due diligence, whether upstream or downstream. Downstream companies are welcome to directly participate in ITSCI to understand improvements carried out as well as risks and mitigation in upstream ITSCI supply chains.

¹ Footnote 1: 'For programs recognized after January 1, 2023, recognition thresholds shall be aligned with OECD Due Diligence Guidance Alignment Assessment Methodology (Section A 100%, B and C 80%, no 'Not Aligned'). Recognized upstream mechanisms shall report to RMI on closure of any gaps highlighted in alignment assessment, annually.'

ADDITIONAL NOTES AND FACTS

This document provides background, facts, and initial comment on the RMI Memo ‘*Status of ITSCI application for upstream recognition and support for smelter RMAP*’ issued on 18th December 2023. Considering timing of the release of the Memo, we do not address all details in full, particularly on evolving requirements and events.

What changed on 18th December?

On 23 January 2023, ITSCI and RMI clarified and confirmed [both organisations’ mutual understanding](#) of the engagement, process, and commitments regarding the RMI Recognition Process for ITSCI as an upstream mechanism. The was stated as achieving a **lasting understanding supported by clarification and dialogue with experts and stakeholders**, and informed by the [OECD paper](#) on the role of industry initiatives in mandatory due diligence.

On 18th December 2023, the RMI [Memo](#) stated **for the first time** that the January Understanding provided ‘only helpful clarifications’ under which RMI had not agreed ‘terms’. Neither the Understanding nor the RMI Recognition Process ([v1.4](#)) provides for issuance of ‘terms.’ In recent weeks, due to the introduction and evolution of ‘terms’, ITSCI sought confirmation from RMI that RMI remained committed to the Understanding but did not receive any feedback.

Why is the January ITSCI-RMI Understanding important?

ITSCI committed to engage in RMI recognition according to the content of the January Understanding, which clarified the RMI Recognition Process as it relates to ITSCI. The Understanding resolved the prior lack of common view on recognition processes which led to the RMI announcement of ITSCI status change in October 2022. It promotes a transparent and collaborative approach agreed by affected stakeholders. The document is the full extent of the process under which ITSCI considered application for RMI Recognition.

The Understanding included many important statements including confirmation of the following;

- **Any threshold that differs from the OECD methodology, will not be required for recognition.**
- ITSCI is committed to the general principle of progressive improvements and will continuously aim to increase its alignment rate, taking local context, conditions, and available funding into account.
- ITSCI and the RMI retain full control and responsibility for their own governance, management, decision-making and operations and recognition does not provide or imply any control for one initiative on the other.

What is required to achieve RMI recognition?

As noted above, according to the Understanding, the threshold to achieve RMI recognition is stated to be the same as OECD methodology. That is also stated in the RMI Recognition Process (v1.4) itself, Footnote 1: ‘For programs recognized after January 1, 2023, recognition thresholds shall be aligned with OECD Due Diligence Guidance Alignment Assessment Methodology (Section A 100%, B and C 80%, no ‘Not Aligned’). Recognized upstream mechanisms shall report to RMI on closure of any gaps highlighted in alignment assessment, annually.’

On 8th June 2023, ITSCI completed and published results from alignment assessment to OECD. ITSCI is [‘fully aligned’](#) and has also taken all [other steps](#) expected in the Understanding.

How is progressive improvement of systems addressed?

ITSCI works to support responsible sourcing in challenging conflict-affected and high-risk areas (CAHRA) which are not risk-free environments. Our objective is to encourage, support and report due diligence in supply chains including resolution of risks. We understand that companies and stakeholders are sensitive to risks and, as expected by OECD

guidance, progressive improvement in both ITSCI's own activities, as well as those of other initiatives and companies is expected.

As stated in the Understanding, ITSCI is committed to the general principle of progressive improvements and will continuously aim to increase its alignment rate, taking local context, conditions, and available funding into account. **ITSCI will publicly communicate about progress on addressing gaps and making improvements** through annual reports or other communication means, at least annually including over the time period of RMI recognition of ITSCI. This process is also as expected in Footnote 1 of RMI Recognition Process (v1.4).

How can stakeholders engage with ITSCI regarding improvements?

Engagement of affected stakeholders in mineral production areas is **embedded in ITSCI systems**. Government is fully engaged, cooperates, and is supported to implement traceability, address risks, and support due diligence actions. Civil society is also engaged through multiple formal and informal meetings, including to agree risk mitigation. ITSCI member companies and other industry actors locally are supported in due diligence. More widely, international stakeholders, including RMI, are welcome to regular stakeholder calls and downstream companies are welcome to directly participate in ITSCI to receive regular ITSCI information, understand potential risks and their management as well as system improvements. ITSCI is also in direct contact with the UN Group of Experts and provides feedback as requested.

What communication has there been regarding 'terms'?

The RMI was expected to [share the outcome](#) of its recognition review by 15th August 2023. ITSCI did not receive any conclusion or 'terms' by this time. There was some discussion of information to assist training in smelters which later became a new requirement for recognition, and later still, required different formats. Only on 28th September 2023 did RMI communicate that there may be 'terms', or what those 'terms' were, to ITSCI. We note that text in the table of 'terms' published in the 18th December RMI memo differs from what was sent to ITSCI on 28th September.

ITSCI provided RMI with commentary on our view of 'terms', and, explained how topics of interest could be managed according to the Understanding. ITSCI also requested the opportunity to discuss alignment with the RMI Steering Committee as laid out in the Understanding. Discussion was not granted without a pre-condition to agree 'terms'.

What is the justification for 'terms'?

The recent RMI memo page 6-7 provided justification for 'terms' by putting forward 'risk-based factors salient to system-to-system recognition, as well as relevant OECD publications.' RMI had not previously provided any justification of 'terms' to ITSCI making the public memo of 18th December 2023 the **first time such comments were available** for review.

Further time is required to review these comments in depth however key points of note include;

- RMI refers to the OECD paper to unilaterally justify a new process. This OECD paper was already considered in the drafting of the January Understanding in consultation with expert stakeholders as well as ITSCI. It is not a new factor for consideration.
- RMI relates the OECD paper to 'EC and OECD expectations'. As far as ITSCI is aware, the EC does not determine expectations² based on that paper, and as above, the paper was already considered in the agreed Understanding. RMI has not listed in their 'terms' or Memo exact EC or OECD 'expectations' for stakeholder understanding.

² REGULATION (EU) 2017/821 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

- While explicitly referencing OECD alignment assessment methodology and results as threshold for RMI recognition in their public recognition process and the Understanding, RMI questions the same alignment assessment methodology to justify ‘terms’.
- As an example, RMI states that ‘Current alignment assessment methodology does not necessarily require independent observation of program implementation’. ITSCI believes that statement is **not** correct. The OECD methodology clearly states that ‘the documentation review should be supplemented by primary research activities; namely observations of programme management and auditor activities and semi-structured interviews with key stakeholders’³. These steps were completed by the ITSCI AA assessor, as described in the ITSCI AA report. We also understand that the approach to assessment for upstream on-the-ground systems focuses on stakeholder interview and is not recommended to be undertaken in the same manner as for an audit programme.
- In another example, RMI states that ‘Current alignment assessment methodology does not necessarily evaluate the scope, frequency, or limitations of due diligence information provided to system users such as smelters.’ ITSCI believes that statement is **not** correct. The ITSCI AA assessor did assess what ITSCI information is provided to members including smelters, including its scope and frequency. This is reflected in the ITSCI AA report.

The conclusion of the OECD paper referenced by RMI states that ‘...understanding how initiatives operate in practice: the extent to which they implement core due diligence characteristics and steps; the adequacy of their monitoring, assurance and oversight mechanisms; and the robustness of their governance systems and overall credibility – **as set out in OECD alignment assessments.**’

How are RMAP smelter auditees affected?

Communication processes of RMI in regard to ITSCI recognition status generally, and RMAP 2017 audit requirements more specifically have created extreme uncertainty for upstream industry, in particular for smelters. Setting aside other issues, communication close to deadlines and/or omitting details of requirements has been unhelpful.

RMI has confirmed that the RMAP 2017 audit standard has not changed. In that standard smelters are expected to understand upstream mechanisms, review available information and, if necessary, fill gaps. ITSCI believes **that should always be a company responsibility**. RMI has provided a FAQ to indicate the extent to which any recognition reduces audit requirements, yet this document lacks some clarity and does not always directly relate to the RMAP standard, nor the OECD guidance. RMI has not provided feedback on a 27th July 2023 request for clarification.

The only available alignment assessment report on [RMI dates from 2018](#). There is no public information available on updated alignment assessment on current RMAP standards and their implementation. Without clarity on expectations of EC and OECD expressed through that assessment it is not possible to clarify roles of all parties, including ITSCI and smelters themselves. We call on RMI to transparently provide relevant information to inform discussion.

³ Methodology for the alignment assessment of industry programmes with the OECD Minerals Guidance. 2018. Page 11.