



Recommendation of the Council on
Due Diligence Guidance for
Responsible Supply Chains of
Minerals from
Conflict-Affected and
High-Risk Areas

**OECD Legal
Instruments**



This document is published under the responsibility of the Secretary-General of the OECD. It reproduces an OECD Legal Instrument and may contain additional material. The opinions expressed and arguments employed in the additional material do not necessarily reflect the official views of OECD Member countries.

This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

For access to the official and up-to-date texts of OECD Legal Instruments, as well as other related information, please consult the Compendium of OECD Legal Instruments at <http://legalinstruments.oecd.org>.

Please cite this document as:

OECD, *Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, OECD/LEGAL/0386

Series: OECD Legal Instruments

Photo credit: © © Hemera/Thinkstock.com

© OECD 2018

This document is provided free of charge. It may be reproduced and distributed free of charge without requiring any further permissions, as long as it is not altered in any way. It may not be sold.

This document is available in the two OECD official languages (English and French). It may be translated into other languages, as long as the translation is labelled "unofficial translation" and includes the following disclaimer: *"This translation has been prepared by [NAME OF TRANSLATION AUTHOR] for informational purpose only and its accuracy cannot be guaranteed by the OECD. The only official versions are the English and French texts available on the OECD website <http://legalinstruments.oecd.org>"*

Date(s)

Adopted on 25/05/2011
Amended on 17/07/2012

Background Information

The Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (“the Guidance”) was adopted by the OECD Council on 25 May 2011 on the proposal of the Development Assistance Committee (DAC) and the Investment Committee. The Guidance is the first example of a collaborative government-backed multi-stakeholder initiative on responsible supply chain management of minerals from conflict-affected areas. Its objective is to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices. The Guidance is also intended to cultivate transparent mineral supply chains and sustainable corporate engagement in the mineral sector with a view to enabling countries to benefit from their mineral resources and preventing the extraction and trade of minerals from becoming a source of conflict, human rights abuses, and insecurity. With its Supplements on Tin, Tantalum, Tungsten and Gold, the OECD Guidance provides companies with a complete package to source minerals responsibly in order for trade in those minerals to support peace and development and not conflict.

THE COUNCIL,

HAVING REGARD to Article 5(b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Guidelines for Multinational Enterprises which form part of the Declaration on International Investment and Multinational Enterprises [C(2000)96/FINAL as amended on 25-26 May 2011 C(MIN(2011)11/FINAL];

RECALLING that the common aim of governments recommending the observance of the Guidelines for Multinational Enterprises and the development community is to promote principles and standards for responsible business conduct;

OBSERVING that responsible sourcing of minerals has developmental and business dimensions;

HAVING REGARD to the Policy Framework for Investment adopted in 2006 [C(2006)68] which aims to mobilise private investment in a way which supports steady economic growth and sustainable development;

RECALLING the work of the Development Assistance Committee in the field of international engagement in fragile states, aimed at avoiding harm when engaging in fragile and conflict-affected environments, including the Principles for Good International Engagement in Fragile States and Situations endorsed at its High Level Meeting on 3-4 April 2007;

RECALLING the efforts of the international community to cooperate in the fight against corruption, including through the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention Against Corruption;

RECOGNISING that governments, international organisations and companies can each draw on their respective competences and roles to contribute to ensuring that trade and investment in natural resources is beneficial to society at large;

CONSIDERING the efforts of the international community, in particular the International Conference on the Great Lakes Region, to combat illegal exploitation of natural resources in conflict-affected and high-risk areas;

RECOGNISING that there is significant exploitation of natural mineral resources in conflict-affected and high-risk areas and that companies sourcing from or directly operating in those areas may face higher risk of contributing to conflict;

NOTING that due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas is an on-going, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict;

HAVING REGARD to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (hereafter "the Guidance"), developed in cooperation with the International Conference on the Great Lakes Region and approved by the Investment Committee and the Development Assistance Committee [C/MIN(2011)12/ADD1];

HAVING REGARD to the Supplement on Tin, Tantalum and Tungsten [C/MIN(2012)12/ADD1] and the Supplement on Gold [C(2012)93/ADD1], which are an integral part of the Guidance, and noting that supplements on other minerals may be added to the Guidance in the future;

NOTING that this Guidance sets out the steps companies should take to identify and address actual or potential risks in order to prevent or mitigate adverse impacts associated with their activities or relationships, while recognising that flexibility is needed in its application depending on individual circumstances and factors such as the size of the enterprise, the location of the activities, the situation in a particular country, the sector and nature of the products or services involved;

RECOGNISING that the serious abuses associated with the extraction, transport or trade in minerals listed in Annex II to this Recommendation, especially when perpetrated against women and children, should not be tolerated;

On the proposal of the Investment Committee in enlarged session (including the non-Member adherents to the Declaration on International Investment and Multinational Enterprises) **and the Development Assistance Committee;**

RECOMMENDS that Members and non-Member adherents to the Declaration on International Investment and Multinational Enterprises actively promote the observance of the Guidance by companies operating in or from their territories and sourcing minerals from conflict-affected or high-risk areas with the aim of ensuring that they respect human rights, avoid contributing to conflict and successfully contribute to sustainable, equitable and effective development;

RECOMMENDS, in particular, that Members and non-Member adherents to the Declaration on International Investment and Multinational Enterprises take measures to actively support the integration into corporate management systems of the 5-Step Framework for Risk-Based Due Diligence in the Mineral Supply Chain having due regard to the Model Supply Chain Policy set out respectively in Annexes I and II to this Recommendation of which they form an integral part;

RECOMMENDS that Members and non-Member adherents to the Declaration on International Investment and Multinational Enterprises, with the support of the OECD including through its activities with the United Nations and international development organisations, ensure the widest possible dissemination of the Guidance and its active use by other stakeholders including professional associations, financial institutions, and civil society organisations;

INVITES other non-Members to take due account of and adhere to the present Recommendation;

INSTRUCTS the Investment Committee and the Development Assistance Committee to monitor the implementation of the Recommendation and to report to Council no later than three years following its adoption and as appropriate thereafter.

ANNEX I

STEP FRAMEWORK FOR RISK-BASED DUE DILIGENCE IN THE MINERALS SUPPLY CHAIN

While specific due diligence requirements and processes will differ depending on the mineral and the position of the company in the supply chain (as detailed in the mineral Supplements), companies should review their choice of suppliers and sourcing decisions and integrate into their management systems the following 5-step framework for risk-based due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas:

- 1. *Establish strong company management systems.*** Companies should:
 - A** Adopt, and clearly communicate to suppliers and the public, a company policy for the supply chain of minerals originating from conflict-affected and high-risk areas. This policy should incorporate the standards against which due diligence is to be conducted, consistent with the standards set forth in the model supply chain policy in Annex II.
 - B** Structure internal management to support supply chain due diligence.
 - C** Establish a system of controls and transparency over the mineral supply chain. This includes a chain of custody or a traceability system or the identification of upstream actors in the supply chain. This may be implemented through participation in industry-driven programs.
 - D** Strengthen company engagement with suppliers. A supply chain policy should be incorporated into contracts and/or agreements with suppliers. Where possible, assist suppliers in building capacities with a view to improving due diligence performance.
 - E** Establish a company-level, or industry-wide, grievance mechanism as an early-warning risk-awareness system.

2. **Identify and assess risk in the supply chain.** Companies should:
 - A Identify risks in their supply chain as recommended in the Supplements.
 - B Assess risks of adverse impacts in light of the standards of their supply chain policy consistent with Annex II and the due diligence recommendations in this Guidance.

3. **Design and implement a strategy to respond to identified risks.** Companies should:
 - A Report findings of the supply chain risk assessment to the designated senior management of the company.
 - B Devise and adopt a risk management plan. Devise a strategy for risk management by either (i) continuing trade throughout the course of measurable risk mitigation efforts; (ii) temporarily suspending trade while pursuing ongoing measurable risk mitigation; or (iii) disengaging with a supplier after failed attempts at mitigation or where a company deems risk mitigation not feasible or unacceptable. To determine the correct strategy, companies should review Annex II (Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas) and consider their ability to influence, and where necessary take steps to build leverage, over suppliers who can most effectively prevent or mitigate the identified risk. If companies pursue risk mitigation efforts while continuing trade or temporarily suspending trade, they should consult with suppliers and affected stakeholders, including local and central government authorities, international or civil society organisations and affected third parties, where appropriate, and agree on the strategy for measurable risk mitigation in the risk management plan. Companies may draw on the suggested measures and indicators under Annex III of the Due Diligence Guidance to design conflict and high-risk sensitive strategies for mitigation in the risk management plan and measure progressive improvement.
 - C Implement the risk management plan, monitor and track performance of risk mitigation efforts and report back to designated senior management. This may be done in cooperation and/or consultation with local and central government authorities, upstream companies, international or civil society organisations and affected third parties where the risk management plan is implemented and monitored in conflict-affected and high-risk areas.
 - D Undertake additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.

4. **Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain.** Companies at identified points (as indicated in the Supplements) in the supply chain should have their due diligence practices audited by independent third parties. Such audits may be verified by an independent institutionalised mechanism.

5. **Report on supply chain due diligence.** Companies should publicly report on their supply chain due diligence policies and practices and may do so by expanding the scope of their sustainability, corporate social responsibility or annual reports to cover additional information on mineral supply chain due diligence.

ANNEX II

MODEL SUPPLY CHAIN POLICY FOR A RESPONSIBLE GLOBAL SUPPLY CHAIN OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS¹

Recognising that risks of significant adverse impacts which may be associated with extracting, trading, handling and exporting minerals from conflict-affected and high-risk areas, and recognising that we have the responsibility to respect human rights and not contribute to conflict, we commit to adopt,

¹ This Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas is intended to provide a common reference for all actors throughout the entire mineral supply chain. Companies are encouraged to incorporate the model policy into their existing policies on corporate social responsibility, sustainability, or other alternative equivalent.

widely disseminate and incorporate in contracts and/or agreements with suppliers the following policy on responsible sourcing of minerals from conflict-affected and high-risk areas, as representing a common reference for conflict-sensitive sourcing practices and suppliers' risk awareness from the point of extraction until end user. We commit to refraining from any action which contributes to the financing of conflict and we commit to comply with relevant United Nations sanctions resolutions or, where applicable, domestic laws implementing such resolutions.

Regarding serious abuses associated with the extraction, transport or trade of minerals:

1. While sourcing from, or operating in, conflict-affected and high-risk areas, we will neither tolerate nor by any means profit from, contribute to, assist with or facilitate the commission by any party of:

- i) any forms of torture, cruel, inhuman and degrading treatment;
- ii) any forms of forced or compulsory labour which means work or service which is exacted from any person under the menace of penalty and for which said person has not offered himself voluntarily;
- iii) the worst forms of child labour²;
- iv) other gross human rights violations and abuses such as widespread sexual violence;
- v) war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide.

Regarding risk management of serious abuses:

2. We will immediately suspend or discontinue engagement with upstream suppliers where we identify a reasonable risk that they are sourcing from, or linked to, any party committing serious abuses as defined in paragraph 1.

Regarding direct or indirect support to non-state armed groups³:

3. We will not tolerate any direct or indirect support to non-state armed groups through the extraction, transport, trade, handling or export of minerals. "Direct or indirect support" to non-state armed groups through the extraction, transport, trade, handling or export of minerals includes, but is not limited to, procuring minerals from, making payments to or otherwise providing logistical assistance or equipment to, non-state armed groups or their affiliates who⁴:

- i) illegally control mine sites or otherwise control transportation routes, points where minerals are traded and upstream actors in the supply chain⁵; and/or
- ii) illegally tax or extort⁶ money or minerals at points of access to mine sites, along transportation routes or at points where minerals are traded; and/or

² See ILO Convention No. 182 on the Worst Forms of Child Labour (1999).

³ To identify non-state armed groups, companies should refer to relevant UN Security Council resolutions.

⁴ "Affiliates" includes négociants, consolidators, intermediaries, and others in the supply chain that work directly with armed groups to facilitate the extraction, trade or handling of minerals.

⁵ "Control" of mines, transportation routes, points where minerals are traded and upstream actors in the supply chain means (i) overseeing extraction, including by granting access to mine sites and/or coordinating downstream sales to intermediaries, export companies or international traders; (ii) making recourse to any forms of forced or compulsory labour to mine, transport, trade or sell minerals; or (iii) acting as a director or officer of, or holding beneficial or other ownership interests in, upstream companies or mines.

⁶ "Extort" from mines, transportation routes, points where minerals are traded or upstream companies means the demanding, under the threat of violence or any other penalty, and for which the person has not voluntarily offered, sums of money or minerals, often in return for granting access to exploit the mine site, access transportation routes, or to transport, purchase, or sell minerals.

iii) illegally tax or extort intermediaries, export companies or international traders.

Regarding risk management of direct or indirect support to non-state armed groups:

4. We will immediately suspend or discontinue engagement with upstream suppliers where we identify a reasonable risk that they are sourcing from, or linked to, any party providing direct or indirect support to non-state armed groups as defined in paragraph 3.

Regarding public or private security forces:

5. We agree to eliminate, in accordance with paragraph 10, direct or indirect support to public or private security forces who illegally control mine sites, transportation routes and upstream actors in the supply chain; illegally tax or extort money or minerals at point of access to mine sites, along transportation routes or at points where minerals are traded; or illegally tax or extort intermediaries, export companies or international traders⁷.

6. We recognise that the role of public or private security forces at the mine sites and/or surrounding areas and/or along transportation routes should be solely to maintain the rule of law, including safeguarding human rights, providing security to mine workers, equipment and facilities, and protecting the mine site or transportation routes from interference with legitimate extraction and trade.

7. Where we or any company in our supply chain contract public or private security forces, we commit to or we will require that such security forces will be engaged in accordance with the Voluntary Principles on Security and Human Rights. In particular, we will support or take steps, to adopt screening policies to ensure that individuals or units of security forces that are known to have been responsible for gross human rights abuses will not be hired.

8. We will support efforts, or take steps, to engage with central or local authorities, international organisations and civil society organisations to contribute to workable solutions on how transparency, proportionality and accountability in payments made to public security forces for the provision of security could be improved.

9. We will support efforts, or take steps, to engage with local authorities, international organisations and civil society organisations to avoid or minimise the exposure of vulnerable groups, in particular, artisanal miners where minerals in the supply chain are extracted through artisanal or small-scale mining, to adverse impacts associated with the presence of security forces, public or private, on mine sites.

Regarding risk management of public or private security forces:

10. In accordance with the specific position of the company in the supply chain, we will immediately devise, adopt and implement a risk management plan with upstream suppliers and other stakeholders to prevent or mitigate the risk of direct or indirect support to public or private security forces, as identified in paragraph 5, where we identify that such a reasonable risk exists. In such cases, we will suspend or discontinue engagement with upstream suppliers after failed attempts at mitigation within six months from the adoption of the risk management plan⁸. Where we identify a reasonable risk of activities inconsistent with paragraphs 8 and 9, we will respond in the same vein.

⁷ "Direct or indirect support" does not refer to legally required forms of support, including legal taxes, fees, and/or royalties that companies pay to the government of a country in which they operate (see paragraph 13 below on disclosure of such payments).

⁸ As detailed in Step 3(D) of Annex I, companies should conduct an additional risk assessment on those risks requiring mitigation after the adoption of the risk management plan. If within six months from the adoption of the risk management plan there is no significant measurable improvement to prevent or mitigate the risk of direct or indirect support to public or private security forces, as identified in paragraph 5, companies should suspend or discontinue engagement with the supplier for a minimum of three months. Suspension may be accompanied by a revised risk management plan, stating the performance objectives for progressive improvement that should be met before resuming the trade relationship.

Regarding bribery and fraudulent misrepresentation of the origin of minerals:

11. We will not offer, promise, give or demand any bribes, and will resist the solicitation of bribes to conceal or disguise the origin of minerals, to misrepresent taxes, fees and royalties paid to governments for the purposes of mineral extraction, trade, handling, transport and export⁹.

Regarding money laundering:

12. We will support efforts, or take steps, to contribute to the effective elimination of money laundering where we identify a reasonable risk of money-laundering resulting from, or connected to, the extraction, trade, handling, transport or export of minerals derived from the illegal taxation or extortion of minerals at points of access to mine sites, along transportation routes or at points where minerals are traded by upstream suppliers.

Regarding the payment of taxes, fees and royalties due to governments:

13. We will ensure that all taxes, fees, and royalties related to mineral extraction, trade and export from conflict-affected and high-risk areas are paid to governments and, in accordance with the company's position in the supply chain, we commit to disclose such payments in accordance with the principles set forth under the Extractive Industry Transparency Initiative (EITI).

Regarding risk management of bribery and fraudulent misrepresentation of the origin of minerals, money-laundering and payment of taxes, fees and royalties to governments:

14. In accordance with the specific position of the company in the supply chain, we commit to engage with suppliers, central or local governmental authorities, international organisations, civil society and affected third parties, as appropriate, to improve and track performance with a view to preventing or minimising risks of adverse impacts through measurable steps taken in reasonable timescales. We will suspend or discontinue engagement with upstream suppliers after failed attempts at mitigation¹⁰.

⁹ See OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997); and the United Nations Convention Against Corruption (2004).

¹⁰ As detailed in Step 3(D) of Annex I, companies should conduct an additional risk assessment on those risks requiring mitigation after the adoption of the risk management plan. If within six months from the adoption of the risk management plan there is no significant measurable improvement to prevent or mitigate the risks of bribery and fraudulent misrepresentation of the origin of minerals, money-laundering and payment of taxes, fees and royalties to governments, companies should suspend or discontinue engagement with the supplier for a minimum of three months. Suspension may be accompanied by a revised risk management plan, stating the performance objectives for progressive improvement that should be met before resuming the trade relationship.

Adherents*

OECD Members

Australia
Austria
Belgium
Canada
Chile
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Israel
Italy
Japan
Korea
Latvia
Lithuania
Luxembourg
Mexico
Netherlands
New Zealand
Norway
Poland
Portugal
Slovak Republic
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom

United States

Non-Members

Argentina
Brazil
Colombia
Costa Rica
Kazakhstan
Morocco
Peru
Romania
Ukraine

* Additional information and statements are available in the Compendium of OECD Legal Instruments:
<http://legalinstruments.oecd.org>

About the OECD

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD Member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Legal Instruments

Since the creation of the OECD in 1961, around 450 substantive legal instruments have been developed within its framework. These include OECD Acts (i.e. the Decisions and Recommendations adopted by the OECD Council in accordance with the OECD Convention) and other legal instruments developed within the OECD framework (e.g. Declarations, international agreements).

All substantive OECD legal instruments, whether in force or abrogated, are listed in the online Compendium of OECD Legal Instruments. They are presented in five categories:

- **Decisions:** OECD legal instruments which are legally binding on all Members except those which abstain at the time of adoption. While they are not international treaties, they entail the same kind of legal obligations. Adherents are obliged to implement Decisions and must take the measures necessary for such implementation.
- **Recommendations:** OECD legal instruments which are not legally binding but practice accords them great moral force as representing the political will of Adherents. There is an expectation that Adherents will do their utmost to fully implement a Recommendation. Thus, Members which do not intend to do so usually abstain when a Recommendation is adopted, although this is not required in legal terms.
- **Declarations:** OECD legal instruments which are prepared within the Organisation, generally within a subsidiary body. They usually set general principles or long-term goals, have a solemn character and are usually adopted at Ministerial meetings of the Council or of committees of the Organisation.
- **International Agreements:** OECD legal instruments negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.
- **Arrangement, Understanding and Others:** several ad hoc substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.