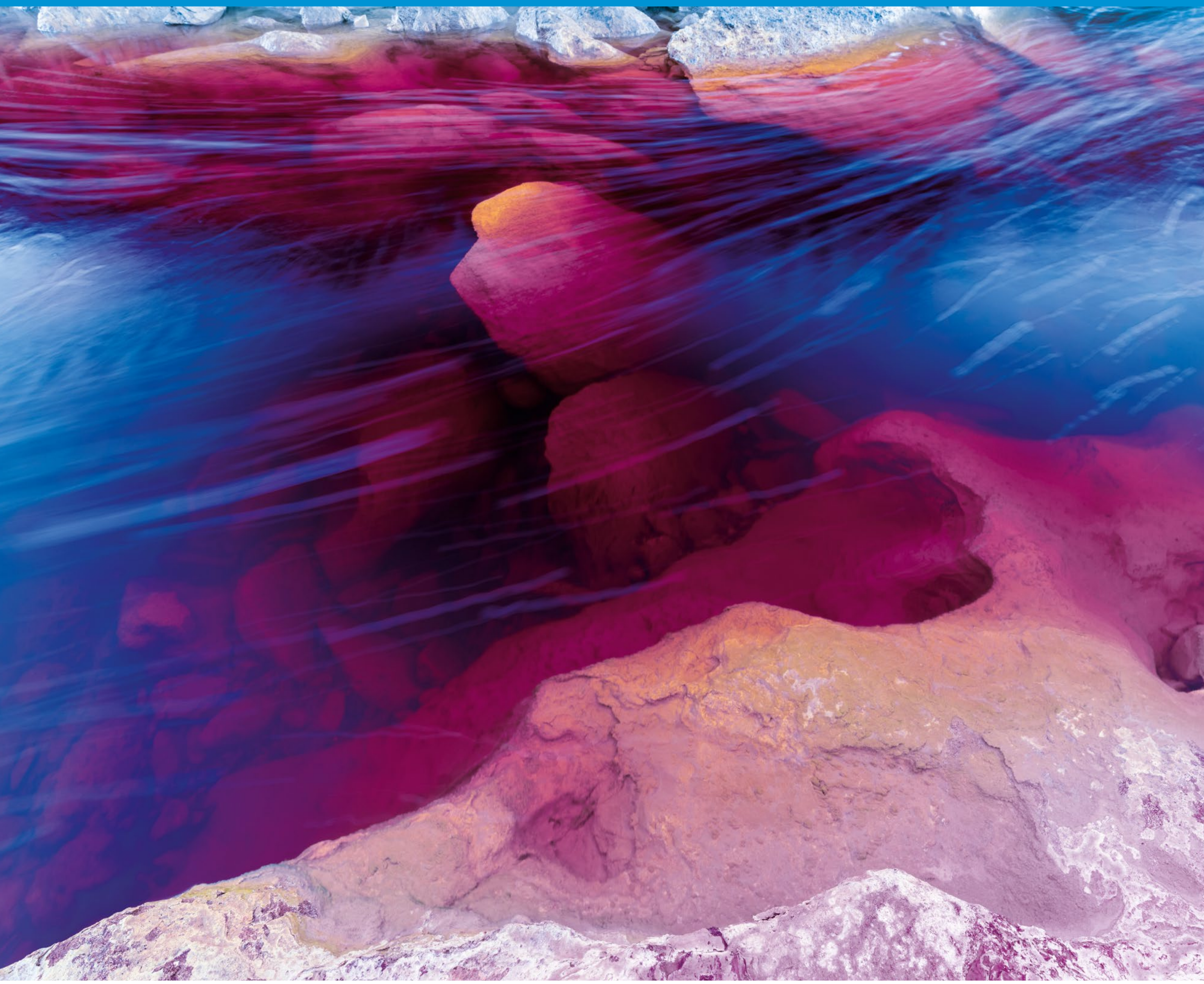
Supplying responsibly

Towards a clean metals supply chain



Supplying responsibly

Towards a clean metals supply chain

Demand for ethically produced resources will help prevent supply chain abuse and enable mining companies operating in tightly regulated jurisdictions to compete on a level playing field. This brief guide outlines how miners and smelters can prepare for enhanced supply chain scrutiny.

New and expanded legislation governing various aspects of raw materials sourcing, coupled with concerns about security of access to critical minerals, is forcing a rethink of mining supply chains.

Recent legislative developments, such as the EU's Conflict Minerals Regulation, track stakeholder demands for thorough supply chain due diligence showing products have been made using materials and processes that conform to the highest environmental, social and corporate governance (ESG) standards.

New and rejuvenated deposits under development in Europe, North America and Australia are being constructed as exemplars of sustainable, clean and transparent sourcing, and have the added benefit of being close to major manufacturing hubs.

While this "clean" jurisdiction approach allows downstream consumers to avoid mounting legal and reputational risks associated with other areas, it is in the interests of the mining and metals industry to strive for higher standards and greater transparency across the board, to avoid future shortages, bottlenecks and price volatility.

Critical raw materials

The EU has drawn up (and continues to add to) a list of critical raw materials, deemed essential to the bloc's economic security and prosperity and an Action Plan on Critical Raw Materials to ensure EU businesses have unrestricted access to these products.
The key aspects of this action plan are as follows:

- **Increasing domestic supply**

  The plan aims to reduce Europe's dependency on third countries, diversify supply from primary and secondary sources and improve resource efficiency and circularity.

  The purpose of this initiative is to foster Europe's transition to a green and digital economy and bolster Europe's resilience and strategic autonomy in key technologies needed for this transition.

- **More local processing capacity**

  Increasing the number of mines within the EU will not boost local raw materials supply on its own.

  The European Commission acknowledges there is a shortage of processing capacity in Europe, which is a barrier to making better use of domestic resources.

  As part of its Action Plan, the European Commission has pledged to work with Member States to identify mining and processing projects in the EU that can be operational by 2025.

  Many new mining projects in the UK and Europe are being developed with integrated refining capacity to bridge potentially risky gaps in the supply chain and avoid raw materials being shipped out of Europe for processing.

- **Promoting responsible sourcing**

  The EU is not aiming for self-sufficiency, which would be impractical, so its measures to boost domestic minerals supply will be complemented by efforts to promote responsible sourcing worldwide.

  The European Commission has committed to developing strategic international partnerships to secure the supply of critical raw materials from outside Europe. Pilot partnerships with Canada, interested countries in Africa and countries bordering the EU are due to start in 2021.

  The European Commission accepts the need to support legitimate mining operations, including artisanal miners, in resource-rich regions blighted by conflicts and human rights abuses, while ensuring all suppliers are held to similar standards of responsibility to help level the playing field for EU operators.

  There is also an incentive to ward off substitution. Greater legal and reputational risks associated with importing the four main 'conflict minerals' – tin, tantalum, tungsten and gold (3TG) – and other minerals such as cobalt commonly produced in conflict zones into Europe has prompted end users to try to engineer out their reliance on these raw materials.

  Risk avoidance, through dodging countries and via substitution, is not what the OECD envisaged when it produced responsible sourcing guidelines that form the basis of new ethical approaches to due diligence.

  Rather, it advocates a risk management approach, working with suppliers to improve due diligence and support the whole mining industry to raise standards.

Conflict minerals

Among the most significant recent developments in raw materials sourcing legislation was the entry into force of the EU's Conflict Minerals Regulation **(EU 2017/821)** on 1 January 2021. This new regulation concerns imports of 3TG into the EU.

The purpose of the legislation is to ensure that these key natural resources, used in electronic devices, renewable energy technologies, the automotive, aerospace and medical device industries, jewellery and various industrial applications, which are often mined in places affected by armed conflict, are sourced responsibly.

Authorities in EU Member States are expected to check importers comply with the regulation and to request and examine documents and audit reports. They can also carry out spot inspections of an importer's premises.

The UK's departure from Europe on 31 December 2020 meant the EU Conflict Minerals Regulation missed being automatically incorporated into the UK statute books. However, since the UK was involved in the creation of the OECD guidance on conflict minerals, it is expected to adopt the measures set out in the EU regulation as a minimum.

The EU Conflict Minerals Regulation has become law in Northern Ireland where it was adopted as an annex to the Northern Ireland protocol.

In contrast to the US' Dodd-Frank law, which since 2010 has required all Securities and Exchange Commission (SEC) reporting companies to report annually on the use of any minerals from the Democratic Republic of the Congo (DRC) and surrounding countries in their supply chain, the EU law currently focuses on just 3TG.

The EU Conflict Minerals Regulation casts its net wider than Dodd-Frank, however, in that it covers all source countries which may be affected by conflicts and applies to all businesses importing over a certain volume into the EU.

Supplying responsibly
How to manage risks

While existing minerals sourcing legislation and stakeholder pressure places the due diligence burden on importers and some downstream consumers of these materials, as well as institutional mining finance providers, there are clear and growing implications for mining companies.

Miners can support the responsible sourcing efforts of their customers. Companies that have badged their products as "clean", "sustainable" and/or "conflict-free" need to be able to justify these labels.

Steps miners and smelters can take to underpin their customers' due diligence processes and promote transparency include:

› **Map a route to market**

Mining companies, particularly those that lose sight of their products at the point of sale to an intermediary, need to be aware of the risks inherent in supply chains.

Today, very few mines get built without an offtaker first being lined up to buy a substantial/majority share of the output. This helps mining companies obtain financing and plan their mine-to-market strategies.

If the offtaker is a trader, or if surplus material ends up on the open market, mining companies can ask questions about who their buyers plan to supply.

Violations can occur at any point along the supply chain between the miner and the end user, including modern slavery, child labour or other human rights abuses, environmental damage, biodiversity loss, water pollution, money laundering, bribery, fraud or the funding of illegal armed conflicts.

Even if the material was "clean" when it left the mine, mining companies risk their routes to market being compromised if their intermediaries are not transparent about their activities or fail to adhere to good ESG standards.

This risk is elevated if any part of the supply chain sits outside the EU.

Under the EU Conflict Minerals Regulation, Dodd-Frank, and any commercial supply agreements that contain relevant ESG provisions, importers of material into the EU will cascade down the responsible sourcing requirements to miners and smelters by assessing the due diligence procedures they have in place.

Pursuant to the EU Conflict Minerals Regulation, the European Commission intends to publish and regularly update whitelists of "responsible" smelters and refiners located across the world.

Ascertain ownership of intermediaries

Supply chain mapping requires mining companies to ensure they know exactly who owns the operations at various links of their upstream and downstream supply chains (including any companies that supply them with services, equipment or materials) and where they are located.

Just because a physical supply chain avoids conflict-affected or high-risk areas (CAHRAs), or is based entirely within the EU, that does not guarantee every operator in the supply chain will be completely free from links to unethical or illegal activity.

This risk is particularly, but not exclusively, prevalent in the gold market

The EU has produced a non-exhaustive list of CAHRAs, most of which are in Africa, South America, Asia and the Middle East.

However, the conflict status of a country or region can change very quickly, and a legitimate business can suddenly find itself in the midst of an armed conflict, military coup or human rights disaster overnight.

Avoid unnecessary complexity

While mining companies based in the UK and the EU are largely free from suspicion under the EU Conflict Minerals Regulation, this is not a reason to be complacent.

Mineral and metal supply chains can be lengthy and complex and unscrupulous operators use this complexity to their advantage, obscuring the source of the metal or mineral by inserting extra links.

With European countries aiming to become recognised suppliers of 3TG (and potentially other minerals in future), this increases the risk that these countries could be used to mask illegal or unethical sourcing activity.

Mining companies and mineral processors should therefore keep their supply chains as simple as possible and ensure they are able to prove their products have not been smuggled into their country of operation.

Prepare responsible credentials

While every customer will have their own due diligence processes, increased regulation of supply chains is a step towards standardising the approach.

Mining companies and processors can get a step ahead by establishing one comprehensive set of questions and answers (with supporting evidence) that they can share with purchasing organisations and potential partners/investors.

Having information (including policy documents, certificates and other verifications) prepared should save suppliers (and purchasers) time and money, and allow them to showcase strong ESG credentials.

It is also important to take a consistent approach to customers. Giving different treatment to different customers may raise concerns about transparency.

Establish a practical ESG strategy

Being a responsible supplier should be just one aspect of a wider ESG strategy.

A good ESG strategy should be practical, measurable, reviewed regularly and communicated to supply chain partners.

As part of their ESG strategies, mining companies should also consider signing up to independent external standards.

Industry bodies and NGOs have introduced various codes and principles that set minimum standards for ESG, covering everything from environmental stewardship, to equitable distribution of benefits and transparent accounting practices.

Companies need to think carefully about which set of standards to adopt, based on their business model and risk exposure.

Work with experts

Increasingly, end users are requesting evidence that physical checks and audits have been carried out to provide proof of compliance with ESG standards proffered by suppliers.

Although audits and physical checks can be daunting, they are becoming necessary aspects of compliance and are an opportunity to share best practice ideas, improvements and efficiencies.

It is typically more cost-effective and efficient to partner with third-party experts than trying to do all the desk-based and in-person validation checks in-house.

Expert advisers can help mining companies identify the information and evidence they need to satisfy auditors, customers and regulators that their operations are clean, ethical and compliant.

Be prepared to make changes

Feedback from auditors, lawyers, purchasers and regulators may require some changes to a supplier's operations, affiliations or reporting procedures.

Mining companies, even those whose operations have been designed to the highest contemporary standards, must be flexible and willing to adapt to new customer and societal expectations as well as legal requirements if they are to maintain their status as responsible suppliers.

Looking ahead

Increased regulation is a boost for mining companies with operations in Europe and other conflict-free regions, where high standards have previously been a drag on competitiveness.

However, improvements in sourcing practices need to be industry-wide to deliver long-lasting benefits to the mining and metals sector as a whole.

Governments are well aware that the ethical agenda needs to be balanced against providing access to critical raw materials supply at competitive costs. Strategic raw materials need to be sourced ethically, but they do need to be sourced.

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Our integrated cross-departmental mining team advising companies and their funders in relation to mining projects across the world.

We are particularly well-represented in Europe, Africa, Russia and the CIS, but our geographical footprint continues to expand and we also advise clients with interests in North America, Asia and Australasia.

The team is recognised as a leading practice in the small-to-mid cap part of the sector, with particular expertise in alternative mining finance on which we publish a comprehensive biennial guide.

We are also recognised as thought leaders on topics including ESG and sustainability in the mining industry and supply chain transparency in respect of conflict minerals and wider manufacturing operations.

We advise on most of the mining projects in the UK – including copper and tin projects in Cornwall; gold in Northern Ireland and Scotland; and coal in Wales and England.

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