Public Consultation on the LBMA's Amended Disclosure Guidance

Submission by SWISSAID

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SWISSAID welcomes the opportunity to provide feedback on the London Bullion Market Association (LBMA)'s amended Disclosure Guidance (DG). With this new guidance, LBMA refiners will have to publicly disclose, from January 2026: 1) The identity of the refiner and local exporter in "red flag" locations as defined in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance); 2) All World Gold Council (WGC) miners and mines from which they receive material; and 3) All locations (countries) from which they receive mined material.

SWISSAID commends the LBMA for its commitment to enhancing transparency in its members' gold supply chains and its effort to align more closely with the OECD Guidance requirements. At the same time, the proposed changes are insufficient, should be regarded as an intermediary step and be followed by additional requirements leading to the full disclosure of all refiners' suppliers.

SWISSAID considers the proposed changes as insufficient for the following reasons:

- The first change, namely the public disclosure of suppliers in red flag locations, is anyway a requirement according to footnote 59 of the OECD Guidance. Criticized for not being aligned with this requirement, the LBMA included it in the draft version of its revised Responsible Gold Guidance (RGG) v.9. However, under pressure from the industry, the LBMA dropped the requirement in the final version. There was a debate in recent years on whether the LBMA qualifies as an "institutional mechanism", according to footnote 59. Had this been the case, LBMA refiners would have been allowed to disclose only to the LBMA. But the OECD stated clearly that the LBMA does not qualify as an institutional mechanism, thereby putting an end to that debate. Consequently, to be aligned with this specific OECD requirement, the LBMA had no other possibility than to ask its members for full disclosure.
- The second change is limited. It is a reaction to the commitment made by the members of the World Gold Council (WGC) in 2023 to disclose the names of the refineries they work with. The WGC members' commitment occurred a few months after SWISSAID had published a report highlighting 142 past or ongoing business relationships between industrial gold mines in Africa and the refineries they send their gold to. Although it is a positive step, the LBMA's new requirement that its members should disclose all WGC miners and mines from which they source material will not increase transparency much, because most of these business relationships are already in the public domain.
- The third change is very limited given that the new requirement only covers countries of origin and mined gold, and not suppliers.

SWISSAID, together with other NGOs, has been advocating for greater transparency in gold supply chains and alignment of industry schemes on the OECD Guidance for several years, e.g. through the publication of several reports and open letters.

Feedback on the proposed changes and recommendations

SWISSAID considers the current proposal to be only an intermediary step toward full disclosure, which should take place in 2027. The proposal has several shortcomings: it fails to refer explicitly and in detail to the definition of "red flag location" given in the OECD Guidance; it creates the risk of unfair competition; it does not affect most of LBMA refiners' gold sourcing, which remains opaque; it does not bring transparency on the sourcing of so-called recycled (reprocessed) gold, a problematic type of gold; and it creates the risk of a weakened exercise of due diligence by refiners and a stigmatization of certain countries and ASM in general.

To overcome these problems and enhance trust in a standard that has significant loopholes, as highlighted in the assessment of the LBMA RGG9 commissioned by European Commission, SWISSAID recommends that the LBMA require from its members the full disclosure of all their suppliers, starting in January 2027.

1. Transparency is essential

Transparency in gold supply chains is essential. It strengthens refiners' accountability for their sourcing practices, pushing them to be more rigorous regarding their due diligence obligations and to fight the problems associated with gold sourcing. This is particularly important considering that in recent years, many Good Delivery List refineries have failed to comply with the requirements of the OECD Guidance, demonstrating serious shortcomings in their exercise of due diligence (see, e.g. European Commission). They have sourced gold from suppliers that have been linked to human right violations, environmental abuses, money laundering, illicit financial flows or conflict financing (see, e.g. SWISSAID & CSOs).

Transparency, with the disclosure of the identity of suppliers, is one of the most important elements to secure trust in the practices of LBMA refiners and in this industry scheme. As mentioned in the assessment of LBMA RGG (v.9) commissioned by the European Commission, the LBMA standard has significant loopholes: "Neither the LBMA policies and standards nor the implementation of those policies were found to be fully aligned with all of the criteria for Overarching due diligence principles that are set out in the OECD Alignment Assessment methodology" (p. 18). In addition to working on these loopholes, the LBMA should enhance trust in its standard, which could be achieved notably through requiring full transparency on suppliers.

Transparency in gold supply chains is also important because it enables affected communities, civil society organizations, trade unions, consumers, States and other stakeholders to identify and alert on abuses and violations occurring at mining sites or elsewhere in the supply chains.

Ten years ago, making the identity of refiners' suppliers transparent would have been unimaginable, despite the fact that footnote 59 of the OECD Guidance already existed. However, much has changed since then: a lot more information about gold supply chains is publicly available, in particular via paid customs databases, mining company reports and Extractives Industries Transparency Initiative reports. To a certain extent, this also creates unfair competition between refineries sourcing gold from countries where suppliers' names are easily accessible and others sourcing from countries where they aren't. A full disclosure of all suppliers, regardless of the location, would create a fairer competition.

2. Determination of red flag location

Definition of OECD red flag location. Footnote 59 of the OECD Guidance stipulates that "*the identity of the refiner and the local exporter located in red flag locations should always be disclosed"* (p. 111). The OECD Guidance defines "*red flag locations of gold origin and transit*", in part, as a location where "*the gold originates from or has been transported through a conflict-affected or high-risk area [CAHRA]*" (p. 79). "*High-risk area*" is defined by the OECD Guidance as "(…) *those where there is a high risk of conflict or of widespread or serious abuses as defined in paragraph 1 of Annex II of the Guidance. Such areas are often characterised by political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure, widespread violence and violations of national or international law*" (p. 66). Annex II, paragraph 1 of the Guidance (p. 20-21) includes notably "*gross human rights violations and abuses*". Such kinds of violations and abuses are very common in the gold sector and have been well documented in the vast majority of gold-producing countries. Therefore, based on the above definitions, almost all producing countries could be classified as CAHRA.

Furthermore, the OECD Guidance also defines "*red flag locations of gold origin and transit*", in part, as locations where "*the gold is claimed to originate from a country through which gold from conflict-affected and high-risk areas [CAHRA] is known or reasonably suspected to transit*" (p. 79). Based on this definition, all countries that import gold from countries where there are "*gross human rights violations and abuses*" should be considered as red flag locations, and that covers most countries that import gold from producing countries.

In brief, most gold-producing countries and gold-importing countries fall under the definition of a red flag location, and thus refiners' suppliers located in those countries must be disclosed. Given that it is tricky to identify countries that do not belong to this category, a differentiation between red flag and non-red flag countries does not really make sense, and thus, the necessity to disclose all suppliers becomes obvious.

It should be noted that not all countries report their gold trade publicly to UN Comtrade. Having a full disclosure requirement would create a level playing field where no country could hide that it receives gold from CAHRA.

In addition to the general recommendation of adopting a full disclosure requirement, SWISSAID has some specific recommendations:

- Regarding the "scope of OECD red flag locations (…)", the DG mentions notably that the gold is "claimed to originate from a country through which gold from CAHRAs are known to transit" (p. 11), whereas the OECD Guidance mentions that the gold "is claimed to originate from a country through which gold from conflict-affected and high-risk areas is known or reasonably suspected to transit" (p. 79). The words "or reasonably suspected" are missing from the DG and should be added.
- The DG limits the definition of "refiners" to "intermediate refiner per RGG9" (p. 11), which is too restrictive. The OECD Guidance definition of a "refiner" (p. 70) should be used.
- The DG should mention clearly that all suppliers of any type of gold located in a "red flag location" must be disclosed publicly.

Limitations of lists of countries. The DG asserts that the "Determination of OECD red flag locations must be made using the following sources for consistent reporting" (p. 11) and mentions 3 lists of countries: U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1502; EU CAHRA

List; European Commission Delegated Regulation (EU) 2024/163 third countries which have strategic deficiencies in their AML/CFT regimes. A short analysis of those lists reveals significant shortcomings. Numerous countries that clearly fall under the definition of red flag location and where loopholes or abuses have been well documented are not included. These are, e.g., producing countries such as Brazil, Ghana, Ecuador and Guyana, and refining hubs like the United Arab Emirates, Turkey, Hong Kong and Switzerland.

While lists of countries can serve as a starting point, they are also problematic and could be counter-productive, for several reasons:

- Limited. A list comprising all countries falling under the category of "red flag locations of gold origin and transit", as defined by the OECD Guidance, does not exist. Such a list would be very difficult to establish and would not be exhaustive. And since, as mentioned above, most gold-producing countries and gold-importing countries are likely to be put into the category of red flag locations, such a list hardly makes sense.
- Stigmatization/disengagement. Lists of countries can trigger or contribute to the stigmatization of certain producing countries and prompt refiners and downstream companies to stop sourcing from these countries.
- Weakened due diligence. There is a risk that refiners or downstream companies limit their enhanced due diligence to the countries listed and consider those non-listed as presenting no or only limited risks. But due to the complexity of gold supply chains, there is a significant risk that dubious gold is present in non-listed countries as well.

Due to the limitations and risks associated with lists of countries, SWISSAID recommends using them only as an intermediary step, i.e. for disclosure in 2026. With the adoption of a full disclosure requirement in 2027, these lists would no longer be necessary. Regarding the intermediary step, SWISSAID recommends that:

- At least three other lists of countries be included: the Financial Action Task Force (FATF)'s black and grey lists, including the countries listed in the past 5 years; the Basel AML Index, focusing on countries that have a score above 4.5; and the U.S. Department of International Labor Affairs' List of Goods Produced by Child Labor or Forced Labor, focusing on countries in relation with which gold is mentioned. The first two of these lists also better reflect the risks of weak anti-money laundering (AML) enforcement, which is mentioned in the OECD Guidance: "*In each of these location-based red flag considerations, the risk is increased when anti-money laundering laws (…) are weakly enforced*" (p. 79).
- The wording be made clearer and more precise. The sentence "Determination of OECD red flag locations must be made using the following sources for consistent reporting" should be replaced by "Refineries sourcing from a country mentioned in one or several of the following lists have to publish the names of their suppliers in those countries". The DG should also clearly mention that those lists are only a starting point for the identification of red flag locations.

Classification of countries – risk of differing disclosure practices. The gold-refining sector is characterized by high competition due to worldwide refining overcapacity. It is therefore essential to have clarity regarding disclosure requirements, so that all refiners publish the same kind of information. The current DG proposal, in particular the way in which it seeks to implement footnote 59 of the OECD Guidance, does not establish detailed criteria to determine if a country should be classified as a red

flag location or not. Allowing refineries the freedom to categorise countries could lead to differing disclosure practices between refiners sourcing from a same country, and thus, unfair competition. Moreover, the assessment of LBMA RGG9 commissioned by the European Commission revealed serious loopholes in LBMA refiners' identification of risks and categorization of countries. The assessment describes the example of a refinery "sourcing gold from multiple sources that reasonably should have been considered high risk and therefore subject to an increased level of due diligence, but the refiner had categorised these sources as 'low risk' and undertaken limited due diligence beyond KYC [know your customer] checks. The rationale and evidence for such a 'low risk' categorisation by the refiner was unchallenged by the auditor".

SWISSAID recommends that the DG state explicitly that LBMA refiners should identify red flag locations based on the OECD definition of that concept. Based on the explanation above about this definition and the number of countries falling into this category, full disclosure, regardless of the location, once again appears essential. It would bring clarity and avoid unfair competition and endless debates about the categorization of a country.

3. Include reprocessed/recycled gold suppliers

The LBMA "Refiner Transparency Roadmap" as well as the next disclosure requirements proposals, mentioned in footnote 2 of the DG (p. 4), do not mention any disclosure requirement on reprocessed/recycled gold. This is highly problematic for several reasons:

- **Mined gold is easily laundered into reprocessed/recycled gold**. Due diligence requirements for sourcing recycled/reprocessed gold are weak and that represents a loophole through which much illegally mined gold may be laundered. The LBMA recognized this risk by stating in its Sustainability & Responsible Sourcing Report 2024 that "due diligence on recycled gold (or secondary material) is just as critical as on ASM supplies, as the governance concerns are often linked. If we are to put an end to gold laundering, due diligence must be strong for both primary and secondary material" (p. 16). Surprisingly, however, the LBMA doesn't require more transparency on this type of sourcing. It should require in particular that the names of suppliers of reprocessed/recycled gold be disclosed.
- **Opacity regarding recycled/reprocessed gold marginalizes ASM**. Requiring transparency on suppliers of ASM gold while at the same time allowing opacity regarding those of reprocessed/recycled gold is problematic. It creates incentives for not sourcing from ASM, which risks marginalizing ASM communities. However, ASM gold will continue to circulate through complex supply chains, be classified as reprocessed/recycled gold at some point, loose its real origin, and eventually arrive at LBMA refineries. If the LBMA wants to be coherent (by building on the interesting initiative it is developing with the ASM Task force), increase direct sourcing of ASM gold and avoid the laundering of ASM gold in dubious reprocessed gold supply chains, it should require the disclosure of suppliers of all types of gold.
- **Most of the gold processed by LBMA refiners is recycled/reprocessed gold**. According to the LBMA's Sustainability & Responsible Sourcing Report 2024, these refineries sourced 3,428 tonnes of recycled/reprocessed gold and only 1,914 tonnes of mined (LSM and ASM) gold in 2022. Given that they account for the largest part of LBMA refiners' sourcing and that they are associated with significant risks, supply chains of recycled/reprocessed gold should not remain opaque.

SWISSAID recommends that the suppliers of reprocessed/recycled gold be disclosed following the proposal below.

4. Establish a clear timeline for disclosure

The LBMA has established a Refiner Transparency Roadmap, which is mentioned in the DG (footnote 2, p. 4). While the requirements for 2026 have been included in the amendment of the DG, further disclosure is only at the stage of proposal (DG, p. 4). SWISSAID believes it is important to immediately set a clear agenda for the next disclosure requirements. This would give refiners time to amend their contracts with their suppliers to include a clause on transparency.

SWISSAID recommends the following disclosure agenda:

- From January 2026. 1) The identity of the refiner and local exporter in "red flag" locations as per OECD Guidance (already included in the DG). 2) The identity of suppliers, locations (countries) and total volumes (per supplier) for all mined material. 3) The identity, locations (countries) and total volumes (per supplier) of all processing plants, smelters, intermediary refineries and refineries. 4) The countries of origin and total volumes (per country) of reprocessed/recycled gold, divided under 5 categories (unprocessed, melted, industrial, mixed, grandfathered). This information has already been published by Rand Refinery in their 2024 Compliance report (p. 15). The DG should also specify (e.g. in a footnote) that refiners have to disclose the name of their suppliers in their 2025 compliance report, which they will publish in 2026.
- From January 2027 (or earlier, if possible). 1) Full disclosure, i.e. the identity of all suppliers, locations (countries), volumes (per supplier) and types of gold (per supplier, broken down by the 5 categories regarding reprocessed/recycled gold). 2) A new requirement should also be integrated in DG and RGG 10 to oblige refiners to source only from smelters, intermediary refineries and refineries that implement OECD footnote 59, i.e. disclose the names of their suppliers in red flag locations.

5. Establish a clear sanction mechanism for non-compliance

Right now, it isn't clear what sanctions, if any, the LBMA would take if a member refinery was to be found as having failed to fulfil its obligations according to the DG.

The LBMA therefore needs to clearly explain what would happen in such cases. Would the accreditation of that member refinery be suspended, e.g. for the time that they didn't publish the names of their suppliers? Would the refiner have to pay a fine? If yes, how much? The process needs to be made transparent.

Providing detailed information on this aspect is all the more important that there are documented cases of rule-breaking by LBMA members without consequences (see, e.g. European Commission).