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EU-Latin America cooperation in responsible mineral supply: Reflections on the Colombian case

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STRADE is an EU-funded research project focusing on the development of dialogue-based, innovative policy recommendations for a European strategy on future raw materials supplies. In a series of policy briefs and reports, the project will offer critical analysis and recommendations on EU raw materials policy.

This policy brief addresses the main topics and reflections debated during the STRADE workshop “*The European Union and Colombia: strategic partners in responsible gold mining*”, held in March 2018 in Colombia, bringing into the discussion potential areas for common action with the EU.

1. Introduction

Latin America and the European Union (EU) share an institutionalised common relation framed by a long standing bi-regional process or EU-CELAC (Community of Latin American and Caribbean States) ‘strategic partnership’¹. Political engagement, trade and investment, sectoral dialogues and EU development cooperation instruments have been the building blocks of the relation. Given the different priorities and potentialities at the sub-regional and national levels, the EU has also implemented bilateral cooperation programmes with individual countries, tailored to their national development agenda, and also regional programmes pursued at continental level (supporting closer cooperation in many areas in line with the bi-regional political agenda, e.g. social cohesion, education, environment and climate change, trade and small and medium enterprises (SME)).

At the sectoral dialogue level and within the framework of the [EU Raw Materials Diplomacy](#), the EU-Latin America diplomacy events on raw materials, have identified the topics of investment and innovation, trade, United Nations Sustainable Development Goals (SDG), environmental and safety performance, research, education and training opportunities along the mining value chain, as the key subjects for common action and bi-regional cooperation in the mining and minerals sector². The relevance of these topics for the sector stakeholders in both regions was reaffirmed during the EU-Latin American Mining & Exploration Convention and Trade Show [METS](#), held in April 2018 in Madrid.

The EU has signed free trade agreements (FTA), both at the sub-regional and national levels, with Central America, Chile, Mexico (in modernisation process), Colombia, Peru, and recently Ecuador. Negotiations are still ongoing with Mercosur. The ‘new generation’ EU FTAs with Latin America (Colombia and Peru, applied since March and August 2013, respectively) have had a stabilising effect, as the overall decline of these two countries’ trade with the EU is smaller than the decrease of trade with the world. According to the European Commission, without the FTA, the decrease of trade with the EU would have likely been even greater. However, while EU exports and imports of agricultural products have increased significantly in both markets

¹ The EU-CELAC strategic partnership dates back to 1999 and is underpinned by the close historical, cultural and increasing economic ties, as well as a set of shared values and goals. For more details about the meetings, its resulting declarations and action plans, and programmes within this framework, see STRADE Report 10/2018 “EU cooperation strategy with resource-rich developing and emerging countries”.

² European Union “EU-Latin America dialogue on raw materials: consolidating the cooperation” https://europa.eu/newsroom/events/eu-latin-america-dialogue-raw-materials-consolidating-cooperation_en

since the application of the FTA, imports of raw materials and minerals from both Colombia and Peru have decreased³. Latin America remains yet the most significant EU trade partner in mineral raw materials and metals, playing a major role as a source of indirect imports.⁴

At the higher bi-regional political dialogue level, the reaffirmation of cooperation efforts addressing illegal trade in mining products – as an effort for fighting transnational organized crime, was recently brought onto the agenda⁵. A second mining-related provision added to this agenda is the identification of areas of common interest for cooperation on earth observation and earth sciences in multilateral fora and in the framework of the [Copernicus programme](#)⁶, which is indeed particularly relevant given Latin America's position as the most attractive exploration destination worldwide⁷, furthermore earth observation has the potential to help monitor, among others, illegal mining activities, contributing to the first pinpointed element.

An analysis of Latin American mining policies and national development plans revealed that the following topics are predominant: Participation of the population, in particular in the decision-making process, responsible mining and sustainable development, access to finance and investment, and adaptation/simplification of the regulatory framework⁸. However, it must be recognised that Latin American countries have different approaches to mining and the role they attribute to the sector as an agent of national growth and development. Brazil, Chile, Peru, Colombia and Argentina regard the mining and mineral sector - to varying degrees - as a driver of national development from a liberal perspective, promoting its competitiveness, productivity and attractiveness for (foreign) investment⁹.

Given its relevance for many Latin American countries¹⁰, artisanal and small-scale mining (ASM) and related social and environmental challenges are acknowledged and form part of many of the region's evoked priorities and areas for potential common action with the EU, both at the bi-regional and national levels¹¹. Responsible sourcing is one of these and it is in line with the EUs concerns and initiatives on the matter, such as the recently adopted Conflict Minerals Regulation (EU CMR) that will fully enter into force in 2021.

With the aim of providing a space for discussion and reflection on some of the most relevant issues on the EU-Latin America agenda in the mining and minerals sector, with a specific focus on responsible sourcing and the possible implications of the EU CMR in the region, and especially in Colombia, where the post-conflict situation makes its possible impact very likely, STRADE, in collaboration with the European Union Delegation in Colombia, organized the workshop "*The European Union and Colombia: strategic partners in responsible gold mining*" in March 2018 in Bogotá.

More specifically, the multi-stakeholder¹² workshop sought to better understand internal and external responsible sourcing initiatives and efforts – including due diligence and certification schemes and their application in the country -, especially with a view to the future implementation of the EU CMR. The topics of

³ Report from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of Free Trade Agreements. 11/2017
<https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-654-F1-EN-MAIN-PART-1.PDF>

⁴ Policy Brief No. 2/2017 "EU raw material import flows - acknowledging non-EU environmental and social footprints"

⁵ Declaration resulting from the EU-CELAC Ministerial meeting on 16-17th July 2018 in Brussels "Building bridges and strengthening our partnership to face global challenges"

⁶ Copernicus has the potential to serve as an instrument for Latin American geological surveys to monitor mine sites, illegal activities, environmental impact, distribution of elements/heavy metals in the earth, analyse land use conflicts, among others (STRADE Report 10/2018 "EU cooperation strategy with resource-rich developing and emerging countries")

⁷ STRADE Policy Brief 05/2018 "Latin America's Policy Priorities on Mining and Sustainable Development, and Opportunities for EU Cooperation"

⁸ Policy Brief No. 08 / 2017 "Aligning EU cooperation with resource-rich developing and emerging countries' needs – key elements for creating win-win partnerships and a strategy for sustainable mineral supply"

⁹ For further details see Policy Brief No. 05/2018: Latin America's Policy Priorities on Mining and Sustainable Development, and Opportunities for EU Cooperation.

¹⁰ 1.4 million ASM operators are estimated in 19 Latin American countries, and in Colombia for instance it represents around 72 per cent of the country's total gold production (ILO, 1999; Artisanal and Small-scale Mining Knowledge Sharing Archive, 2017 in *Global trends in Artisanal and small-scale mining : a review of key numbers and issues*
<https://www.iisd.org/sites/default/files/publications/igf-asm-global-trends.pdf>)

¹¹ For further details see STRADE Policy Brief 09/2017: The ASM Sector and its Importance for EU Cooperation with Resource-Rich Developing and Emerging Countries; STRADE Report 03/2018: Successful implementation of conflict mineral certification and due diligence schemes and the European Union's role: lessons learned for responsible mineral supply

¹² The workshop participants included representatives from the Colombian public sector, private large-scale mining (LSM) and ASM sectors, civil society organisations (CSO), independent institutions and academia.

attraction of responsible investments and community consultation mechanisms (i.e. prior and popular consultations) were addressed given their relevance in the current context of the mining sector in Colombia, in line with the priority sector issues indicated at the regional and bi-regional levels. The workshop also sought to feed the discussion on a sustainable and mutually beneficial cooperation between the European Union and Latin America in the sector, outlining opportunities for common action in the areas addressed. The workshop counted on some regional perspectives for sharing of experiences and best practices¹³.

This Policy Brief will address the main topics and reflections debated during the workshop, bringing into the discussion potential areas for common action with the EU. Some key concepts and definitions will be recalled or provided beforehand. New developments and a renewed debate on the issue of prior and popular consultations will be indicated and considered when addressing the workshop discussion on the matter.

2. The EU CMR and its possible impact in Latin American countries

The EU CMR¹⁴ is based on the principles set forth in the OECD Due Diligence Guidance for Responsible Supply Chains (DDG) and requires importers to follow its five-step framework and its main goal is to 'enable the development of *secure, transparent and verifiable supply chains of minerals* and to ensure, facilitate and promote the *responsible importation* into the EU of minerals and metals from conflict-affected and high-risk areas (CAHRAs) without contributing to armed conflict and associated human rights abuses'¹⁵. In brief, selected EU importers¹⁶ of tin, tantalum and tungsten their ores, and gold have to comply with, and report on, supply chain due diligence obligations if the minerals originate from CAHRAs.

CAHRAs are the 'areas in a state of armed conflict or fragile post-conflict; witnessing weak or non-existing governance and security and widespread and systematic violations of international law'. In August 2018 the EU published the Recommendation 2018/1149, which provided guidelines to help enterprises identify CAHRAs, including a general explanation of the key elements of definition (state of armed conflict, fragile post conflict areas, and failed states) and an indicative list of open source information¹⁷. In addition, a group of external experts will be commissioned by the EC to provide an indicative and non-exhaustive list of conflict-affected and high-risk areas.

Given its current context of transition after more than half a century of internal conflict and the important role illegal mining played in the financing of illegal armed groups¹⁸, Colombia will be most probably concerned by the Regulation effects. On the basis of the above-mentioned identification guidelines, not only Colombia, but also other countries in the region (e.g., Mexico, Venezuela, Peru, Brazil) will most likely be within the scope of the EU CMR.

As the EU CMR regulates importers, not countries, the potential impact on Latin American CAHRAs is indirect, but nonetheless relevant, as EU companies must be able to demonstrate responsible sourcing throughout the whole supply chain, including mines, producers and traders in the upstream, as well as smelters and refiners - usually pinpointed as 'bottlenecks' (OECD, 2018) - in the midstream.

Consequently, interested parties raised the issue of accompanying measures for ASM producers in CAHRAs with great interest during the workshop, emphasising the need for the impacts of the EU CMR to be projected and monitored from the outset, and for measures to be put in place in the potentially affected regions or countries, before the effective implementation of the Regulation, in order to allow time to prepare.

¹³ Workshop agenda available at (in Spanish):

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=12290>

¹⁴ For details on the EU CMR see STRADE Report 03/2018: [Successful implementation of conflict mineral certification and due diligence schemes and the European Union's role: lessons learned for responsible mineral supply](#)

¹⁵ Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 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

¹⁶ It will be mandatory for EU importers when volumes exceed specific limits (EU Parliament sets the yearly limits at 100 kg gold per year).

¹⁷ European Commission Recommendation 2018/1149 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018H1149&from=EN>

¹⁸ To August 2017, in a post-peace agreement scenario with the FARC, illegal gold mining reported revenues for illegal armed groups of between US\$ 55,925,136 and US\$111,850,273. Güiza, Leonardo (2018) Colombian mining observatory OCMI, Rosario University.

From the EU side, it was reminded that the regulation is not intended to 'block' the import of minerals, but to secure it at the legal level. Responsible sourcing in general and the proper implementation of due diligence approaches in Latin America, and notably in the CAHRAs, thus represents an opportunity for both regions. For example, for the Colombian gold sector, the focus on the EU regulation will mean, inter alia, that more police and customs investigations into gold will be launched, as well as that major refineries will have to agree to be audited against responsible sourcing requirements and in general an opportunity will be created to attract investment.

Several actions related to responsible and ethical supply – due diligence and 'premium standards' initiatives - converge in the Colombian mining sector. A look at the state of these initiatives and government actions in this area allows for the identification of challenges and areas of potential action, with a view to integrate possible accompanying measures promoting compliance with the EU CMR in third countries.

2.1. Alignment with internal policies and implementation of the OECD DDG in Colombia

Colombian authorities have progressively implemented and readapted measures for increasing mining and mineral supply chain sustainability, including, in a broad sense, the creation of autonomous agencies aiming at improving the efficiency of the licensing processes by ensuring compliance with sustainable standards¹⁹. However, after just a few years, one of these agencies, the National Environmental Licensing Authority (ANLA), has been the subject of controversy, due notably to the acceleration of the licensing process, not giving enough time to carry out serious studies on the impacts that a large project can have. The national controlling organisation has also questioned the agency management.²⁰

With the intention of enhancing transparency in the sector, the national government has issued several provisions since 2015. This included the categorization and recognition of artisanal miners who extract ore from tailings as subsistence miners (then considered as authorized mining operators)²¹ as well as the request to smelters and traders to demonstrate the legal origin of the product. This means, they can only purchase their products from mining operators and traders who are duly registered in the mineral commerce registry system (RUCOM) managed by the National Mining Agency.

As part of the RUCOM's processes miners must produce a 'Certificate of origin'²² to certify the licit provenance of the mineral. Despite the system's aim, it initially led to the massive legalisation of illegal gold and money laundering due to the lack of a control system and legal loopholes²³. Modifications were recently implemented attempting to correct these perverse effects, including the establishment of commercialization quotas and imposition of the tax registry (RUT) for commercialization to subsistence miners, as a strategy for prior identification of taxation. It is too early to assess the effect of the amendments, although some of these provisions come along with potential negative externalities, e.g., the requirement for artisanal miners to be included in the tax registry may be a deterrent for formalization. Furthermore, fundamentally these measures do not take into account another key problem of RUCOM, that is that the fact that the National Mining Agency does not have the capacity (personnel) to go and collect data on the ground to confirm whether or not a mineral comes from where it was declared to originate.

The OECD has supported the strengthening of the RUCOM system in Colombia, backing the implementation of the DDG, especially through recommendations to introduce background checks, cross-referencing judicial and law enforcement records and enhanced background checks when gold producing or trading entities are based in, or potentially sourcing gold from, high-risk areas.

¹⁹ ANLA (National Environmental Licensing Authority) and ANM (National Mining Agency)

²⁰ *Semana Sostenible "Contraloría cuestiona gestión de la Anla y Corpocesar en proyectos de minería"* (08/2018) <https://sostenibilidad.semana.com/medio-ambiente/articulo/contraloria-investiga-a-la-anla-y-corpocesar-por-falta-de-control-a-mineria-en-cesar/41436>

²¹ 'Baraqueros' and 'chatarreros' - artisanal gold miners who extract ore from tailings. According to data from the mining authorities they produce about 60% of the gold that Colombia exports to international markets. Subsistence miners are considered authorized mining operators, then all gold coming from these producers is assumed legal.

²² All authorized mining operators must issue certificates of origin, except for Subsistence Miners, in which case, must issue a "Declaration of Production", each time they sell minerals to dealers or authorized consumers. This Declaration requires the Single Tax Registry (RUT). Presidential Decree No. 1102, 27 June 2017.

²³ For further information (in Spanish) see Verdad Abierta "Barequeros' y 'chatarreros', entre criminales y la DIAN", March 2017 <https://verdadabierta.com/barequeros-y-chatarreros-entre-criminales-y-la-dian/> March 2016.

In the same vein, the imminent accession of Colombia to the OECD is a key incentive - and a requirement - for the continued improvement of practices and alignment of its legislation, policies and practices to OECD standards, including the observance of the OECD DDG²⁴. There is a common understanding that ensuring the integrity of global supply chains will not only reduce the source of financing for armed groups, but above all will lead to transparent supply chains and increased consumer confidence, which in turn will maximize the value of global mineral value chains. Nevertheless, there is not enough capacity on the ground to reach successful implementation, calling for additional support in that regard.

The extent of the risks confirms these shortcomings, notably when it comes to the gold supply chain, as underlined by OECD representatives working on DDG implementation in Colombia during the workshop. For example:²⁵

- Colombia's illicit mining industry generates about \$2.4 billion a year.
- Despite the country's efforts to control the trade, about 80 percent of Colombia's gold is being mined illegally, without permits or even basic environmental precautions, authorities say.
- On paper, Colombia exports more gold than it actually produces. While large-scale, legal mining operations unearthed eight tons of gold in 2016, according to the Colombian Mining Association, the country exported 64 tons worldwide, much of it to the United States.
- Since 2014, the police unit has destroyed or seized more than 400 pieces of heavy machinery, including 142 in the first nine months of 2017. But the illegal mining operations are never gone for long.
- In February, the unit spent weeks attacking sites along the Atrato River in north-western Colombia, destroying more than 47 backhoes and other machinery and seizing cash and gold worth more than \$18 million.

Other OECD support activities to Colombia include capacity building on OECD Due Diligence and EU CMR: Workshops with relevant government agencies and industry associations; train the trainer approach with civil society and mining community organisations; technical support to customs authorities; and mine site monitoring supported locally through multi-stakeholder monitoring committees and provincial monitoring committees formed by local miners, traders, exporters, civil society and local police. This has the potential to enable groups to engage with authorities to share information on risks, express concerns, and provide advice on reform.

Among the main challenges stated by the participants of the workshop for the effective implementation of the OECD DDG and other initiatives for responsible mineral sourcing in the country are: local institutional management and due diligence awareness at the local level; as well as access to information in simplified terms, especially for ASM miners explained.

2.2. Other (OECD – DDG aligned) initiatives of responsible mineral supply in Colombia

Other initiatives contributing to responsible mineral supply, aligned with the OECD DDG and supported by international cooperation, converge in the country. Some of them have a sub-regional scope or are based on the positive outcomes of a first implementation in other countries of the region. This is the case, for instance, of the Better Gold Initiative, a public-private partnership of the Swiss State Secretariat for Economic Affairs SECO and the Swiss Better Gold Association, which in its previous phase was implemented in Peru in 2013 and expanded to Colombia and Bolivia in 2017. It aims at connecting the ASM operations directly to Swiss refiners facilitating the gold value chain from the mine to the market, ensuring gold traceability and

²⁴ OECD countries agreed on 25 May 2018 to invite Colombia as the 37th member of the Organisation <http://www.oecd.org/newsroom/oecd-countries-agree-to-invite-colombia-as-37th-member.htm>

²⁵ Jim Wyss & Kyra Gurney, El Nuevo Herald "El oro sucio es la nueva cocaína en Colombia, y también deja un rastro de sangre" (01/2018)

transactions transparency²⁶. Access to markets via exports facilitation, and especially for ASM miners, was in fact one of the topics raised by the workshop participants as particularly relevant for the promotion of the Colombian and regional mining sectors.

The Code of Risk-mitigation for ASM engaging in Formal Trade (CRAFT Code) was introduced to the workshop as the 'solution to the implementation of the OECD DDG for ASM'. It was developed by the Alliance for Responsible Mining (ARM) and RESOLVE with funding of the European Partnership for Responsible Minerals (EPRM). It is a recently launched global instrument (Progressive Performance Standard for ASM Mineral Producers) to help ASM and the industry demonstrate its eligibility to sell and procure gold in accordance with the OECD DDG and related legislation. A pilot was conducted with a women's mining association in Colombia to prove the feasibility of entering into formal trade through better collective organization and performance. A first version of this Code, which was in a public consultation process at the time of discussion during the workshop, was officially launched in July 2018. Therefore, any assessment is still premature²⁷.

2.3. Challenges and needs in relation to due diligence and other responsible sourcing initiatives - Possible common scope for action with the EU?

The following topics were raised and discussed during the workshop as particular areas, for which support is required and might be provided by the EU, through either ODA projects, including EU CMR accompanying measures, or through private sector partnerships. While some areas could be directly supported, others rather call for indirect support through the strengthening of civil society.

- Community monitoring should be strengthened: In the face of the limited presence of the State in mining areas, the communities themselves should support monitoring from the local level. They are also paramount for determining the specific support needed for improving the mechanisms in place, e.g., how to improve RUCOM system? Dynamic community monitoring for certain environmental and social impacts would be a concept worth further exploration and support.
- Compliance with exports administrative requirements, and their full understanding, can be particularly difficult for small operators, even certified ones, as reported by a Fairmined-certified Colombian SSM operator. In the same vein, operators argued the lack of consolidated sources of information on compliance and support. The provisions of the mining code, e.g. on taxation, are very complex. The development of consolidated and easily understandable guides for formalisation and export could be a solution in this respect.
- The implementation of the schemes needs on-site mapping/monitoring of activities and random site visits.
- Technology driven solutions (cleaner mining) for ASM should be more adapted to the specific mines. This is why an in-situ inspection of the mine is needed before deciding on the most adapted technology that can be implemented. Technology should be designed from the site up (taking into account local logistics, availability of energy, infrastructure, alternative activities, local financing, local mineralization, etc..) and not from the top – i.e. technologies should be designed for specific mines instead of first being developed and then having to look for a suitable mine where it could be implemented.

²⁶ For further information see STRADE Report 03/2018: Successful implementation of conflict mineral certification and due diligence schemes and the European Union's role: lessons learned for responsible mineral supply

²⁷ Código para la mitigación de Riesgos para la Minería Artesanal y de Pequeña Escala Formando cadenas Transparentes y legales. Further information <http://www.responsiblemines.org/wp-content/uploads/2018/08/2018-07-31-CRAFT-Code-v-1.0-EN.pdf>

- Capacity building measures aiming at enhancing awareness of sustainable production are still needed (e.g. consumer demand is so far extremely limited, except for jewellery). Awareness should be increased among industry partners along the whole supply chain²⁸

²⁸ Further information STRADE Policy Brief Policy Brief No. 04/2017 Operational design and implementation experience with due diligence initiatives and certification schemes.

3. Promotion of responsible investment

Current trends and emphasis in many Latin American countries are on increasing competitiveness and productivity, while enhancing the transformative role that the mining sector can play²⁹. This is the case of Chile, Peru, Colombia and Argentina. This often goes hand in hand with the priority of promoting investment, as highlighted in their national development plans and mining strategies³⁰.

However, competitiveness challenges in the entire region have been evidenced, including in the mining sector. Policy climate and some of the least attractive jurisdictions in the world for mining investment are just an example of these (e.g. Argentinean provinces of Jujuy, Mendoza and Chubut, Guatemala, Bolivia, Venezuela, with the sole exception of Chile which is among the top ten)³¹. A strategy and related measures favouring investment attraction is thus considered both timely and highly relevant for the region.

For Colombia, investment attraction for the mining sector has been a clear priority as introduced in the country's National Development Plans for 2010-2014 and 2014-2018, and policy, regulatory and institutional reforms to promote and support the mining sector have been carried out in this sense. Concrete potentialities and challenges to the effective investment promotion have been pointed out by the workshop participants, some of them brought up as desired fields of action for the support of /partnerships creation with actors such as the EU.

3.1. Exploration as a focus of investment in the Latin American mining sector

Colombian stakeholders highlighted the potential of exploration, which is seen as an investment target thanks to the recovery of territories that have not been well explored due to the conflict. That is, to encourage exploration by taking advantage of the "peace dividend"³², i.e. the gain of the Colombian economy from the end of the armed conflict since it would allow to reach historically remote areas, formerly dominated by armed groups. It is thus seen as a means of detection of strategic mining areas, e.g., copper, and to get to know the geological potential of the country. Latin America, in general, is relatively unexplored and other countries, such as Argentina have also emphasised the big potential of exploration (e.g., investment in exploration of base metal assets recovered in the second half of 2017 and battery metals, in particular lithium, attracted special attention)³³.

Despite global contractions in mineral exploration over the past few years, the exploration spending on non-ferrous metals amounted to about US\$8.4 billion in 2017 compared with US\$7.3 billion in 2016, being the first annual increase in exploration spending by mining companies after four consecutive years of declining investment. In addition to that, the generally positive trend in metal prices has continued in early 2018 and therefore the overall exploration budget for 2018 can be expected to increase by 15% to 20% from year to year.³⁴

This paints a positive picture for investment in exploration which, in the case of EU-Latin American economic relations, has the potential of being boosted by the positive management of existing bilateral partnerships and/or networks (e.g. EU-Latin American and MS partnerships on raw materials, such as Germany's mineral partnerships or the EU-Latin American Mineral Development Network Platform –MDNP).

²⁹ Policy Brief No. 05/2018: Latin America's Policy Priorities on Mining and Sustainable Development, and Opportunities for EU Cooperation.

³⁰ Policy Brief No. 08 / 2017 "Aligning EU cooperation with resource-rich developing and emerging countries' needs – key elements for creating win-win partnerships and a strategy for sustainable mineral supply"

³¹ Reference to the Fraser Institute Mining Competitiveness Report. Available at: <https://www.fraserinstitute.org/studies/annual-survey-of-mining-companies-2017>

³² Santiago Ángel, Colombian Mining Association

³³ World Exploration Trends 2018 (WET) de S&P Global Market Intelligence – PDAC 2018.: <https://pages.marketintelligence.spglobal.com/World-Exploration-Trends-Report-2018-MS.html>

³⁴ World Exploration Trends 2018 (WET) de S&P Global Market Intelligence – PDAC 2018.: <https://pages.marketintelligence.spglobal.com/World-Exploration-Trends-Report-2018-MS.html>

The following challenges related to or arising from the promotion of investment in the Colombian context were raised during the workshop:

- The ‘maturing process’ of mining investments is a long-term and high risk process, which is why the promotion of responsible investment has had very extreme swings in the midst of very complex decisions.
- Awareness-raising on the difference between informality and illegality in mining, and the different terms used to refer to the mining activities, should be improved among the general public in the country. The situation is similar with regards to the difference between exploration and exploitation, which the communities do not seem to clearly understand. This implies teaching about the time to be spent at each stage of the mining cycle, and the uncertainty of success of the exploration process. The sensitization actions have to also consider impacts, jobs, and revenues potentially generated at each step. Not to forget the best practices in monitoring the different types of impacts at each stage of the cycle.
- As awareness of these activities increases, community decisions will become more informed and less politicized, for example when it comes to popular consultations on mining. This was raised as an area in which a bilateral EU cooperation could be envisaged, combining the sharing of best practices and experience of mining categorization in the EU.
- An increase in mining activity as a result of successful investment attraction entails a challenge in terms of an accurate assessment of environmental impacts. This challenge is particularly visible in Colombia, where environmental authorities granting permits have been questioned for their management (cf. section 3, ANLA) and where there also are problems of effective coordination between authorities at the local and national levels.
- In Colombia, progresses have been made, for instance in the management of mining income; in the extraction of value and legal management of taxation. Difficulties can be however identified when it comes to generating and accessing information –which has been partly improved thanks to the action of the group that is implementing the EITI in Colombia. Information on persons linked to companies and beneficial ownership as well as on the transparency of public officials is still unclear.
- Other main topics of priority in the current Colombian mining sector – with the potential to positively impact investment attraction - are an improved territorial planning³⁵ and a clearer definition and dissemination of soil and subsoil rights.

4. Social acceptance of mining: FPIC dynamics and other community involvement initiatives (popular consultations)

Free, Prior and Informed Consent (FPIC) is the fundamental right that indigenous peoples and other ethnic groups (e.g. afro-descendants in Colombia) have when measures or projects (including mining ones) are to be carried out within their territories, seeking to protect their cultural, social and economic integrity and guarantee the right to participation. It is founded on the Colombian ratification of the ILO Convention N°169 and has been widely applied in the country, though not yet properly regulated by a statutory law. As a consequence, the different interpretations about this necessary instrument have been resolved by judiciary mechanisms (constitutional action). Additionally, there is no census of the communities with constitutional access to this instrument, which is a required input to guarantee its effectiveness.

Given the lack of regulation of this mechanism³⁶, Colombia’s Ministry of Mines argues that it has led to a situation of ‘abuse’ evidenced by the increase in the number of consultations, which threatens to curb

³⁵ Municipalities are required to submit territorial planning maps, but these are only concerned about above-ground uses as the subsoil belongs to the State and its planning should be done by the National Mining Agency, which does not communicate on the matter with the municipalities resulting on parallel and not necessarily aligned territorial management plans.

³⁶ A bill has been filed in the Colombian Congress, which still needs to be debated and approved.

important projects for the development of the mining sector and that has indeed created a climate of mistrust.

Compared to other Latin American countries, which also recognize and apply prior consultation and have larger indigenous populations, particularly Chile, Peru and Bolivia, Colombia has carried out more than 4,500 prior consultation processes for 3.5 per cent of the population (recognized as ethnic), while in the other above mentioned countries only 36, 28 and 40 processes have been carried out, respectively³⁷. This mismatch is attributed to an 'excessively protector interpretation of the Constitution' and/or a possible abuse of those who intervene in them. However, the organization representing the indigenous peoples of Colombia (ONIC) is clearly against these justifications and argues that the draft law attempting to regulate FPIC is intended to 'arbitrarily stigmatize' the autonomy of indigenous peoples.

Although the issue of FPIC implementation and its regulatory problem is an internal affair, some important considerations that relate to social license and participation mechanisms can be outlined. First, there is no proper register and categorization of indigenous peoples and other ethnic groups, i.e., those effectively covered by the mechanism.

Second, those who cannot be recognised as indigenous or members of ethnic groups lack of consultation mechanisms, including in the environmental license, to oppose mining projects that affect the areas where they reside (even the FPIC is supposed to protect the ethnic and community integrity but not the environment³⁸). Unlike Environmental Impact Assessment (EIA), Social Impact Assessment is not mandatory in Colombia, and the former may underestimate or even ignore the impact of mining projects on the local population.

Third, this situation has led to a proliferation of popular consultations on the local level, a direct participatory tool, which guarantees citizens' intervention in a matter of national, departmental, municipal, district or local significance. In 2017, five popular consultations have been carried out in Colombia asking about the development of mining projects and all have resulted in the rejection of the mining projects in question³⁹.

Finally, to date, there is controversy regarding the validity, legality and legitimacy of this mechanism of participation at both, the legal and political levels (since the ownership of subsoil resources belongs to the State and territorial entities or local populations would not have competence to decide on their use)⁴⁰. However, the consultations carried out begin to have political repercussions, since in some cases they lead to the mining projects being temporarily halted, modified in their design or even cancelled.

At the time of writing this policy brief, the Colombian Constitutional Court ruled against the validity of popular consultations to block extractive projects and claimed that local communities and entities cannot prohibit these activities through a popular consultation. The Court's decision also asked the Congress to define in the shortest possible time one or more better suited mechanisms of citizen participation and one or more instruments of coordination and nation-territory concurrence⁴¹.

³⁷ El Espectador, "Así es el proyecto de ley que busca regular la consulta previa en Colombia", september 2018 <https://www.elespectador.com/noticias/medio-ambiente/asi-es-el-proyecto-de-ley-que-busca-regular-la-consulta-previa-en-colombia-articulo-811740>

³⁸ The environmental discussion must be separated from those with the communities under FPIC. The first should take place in the framework of the environmental authorities

³⁹ Semana Sostenible, "La consulta popular: se la explicamos en tres pasos", August 2017 <https://sostenibilidad.semana.com/impacto/articulo/consulta-popular-explicada-facilmente-en-colombia-en-solo-tres-pasos/38327>

⁴⁰ At the time of writing this policy brief, the Colombian Constitutional Court ruled against the validity of popular consultations to block extractive projects and claimed that local communities and entities cannot prohibit these activities through a popular consultation. The Court's decision also asked the Congress to define in the shortest possible time one or more better suited mechanisms of citizen participation and one or more instruments of coordination and nation-territory concurrence. El Tiempo, "Claves del fallo sobre consultas para frenar la minería". <https://www.eltiempo.com/justicia/cortes/corte-constitucional-dice-que-consultas-minas-no-pueden-frenar-la-mineria-280304>

⁴¹ El Tiempo, "Claves del fallo sobre consultas para frenar la minería". October 2018. <https://www.eltiempo.com/justicia/cortes/corte-constitucional-dice-que-consultas-minas-no-pueden-frenar-la-mineria-280304>

Some major issues and challenges related to the social acceptance of mining and citizen participation were raised during the workshop. These might represent potential areas for cooperation:

- The bottom line of popular acceptance or opposition to mining is that the citizenry is not well informed and could be therefore easily influenced by a kind of "environmental mercenaries" who advocate against mining, making of these consultations an instrument to try to veto or curb mining projects. No significant effort has been made to make indifferent people aware of the potential of the mining sector, so a frank dialogue with the communities must be established. In addition, a "media bombardment" has caused great damage to the communities' perception of mining, so how to change these perspectives should be a priority for all stakeholders in the mining sector. This was signalled as a potential issue for cooperation.
- Obtaining a social license to operate must to be considered from the start of the exploration stage. This could increase the efficiency of the processes and can help to avoid non-informed discussions and significant investments for projects that would not take-off due to the lack of a social license to operate.
- In addition, experiences can be shared with other Latin American countries, such as Argentina, which has recently also faced many challenges in relation to local and indigenous communities due to the "lithium boom". In this regard, the Argentina coordinator of the Center for Sustainability Studies of the National University of San Martín and member of the IGF Executive Committee, Roberto Sarudiansky, said that early consultation with indigenous communities has allowed the social acceptance of lithium operations in the provinces of Jujuy, Salta and Catamarca "to be on the right track".

5. Conclusions

The workshop had an instructive component regarding the EU CMR and its implementation and potential impacts, and also allowed Colombian mining authorities to present the efforts and limitations of the governmental initiatives undertaken for ensuring responsible and sustainable mining supply. The support of the OECD in the implementation of the DDG, as well as other cooperation initiatives that align with these directives, have shown progresses, but have also further revealed the high level of risks in the mining sector in Colombia. Among others, the high presence of illegal mining, which continues to finance illegal groups, and the vulnerability of artisanal miners, who also argue that they do not have access to simplified information to facilitate the adoption of responsible practices or access markets for their products. The weight of community misinformation, legal loopholes and the lack of legitimate consultation mechanisms to participate in the decision making processes of mining projects has created a climate of mistrust and has fostered opposition to mining, which materialized in popular consultations that have come to stop mining operations. These dynamics and risks threaten the attraction of investments in the Colombian mining sector, despite the high relevance that the government has granted it within its national development strategy.

5.1. Potential areas for EU support

Some observations and themes on which actors such as the EU can potentially support the sector in Colombia and Latin America were expressed during the workshop discussions:

- Accompanying measures on the EU CMR implementation are recommended and notably to potentially affected CAHRAs in Latin America. Support can be provided, inter alia, for the facilitation of compliance and cost sharing as well as certification of best practice cases. The impacts of the EU CMR on ASM producers in Latin American should be monitored.
- Some areas of specific relevance to the Colombian case (support to the monitoring of conflict dynamics and links with illegal mining) also show a high potential for EU's support to responsible mining.

- Awareness raising at the local level is needed. Multiple topics should be addressed: relevance and potential impacts of mining; jobs and revenues potentially generated at each step of the mining process; best practices in monitoring the different types of impacts at each stage are some examples.
- High environmental and social standards in the EU mining sector are the most highly valued by Latin American stakeholders, who often point to the exchange of experiences and best practices, and capacity building as natural formats of cooperation when it comes to the EU as a donor or partner.
- Strengthen the capacity (technical and human) of enforcement agencies so that laws and regulations can be applied correctly and not merely embodied on paper. Support to local institutional management.
- Coordination and alignment of national and local levels and territorial planning in keeping with a mining-induced development. Ensure that soil and subsoil planning are aligned and that discussions take place with communities. This could take the form of a centralised multi-purpose cadastre.
- At a regional level, to advocate for an insertion of the mining-related priorities into the political bi-regional agenda/process would facilitate the conceptualization of new cooperation programmes, projects and partnerships based on the current real demands, aligned with the Latin American national priorities and the related EU programmes in Latin America in related sectors, e.g. on business services, science and technology for development, renewable energies, waste management, which would indeed facilitate sustainability of the initiatives once the funding is finished. Otherwise, there is a risk that new measures could be perceived as “imposed” by an external (the EU) agenda and interests, not taking into consideration the region/countries. The very recent inclusion in bi-regional declarations of references to the need for joint action against illegal mineral trafficking and the opportunity for cooperation in earth observation is a good start. This trend, improved by the inclusion of other sector priorities, should be maintained.
- Building on existing initiatives for fostering promotion of investment between the EU and Latin America, capitalizing on the outcomes of the bi-regional diplomacy events on raw materials, METS and the [Mineral Development Network Platform](#).
- Support to productive reconversion (alternatives to mining or post mining) or harmonization of mining and other parallel economic activities (a good example is certified agro-mining cooperatives). While specific projects addressing these topics in isolation are not recommended, an important recommendation is to see the mining sector in its wider economic context and to include support measures for the mining sector in broader long-term rural and economic development programmes.

Some of the topics discussed above could be directly supported by the EU, e.g., through ODA, some could be addressed within knowledge networks facilitating the exchange of experiences and best practices without interfering with the national sovereignty of Latin American states.

5.2. Areas beyond EU support

The workshop discussions also identified issues that are a current priority to facilitate responsible mining and mineral supply in Colombia. However, for some of them STRADE does not see a role for the EU, even if support is desired by Colombian stakeholders. On the one hand, because they are issues of the internal jurisdiction of the country and therefore it is the national government that is (or should be) addressing them, or because they are issues that other donors are addressing:

- Assistance needs were raised regarding market access for ASM miners: exports promotion, via a wide dissemination of simplified procedures, e.g. development of export guides, but mutually reinforcing with proper controls. OECD support to customs authorities is also a good example in this respect. Market access for ASM minerals could be supported too through private sector partnerships (for example BGI).

- Community engagement initiatives, for instance via mediation through the participation of donor representatives in 'mesas de diálogo' and other dialogue spaces on mining matters.
- Women-oriented cooperation initiatives (e.g. awareness-raising on mercury abatement in ASM activities).

Project Background

The Strategic Dialogue on Sustainable Raw Materials for Europe (STRADE) addresses the long-term security and sustainability of the European raw material supply from European and non-European countries. Using a dialogue-based approach in a seven-member consortium, the project brings together governments, industry and civil society to deliver policy recommendations for an innovative European strategy on future EU mineral raw-material supplies.

The project holds environmental and social sustainability as its foundation in its approach to augmenting the security of the European Union mineral raw-material supply and enhancing competitiveness of the EU mining industry.

Over a three year period (2016-2018), STRADE shall bring together research, practical experience, legislation, best practice technologies and know-how in the following areas:

1. A European cooperation strategy with resource-rich countries
2. Internationally sustainable raw-material production & supply
3. Strengthening the European raw-materials sector

Project Identity

Project Name	Strategic Dialogue on Sustainable Raw Materials for Europe (STRADE)	
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