Annual Report on the OECD Guidelines for Multinational Enterprises 2014
Responsible Business Conduct by Sector


*Chapter 2*

# Responsible business conduct by sector

*The 2011 update of the* Guidelines *added a new prospective dimension to the* Guidelines *aimed at encouraging the exercise of due diligence to prevent and mitigate potential adverse impacts in relation to particular products, regions, sectors or industries. This chapter reviews the sectoral work undertaken in implementing this proactive agenda over the June 2013-June 2014 period.*

During the reporting period, efforts were concentrated in giving practical meaning to due diligence in the extractives, agricultural and textiles sector. The application of the *Guidelines* to the financial sector was one of the main issues deliberated by adhering governments.

## Minerals in weak governance zones and conflict-affected and high-risk areas

The implementation of the OECD *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (Due Diligence Guidance) continues to be the flagship program that showcases the *Guidelines* in practice. Approximately 500 organisations, including governments, private sector companies, civil society, and other experts, are part of the implementation programme. As a result of this broad network of engaged and committed participants, the Due Diligence Guidance – though applicable to all minerals and regions globally – has gained wide acceptance particularly throughout the supply chains of tin, tantalum and tungsten (3T) and gold. The Due Diligence Guidance has become the leading international and industry standard for companies to meet the expectations of the international community and customers *vis-à-vis* minerals from conflict-affected and high-risk areas.[1] The Multi-stakeholder Steering Group, which governs the implementation programme, continues to be an effective structure, and possible model for other sectoral projects.

One of the most important activities of the implementation programme is awareness-raising about the Due Diligence Guidance, including concepts such as due diligence, risk assessment, mitigation, transparency and reporting. Key markets and stakeholders, notably many SMEs, have limited awareness of the Due Diligence Guidance and limited capacity to implement the 5-step due diligence framework and, in many cases, those operators are based in countries which are not yet adherents to the Due Diligence Guidance. However, given the global nature of mineral supply chains, the engagement of all actors in the supply chain is critical to cut the link between illegal armed activity and mineral trade. Since our last update in 2013, there has been growing support for the implementation of the Due Diligence Guidance outside the African Great Lakes region, notably by the government of Colombia and Colombian industry. Colombia provides a tangible example, albeit a work in progress, of how responsible sourcing can be implemented in conflict-affected and high-risk areas beyond the Great Lakes region.

Box 2.1. **About the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas**

- 34 OECD member countries and 9 non-members adhere to the Due Diligence Guidance, it has been integrated into national legislations in 3 countries in Africa's Great Lakes region (DRC, Rwanda and Burundi) and into the ICGLR's Regional Certification Mechanism that covers its 12 member states.
- Over 500 governments and organisations from industry and civil society, and over 360 participants took part in the most recent Multi-stakeholder Forum for Responsible Mineral Supply Chains held in Paris in May 2014.
- The implementation of the Due Diligence Guidance through industry programmes has given market access to an estimated 70 000 artisanal miners in the Democratic Republic of the Congo (DRC) and Rwanda, supporting about 350 000 dependants.
- The DRC has assessed conditions at more than 600 mine sites against OECD standards and industry programs now cover 1 000+ mines sites in the DRC, Rwanda and Burundi.

Turkey is equally keen to accelerate awareness and implementation of the Due Diligence Guidance in its gold supply chain, and Borsa Istanbul in mid-2014 agreed to translate the Due Diligence Guidance into Turkish. There has also been good progress in developing partnerships in China with appropriate associations. In May 2014, the Mandarin edition of the Due Diligence Guidance was launched during the 7th Multi-stakeholder Forum on Responsible Mineral Supply Chains in Paris. Participants from the government of the People's Republic of China and the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC) attended the Forum; CCCMC has voiced strong support for the Due Diligence Guidance and is open to partnering on training and outreach in China to reach its 6 000 members.

NCPs have continued to play an important role in promoting the Due Diligence Guidance. Of the 38 NCP reports received in 2014, 18 respondents (47%) affirmed that they or another government agency promote the *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*, while 22 of the 38 respondents (58%) affirmed that either they or another government agency promote the Due Diligence Guidance. Promotion of the Due Diligence Guidance ranged from making the document available on the NCP or government website, to translating the Due Diligence Guidance into the local language (Slovenia is the most recent adherent to do so), to actively promoting the Due Diligence Guidance through workshops, and information exchanges with embassies and key industry associations in the country. The OECD is aware that government agencies in some countries are promoting the Due Diligence Guidance but have not communicated this to their NCP colleagues. Close communication between key government departments involved in RBC is encouraged, as this will result in better coordination, effective implementation and uptake on the ground.

### *Impact*

The UN Group of Experts on the DRC has reported on increases in revenues and government capacity to regulate the mineral sector in the DRC and Rwanda as a result of due diligence efforts by the private sector and relevant stakeholders. In 2012, the UN Group of Experts on the DRC also reported that "the security situation at tin, tantalum and tungsten mine sites has improved and trade in tin, tantalum and tungsten has become a much less important source of financing for armed groups".[2] However, the most recent report from the group, which was issued in January 2014, estimates that 98% of the DRC's gold is smuggled out of the country, thus rendering it impossible to distinguish conflict-gold from clean gold. While this underlines that much more work needs to be done to effectively cut the link between fraud, violence and the mineral trade, a June 2014 report by the Enough Project[3] is encouraging:

> "since legislation began forcing companies to examine and begin cleaning up their supply chains, and since the Congolese military launched an initial restructuring, armed groups and Congo's army have ceded control of two-thirds of mines surveyed (67%) that produce tantalum, tin, and tungsten in eastern Congo, three of the four conflict minerals. Furthermore, the mines at Bisie and Rubaya, previously major revenue sources for deadly armed groups, are now nearly completely demilitarized."

### *Regional and national legal developments*

The Due Diligence Guidance is incorporated into the national legal frameworks and policies of the DRC, Rwanda and Burundi, and is part of the International Conference on the Great Lakes Region (ICGLR) Regional Certification Mechanism, covering all 12 ICGLR member states. The first ICGLR certificates were issued by Rwanda and the DRC in early 2014, highlighting the progress made in implementing supply chain due diligence through the ICGLR Regional Certification Mechanism and the Due Diligence Guidance.

The US Securities and Exchange Commission (SEC) furthermore recognises the Due Diligence Guidance as an international framework available to companies to meet their reporting obligations under the Dodd-

Frank Act.[4] Approximately 1,300 US-listed companies filed their first conflict-minerals reports with the SEC by 2 June 2014. 99% of companies sampled by Ernst & Young[5] that had filed their first conflict minerals reports in the US under the Dodd-Frank Act reported to be using the OECD due diligence approach for their reporting. This was reflected by many of the companies attending the May 2014 Multi-stakeholder Forum meeting who highlighted the central role of the Due Diligence Guidance in meeting their due diligence and reporting requirements.

In March 2014, the EU put forward its integrated approach on the responsible sourcing of minerals originating from conflict-affected and high-risk areas, including a draft regulation[6] and a host of accompanying measures referencing the Due Diligence Guidance extensively. The EU draft regulation is focused on voluntary self-certification by importers of minerals into Europe and the accompanying measures include for example a global list of smelters to provide visibility to those smelters that are compliant, public procurement incentives and financial support to SMEs.

### *Next steps*

Awareness-raising and capacity building remains a critical aspect of the implementation programme. In 2014 the focus will be on outreach in the Great Lakes region, China, Colombia and Turkey. We hope that similar progress will take root in India, which is an important market in gold. Capacity-building activities will include a "Train the Trainer" model to enable local stakeholders to perform awareness-raising of the Due Diligence Guidance on their own. Pilot trainings using this model will be carried out in the DRC but could be rolled out to other relevant areas. In addition, baselines assessments of gold supply chains and the level of awareness of due diligence in the DRC, Middle East and Colombia will further refine outreach needs and approaches. Finally, peer-learning and tool development will continue to be an important part of the implementation programme and these will be developed through the many working groups within the implementation programme on diverse issues such as the Artisanal and Small-Scale Mining Hub, audits, 3T commercial risk mitigation and the worst forms of child labour in mining.

## Financial sector

On the basis of research commissioned in 2013 it was concluded that few of the financial institutions surveyed use the *Guidelines* in the implementation of environmental and social due diligence as they are seen as too generic; many cited a lack of clarity on terminology, for example, the meaning of "business relationships" and "direct" links to adverse impacts in the context of the financial sector.

On the basis of these findings and further discussion within the WPRBC meetings recommendations were developed with regards to this proactive agenda project and four priority issues were identified in terms of the application of the *Guidelines* to the financial sector. In response to these issues the OECD developed three explanatory papers on the application of the *Guidelines* in the context of the financial sector.

A paper on the application of the term "business relationships" was developed and revised several times to incorporate the comments of the WPRBC. During the WPRBC meeting of 20 March 2014 the paper was approved by consensus for release.

The main findings of the paper were the following:

- The understanding that the *Guidelines* are voluntary for enterprises has implications for the use of key terms such as "application" and "scope" of the Guidelines. It is precisely since the *Guidelines* are recommendations and not legally enforceable that open-ended descriptions of what is meant by the term 'business relationships' can be used. Since the Guidelines are recommendations, and adhering countries are committed to their widest possible observance, a precise definition is not necessary.
- the *Guidelines* contain an expansive description of the term "business relationships". Since the Guidelines operate with non-exhaustive descriptions of key terms, their possible use or "scope" is not limited by sector, to certain kinds of enterprises or to certain kinds of business relationships. A minority shareholding can therefore in principle be seen as a business relationship under the Guidelines, even if this is not spelled out in the text of the Guidelines itself.
- Although observance of the *Guidelines* by enterprises is voluntary and not legally enforceable,[7] this does not reduce the expectations that the Guidelines should be observed. Financial institutions should consider the appropriate manner in which observance of the Guidelines could successfully be implemented in their business strategies.
- As concerns the issue of financial institutions in their role as minority shareholders, including sovereign wealth funds and central banks, due regard must be paid to the sector-specific characteristics and practical and legal concerns and restrictions. This is important for the understanding of how the *Guidelines* could be observed within the financial sector.

A paper on the meaning of "adverse impacts directly linked to financial sector operations, products or services by a business relationship" was released as a note from the OECD Secretariat during the 2nd Global Forum on RBC in June 2014.[8] The paper provides the OECD Secretariat's guidance on how the nature of a relationship to an adverse impact affects the type of response an enterprise is expected to exercise. It also provides more guidance on the meaning of "directly linked" in the context of the financial sector. This paper has not been approved by the WPRBC. It was released as the OECD Secretariat's note upon discussion in the WPRBC and will be discussed at a later stage of the project.

The third paper on the application of the *Guidelines* to sovereign wealth funds was developed by the OECD but was not released because the request for clarification on this issue by Norway was revoked.

A project proposal on the application of the *Guidelines* within the financial sector including a plan to build upon the initial exploratory work done by the OECD with regard to the aforementioned priority areas was submitted in response to a request to do so by the WPRBC. The project will, amongst other matters, include examination of risk-based due diligence approaches, the metrics and tools for risk prioritisation, the legal, policy and market contexts, and leverage in various financial services and associated business relationships. Specifically with regard to financial investments, the project will also examine due diligence in minority shareholdings, and how approaches may differ in accordance with the investment strategies (i.e. passive or active), and how to deal with investments in sovereign bonds. Currently funding is being sought to support this project.

A panel on responsible business conduct in the financial sector was organised during the 2014 Global Forum on RBC during which many of the issues above were discussed amongst industry experts.

Significant outreach efforts related to the *Guidelines* application in the financial sector were also undertaken.[9]

## Extractive sector stakeholder engagement

Following the inclusion of a new provision on stakeholder engagement in the updated *Guidelines*, adherents agreed to pursue a proposal by Canada and Norway for a proactive agenda project to develop a user guide for stakeholder engagement and due diligence in extractive industries. The user guide is intended to assist companies and a broad range of affected stakeholders in the extractive sector in understanding and implementing stakeholder engagement and due diligence along the full spectrum of activity, in particular at the operational and/or site-based level, to prevent and mitigate adverse impacts of extractive industries. It will also provide guidance on monitoring and evaluating stakeholder engagement to encourage putting in place systems or processes that recognise and take into account the interests of the stakeholders and provide an informed basis for decisions taken by an enterprise on its operations.

In March 2013 the WPRBC constituted an OECD-hosted multi-stakeholder Advisory Group, Chaired by the governments of Canada and Norway, to provide substantive input on the development of a user guide on stakeholder engagement and due diligence. The membership of the Advisory Group evolved over several months and today represents a diverse body of OECD and non-OECD countries (e.g. Canada, Colombia, the Netherlands, Norway, Tanzania), industry participants from the oil, gas, mining and metals sectors (e.g. AngloAmerican, BIAC, Canadian Association of Petroleum Producers, Chevron, China Chamber of Commerce for Metals, Minerals and Chemicals, International Council on Mining and Metals, Prospectors and Developers Association of Canada, World Gold Council,) and civil society organisations and other initiatives (e.g. International Work Group for Indigenous Affairs, OECD Watch, Oxfam Australia, Partnership Africa Canada, TUAC).

In November 2013 a request for proposals to lead the drafting of the user guide was distributed to contractors with expertise on stakeholder engagement in extractive industries. Relying on feedback from the Advisory Group on the submitted proposals, the Center for Social Responsibility in Mining (CSRM) was awarded the contract for the project. CSRM is housed at the Sustainable Minerals Institute of the University of Queensland, one of Australia's premier universities and possesses 12 years of experience in working with companies, governments, international organisations and communities on issues of stakeholder engagement in the extractive industries to advance sustainable development.

The Advisory Group, Chairs, CSRM, and the OECD convened by teleconference in January, February, March and in a face to face meeting on 27 June 2014 to discuss the guide. Initial discussion focused on the scope, audience and structure of the guide. The Advisory Group is providing feedback on the outline and drafts of the guide both through written commentary and during scheduled meetings.

A panel on stakeholder engagement and due diligence in the extractive industries was organised during the 2014 Global Forum on RBC. The panel was comprised mostly of speakers from the Advisory Group and generated discussion on some of the most challenging issues with regard to this subject to help support the drafting of the user guide.

A first draft of the user guide was circulated to the Advisory Group for comment in August 2014. Finalising the user guide will be an iterative process of drafting and redrafting by the contractor in close consultation with the Advisory Group. Once the feedback of the Advisory Group is integrated a draft will be circulated for broader public consultation and input from NCPs.

## Textile and garment sector supply chains

On 29-30 September 2014, the OECD and the ILO organised a joint high-level roundtable on responsible supply chains in the textile and garment sector to foster an open and constructive exchange of information among policy-makers, donors, the private sector, practitioners and CSOs, so as to strengthen implementation of textile and garment sector supply chain initiatives. The roundtable will provide an opportunity to further explore the desirability and feasibility of additional OECD due diligence guidance in this area.

The OECD may consider pursuing a project on the textile and garment sector which would focus on developing countries at particular risks of adverse impacts and facing challenges to implement responsible business conduct, with a view to explore the need and feasibility for developing practical due diligence guidance for the sector that brings added-value and is consistent with the *Guidelines* and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.

A session entitled “Rana Plaza: Responsible Supply Chains in the Textile and Garment Sector” was organised during the 2014 Global Forum on RBC.[10] This session featured participation by senior government officials, labour representatives and civil society and discussed progress as well as ongoing challenges in this sector since the Rana Plaza incident over one year ago.

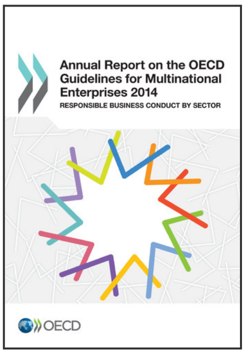
## Agricultural supply chains

The increased involvement of a wide range of investors in the agri-food sector can help meet the growing demand for agri-food products, but it also heightens the risks of adverse impacts, particularly in weak governance countries. In this context, the OECD and the UN Food and Agriculture Organisation (FAO) are developing a practical guidance to support businesses in undertaking due diligence and implementing existing principles for responsible business conduct along agricultural supply chains. A multi-stakeholder Advisory Group comprising OECD and non-OECD countries, institutional investors, agri-food companies and civil society organisations has been established in 2013 to help develop such guidance. This work is undertaken in close collaboration with the Committee on World Food Security.

The WPRBC agreed to establish an Advisory Group on responsible business conduct along agricultural supply chains on 27 June 2013. The Advisory Group held its first meeting on 16 October 2013. Terms of reference for developing the practical guidance were then approved by the Advisory Group on 10 February 2014. The first draft of the practical guidance was discussed at the second meeting of the Advisory Group on 26 June 2014. The OECD and FAO Secretariats will incorporate the comments received from members of the Advisory Group in a revised version of the guidance that will be presented to the WPRBC and the Working Party on Agricultural Policies and Markets in October and November 2014.

## *Notes*

1. See for example the International Tin Supply Chain Initiative (iTSCi) designed to implement the OECD Due Diligence Guidance for 3T minerals from mines to smelters; and the Conflict-Free Sourcing Initiative (CFSI) developed by EICC-GeSI to identify and assess the conflict-free status of 3Ts and gold smelters/refiners. Gold industry and trade organisations such as World Gold Council (WGC), London Bullion Market Association (LBMA), the Responsible Jewellery Council (RJC), EICC & GeSI and the Dubai Multi-Commodities Centre (DMCC) have already developed schemes and tools that operationalise the Supplement on Gold within their specific segments of the supply chain.
2. *www.securitycouncilreport.org/un-documents/democratic-republic-of-the-congo/*.
3. *www.enoughproject.org/reports/impact-dodd-frank-and-conflict-minerals-reforms-eastern-congo%E2%90%99s-war*.
4. The SEC final rule on Section 1502 of Dodd Frank Act repeatedly endorses the OECD Guidance as a "nationally or internationally recognized due diligence framework" for fulfilling Dodd-Frank requirements of conflict mineral due diligence. The SEC says that the OECD Guidance "satisfies our criteria and may be used as a framework for purposes of satisfying the final rule's requirement that an issuer exercise due diligence in determining the source and chain of custody of its conflict minerals" (full text available at *http://sec.gov/rules/final/2012/34-67716.pdf*).
5. EY Center for Board Matters: "Let's talk: Governance – first-year conflict mineral reporting reveals insights and surprises", Issue 6, June 2014.
6. Text of the EU draft regulation: *http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152227.pdf* and accompanying materials: *http://europa.eu/rapid/press-release_MEMO-14-157_fr.htm*.
7. The Guidelines Chapter I, paragraph 1.
8. See *http://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/GFRBC-2014-financial-sector-document-1.pdf*.
9. See Chapter 1 of this report for more details.
10. Further details are provided in Chapter 4 of this report.

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