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FROM SHOULD-HAVE TO MUST-HAVE

**How Due Diligence Regulation is Changing Responsible
Sourcing and Mining Standards Adoption**

Latest Developments in Due Diligence Regulations



1. What is supply chain due diligence?
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There are over a dozen mandatory supply chain due diligence regulations directly or indirectly impacting companies in the minerals value chain globally. Some of them are already in effect whilst some are still in the process of being passed. How can companies make sense of this complex landscape of due diligence requirements and understand which voluntary standards and industry schemes enable compliance?

1. What is supply chain due diligence?

Many companies in the minerals value chain are already undertaking due diligence in their supply chain on a voluntary basis. And the key guiding frameworks, which they are using, comprise:

- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
- OECD Guidelines for Multinational Enterprises
- UN Guiding Principles on Business and Human Rights

All of these frameworks define due diligence as a *proactive and reactive, continuous improvement process to identify, assess and mitigate ESG or human rights risks in the supply chain.*

Specifically, they recommend:

1

Setting up a management structure for supply chain due diligence including public commitments, policies and processes

2

Identifying and assessing risks in the supply chain on an ongoing basis

3

Mitigating risks

4

Externally reporting on due diligence actions taken

2. Guiding due diligence frameworks translated into practical actions

The guiding frameworks for due diligence recommend a number of concrete, overlapping due diligence steps.

OECD Five-Step Framework for Risk-Based Due Diligence	OECD Guidelines for Multinational Enterprises	UN Guiding Principles on Business and Human Rights
Step 1: Establish strong company management systems	1: Embed responsible business conduct into policies and management systems	UNGP 11-15: Foundational principles; UNGP 16: Policy commitment; UNGP 19: Integrate findings of risks assessments in relevant internal functions and processes, and take action; UNGP 23: Take into account issues of context
Step 2: Identify and assess risks in the supply chain	2: Identify and assess adverse impacts in operations, supply chain and business relationships	UNGP 17: Conduct ongoing human rights due diligence; UNGP 18: Identify and assess actual and potential; adverse human rights impacts in operations and business relationships; UNGP 19: Integrate findings of risks assessments in relevant internal functions and processes, and take action
Step 3: Design and implement a strategy to respond to identified risks	3: Cease, prevent or mitigate adverse impacts 4: Track implementation and results 6: Provide for and cooperate in remediation when appropriate	UNGP 17: Conduct ongoing human rights due diligence ; UNGP 19: Integrate findings of risks assessments in relevant internal functions and processes, and take action; UNG 20: Track effectiveness of response; UNGP 22: Remediation; UNGP 24: Prioritise actions to prevent/mitigate most severe/irremediable impacts
Step 4: Carry out independent third-party audits of smelter/refiner's [choke points/points of transformation] due diligence practices	Not applicable though supplier audits should be part of risk assessment	Not applicable though supplier audits should be part of risk assessment
Step 5: Report annually on supply chain due diligence	5: Communicate how impacts are addressed	UNGP 17: Conduct ongoing human rights due diligence; UNGP 21: Communicate externally about how human rights impacts are addressed

3. Latest developments in due diligence regulation and their practical impacts on companies

Over the last decade, there has been an increase in due diligence action by companies, which in part reflects the emergence of due diligence regulation globally. Since 2012, at least 7 human rights due diligence laws were passed and in the last 5 years the scope has clearly broadened to managing ESG risks in the supply chain including those related to environmental performance.

Due diligence regulation has been particularly coming fast in Europe both at the national and regional level over the past 5 years. The EU is now setting the bar for due diligence regulation globally as companies from across sectors are being impacted either directly or indirectly depending on the scope of applicability. There are multiple legislative processes in the EU, including but not limited to:

- A new proposal for a **Sustainable Corporate Due Diligence Directive** that will mandate ESG due diligence horizontally across sectors was published by the European Commission in February 2022;
- There is ongoing implementation of the **EU Conflict Minerals Regulation** with the European Commission issuing its first implementation report in January 2023;
- The **EU Batteries Regulation** is expected to be agreed end of this summer and includes supply chain due diligence requirements for companies that place batteries on the market including those related to GHG emissions and recyclability in the form of a battery passport;
- Methodologies and metrics for **mandatory ESG reporting** are being developed as part of a review of EU non-financial reporting rules;
- Technical screening criteria are being established for them as part of the **EU Taxonomy Regulation**, which provides a classification system for environmentally sustainable economic activities for investors and companies.

It’s also notable that only 6 of the laws refer to the guiding frameworks for due diligence referenced above, which makes companies subject to a patchwork of different due diligence requirements. Furthermore, only 2 of the laws incorporate the possibility to formally recognise existing industry schemes whilst the progress to formalise this recognition is still ongoing. This includes the EU Conflict Minerals Regulation, which is currently in the process of recognising 6 industry schemes (including Responsible Minerals Initiative Responsible Minerals Assurance Process, London Bullion Market Association and Responsible Jewellery Council Code of Practices) to enable EU-based importers of tin, tantalum, tungsten and gold achieve through third party assurance scheme participation.

Due diligence regulation overview and analysis (non-exhaustive)

Regulation	Region	Year	Scope	Formal Recognition of Industry Schemes for Compliance	Recognised Industry Schemes	Reference to Voluntary Due Diligence Standards		
						OECD DDG	OECD Guidelines for MNEs	UNGPs
EU Conflict Minerals Regulation	Europe	2017	Human Rights	✓	→	✓	X	X
EU Batteries Regulation	Europe	2022*	ESG	✓	→	✓	X	X
Sustainable Corporate Due Diligence Directive	Europe	2024-25*	ESG	X	N/A	X	✓	✓
Corporate Sustainability Reporting Directive	Europe	2022*	ESG	X	N/A	X	✓	✓
EU Taxonomy Regulation	Europe	2020	ESG	X	N/A	X	✓	✓
German Supply Chain Due Diligence Act	Europe	2021	ESG	X	N/A	X	X	X
French Duty of Vigilance Law	Europe	2017	ESG	X	N/A	X	X	X
UK Modern Slavery Act	Europe	2015	Human Rights	X	N/A	X	X	X
Netherlands Child Labour Due Diligence Act	Europe	2022*	Human Rights	X	N/A	X	X	X
Norwegian Transparency Act	Europe	2021	ESG	X	N/A	X	✓	X
Australia Modern Slavery Act	Australia and New Zealand	2018	Human Rights	X	N/A	X	X	X
California Transparency in Supply Chains Act	US	2012	Human Rights	X	N/A	X	X	X
US Dodd Frank Act Section 1502	US	2012	Human Rights	X	N/A	✓	X	X
Uyghur Forced Labour Prevention Act	US	2021	Human Rights	X	N/A	X	X	X

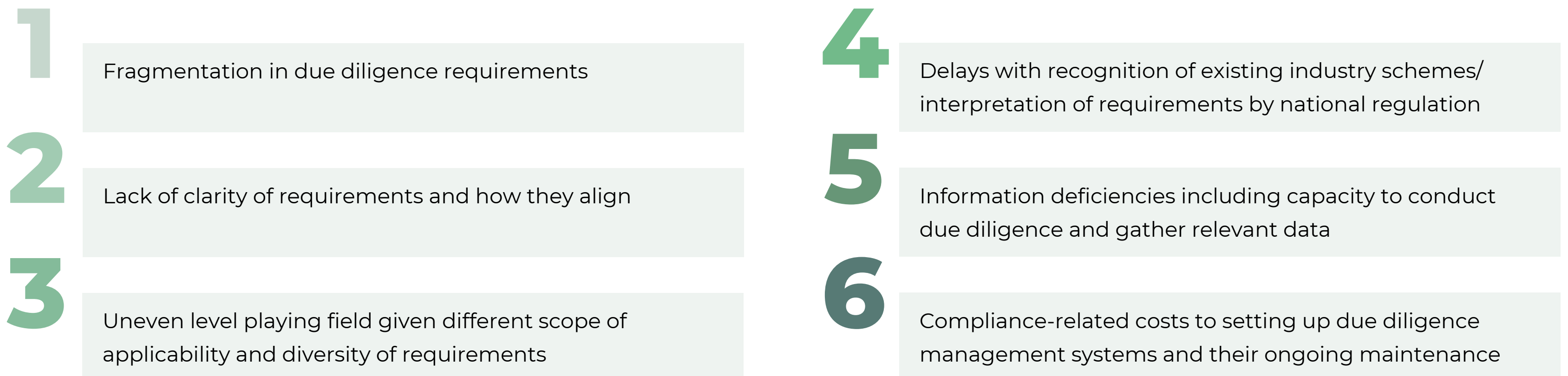
* Expected ✓ Yes X No → In progress N/A Not applicable

4. Practical impacts on companies

In terms of the practical impacts growing due diligence regulation is having on companies:

- It introduces specific and measurable requirements for due diligence that companies are subject to either directly and indirectly; for example, some of the due diligence regulation only applies to downstream or midstream companies in the minerals value chain though its effects will be felt by actors further down the value chain as the requirements flow down to them;
- The scope is gradually extending to cover more companies and sectors;
- Extraterritorial applicability, for example, as companies generating a certain revenue in a country or region, though headquartered in another jurisdiction, are subject to the rules;
- Expanding ESG scope beyond human rights to cover environmental related topics.

This is also creating challenges including:



5. What's next?

Companies can take a number of practical steps to respond effectively to the combination of regulatory and market requirements.

1

Understand how due diligence regulation is impacting a company directly (through direct scope of application or indirectly through customer requirements)

2

Understand how compliance can be achieved through adoption of recognised, voluntary standards and participation in industry schemes by reviewing existing voluntary commitments and actions against regulatory requirements

3

Establish a due diligence management system that responds to and anticipates future regulatory and market requirements for due diligence

4

Establish a mechanism to effectively engage with and positively shape voluntary standards and industry schemes such that they help companies achieve regulatory compliance

6. How can RCS Global Group help?

RCS Global Group is the leading Supply Chain Mapping, Responsible Sourcing, Responsible Mining, ESG Performance and Traceability solutions provider, focusing on natural resources value chains. We have more than 15 years of experience delivering globally for the leading corporations from all tiers of the value chain, from mining to the OEMs.



Get in touch

If you would like to speak to RCS Global regarding improvements to your supply chain due diligence approach, please contact us at any point at contact@rcsglobal.com.