ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

OECD Pilot Project in the Mining and Minerals Sector

Due diligence guidance for responsible supply chain management of minerals from conflict-affected and high-risk areas

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Overview

- Background on the project
- Outcomes of the expert meeting (Paris, 28 April 2010)
- Terms and definitions and Due Diligence Framework
- Identification of risks in the minerals supply chain
- Due diligence steps 1-5
- The way forward

Background

- The OECD pilot project on due diligence in the mining and minerals sector is part of the follow-up initiatives to the 2002 Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, providing for allegations of violations of the OECD Guidelines for Multinational Enterprises by companies operating or sourcing minerals from the DRC.

Background

- Since the publication of the UN report, the OECD has intensified efforts to promote responsible investment and trade, by fostering the integration of sustainable management of natural resources into core corporate strategies through due diligence procedures.

- It is against this background that in October 2009 the pilot project on due diligence in the mining and minerals sector was jointly approved by the OECD Development Assistance Committee and the OECD Investment Committee.

Outcomes of the expert meeting (Paris, 28 April 2010)

- The OECD hosted an expert meeting of the OECD-hosted working group on 28 April 2010 to review the draft due diligence guidance for responsible supply chain management of conflict minerals. OECD and African countries, industry and civil society organisations were well represented.
- The OECD-hosted working group is an open and inclusive platform in which home and host states, international organisations, industry and trade organisations, mining and metal companies, and civil society organisations, have committed to make substantial contributions according to their role and expertise by offering critical analysis, sharing their experience and deriving concrete solutions.

Outcomes of the expert meeting (Paris, 28 April 2010)

- Participants commended the draft guidance and recognised its added-value as it provides a global framework on responsible supply chain management of conflict commodities encompassing all actors involved, beyond mineral, country or regional specific initiatives.
- Participants adopted the due diligence framework structured around five procedural steps.
- Participants also highlighted that the draft guidance would play the key role of bringing together and clarifying standards for international corporate supply chain management, thus providing a coherent and comprehensive framework for specific implementation initiatives. Benefits include: reduced costs for the business community, harmonisation of approaches and the provision of clear expectations of corporate behaviour across the entire supply chain.

Terms and definitions

- "Supply chain" refers to the system of all activities, actors and services necessary for moving the mineral from the site where the mineral is sourced downstream to the end consumer.

- "Due diligence" means the steps companies should take to ensure they do no harm to themselves (reputational and liability risks) and third parties directly or indirectly affected by their operations or by the relationships of upstream actors in the supply chain.

Terms and definitions

- The rationale for the draft guidance is that companies are expected to perform due diligence for responsible supply chain management of minerals from conflict-affected and high-risk areas in order to discharge their corporate responsibilities and prevent or manage the adverse impacts associated with the mineral extraction, trade and handling in these areas.

- Minerals extracted, traded and handled in conflict-affected and high-risk areas are associated with financing parties to the conflict, corruption, financial crime, fraudulent misrepresentation of country of origin and chain of custody, tax evasion and violations of human rights, labour rights and international humanitarian law.

Terms and definitions

- Downstream companies face “concurrent risks” in their supply chain because of the presence of upstream factors which by their nature have higher risks of generating adverse impacts.

- Risk-based due diligence in the supply chain refers to the company efforts to clarify its chain of custody and the qualitative circumstances involved in the mineral extraction, trade and handling in order to identify and manage actual, potential or perceived risks of harm associated the activities and relationships of all upstream actors with a view to avoiding adverse impacts.

Due Diligence Framework

- The draft due diligence guidance puts forward a framework for companies to manage risks in the supply chain structured around the procedural steps that companies should take to:
- (i) identify the factual circumstances that companies should consider while trading, handling, refining, manufacturing or selling minerals originating from conflict-affected and high-risk areas;

Due Diligence Framework

- (ii) detect actual, potential or perceived risks by assessing the factual circumstances against applicable standards;

- (iii) devise sound risk management and mitigation strategies as appropriate, including improvement plans and step-wise improvement indicators.

Due diligence steps 1-5

- The process for conducting due diligence in the supply chain includes the following steps, which are expected of all companies regardless of their position in the supply chain:

1. Strengthen company management systems
2. Identify facts and assess risks in the supply chain
3. Develop and implement a risk management strategy
4. Independent third party audits (as appropriate).
5. Disclose and report on supply chain due diligence practices

Due diligence steps 1-5

- This guidance makes a distinction between the roles and due diligence requirements of companies handling, trading and processing raw *mineral concentrate* and those using *refined metals*.

- The companies handling mineral concentrate include local traders from country of origin, export houses, international concentrate traders and processors. It calls on these companies to establish internal controls based on the minerals in their possession and carry out risk assessments of suppliers as well as the circumstances of mineral extraction, trading and handling.

Due diligence steps 1-5

- The guidance calls on companies using refined metals to conduct an in-depth review of the due diligence process on their suppliers (in particular, the companies handling mineral concentrates) and assess whether the due diligence measures put forward in this guidance are adhered to by them. These companies include metal market traders, component manufacturers and brand end users.

- This distinction reflects the fact that internal control mechanisms based on tracing minerals in a company's possession are generally unfeasible after processing, with refined metals entering the consumer market as small parts of various components in end products. By virtue of these practical difficulties, companies using refined metals should establish internal controls over their suppliers and focus their risk assessments thereon.

Step 1: Strengthen company management systems

a. Create and clearly commit to a supply chain policy for minerals originating from conflict-affected or high-risk areas.

b. Structure internal management systems to support supply chain due diligence.

c. Establish a system of internal controls over the mineral supply chain, including

(i) *for companies handling mineral concentrate*:

setting up a system that generates chain-of- custody documentation;

Step 1: Strengthen company management systems

- *(ii) for companies using refined metals:*

  Introduce a system that generates documentation setting out the following data: identification of all actors in the refined metals supply chain; identification of all mineral processors, the processors' suppliers and the countries of origin and transport for the minerals in the supply chains of each processor.

d. Strengthen company engagement with suppliers.

Step 2: Identify facts and assess risks in the supply chain

- Principles for fact and risk assessment:
  - Independence of company risk assessors
  - Competence of assessors
  - Evidence-based approach
  - Clear evidentiary standards
- Key Questions which risk assessment should answer
  - Know your suppliers
  - Know the circumstances of mineral extraction, trading, handling and export

Step 2: Identify facts and assess risks in the supply chain (companies handling mineral concentrate)

- Desk-based research
  - Collect and review *standards of care*
  - Studying profiles on potential conflict-affected countries of origin, neighbouring and transit countries
  - Making an initial map of the factual circumstances of the company’s supply chain(s)
  - Preliminarily evaluate the risks
- On the ground investigation
  - Interviews
  - Review of documentation
  - Site visits

Identify facts and assess risks in the supply chain (companies using refined metal)

- Risk Assessment for companies using refined metals looks very different than risk assessment for companies handling mineral concentrates:
    1. Supply Chain Mapping
    2. Reviewing evidence of due diligence by smelters and their suppliers
    3. Carry out spot checks

Step 3: Report findings and implement a risk management strategy

- Risk management means exclude risk by excluding a supplier or mitigate risk by continuing engagement with a supplier but using mitigation techniques
  - Improvement plan
  - Step-wise improvement performance indicators
  - Capability training

Step 4: Independent Third – Party Audit

- Principles of audits:
  - Independence
  - Competence
  - Accountability
- Audit activities
  - Audit preparation
  - Document review
  - In-site investigations
  - Audit Conclusions

Step 5: Strengthen company engagement with suppliers.

- Companies need to report publicly on the company supply chain due diligence in order to generate public confidence

The way forward

- It was agreed that the OECD-hosted working group in the mining and minerals sector would undertake the following work to inform the final draft of the guidance:

- Elaborate consolidated standards and develop clear risk mitigation strategies in areas of artisanal mining & mining conditions, involvement of parties to the conflict and corruption & financial crime;

- Refine and clarify the auditing recommendations in the guidance, and undertake a feasibility study on the institutionalisation of audits;

- Determine the applicability of the guidance to other minerals, in particular gold, elaborate any additional recommendations if necessary and identify specific choke point in the gold supply chain.

The way forward

The 2009 UN Group of Experts on the Democratic Republic of the Congo has documented how the exploitation and trade in gold sustains conflict by funding illegal armed groups implicated in egregious abuses of human rights and violations of humanitarian law. Cross-border smuggling of gold in the Great Lakes Region prevents those countries from benefiting from the their natural resources, and gold from the region has become associated with risks of corruption and financial crime.

- Determine the applicability of the guidance to minerals of industrial origin and elaborate any additional recommendations if necessary to ensure the draft guidance applies to supply chain management of minerals of industrial origin from conflict-affected and high-risk areas.

Thank you.

For further information on this project:

www.oecd.org/daf/investment/mining