

# RECOMMENDATIONS

## COMMISSION RECOMMENDATION (EU) 2018/1149

of 10 August 2018

**on non-binding guidelines for the identification of conflict-affected and high-risk areas and other supply chain risks under Regulation (EU) 2017/821 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Natural mineral resources hold great potential for development but can, in conflict-affected or high-risk areas, be a cause of dispute where their revenues fuel the outbreak or continuation of violent conflict, undermining endeavours towards development, good governance and the rule of law. In those areas, breaking the nexus between conflict and illegal exploitation of minerals is a critical element in guaranteeing peace, development and stability.
- (2) To address such concerns, Regulation (EU) 2017/821 of the European Parliament and of the Council <sup>(1)</sup> lays 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; which will apply from 1 January 2021 (hereinafter the 'Regulation').
- (3) Conflict-affected and high-risk areas for the purposes of that Regulation are defined as areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses.
- (4) Article 14(1) of that Regulation sets out that in order to create clarity and certainty for and consistency among the practices of economic operators, in particular SMEs, the Commission, in consultation with the European External Action Service and the OECD, is to prepare non-binding guidelines for economic operators, explaining how best to apply the criteria for the identification of conflict-affected and high-risk areas (hereinafter the 'Guidelines').
- (5) That Article also sets out that these Guidelines are to be based on the definition of conflict-affected and high-risk areas set out in the Regulation and are to take into account the OECD Due Diligence Guidance in this field, including other supply chain risks triggering red flags as defined in the relevant supplements to that Guidance.
- (6) These Guidelines, to be effective, should set out the general concept of due diligence in supply chains of minerals and metals associated with conflict-affected and high-risk areas and the steps companies should take to identify and address the risks in this regard relating to the sourcing of tin, tantalum, tungsten and gold.
- (7) It should be recalled that the Regulation's requirements for Union importers do not only relate to metals and minerals originating from conflict-affected and high-risk areas, but also to associated risks along the upstream chain with regard to, e.g. trading, handling and exporting.
- (8) These Guidelines should also explain the key principles of the identification of conflict-affected and high-risk areas for the specific purpose of implementing the Regulation, while the definition and explanation of such areas are without prejudice to the Union's position on what may constitute conflict-affected and high-risk areas outside the context of that Regulation.

<sup>(1)</sup> 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 (OJ L 130, 19.5.2017, p. 1).

- (9) Reference to relevant open-source information that economic operators can use in identifying conflict-affected and high-risk areas should be a central part of these Guidelines, while recalling that relevant sources are updated with varying periodicity and should be complemented with other sources as appropriate.
- (10) Other supply chain risks triggering red flags addressed by these Guidelines should relate to location, suppliers and unusual circumstances of trading operations and should be based on the OECD's work in this field.
- (11) Article 14(2) of the Regulation sets out that the Commission is to call on external expertise that will provide an indicative, non-exhaustive, regularly updated list of conflict-affected and high-risk areas. That forthcoming list is to be based on the external experts' analysis of these Guidelines and other existing information from, inter alia, academics and supply chain due diligence schemes.
- (12) These Guidelines are non-binding and Union importers maintain their responsibility to comply with the due diligence obligations under the Regulation, while the services of the Commission ensure that these Guidelines remain relevant over time,

HAS ADOPTED THIS RECOMMENDATION:

1. Union importers with obligations under Regulation (EU) 2017/821 should follow the non-binding guidelines provided in the Annex to this Recommendation. Following these Guidelines will help them to identify conflict-affected and high-risk areas and red flags adequately so as to properly meet the requirements of that Regulation when they apply from 1 January 2021. The guidelines can be followed also by other entities applying due diligence to their mineral supply chain.
2. This Recommendation will be published in the *Official Journal of the European Union*.

Done at Brussels, 10 August 2018.

*For the Commission*  
Cecilia MALMSTRÖM  
*Member of the Commission*

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## ANNEX

**1. OBJECTIVE OF THESE GUIDELINES**

Regulation (EU) 2017/821 (hereinafter 'the Regulation') entered into force on 8 June 2017 and applies to Union importers <sup>(1)</sup> (including but not limited to smelters and refiners) as from 1 January 2021. As set out in its first Article, the Regulation is designed to provide transparency and certainty as regards the sourcing practices of Union importers sourcing from conflict-affected and high-risk areas.

According to Article 14(1) of the Regulation, the European Commission is tasked with the preparation of non-binding guidelines in the form of a handbook for economic operators, explaining how best to apply the criteria for the identification of *conflict-affected and high-risk areas*. This Article also sets out that the guidelines are to take into account the OECD Due Diligence Guidance <sup>(2)</sup> in this field, including other supply chain risks triggering the so-called 'red flags', as defined in the relevant supplements to that Guidance.

In these guidelines,

- SECTION 2 sets out the general *concept of due diligence* in supply chains of minerals originating from conflict-affected and high-risk areas and the *steps* companies should take to identify and address the risks associated with sourcing of tin, tantalum, tungsten and gold.
- SECTION 3 explains the key elements of the *definition of conflict-affected and high-risk areas* for the purposes of the Regulation.
- SECTION 4 lists *open source information* to help companies identify conflict-affected and high-risk areas and other risks.
- SECTION 5 provides information on other indicators of potential risks (or 'red flags') in the mineral supply chain in relation to location, suppliers, and unusual circumstances of trading operations.

These guidelines are designed to help EU importers carry out their supply chain due diligence. They are without prejudice to Regulation (EU) 2017/821 and are not legally binding.

Furthermore, it should be noted that pursuant to Article 14(2) of the Regulation, the European Commission will (subsequently) call upon external expertise that will provide an indicative, non-exhaustive, regularly updated list of conflict-affected and high-risk areas. That list will be based on the external experts' analysis of these guidelines and existing information from, inter alia, governments, international organisations, academics and supply chain due diligence schemes.

**2. DUE DILIGENCE IN THE MINERAL SUPPLY CHAIN — GENERAL CONCEPT AND STEPS****2.1. The concept of risk-based due diligence**

In *conflict-affected and high-risk areas*, companies involved in *mining, processing and trade in minerals* have the potential to generate income, growth and prosperity, sustain livelihoods and foster local development. In such situations, companies may also be at risk of contributing to or being associated with significant adverse impacts associated with their activities or sourcing decisions, including armed conflict and serious human rights abuses. In this perspective, to ensure that companies do not intentionally or unintentionally contribute to or become (or continue to be) associated with these adverse impacts, they should conduct risk-based due diligence as part of an on-going, proactive and reactive process firmly integrated into their management system.

<sup>(1)</sup> As set out in Article 2(l) of Regulation (EU) 2017/821 'Union importer' means any natural or legal person declaring minerals or metals for release for free circulation within the meaning of Article 201(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1) or any natural or legal person on whose behalf such declaration is made, as indicated in data elements 3/15 and 3/16 in accordance with Annex B to Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

<sup>(2)</sup> The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (Second Edition, OECD 2013) is the framework to conduct supply chain due diligence pursuant to Regulation (EU) 2017/821.

Generally, *risk-based due diligence* refers to the steps companies should take to identify and address actual or potential risks in their mineral supply chain in order to prevent or mitigate any contribution to adverse impacts related to the extraction, production, trading, processing, handling and export of minerals associated with conflict-affected and high-risk areas. Risks are defined in relation to the potentially adverse impacts of a given company's operations, which result from the *company's own* activities or which may be directly linked to operations, products or services by its *business relationships* with third parties, including suppliers and other entities in the supply chain. Adverse impacts may include harm to people (i.e. external impacts), reputational damage or legal liability for the company (i.e. internal impacts), or both.

Companies may face risks in their mineral supply chains because the circumstances of mineral extraction, production, trading, handling or export by their very nature carry a higher risk of having significant adverse impacts, such as financing conflict or fuelling, facilitating or exacerbating conditions of conflict as *outlined in Annex II of the OECD Due Diligence Guidance and its supplements*.

Because of these risks, companies should *make good faith efforts* to identify and assess *location, supplier or circumstantial-related risks* and put in place due diligence measures adapted to the specific requirements of such risks. Due diligence can also help companies ensure they observe international law and comply with domestic laws, including those governing illicit trade in mineral resources as well as UN sanctions and EU Decisions based on the Treaty of the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), in particular restrictive measures pursuant to Article 215 TFEU.

The overall objective of the Regulation, which is based on the principles set forth in the OECD Guidance, 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 without contributing to armed conflict and associated human rights abuses, thereby contributing to economic development and the livelihood of local communities.

## 2.2. Due diligence — five-step framework

Risk-based due diligence as recommended by the OECD Due Diligence Guidance is structured around the following *five steps*, all of which are also enshrined in the Regulation.

Companies along the supply chain should:

- *Establish a strong management system and adopt and clearly communicate to suppliers and the public their policy for the minerals and metals potentially originating from conflict-affected and high-risk areas. This includes the identification of the factual circumstances involved in the extraction, transport, handling, trading, processing, smelting, refining, and alloying, manufacturing, or selling of products that contain minerals from conflict-affected and high-risk areas. (Article 4 of the Regulation)*
- *Identify and assess any actual or potential risks in the supply chain* <sup>(1)</sup>. (Article 5(1)(a) of the Regulation)
- *Design and implement a strategy to respond to the identified risks* in order to prevent or mitigate them by adopting and implementing a risk management plan. This may result in deciding to *continue trade throughout the course of the risk mitigation efforts, temporarily suspend trade* while pursuing ongoing risk mitigation, or *disengage with a supplier* either after failed attempts at mitigation or if the supplier is committing serious human rights abuses (e.g. worst forms of child labour, forced labour, and torture) or providing direct or indirect support to non-state armed groups. (Article 5(1)(b) of the Regulation)
- *Carry out or obtain an independent third-party audit* of the company's activities, processes and systems used to implement supply chain due diligence at identified points in the supply chain, in particular regarding the due diligence practices of smelters and refiners. (Article 6 of the Regulation)
- *Publicly report on supply chain due diligence policies and practices* in order to generate public confidence in the measures companies are taking. (Article 7 of the Regulation).

<sup>(1)</sup> Risks as set out in Annex II of the OECD Due Diligence Guidance, including risks triggered by 'red flags' as defined in its supplements.

### 3. UNDERSTANDING THE DEFINITION OF CONFLICT-AFFECTED AND HIGH-RISK AREAS

The definition of conflict-affected and high-risk areas applied in the Regulation is in line with the OECD Due Diligence Guidance as to what characterises such areas and is without prejudice to the EU's position on what may constitute conflict-affected and high-risk areas *outside* the context of the Regulation. It is solely provided for the purpose of supply chain due diligence with regard to the metals and minerals in scope of the Regulation and it is designed to be practical, thorough and easily understood by companies.

Definition of conflict-affected and high-risk areas in the Regulation (Article 2(f)):

'Areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existing governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses.'

This definition follows some *key principles* set out in international law, including 'state of armed conflict', 'fragile post-conflict' and 'failed states'. These principles are further illustrated and explained below to facilitate their practical understanding as part of the responsible supply chain management by companies.

Moreover, these key principles should allow for easy matching with *open source information* on the situation on the ground in conflict-affected and high-risk areas, and assist companies with the broader identification of risks in their supply chain and the potential impact of their operations (cf. section 4).

It should be recalled that the supply chain due diligence foreseen in the Regulation — as well as in the OECD Due Diligence Guidance — is tied to identifying and assessing the risks of adverse impacts of certain business operations and relationships relating to metals and minerals originating in or being transported through conflict-affected and high-risk areas (which can be *sub-national*). *Country-related* information can provide contextual information to identify the general level of diligence needed.

Key element of the definition	Explanation
State of armed conflict	<p><i>Presence of armed conflict, widespread violence or other risks of harm to people</i> as described under international humanitarian law, which regulates the conduct of armed conflict by combatants. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc.</p> <p>Specific guidance on the 'state of armed conflict' is provided in the <i>Geneva Conventions of 1949</i> and includes all cases of <i>declared war</i> or of <i>any other armed conflict</i> which may arise between two or more Parties, even if the state of war is not recognised by one of them; all cases of <i>partial or total occupation</i> of the territory of a Party, even if the said occupation meets with no armed resistance. Pursuant to <i>Protocol II (1977)</i> additional to the Geneva Conventions of 1949, they do <i>not</i> apply to situations of internal <i>disturbances and tensions</i>, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.</p>
<p>Fragile post-conflict areas</p> <p>Areas witnessing weak or non-existent governance and security, such as failed states, <i>and</i> widespread and systematic violations of international law, including human rights abuses.</p>	<p><i>Fragile post-conflict areas</i> are areas witnessing cessation of active hostilities and that are in a state of <i>fragility</i>, meaning that the region or state has a <i>weak capacity to carry out basic governance functions</i> and lacks the ability to develop mutually constructive relations within society due to the prior conflictual state. Such areas are more vulnerable to internal or external shocks such as economic crises or natural disasters. In such cases, as in cases covered by the subsequent paragraph of the definition (i.e. areas witnessing weak or non-existing governance and security), economic operators need to ascertain that there is <i>either</i> institutional weakness or lack of governance <i>and</i> widespread and systematic violations of international law and human rights abuses in order to make a determination that the area is a conflict-affected and high-risk area. Thus, the condition of the violations of international law is a <i>cumulative</i> one to the conditions of fragile post-conflict areas and areas witnessing weak or non-existing governance and security. On the latter, the absence of a formal mining licensing procedure would for instance constitute evidence of lack of governance.</p>

Key element of the definition	Explanation
Failed states	A 'failed state' is an <i>illustration of a situation of extreme institutional weakness</i> . A <i>failed state</i> involves an implosion of structures of power and authority, a collapse of law and order and the absence of institutions capable of representing the state.

#### 4. OPEN SOURCE INFORMATION TO IDENTIFY CONFLICT-AFFECTED AND HIGH-RISK AREAS

This section includes an indicative, non-exhaustive list of relevant open-source information to help companies identify conflict-affected and high-risk areas. By understanding the national and regional context as well as the potential risks involved in areas they operate in or source from, companies will be in a position to better tailor their due diligence efforts accordingly. Such more general country specific information can also be beneficial in assessing the plausibility of allegations of misconduct.

The listed open-source information is grouped according to the key elements set out in the definition of conflict-affected and high-risk areas (cf. section 3):

- CONFLICT — allowing for the assessment of whether an area is in a 'state of armed conflict' or is a 'fragile post-conflict' area.
- GOVERNANCE — allowing for the assessment of the extent to which areas witness weak or non-existent governance and security.
- HUMAN RIGHTS — allowing for the assessment of whether an area is affected by widespread and systematic violations of international law, including human rights abuses <sup>(1)</sup>.

In addition, the list provided in section 4.2 includes information sources on mineral resources, for context.

##### 4.1. How to best use the information sources

The listed information sources are of a non-commercial nature, i.e. not requiring subscription fees or any financial contribution. Companies should consider whether that sources provide updated information while using them. The Regulation sets out that in addition to these guidelines, the European Commission is to call upon external expertise that will provide an indicative, non-exhaustive, regularly updated list of conflict-affected and high-risk areas. The European Commission's services will together with such external expertise ensure to update as appropriate the list of information sources to ensure its continued relevance.

Additional *sources of a more general nature* (some of which are not explicitly mentioned in the list below) that are useful to consult include geological surveys with information on mineral resources (British and U.S. Geological Surveys), the European Commission's Raw Material Information System, the websites of leading organisations on this issue such as the U.S. State Department Country Reports (Governance and Human Rights), reports published by the different UN agencies (including the Human Rights Council, UNHCR, OHCHR, UNICEF, UNDP, ILO, and IOM) and other relevant civil society organisations, for instance Amnesty International, Global Witness, Human Rights Watch and IMPACT (the former Partnership Africa Canada). The websites of other organisations and information sources such as the International Committee of the Red Cross, Natural Resource Governance Index, Global Peace Index, etc. may also be consulted by companies for more topical, news-based information.

It would also be useful to consult national or regional sources. Although sometimes more difficult to access, national/regional sources allow for a more in-depth review of the situation in a specific area compared with aggregate country information.

Companies consulting these sources can proceed as follows:

1. On the basis of the supply chain information retained in their management system (step 1 of the five-step framework, cf. section 2), companies should first seek to identify their geographical areas of mineral sourcing, trading, handling and transportation with a view to understanding the context in which the mining and trading activities take place and identify the related risks.

<sup>(1)</sup> For the definition of human rights, see the Convention for the Protection of Human Rights and Fundamental Freedoms; [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

2. To this end, companies can consult the open sources (i.e. analytical sources, maps/tables and news items) listed below covering the three key elements of the definition of conflicted-affected and high-risk areas (i.e. conflict, governance and human rights) to understand the political and security context, and identify and assess the potential risks of adverse impacts of their supply chain against their supply chain policy which are to be consistent with Annex II of the OECD Guidance, and the 'red flags' set out in its supplements.
3. In case the sources listed below provide contradictory or inconclusive information, companies should exercise caution before dismissing an area from enhanced due diligence procedures. It should be stressed again that the responsibility of due diligence is tied to identifying and addressing actual or potential risks in order to prevent or mitigate adverse impacts of operations in particular sourcing, trade and business relationships as well as other circumstances associated with companies' activities and *not only to the country or area of origin of the mineral*.
4. The sources listed below are updated with varying periodicity and while being relevant may not always be fully accurate. They should therefore be used in combination and with the addition of complementary sources as appropriate. Once the abovementioned indicative, non-exhaustive, regularly updated list of conflict-affected and high-risk areas to be provided by external expertise is available, it will provide an addition source of information.

#### 4.2. List of open information sources

Issue for assessment	Coverage	Open sources	Content of the sources
CONFLICT	Global	Analytical sources	
		Heidelberg Conflict Barometer <a href="http://www.hiik.de/?lang=en/">http://www.hiik.de/?lang=en/</a>	Analysis of the most recent global conflict events in the form of texts and graphics; separate regional and individual country chapters.
		Geneva Academy Rule of Law in Armed Conflicts <a href="http://www.rulac.org/">http://www.rulac.org/</a>	Database and analysis reporting on the implementation of international law in armed conflicts around the world (global coverage and brief overviews).
		Assessment Capacities Project — Global Emergency Overview <a href="https://www.acaps.org/countries/">https://www.acaps.org/countries/</a>	World map and country specific analysis providing overview and analysis of countries in 'situation of concern', 'humanitarian crisis', and 'severe humanitarian crisis'.
		Maps or tables	
		Uppsala Conflict Data Programme — Georeferenced Event Dataset <a href="http://www.ucdp.uu.se/ged/">http://www.ucdp.uu.se/ged/</a>	Interactive map of events of organised violence based on news sources; including fatalities, type of violence (state-based, non-state, one-sided), the user can zoom to a level of unique events.
		CrisisWatch <a href="http://www.crisisgroup.org">http://www.crisisgroup.org</a>	State of play in most significant global situations of conflict/potential conflict; interactive map and database allowing to assess the situation in selected country cases 2003-2018.
		Global Peace Index <a href="http://www.visionofhumanity.org">http://www.visionofhumanity.org</a>	Interactive map that measures global peace according to qualitative and quantitative indicators (security officers and police, political instability, organised conflict, armed services personnel, etc.).

Issue for assessment	Coverage	Open sources	Content of the sources
		Major Episodes of Political Violence <a href="http://www.systemicpeace.org">http://www.systemicpeace.org</a>	Maps and tables listing e.g. episodes of armed conflict (including casualties) in the world from 1946-2017.
	Regional	Armed Conflict Location and Event Data <a href="http://www.acleddata.com/">http://www.acleddata.com/</a>	Conflict trend reports and analysis including monthly updates on political violence in Africa, Middle East and Asia based on real-time data, and analysing current and historical dynamics in specific states.
		International Peace Information Service — Conflict Mapping <a href="http://ipisresearch.be/">http://ipisresearch.be/</a>	Maps of Democratic Republic of Congo (conflict/conflict minerals), Central African Republic, Sudan-South Sudan (contested areas, incidents, natural resources, education, community violence, intrastate and interstate violence); analysis of maps is provided.
		International Tin Association <a href="https://www.internationaltin.org/">https://www.internationaltin.org/</a> <a href="http://www.itsci.org/">http://www.itsci.org/</a>	Tin Supply Chain Initiative (iTSCi) provides assessment reports of the security situation of mines sites in Rwanda, Eastern provinces of the Democratic Republic of Congo, Burundi and Uganda.
		Mining Conflicts in Latin America <a href="http://ejatlas.org/featured/mining-latam">http://ejatlas.org/featured/mining-latam</a>	The environmental justice atlas documents and catalogues social conflict around environmental issues for contextual information.
GOVERNANCE	Global	Worldwide Governance Indicators <a href="http://info.worldbank.org/governance/wgi">http://info.worldbank.org/governance/wgi</a>	Dataset of updated aggregate and individual governance indicators for specific countries, six dimensions of governance; country data reports summarise indicators per country.
Fragile States Index <a href="http://ffp.statesindex.org">http://ffp.statesindex.org</a>		Index focusing on indicators of risk, based on news articles and reports.	
Corruption Perception Index <a href="http://www.transparency.org/research/cpi/overview">http://www.transparency.org/research/cpi/overview</a>		Index of the perceived corruption in countries.	
National Resource Governance Institute <a href="https://resourcegovernance.org/">https://resourcegovernance.org/</a>		Country specific information and comparative analysis on issues relating to governance of natural resources.	
HUMAN RIGHTS	Global	United Nations Security Council Resolutions (UNSC) <a href="http://www.un.org/en/sc/documents/resolutions">http://www.un.org/en/sc/documents/resolutions</a>	UNSC Resolutions provide a useful description of the political and security situation in countries of concern on an annual basis.
United Nations Human Rights Council <a href="http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx">http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx</a>		Universal, periodic reviews.	
Office of the United Nations High Commissioner for Human Rights <a href="http://www.ohchr.org/EN/pages/home.aspx">http://www.ohchr.org/EN/pages/home.aspx</a>		Country specific information on human rights issues.	

Issue for assessment	Coverage	Open sources	Content of the sources
		United Nations Development Programme — International Human Development Indicators — Country Profiles <a href="http://hdr.undp.org/en/countries">http://hdr.undp.org/en/countries</a>	Annual country reports of country-specific human rights practices, global coverage.
		Amnesty International <a href="https://www.amnesty.org/en/countries/">https://www.amnesty.org/en/countries/</a>	
		Global Witness <a href="https://www.globalwitness.org/en-gb/">https://www.globalwitness.org/en-gb/</a>	
		Human Rights Watch <a href="https://www.hrw.org/">https://www.hrw.org/</a>	
		Mines and Communities <a href="http://www.minesandcommunities.org/">http://www.minesandcommunities.org/</a>	News articles and analyses of global mining and its impacts; classified by theme, country, company, minerals.
MINERAL RESOURCES AND PRODUCTION	Global	British Geological Survey <a href="https://www.bgs.ac.uk/mineralsuk/statistics/worldStatistics.html">https://www.bgs.ac.uk/mineralsuk/statistics/worldStatistics.html</a>	Country reports on international minerals statistics and information.
		U.S. Geological Survey <a href="http://minerals.usgs.gov/minerals/pubs/country/">http://minerals.usgs.gov/minerals/pubs/country/</a>	Country reports on international minerals statistics and information.
		EU Raw Materials Information System <a href="http://rmis.jrc.ec.europa.eu/">http://rmis.jrc.ec.europa.eu/</a>	Information on production, trade flows and policy relating to raw materials.

In addition to the abovementioned open information sources, it is expected that the OECD will provide additional information of relevance to identify conflict-affected and high-risk areas (<http://www.oecd.org/corporate/mne/mining.htm>). Risks related to humanitarian crises and disasters can also provide contextual information and point to areas where armed conflicts may emerge. In this regard, INFORM is a useful source (a collaborative project between the Inter-Agency Standing Committee and the European Commission; <http://www.inform-index.org>). Another useful tool in this regard is the Global Conflict Risk index (an open-source evidence base to support decision-making on long-term conflict risks developed by the Joint Research Centre of the European Commission; <http://conflictrisk.jrc.ec.europa.eu/>).

Moreover, the European Commission will make available support to SME's in their efforts to put in place and implement policies on responsible sourcing of minerals through the COSME programme, which is expected to partly relate to the identification of conflict-affected and high-risk areas under Regulation (EU) 2017/821.

## 5. RISK ASSESSMENT OF MINERAL SUPPLY CHAINS — 'RED FLAGS' FOR ENHANCED DUE DILIGENCE

### 5.1. Introduction to red flags and general considerations

The due diligence process set out by the Regulation and the OECD Due Diligence Guidance is *not limited to the identification and mitigation of risks in relation to the origin and transportation of minerals* in conflict-affected and high-risk areas. Indeed, companies are to consider and provide information on the risks pursuant to the OECD Due Diligence Guidance in relation to the trading, handling and exporting of minerals along the upstream supply chain, *and unusual circumstances*.

To this end, supplements of the OECD Due Diligence Guidance provide a list of the so called ‘red flag’ situations that trigger the need for *enhanced due diligence*, including the collection of *additional information through the company’s management system*, in particular in the following situations:

A. *Red flag locations of minerals origin and transit*

- Where minerals *originate* from or have been *transported* via conflict-affected and high-risk areas;
- Where minerals are *claimed* to originate from a country in which minerals from conflict-affected and high-risk areas are *known or reasonably suspected to transit*;
- Where minerals are claimed to originate from a country that has *limited known mineral resources or stocks, likely resources or expected production levels of the mineral in question* (i.e. the declared volumes of minerals from that country are out of keeping with the known mineral resources or expected production levels).

In each of these location-based ‘red flags’, in particular in situations of weak or non-existing governance, the risk is increased when anti-money laundering laws, anti-corruption laws, customs controls and other relevant governmental oversight laws are weakly enforced; when informal banking systems operate, and when cash is extensively used.

B. *Supplier red flags*

- Where a company’s *suppliers or other known upstream companies operate* in one of the abovementioned ‘red-flag’ locations of mineral origin and transit, or have *shareholders or other interests* in suppliers of minerals from one of the abovementioned ‘red-flag’ locations of mineral origin or transit.
- Where a company’s *suppliers or other known upstream companies* are known to have *sourced minerals from a ‘red-flag’ location* of mineral origin and transit in the last twelve months.
- For gold: where the gold is claimed to originate from recyclable/scrap or mixed sources and has been refined in a country where gold from conflict-affected and high-risk areas is known or reasonably suspected to transit.

C. *Red flag circumstances*

- Where *anomalies or unusual circumstances* are identified through the information collected by the company’s management system which give rise to a reasonable suspicion that the minerals may contribute to conflict or serious abuses associated with their extraction, transport or trade.

## 5.2. Identifying specific red flags and ensuring appropriate due diligence

Following the identification of the ‘red-flags’ set out in section 5.1 as part of the company’s risk assessment, companies should undertake an in-depth review of the context of all these ‘red-flags’ by collecting additional information through their company’s management system and ensuring that the corresponding risks are duly taken into account.

As highlighted in the OECD Due Diligence Guidance, due diligence is a risk-based and progressive approach whereby companies must put in place adequate management systems and processes, map the factual circumstances along the supply chain and identify the risks that may lead them to undertake enhanced due diligence.

The following guidance should assist companies to obtain the relevant information on ‘red flag’ situations and tailor their due diligence appropriately. It should be noted that the information sources provided are updated with varying periodicity and while being relevant may not always be fully accurate. They should therefore be used in combination and with the addition of complementary sources as appropriate.

A. *Red flag locations of minerals origin and transit*

- *Red flag: Minerals originating from or transported via conflict-affected and high-risk areas*

Enhanced due diligence is triggered when minerals originate from or have been transported via conflict-affected and high-risk areas. The identification of such areas is discussed in section 4 of these guidelines.

- *Red flag: Minerals claimed to originate from a country in which minerals from conflict-affected and high-risk areas are known or reasonably suspected to transit.*

Companies should assess the extent to which the following issues are applicable:

- ‘Governance and other country issues’ need to be reviewed in order to identify the extent to which countries or areas are in control of their borders and have adequate internal enforcement mechanisms in place to ensure credible and documented traceability of the minerals trade to counteract the risks related to transit in case of weak governance.

Indicators	Information sources <sup>(1)</sup>
<ul style="list-style-type: none"> <li>— The declared country of origin has porous borders or weak customs enforcement for goods.</li> </ul>	<ul style="list-style-type: none"> <li>— United Nations Security Council Resolutions (cf. section 4)</li> <li>— Information provided by Local Embassies, EU or other Delegations</li> </ul>
<ul style="list-style-type: none"> <li>— Anti-corruption laws are weakly enforced and reported instances of corruption in mining and trade exist.</li> <li>— Anti-money laundering or banking oversight laws are not or insufficiently in place or weakly enforced.</li> <li>— Economies are mostly cash-based, in particular for the minerals trade.</li> </ul>	<ul style="list-style-type: none"> <li>— Financial Action Task Force (FATF) <a href="http://www.fatf-gafi.org/countries/">http://www.fatf-gafi.org/countries/</a></li> <li>— Corruption Perception Index by Transparency International <a href="http://www.transparency.org/research/cpi/overview">http://www.transparency.org/research/cpi/overview</a></li> <li>— Worldwide Governance Indicator by the World Bank <a href="http://info.worldbank.org/governance/wgi">http://info.worldbank.org/governance/wgi</a></li> <li>— Global Financial Integrity reports <a href="http://www.gfintegrity.org/">http://www.gfintegrity.org/</a></li> <li>— Cf. section 4 on ‘governance’ of these guidelines</li> </ul>

- ‘Direct proximity, regional and historical issues’ provide information on the likelihood of misrepresentation of origin by smuggling from neighbouring countries, countries with historical ties, or countries providing tax incentives.

Indicators	Information sources
<ul style="list-style-type: none"> <li>— The declared country of origin directly borders areas where illegal armed groups, public security forces or criminal organisations are involved in the mineral production and trade.</li> <li>— The declared country of origin has economic ties to conflict-affected and high-risk areas and their associated illicit mineral trade.</li> </ul>	<ul style="list-style-type: none"> <li>— United Nations Security Council Resolutions</li> <li>— Local Embassies, EU Delegations</li> <li>— Cf. section 4 on ‘conflict’ of these guidelines</li> </ul>
<ul style="list-style-type: none"> <li>— The country of origin’s tax policy leads to incentives to smuggle minerals to transit countries where material exports are not taxed, or taxed at much lower rates.</li> </ul>	<ul style="list-style-type: none"> <li>— OECD database for restrictions on exports of raw materials <a href="http://www.oecd.org/tad/benefitlib/export-restrictions-raw-materials.htm">http://www.oecd.org/tad/benefitlib/export-restrictions-raw-materials.htm</a></li> </ul>

- *Red flag: Minerals claimed to originate from a country that has limited known resources/stocks or expected production levels*

The below checklist sets out ‘Mineral and supply chain-specific issues’. As part of their due diligence exercise companies should in particular verify whether a claimed country of origin actually has known geological resources or expected production levels of the mineral concerned. Similarly, companies should reasonably assess whether the declared origin makes sense from an economic perspective — such as the presence of nearby and attractive markets.

<sup>(1)</sup> Information should be updated regularly, as appropriate.

Indicators	Information sources
<ul style="list-style-type: none"> <li>— The declared country of origin has limited known mineral resources or stocks, likely resources or expected production levels of minerals, as well as specific characteristics of minerals.</li> <li>— The declared country of origin has a large informal or artisanal and small-scale mining sector where associated risks are normally higher.</li> </ul>	<ul style="list-style-type: none"> <li>— British Geological Survey: <a href="https://www.bgs.ac.uk/mineralsuk/statistics/worldStatistics.html">https://www.bgs.ac.uk/mineralsuk/statistics/worldStatistics.html</a></li> <li>— USGS U.S. Geological Survey: <a href="http://minerals.usgs.gov/minerals/pubs/country/">http://minerals.usgs.gov/minerals/pubs/country/</a></li> <li>— National Geological Services in EU Member States</li> <li>— Geological Service of the alleged country of origin</li> </ul>

### B. Supplier red flags

- *Red flag: Where a company's suppliers or other known upstream companies operate in one of the abovementioned 'red-flag' locations of mineral origin and transit, or have shareholders or other interests in suppliers of minerals from one of the abovementioned 'red-flag' locations of mineral origin and transit and where company's suppliers or other known upstream companies are known to have sourced minerals from a 'red-flag' location of mineral origin and transit in the last twelve months.*

This supplier-specific information should mainly result from the data collected by companies through the implementation of their due diligence system. Once the identity of a company's supplier or other know upstream company is available, companies should seek to verify if the supplier is operating in a red-flag location by:

- Browsing internet for generic information on the said supplier/upstream company, including governments and international organisations reports (in particular UN Group of Experts reports) and reports from international and local media and civil society organisations more broadly.
- Checking corporate websites, and any available due diligence report (for instance, filing to the US Security Exchange Commission).
- Checking smelter/refiner lists of existing due diligence schemes; and once available the European Commission's forthcoming list of global responsible smelters and refiners;
- Browsing national register of commerce that can provide indications on the localisation of the headquarters and possibly operational subsidiaries.

Companies could also consult beneficial ownership registries where available, as well as country Extractive Industries Transparency Initiative (EITI) reports (which contain an increasing amount of information on beneficial ownership of companies involved in the extractive industry).

### C. Red flag circumstances

- *Red flag: Where anomalies or unusual circumstances are identified through the information collected by the company's management system that give rise to a reasonable suspicion that the minerals may contribute to conflict or serious abuses associated with their extraction, transport or trade.*

This operation-specific information is almost entirely the result of the data collected by companies through due diligence implementation.

Anomalies/unusual circumstances may take a variety of forms. The OECD Due Diligence Guidance Supplement on gold provides the example that if jewellery worn in a country typically is 14k (58 %), an offer claimed to be recycled jewellery with 90 % gold content should be questioned.

Other examples include a situation where an upstream supplier (e.g. a local exporter) is inexplicably able to increase the volume of exported material over a short period of time, and reports of frequent mineral resources theft in a region where the European importer has reason to believe he is sourcing from

Other examples of 'unusual circumstances' specifically with regard to gold (and other precious metals can be found in paragraph 111 of the Financial Action Task Force's Risk-based guidance for dealers in precious metals and stones <sup>(1)</sup> as well as in the Financial Transaction and Reports Analysis Centre of Canada's report on Risk-based approach workbook for Dealers in Precious Metals and Stones <sup>(2)</sup>, e.g.:

- A previously unknown customer requesting that a refiner turns gold into bullion.
  - Gold purity, weight, origin and value are misclassified on customs declaration forms.
  - Unlicensed persons or businesses producing and commercialising gold.
  - Bullion that has physical characteristics inconsistent with industry standards.
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<sup>(1)</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20Dealers%20in%20Precious%20Metal%20and%20Stones.pdf>

<sup>(2)</sup> <http://www.fintrac-canafe.gc.ca/guidance-directives/compliance-conformite/rba/rba-dpms-eng.asp>