

MINING WITH MEANING

➤ PROTECTING HUMAN RIGHTS AND THE ENVIRONMENT ↗

IN THE SHIFT TO CLEAN ENERGY

France's Duty of Vigilance law and the supply chains of the minerals used for the energy transition



*Sherpa

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Founded in 2001, Sherpa has set its mission to protect and defend victims of economic crimes by drawing on the power of the law, and to fight against the new forms of impunity associated with globalization. Our vision is to help build a world where law is in service of a more mindful globalization. To achieve Sherpa's mission, our team of legal experts and lawyers draws on four interdependent lines of action: research and studies, litigation, advocacy, and capacity building. The organization's work has contributed to the compensation of communities affected by economic crimes, to historic court judgements targeting multinational corporations and their directors, and to groundbreaking legislation, such as the Law on the Duty of Vigilance.

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Note on the term "vigilance":

The term "due diligence" is interpreted by businesses with respect to their existing practices (audits, reporting etc.), as opposed to the much broader scope initially envisaged by corporate accountability regulations. This is why we use the term "vigilance", which is also in accordance with the spirit of the obligations under the French law on the Duty of Vigilance.

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SHIFTING TO CLEAN ENERGY

Introduction



To combat global warming and achieve the climate goals of the Paris Agreement, greenhouse gas (GHG) emissions must be reduced¹. This requires changes such as lowering energy consumption, but also adopting clean energy sources and a new approach to moving from A to B. The result is an influx of renewable energies and e-mobility that has intensified the production of solar panels, wind turbines, energy storage and grid connection systems — technologies that are increasingly mineral-intensive.

But the extraction and supply of the minerals needed for the transition to a low-carbon world can have a damaging impact on the environment and on human rights. The *Business and Human Rights Resource Centre* lists over 160 allegations of human rights and environmental abuses leveled against the 37 largest companies involved in mining and using minerals needed for the energy transition². One NGO for example reports the use of child labor in the supply chains of cobalt — a mineral used in electric battery cells³.

In the wake of the coronavirus crisis, which has amplified calls for a world more respectful of the environment, two months before the entry into force of the European Conflict Minerals Regulation, and three years after the adoption of France's "Duty of Vigilance" law, Sherpa has undertaken to understand how French companies involved in the energy transition identify and prevent human rights and environmental abuses in their value chains of minerals used for the development of clean energy sources.

1 — MINERALS USED FOR THE ENERGY TRANSITION

To implement an ambitious climate policy based on the Paris Agreement goal⁴ to limit global warming to 1.5°C, there needs to be a large-scale shift to renewable energies and low-carbon modes of transport. However, manufacturing solar panels, wind turbines, batteries, electric engines and other technologies needed for this energy transition requires some 17 minerals, according to the World Bank.

Other minerals are sometimes used, but in smaller proportions. They include a category of minerals called rare earths such as neodymium, which is used for certain types of wind turbines, but also gallium for various types of PV solar panels, and platinum for certain energy storage technologies. While the pace of technological progress makes it difficult to compile a complete list of all the minerals used for the energy transition, the supply of some of these is already critical. Proof of this is the addition, in September 2020, of minerals including lithium and cobalt, to the European Union's list of Critical Raw Materials⁵.

The transition to clean energy and the resulting increased manufacture of wind turbines, solar panels, electric vehicles, etc. could increase demand for certain minerals. According to the 2-degree scenario projections of the World Bank, demand for lithium for instance could increase by over 400%. [→ see graphics p.6](#)

1. Under the Paris Agreement on the climate, global warming must not exceed 2°C above pre-industrial levels, is capped at 1.5°C

2. Business & Human Rights Resource Centre, Transition Minerals Tracker [→ see](#)

3. Amnesty International, Time to recharge, November 2017 [→ see](#)

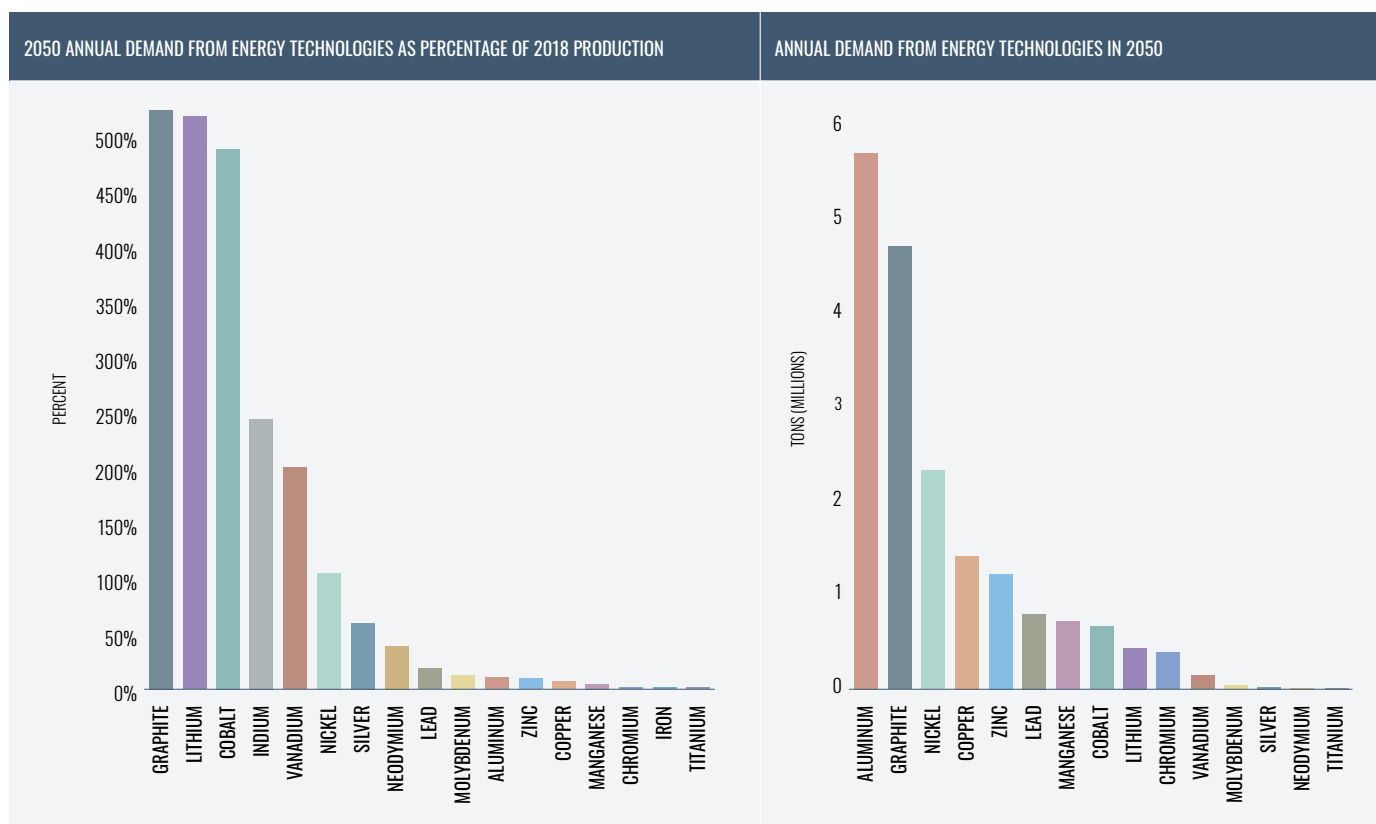
4. See above

5. Every three years the European Commission updates the list of critical raw materials for the European economy by reviewing the new needs of clean energy technologies [→ see](#)

→ MAPPING MINERALS WITH RELEVANT LOW-CARBON TECHNOLOGIES

	ALUMINUM	CHROMIUM	COBALT	COPPER	GRAPHITE	INDIUM	IRON	LEAD	LITHIUM	MANGANESE	MOLYBDENUM	NEODYMIUM	NICKEL	SILVER	TITANIUM	VANADIUM	ZINC	TOTAL
WIND																		10
SOLAR PHOTOVOLTAIC																		8
CONCENTRATED SOLAR POWER																		2
HYDRO																		8
GEOTHERMAL																		6
ENERGY STORAGE																		11

→ PROJECTED ANNUAL MINERAL DEMAND UNDER 2DS* ONLY FROM ENERGY TECHNOLOGIES IN 2050, COMPARED TO 2018 PRODUCTION LEVELS



*2-degree scenario / Source: The World Bank, International Bank for Reconstruction and Development: "Minerals for Climate Action: The Mineral Intensity of the Clean Energy Transition", 2020

Higher demand for these raw materials is not limited to the renewable energies. The digital sector — particularly the manufacture of devices and components — is also affected⁶. The same is observed in the arms trade⁷. For example, the Rafale French fighter aircraft contains minerals including titanium, aluminium, copper, manganese, nickel, cobalt, tantalum and tungsten⁸. Multiple sectors are concerned by higher demand for certain minerals and, by extension, by the human rights and environmental abuses that go with meeting this demand.

This increased demand for minerals used for the energy transition could, however, be limited by policy measures to encourage society to reduce its energy consumption. Research could also play a role to curb demand for minerals, and recycling these minerals should be developed more extensively. These are the very solutions advocated by civil society. In September 2020, in addition to the update to the EU list of Critical Raw Materials⁹, the European Commission unveiled its action plan for securing the supply of these critical raw materials¹⁰. Over 230 civil society organizations, community platforms and academics¹¹ responded by urging the European Commission to rethink its strategy for supplying the resources Europe will need to achieve its energy transition. Indeed, the policy put forward by the Commission involves more mining for minerals. Doing so could destroy ecosystems that are vital to climate regulation, and give rise to social conflicts in the Global South. Its strategy should focus more on reducing energy and resource consumption in Europe, by putting greater emphasis on decreasing demand and increasing recycling.

But until then, the mining of these minerals could intensify. If we want to achieve an energy transition that is sustainable — that is, without human rights or environmental abuses — then the human rights and the environment of the countries where these minerals are extracted must be protected. With this objective in mind, companies that are involved in mining and using these minerals must take adequate measures to identify risks and prevent these abuses.

6. Moreover, the GHG emissions of the digital sector are set to increase sharply: according to the special report of the Intergovernmental Panel on Climate Change (IPCC) published in October 2018, under the scenario of global warming limited to 1.5°C the digital sector could have a direct carbon footprint of up 8% in 2025

7. European Commission, Raw materials in the European defence industry, 2016 → [see](#)

8. Irsem, the strategic research institute of the French Ministry of Defence, *La criticité des matières premières stratégiques pour l'industrie de défense* [Critical strategic raw materials for the defence industry], November 2019 → [see](#)

9. See above

10. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Critical Raw Materials Resilience, *Charting a Path towards greater Security and Sustainability*, September 2020 → [see](#)

11. Open letter Civil society concerns on EU critical raw materials plans → [see](#)

2 — HUMAN RIGHTS AND ENVIRONMENTAL ABUSES IN THE SUPPLY CHAINS OF MINERALS USED FOR THE ENERGY TRANSITION

The use of minerals in the energy transition value chain may be linked to human rights and environmental abuses. Extracting minerals is a chemical-intensive process, and the environmental standards in some of the countries where mining companies operate are often ill-adapted, not complied with and/or not monitored. This leaves ecosystems defenseless against heavy pollution, and local communities vulnerable to contamination¹². This is how, in January 2019, the Brumadinho disaster occurred in Brazil when the tailings dam of the Córrego do Feijão iron ore mine collapsed, leaving 115 dead and 248 missing. The event also released millions of tons of tailings, contaminating an entire region and causing an environmental disaster¹³. Vale, the company operating the dam, had already been involved in a similar disaster: in November 2015, the Fundão dam in Mariana containing tailings from the neighboring iron ore mine, also burst, spilling millions of cubic liters of highly-toxic waste into the environment, killing 19 people and causing the worst environmental damage on record¹⁴. Given the scale of these operations, the risks could not have been ignored and should have been identified to avoid a humanitarian and environmental crisis of this magnitude from reoccurring.

Mining also consumes vast amounts of fresh water¹⁵, and extraction can sometimes take place in water-stressed areas like the Centenario-Ratones salar (salt desert) in Argentina — a region rich in lithium reserves, and where many companies are licensed to operate. This has been the case for Eramet since 2019¹⁶. Mining in areas like these can have severe consequences on the availability and quality of water for the surrounding ecosystems, farms and local communities. For example, in the *Salar del hombre muerto* in Argentina, local communities blame lithium mining activities for contaminating the streams used for their own needs, but also for their crops and livestock¹⁷. Such operations are also harmful to the environment and ecosystems, and therefore in violation of the rights of local communities, such as the right to health, because of the resulting air and water pollution.

The supply of minerals for the energy transition can also be connected to instances of corruption between the mining company, the government and armed groups of mineral-rich countries. The most emblematic case of this is in the Great Lakes Region, and in particular the Democratic Republic of Congo. This region with abundant mineral deposits also includes some of the poorest countries in the world. The embezzlement of funds from mining these minerals together with violations committed by certain companies and governments allow armed groups to exploit these minerals. The extraction of minerals needed for the energy transition can, therefore, give rise to conflicts and violate the human rights of local communities and residents. Hence the term “conflict minerals”.

Mining these minerals can also undermine the right to Free, Prior and Informed Consent (FPIC)¹⁸. The United Nations Declaration on the Rights of Indigenous Peoples states that States wishing to obtain approval for projects that affect indigenous peoples’ right to land, territory and resources must consult and cooperate with them in order to obtain their free, prior and informed consent¹⁹. This principal is also enshrined in Convention 169 of the International

12. See journalist Guillaume Pitron’s investigation *The Rare Metals War* (translated by Bianca Jacobsohn), Melbourne/London/New York, Scribe Publications, 2020

13. France 24; Toll in Brazil dam disaster rises to 115 dead, 248 missing; 02/02/2019 → [SEE](#)

14. BBC News; Brazil dam burst: Six months on, the marks left by sea of sludge, 06/05/2016 → [SEE](#)

15. International Council on Mining & Metals; “Water management in mining: a selection of case studies”, 2012 → [SEE](#)

16. Eramet; “Projet Lithium: un nouveau territoire de développement” → [SEE](#)

17. Friends of the Earth Europe & Global 2000; “Lithium: nécessité et urgence d’introduire de nouveaux processus de collecte et de recyclage”, 2013 → [SEE](#)

18. Verisk Maplecroft and UN Global Compact, *Indigenous peoples, Human Rights and Business Dilemmas Forum* → [SEE](#)

Labour Organization on the rights of indigenous and tribal peoples. Even if the state is acting in the interest of promoting renewable or low-carbon energy, it must still do so in a way that respects human rights. The United Nations Special Rapporteur on the rights of indigenous people highlights that the formats of consultation do not always provide communities with adequate information in a timely manner, nor protect them from excessive influence²⁰. Under the FPIC principles, the communities concerned are to receive all the relevant information on the proposed project, its future development, and the expected benefits, damage and risks, all in a language they understand²¹.

Therefore, where companies in the extractive industry can be directly linked to environmental and human rights abuses, they must apply vigilance measures to identify the risks associated with their mineral value chains serving the energy transition.

3 — VIGILANCE IN MINERAL SUPPLY CHAINS SERVING THE ENERGY TRANSITION

Minerals used for the energy transition must be supplied without prejudice to human rights and the environment. It is therefore vital that companies exercise their duty of vigilance in order to prevent human rights and environmental abuses that exist in the fossil fuel industry and in other sectors of the economy from continuing or occurring. This duty of vigilance is imposed by France's Duty of Vigilance law that applies to parent and instructing companies²². In 2017, on the heels of a campaign led by a coalition of members of parliament, trade unions and NGOs like Sherpa, France adopted legislation that requires certain large corporations to identify and prevent serious risks, as well as environmental and human rights abuses caused by their operations, those of their subcontractors or their suppliers. The measures imposed by the Law are derived by the United Nations Guiding Principles on Business and Human Rights, and by various OECD due diligence guides on responsible business conduct. These guidelines are non-binding: businesses simply commit to abide by them with no risk of sanction for negligence. Under the Duty of Vigilance law, companies are legally bound to implement mitigation and prevention measures for violations committed, failing which companies may face legal action.

The recommendations of the OECD guidelines are approved by governments and addresses responsible business behavior. A total of 37 OECD member states and 11 other countries have committed to applying these guidelines. One of these guides is the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas²³. It outlines practical recommendations for companies likely to use any type of mineral or metal from a conflict area. Its purpose is to improve supply chain transparency and ensure corporate engagement in the mineral sector so that companies adopt responsible practices, respect human rights and disassociate from any potential conflicts.

In 2017, the European Union adopted a Regulation to manage the import of minerals originating from conflict-affected and high-risk areas (known as the "Conflict Minerals Regulation") based on the recommendations of this OECD guidance²⁴. The purpose of this Regulation for the European Union — one of the biggest importers of these raw materials — is to ensure that the

19. United Nations, Resolution 61/295 adopted by the General Assembly, Articles 19 and 32

20. UNDRIP, United Nations report of the Special Rapporteur on the rights of indigenous peoples, *Report on extractive industries and indigenous peoples*, A/HRC/24/41, 2013

21. For a complete list of the elements to be included in the information, see The International Labour Office, *Indigenous & Tribal Peoples' Rights in Practice, A Guide to ILO Convention No.169*, p. 63, 2009

22. Law no. 2017-399 of 27 March 2017 on the Duty of Vigilance of parent and instructing companies, Official Gazette of the French Republic (JORF) no. 0074 of 28 March 2017

23. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition, OECD Publications, 2016, Paris → [see](#)

24. 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

extraction and trade of minerals do not fuel human rights abuses by financing armed groups. Accordingly, European companies that import above a certain limit of tin, tantalum, tungsten and gold are required to demonstrate their implementation of the OECD OECD guidance recommendations.

While the European Conflict Minerals Regulation is a step forward in legislation, it still presents some shortfalls. Firstly, it only covers the four “3TG minerals”: tin, tantalum, tungsten and gold). Secondly, the Regulation only addresses companies “upstream” of the minerals and metals supply chain, i.e. from extraction site to smelters or refiners. Companies located “downstream” of this supply chain, i.e. after smelters or refiners to the final product, are not concerned by the Regulation’s obligations. Rather, they are invited to voluntarily apply the Regulation. In other words, the Regulation only applies directly to EU-based importers of tin, tantalum, tungsten and gold — whether minerals, concentrates or metals.

France’s Duty of Vigilance law is far more comprehensive. It imposes on parent companies of groups exceeding the threshold of 5,000 employees in France, or exceeding the threshold of 10,000 employees worldwide, the obligation to exercise cautious and diligent conduct. This duty of vigilance requires them to employ and disclose *“reasonable vigilance measures that adequately identify risks and prevent serious violations of human rights and fundamental freedoms, health and safety of persons and the environment”*. These measures must be applied to the activities of the subsidiaries, subcontractors and suppliers with whom an established business relationship is maintained. Unlike the European Conflict Minerals Regulation, the French law targets the entire value chain. Furthermore, these vigilance measures must be formalized in a “vigilance plan” that is publicly disclosed in the company’s annual report, as must be a separate report on its effective implementation. These vigilance measures include, but are not limited to: risk mapping, procedures for assessing the value chain, mitigation and preventive actions, alert mechanisms and a framework for ensuring that measures are effectively and efficiently implemented. Companies subject to the Law that are found in non-compliance may be held accountable by law on the basis of the impact of their activities abroad.

In our report we seek to understand how companies that mine minerals used for the energy transition, or whose value chains use these minerals, identify risks and prevent serious violations of human rights and fundamental freedoms, health and safety of persons, and the environment. We therefore focused our analysis on whether companies comply with the obligation to set out vigilance measures, examining only the content of the vigilance plans published by the companies in fulfilment of this obligation by which they are bound. The report examines the vigilance plans disclosed by these companies, and therefore only considers what the companies have chosen to integrate into their vigilance measures within the meaning of the law. As such, it is not based on discussions held with the companies. Finally, this analysis applies solely to the content of vigilance plans; it does not consider the implementation of vigilance plans, nor include any observations in the field to assess their implementation.

Furthermore, our analysis of the measures implemented does not aim to discourage companies from making the transition from fossil fuels to a 100% renewable source of energy. The fact is that fossil fuels sustain the ongoing exploitation of mines, deposits and quarries which

violate human rights and harm the environment. This is compounded by the climate crisis which in turn leads to further human rights abuses due to its negative impact on food security, healthcare, access to water, migration, etc.

This objective of this report therefore is to ensure that companies that mine or use minerals for developing renewable and low-carbon energies are exercising their duty of vigilance to avoid ongoing human rights and environmental abuses in the fossil fuel industry and in other sectors of the economy. The energy transition must be sustainable, with respect for human rights and the environment in order to meet its goals of a greener and more just world.

SHIFTING TO CLEAN ENERGY

Methodology



Created by Sherpa together with CCFD-Terre Solidaire, the [→ vigilance-plan.org](https://vigilance-plan.org) website aims to expose opaque information concerning economic agents, list the companies that must comply with the Duty of Vigilance law, and publish, as appropriate, their vigilance plan.

In this report, we reviewed the vigilance plans of nine companies subject to the law, and whose activities are connected to the energy transition. The companies in question extract minerals used to develop renewable energies, or use these minerals, directly or indirectly, in their supply chains. More specifically, we reviewed the vigilance plans of two companies involved in mining minerals used to develop renewable or low-carbon energy, and the vigilance plans of seven companies that develop renewable or low-carbon energies by using these minerals that are in their supply chains.

Sherpa's Vigilance Plans Reference Guidance²⁵ presents France's Duty of Vigilance law as understood by the organization, and provides tools for stakeholders who wish to familiarize themselves with the law. We reviewed the vigilance plans of these nine companies using this guide, research from the minerals industry, and in consultation with partner organizations specialized in the sector.

We analyzed in depth the vigilance measures presented in the vigilance plans of each of the nine companies by assessing the measures for preparing the vigilance plan, and the content of the vigilance measures on the extraction and use of minerals used for the development of renewable energies.

→ PRESENTATION OF THE NINE COMPANIES REVIEWED IN THE REPORT AND THEIR ACTIVITIES AS PRESENTED IN THEIR 2019 ANNUAL REPORT.

A detailed analysis of the vigilance plans of each of the nine companies are available on each company's page on the website → vigilance-plan.org

IMERYS	ERAMET	ELECTRICITÉ DE FRANCE (EDF)	ENGIE	NEXANS
MINERAL EXTRACTION	MINERAL EXTRACTION	RENEWABLE ENERGY GENERATION	RENEWABLE ENERGY GENERATION	TECHNOLOGY USED FOR THE ENERGY TRANSITION
<p>Imerys is the “world leader in mineral extraction and transformation for industry”. Specialized in the minerals needed for lithium-ion batteries for electric vehicles, the Group “offers a full range of minerals to serve the automotive industry”.</p>	<p>Eramet describes itself as “an important player in an essential energy transition”. The Group has a special focus on the extraction of lithium — “a critical metal essential to energy and digital transition”. The company states that its minerals can be used for “new mobility solutions, [and the] development of renewable energies requiring energy storage”.</p>	<p>EDF indicates that it is “resolutely dedicated to the energy transition”. The Group generates renewable energy via “onshore and offshore wind power, solar power and hydroelectric power”.</p>	<p>ENGIE’s strives to be “a leader in the energy transition”. The Group claims to be “the second-largest hydropower operator and the largest combined wind and solar power operator in France”.</p>	<p>Nexans claims to be a “key player in the global energy transition”. The Group is specialized in the cable industry and specifically in cable solutions for high-voltage projects (offshore wind farms, subsea interconnectors and land high voltage), and the renewable energies industry.</p>
→ DETAILED ANALYSIS	→ DETAILED ANALYSIS	→ DETAILED ANALYSIS	→ DETAILED ANALYSIS	→ DETAILED ANALYSIS

TOTAL S.A.	BOLLORÉ	PSA AUTOMOBILES SA	RENAULT
TECHNOLOGY USED FOR THE ENERGY TRANSITION	TECHNOLOGY USED FOR THE ENERGY TRANSITION & TRANSPORTATION OF MINERALS USED FOR THE ENERGY TRANSITION	TECHNOLOGY USED FOR THE ENERGY TRANSITION	TECHNOLOGY USED FOR THE ENERGY TRANSITION
<p>Total says it “supports the energy transition”. The Group also states that it is “increasing its production capacity of renewable electricity” through its subsidiaries Total Quadran, Total Solar International and Total Solar Distributed Generation. Total also claims that it “develops batteries using nickel, lithium-ion and primary lithium-based technologies” through its subsidiary Saft.</p>	<p>Bolloré develops and manufactures Lithium Metal Polymer (LMP®) batteries which use several raw materials, such as lithium. The Group also has mineral import/export businesses (through Bolloré Logistics).</p>	<p>PSA Group manufactures electric and hybrid cars and aims “to become a major player in electric mobility” by “supporting the energy transition”. It has announced the launch of 12 fully-electric models by the end of 2021.</p>	<p>Renault manufactures electric and hybrid cars. One of the group’s priorities is the electric vehicle and will electrify over half of its range by 2022. It also reports that “since 2017 it has prioritized its work with the cobalt sector, as this mineral is used in electric batteries”.</p>
→ DETAILED ANALYSIS	→ DETAILED ANALYSIS	→ DETAILED ANALYSIS	→ DETAILED ANALYSIS

Analysis of the vigilance measures of the nine plans



The vigilance plan constitutes the documented evidence of the vigilance exercised by the company; it presents the measures the company has established and must effectively implement. In doing so, companies can identify risks and prevent serious violations of human rights and fundamental freedoms, health and safety of persons, and the environment. For the vigilance plan and its implementation to be effective and consistent with the obligations of the Duty of Vigilance law, companies are required to clearly map the risks specific to their activities in their vigilance plan. Based on these risks that have been identified with sincerity, companies must clearly present the measures taken to address these risks. The vigilance measures and the risk map — the cornerstone of the vigilance plan — on which these measures should be based are therefore closely correlated.

However, the vigilance plans reviewed only included the company's overall vigilance methodology. The measures presented in the plans are not always clear and seem to be based on pre-existing tools, whereas the law calls for new behaviors to establish and implement precise and suitable measures.

1 — SOME COMPANIES CONFUSE VIGILANCE WITH REPORTING

The companies reviewed must be consistently vigilant in the way they identify and prevent risks and serious violations. To this end, the vigilance plan, which formalizes the company's compliance with this obligation, must be publicly disclosed immediately and updated as regularly as possible as risks, violations and the management thereof evolve. This is not a straightforward reporting exercise. The obligation of vigilance has been described as a best-efforts obligation. It also refers in Articles 1240 and 1241 of the French Civil Code which refer to the obligation of care and diligence, i.e. the actions of the reasonable person. Duty of vigilance must therefore be understood as an obligation to act with care and diligence — i.e. reasonable conduct — and not just once a year. It must be renewed constantly as risks and violations evolve. This approach is perfectly aligned with the tools and objectives of civil liability to which the law explicitly pertains and which serves to prevent or halt damage, or remedy any damage caused²⁶. This is what distinguishes the Duty of Vigilance law from basic reporting and compliance exercises.

Yet the vigilance plans reviewed make numerous references to the Non-Financial Performance Report (DPEF) — a CSR reporting obligation requiring certain companies to disclose information on their labor, social and environmental accountability. On the one hand, some companies failed to prepare and formalize their vigilance plan, presenting it instead in the company annual report as a standalone table with cross-references to paragraphs in the annual report, and especially to the Non-Financial Performance Report. This is how Imerys presents its vigilance plan, which cross-refers the various “components” of the vigilance plan, such as the “ESG risk mapping process”, to several pages on the company annual report, making it part of the Non-Financial Performance Report. Moreover, the different sections to which Imerys' vigilance plan cross-refers systematically make new cross-references to other parts of the report. Presenting the vigilance plan in the form of table does not meet the accessibility requirement due to the systematic use of cross-references which, moreover, are not hypertext links. Under the accessibility requirement, cross-referencing to other chapters

in the annual report or to other documents prepared by the company should be limited. Instead, the requirements of accessibility to information is impeded by making information difficult to follow.

On the other hand, the companies that did prepare and formalize their vigilance plan make frequent cross-references to the Non-Financial Performance Report. This is the case of Groupe Bolloré: its vigilance plan states that the company integrated *“the mitigation measures implemented for all of these CSR and duty of care risks in its statement of non-financial performance [DPEF]”*. However, this opposite methodology should apply. Accordingly to the French Commercial Code, *“where applicable, the statement may cross-refer to information mentioned in the vigilance plan provided for in Article L. 225-102-4”²⁷*. Such confusion could result in vigilance measures being interpreted as just a CSR reporting measure rather than the vigilance measures required by law.

It would seem, therefore, that companies use pre-existing tools and mechanisms and have not developed new practices which could be seen as suitable vigilance measures. Therefore, use of multiple cross-references in the vigilance plans to the DPEF — a reporting exercise with which companies are well versed — indicates that some companies confuse vigilance with reporting.

2 — THE RISKS ASSOCIATED WITH THE USE OF MINERALS ARE OFTEN IGNORED

Some of the companies reviewed use certain minerals for their activities linked to the energy transition. Yet most of them make no mention of the risks and serious human rights and environmental abuses resulting from the extraction and use of these minerals. Indeed, the risks in the vigilance plans are often identified without making a direct connection to the company's activity and potential impact. This is the case of the EDF Group, which identifies the risks of its Group scope and non-Group scope according to three areas (health & safety, the environment, and human rights). The risk map of the Group scope simply identifies "salient" risk categories as "risks due to working conditions" without providing any additional details. Risks are not identified in enough detail in proportion to companies' operations and the location of their sites and entities around the world.

This is even more surprising given that some of these companies have already been accused of human rights and environmental abuses. The company Eramet for example describes itself as "an important player in an essential energy transition", particularly through its lithium, manganese and nickel mining activities, allowing "new mobility solutions [and the] development of renewable energies requiring energy storage". One of its subsidiaries, Comilog, was faced with allegations and taken to court for violations that supposedly took place at its manganese mining site in Moanda in south-east Gabon. The company was accused of dumping the water used for purifying manganese minerals into the surrounding environment, and is believed to have wrongfully terminated the contracts of 600 employees²⁸. Yet in its risk map for this particular site, Eramet makes no mention of the risk of serious environmental damage, water pollution, health and housing violations, nor any mention of the risk of threats to a healthy environment and its protection, and to worker rights, particularly through the termination of employment contracts.

Most of the risk maps reviewed therefore have an insufficient level of detail and do not clearly present the risks associated with using certain minerals. When these risks are mentioned, it is often with respect to "conflict minerals", in which case they are addressed in a short paragraph or in a few sentences stating that suppliers are required to ensure "responsible procurement". In this case, vigilance plans go no further than mentioning that the companies in question have joined certain multi-stakeholder initiatives. But as explored below, such initiatives do not exempt the company from identifying and assessing the risks associated with the presence of conflict minerals in its value chain, nor from presenting how the measures taken as part of these multi-stakeholder initiatives are suitably adapted to prevent and mitigate risks and serious violations.

→ RISKS ASSOCIATED WITH THE PRESENCE OF NEODYMIUM IN CERTAIN WIND TURBINES

Some offshore wind turbines use permanent magnets, the manufacture of which requires neodymium²⁹. Numerous studies have raised the alarm on the conditions in which this mineral is mined, especially in China which accounts for 90% of the world's neodymium production. The report *Human Rights in Wind Turbine Supply Chains*³⁰, reveals that extracting neodymium involves mixing it with uranium and thorium which is then dumped into the surrounding environment after use. Every ton of neodymium produced is believed to generate between 9,627 and 11,893 m³ of poisonous gases, 73.6 m³ of acidic water and 0.3 cubic ton of radioactive waste. In Baotou, a city in northern China, a lake of over 120 km² of toxic sludge and waste has formed. The area's groundwater has become radioactive, the air contains high concentrations of poisonous substances, and the surrounding flora, fauna and people have been contaminated. The lake's poisonous water is also mixing with the Yellow River — one of China's main waterways³¹.

While not all offshore wind turbines are made with permanent magnets requiring neodymium³², there are companies, like Siemens Gamesa Renewable Energy (SGRE), that are believed to use magnets containing neodymium³³. SGRE is a supplier of EDF Group and ENGIE's offshore wind turbines. Indeed, in June 2020, EDF announced the construction of a new offshore wind farm in the English Channel (La Manche) off the coast of Fécamp, with SGRE supplying the 71 wind turbines³⁴. ENGIE also operates offshore wind farms. The Dieppe Le Tréport and Yeu Noirmoutier wind farms are currently under development and should also be equipped with SGRE wind turbines³⁵.

The vigilance plans of EDF and ENGIE should therefore identify the risks and violations that may arise from supplying the materials needed to manufacture these wind turbines. For example, they could identify the risk of poisonous substances spilling into the channel and surrounding environment, and the risk of water contamination, health and housing violations, and environmental damage as a result.

29. Ademe (French Agency for Ecological Transition), *Avis Technique – terres rares, énergies renouvelables et stockage d'énergie*, October 2020 → [S88](#)

30. Action Aid and Somo, *Human rights in wind turbine supply chains*, 2018 → [S88](#)

31. *Idem*

32. See above

33. Meeschaert AM, *Les chaînes d'approvisionnement en métaux rares Enjeux pour une transition énergétique durable*, 2019, p.28 → [S88](#)

34. EDF; "EDF Renouvelables, Enbridge et wpd lancent la construction du parc éolien en mer de Fécamp" → [S88](#)

35. Energies de la mer; "Parc éolien en mer Dieppe Le Tréport", 2019 → [S88](#)

3 — VIGILANCE MEASURES ARE VAGUE AND UNRELATED TO THE RISKS ASSOCIATED WITH USING MINERALS

The vigilance plans must include adequate actions developed by the companies for mitigating risks and preventing serious violations, and in line with the identified risks and potential violations. The measures they entail must then be implemented by the companies and monitored to ensure they are properly deployed and produce tangible results on the ground.

However, as highlighted, the risk maps do not have a sufficient level of detail and only cover general risks, such as *“risks related to working conditions”*, that are not specific to the business of the company.

The actions plans set out in the vigilance plans which include measures to mitigate risks and prevent violations are therefore not detailed enough either. Like the risk map, the measures to mitigate risks and prevent violations are provided as a general overview. Basic examples of measures to address *“human rights and fundamental freedoms, health and safety of persons and the environment”* are often presented.

This is particularly the case for ENGIE which, with respect to risks and environmental damage, states that it prepares *“an action plan that integrates all these environmental aspects in consultation with local stakeholders”*, without elaborating on the contents of this plan. Other vigilance plans state that measures for mitigating risks and preventing serious violations are implemented by each of the company’s entities, as is the case for Imerys: *“[e]ach mining operation is required to have a Life of Mine Plan (LOM Plan) and create a detailed Five-Year Mine Plan”*. But the company goes no further than mentioning these measures and action plans; their content is not presented, and as such compliance with the requirements of the law cannot be ensured.

Most of the vigilance plans simply specify the “standards” that form the basis of the vigilance measures and action plans to be implemented. The companies falling into this category explain that their vigilance measures and action plans draw from the company’s ethical codes, CSR charters, human rights charters, business codes of conduct, etc. That said, the contents of these codes are not presented either, and the companies do not explain how the content of these standards relate to the adapted vigilance measures. Drawing on the company’s internal commitments does not constitute “suitable actions” within the meaning of the law insofar as they are too vague and fail to individually address the identified risks and violations, or are unrelated to measures to ensure their actual implementation and effectiveness.

Yet some of the companies reviewed have been accused of human rights and environmental abuses and could, therefore, present precise and tangible measures to mitigate and prevent the recurrence of similar serious violations.

→ RENAULT AND COBALT

Groupe Renault manufactures electric vehicles using minerals such as cobalt. It asserts that “since 2017 it has prioritized its work with the cobalt sector, as this mineral is used in electric batteries.” Following the report released in November 2017 entitled *Time to Recharge* by NGO Amnesty International³⁶, which led to allegations of the use child labor in Renault’s supply chain, the Group has committed to address the risks associated with its cobalt supply chain. It also reports to have written a policy on the “supply chain for minerals and materials originating from conflict-affected and high-risk areas”, specifying that “[t]his policy provides suppliers and their subcontractors with details of products that may contain such minerals, and the Group’s expectations.” Renault should nevertheless endeavor to present in what way this policy includes suitable vigilance measures, and provide indicators for evaluating the measures taken to prevent the risks associated with potential supplying conflict minerals from materializing.

Groupe Renault could also specify whether its “policy on the supply of [...] minerals from conflict-affected and high-risk areas” is based on the European Conflict Minerals Regulation. This Regulation requires certain companies that import tin, tantalum, tungsten and gold to put in place risk assessment processes in order to demonstrate that they are guarding against the possibility of their supplies contributing to armed conflicts. However, as mentioned above, the European Regulation does not address all the companies in the value chain of these minerals. It only applies to mineral or metals importers based in the EU, and not to importers of manufactured goods. Duty of vigilance nevertheless requires Renault to manage the traceability of minerals used so that it can implement adequate vigilance measures.

4 — REFERENCES TO MULTI-STAKEHOLDER INITIATIVES

Not enough detail is provided on the measures aimed at mitigating risks and preventing violations associated with certain minerals in the majority of the action plans presented in the vigilance plans.

That said, some companies specify that they have taken measures to prevent risks and serious violations that may occur in their value chain. More often than not, the companies in this case reference multi-stakeholder initiatives, such as the Responsible Mineral Initiative (RMI), aimed at building a responsible supply chain of minerals originating from conflict-affected or high-risk areas. Yet in their vigilance plans, these RMI member companies fail to present the measures implemented under this initiative, and do not explain how they are applied to appropriate vigilance actions. For example, the vigilance plan of PSA Group states that “[t]he Conflict Minerals Reporting Template that is provided by the RMI is requested for the suppliers using the 3TG metals (tungsten, tantalum, tin and gold)”. Indeed, PSA Group neither presents the content of measures implemented under this initiative, nor explains how it relates to appropriate vigilance actions.

Use of these initiatives can also be part of a company’s policy on a particular mineral. This is the case of Renault. Its vigilance plan states that “*Groupe Renault policy on the Supply of cobalt and minerals from conflict-affected and high-risk areas (2019)*” mainly draws from its membership of the Responsible Cobalt Initiative (RCI) that is dedicated to creating a responsible supply chain of cobalt originated from conflict-affected or high-risk areas. However, Groupe Renault does not expand on the content of the measures implemented under this initiative either, nor explain how it relates to appropriate vigilance actions.

This type of multi-stakeholder initiatives is not without criticism. For example, according to a report by the non-profit Germanwatch on the effectiveness of sectoral initiatives on mineral supply chains for electronic devices³⁷, these initiatives may not have enough reach. Germanwatch highlights that the Responsible Mineral Initiative is only “*partially credible and transparent*” and that “*affiliation (i.e. membership or certification) does not in itself prove that minerals have been obtained in a way that takes into account environmental, social and human rights risks*”. In addition, companies that indicate that they are members of multi-stakeholder initiatives generally do not indicate whether they can use the measures of the initiatives to implement the requirements of the EU Regulation on conflict minerals. The Regulation requires certain companies that import tin, tantalum, tungsten and gold to put in place risk assessment measures in order to demonstrate that they forestall the possibility of their supplies being used to fuel armed conflicts.

37. Germanwatch - Sydow J. and Reichwein A., *Governance of Mineral Supply Chains of Electronic Devices: Discussion of Mandatory and Voluntary Approaches in Regard to Coverage, Transparency and Credibility*, 2018
→ 588

5 — VERY LIMITED TRACEABILITY OF MINERALS USED

The risks associated with a mineral by country or region of origin can be identified with greater accuracy by retracing the mineral supply chain. However, the majority of the vigilance plans reviewed neither disclose nor provide any information on their suppliers. Most of the companies simply indicate that measures have been taken with respect to their “direct suppliers”. Some companies state that they have taken measures reaching as far as their tier 3 suppliers, but without mentioning them or specifying what those measures are. Group PSA which states that it performs audits up to tier 3 suppliers. According to its plan, “[s]ince 2008, 98 social and environmental audits have been performed at tier 1, 2 or 3 suppliers”. However, only a few suppliers described as “at risk according to risk criteria by country, product or process” are concerned.

Then there are companies like Renault which seems to have developed specific measures for minerals used for the energy transition. As mentioned earlier, in its vigilance plan the Group states that it has drawn up a mineral-specific risk map — especially for the cobalt sector — as part of its “commitment to human rights and fundamental freedoms, and particularly the fight against child labor in its supply chains of minerals”. Every year since, it publishes a list of its cobalt suppliers, but does not include it in its vigilance plan. The list also only seems to cover tier-one suppliers of cobalt only and not any other minerals potentially used by the Group. Furthermore, where measures taken by companies to ensure traceability of the minerals are mentioned, they again seem to make use of multi-stakeholder initiatives. Group PSA, for example, uses “[t]he Conflict Minerals Reporting Template that is provided by the RMI”, but without indicating how it uses the multi-stakeholder initiative to ensure the traceability of minerals used by its suppliers.

The vigilance plans reviewed therefore do not demonstrate that companies are able to retrace their entire supply chain of minerals used for the energy transition and thus ascertain their exact origin. Deployment of vigilance measures should, however, help to determine whether the minerals used potentially come from countries or regions where human rights and environmental abuses are committed, so that the appropriate risk prevention and mitigation measures can be implemented. But companies increasingly seem to resort to multi-stakeholder initiatives or audit and certification mechanisms to attest to the compliance of their value chains to the obligations of the law.

6 — VIGILANCE WORKAROUNDS: USE OF PRE-EXISTING AUDIT AND CERTIFICATION PRACTICES

The vigilance plans reviewed systematically show that some certifications and audits are used as vigilance measures. However, when these references are employed, the content of such audits and certifications is not detailed, meaning there is no way to make sure the vigilance measures enacted are adequate. For example, Eramet states in its vigilance plan that the company's goal is to obtain *"ISO 14001 certification for all sites"* without stating how this certification goal represents a reasonable vigilance measure and what the certification of its sites would entail.

Use of audits follows the same logic, and external audits are presented as vigilance measures. For example, in Total's vigilance plan the company presents an *"audit of working conditions"* conducted *"by a specialized audit firm"* as an appropriate action aimed at risk mitigation or prevention of serious violations. However, the content, scope, frequency and results of the audit, in addition to the resulting corrective measures, are not presented. As a result, there is no way to make sure it is an appropriate vigilance measure in the eyes of the law.

The scope of audits should be expanded to cover entities that are representative of the scope within and outside the Group of the company, selected using a method that is clearly explained, which would be based for example on a hierarchy of risks. That said, as a general rule the plans reviewed did not explain how these audits were implemented. Renault, for example, reports in its vigilance plan that in *"2019, 17 on-site audits of certain suppliers and sub-contractors in the cobalt supply chain were conducted by an audit firm"*, but without giving additional information on the choice of suppliers, their place in the value chain or the content of the assessments and whether they were performed periodically or not.

Although some vigilance plans do indicate the frequency of audits. In its plan, Total mentions that an *"HSE audit is conducted at least once every five years."* When the frequency of audits is indicated, it often turns out to be insufficient, as is the case for Total, considering that such audits might only happen once every five years.

Furthermore, generally speaking few of the vigilance plans reviewed shared the results of the various audits or any resulting measures. Some plans even indicate that the audits uncovered no risk, which seems unlikely given the size of the companies subject to the Duty of Vigilance law. Take Bolloré Group, for example, which states in its vigilance plan that the *"Human Rights audits [conducted] in 2018 and 2019, respectively [...] found no discrepancies."*

Some of the companies addressed in our review did present their audit results, however. One example is Nexans, which reports in its vigilance plan that *"suppliers making up 80% of Group purchases have been surveyed on their CSR policy since 2017. At end-2019, 47% of these suppliers completed the EcoVadis questionnaire and were assessed on that basis, representing 49% coverage of Group expenditures in 2019."* Nexans also presents its audit results, stating that *"98% of suppliers received an EcoVadis score of 35/100 or higher."* The problem is that

the results as presented do not incorporate the deficiencies observed during the audits, because they are simply presented in statistical form. As such, the specifications underlying the assessments are not known and thus there is no way to ensure that they contribute to vigilance measures. In addition, when the results are presented, they sometimes overlook a number of audited entities. For Nexans, the results of 2% of audited entities not obtaining a score “of 35/100 or more” are not presented.

Audit results should also give rise to steps taken by the company to implement vigilance measures aimed at preventing the risks potentially highlighted by the audits. In general, the vigilance plans reviewed do not indicate whether or not measures are defined post-audit. Where such measures are apparently defined, they are not detailed enough to be considered as adequate vigilance measures. For example, Bolloré’s vigilance plan indicates that “*corrective actions are taken in an effort to continuously improve the vigilance cycle.*” However, the corrective actions referenced are never presented.

The vigilance plans reviewed thus base their vigilance measures on pre-existing tools, such as audit systems. These various audit systems cannot be considered as adequate vigilance initiatives within the meaning of the law, however, if they are too vague and do not address identified risks or violations, or if they are not associated with control measures to ensure that their actual implementation.

From the Conflict Minerals Regulation to a European Duty of Vigilance ?



Several of the companies covered by our review may be subject to the obligations set out in European Regulation 2017/821 on conflict minerals, set to take effect from 1 January 2021. Adopted in 2017, its entry into force four years later should enable the companies subject to the regulation to gradually implement the measures imposed as a result. Said measures are derived from the OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas. The Regulation calls for certain companies reaching a minimum level of tin, tantalum, tungsten or gold imports to establish, as from January 2021, measures aimed at generating risk assessments demonstrating that the extraction and trade of certain minerals do not serve to fund armed conflicts or human rights abuses. However, despite the time given to companies to make the necessary changes, most have not indicated whether or not they will be subject to the regulation, just a few months before it is set to take effect.

When companies do mention the conflict minerals issue in their vigilance plan, they sometimes simply make reference to the OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas. Eramet, for example, explains that the Group is *“highly attentive to conflict minerals supply conditions, and particularly compliance with the conduct guidelines set for multi-national corporations by the OECD.”* Renault refers to a policy governing *“the supply of cobalt and minerals from conflict-affected and high-risk areas”*, which is accessible. In this policy, however, the Group does not indicate whether or not it will be subject to the obligations established by the European regulation. Furthermore, this one-page document is too concise to detail the measures taken by the Group and appears solely to be based on contractual clauses signed with suppliers. Lastly, PSA Group stands out as an exception, stressing in *“PSA Group’s Policy on Conflict Minerals”* that the Group plans to implement the European Conflict Minerals Regulation. However, this one-page document, only available in English, is still too concise to detail the measures actually taken. The measures in question also appear to rely exclusively on contractual clauses, with no follow-up to guarantee that they are applied by the co-contracting parties.

The vigilance plans thus contain no measures aimed at mitigating risks and preventing abuses associated with the use of conflict minerals. Only references to the OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas are made, with some indirect references to group policies on conflict minerals, which are short and light on details. As a result, the effectiveness of a transition period giving companies time to implement the European regulation can be called into question, especially at a time when no national authority responsible for overseeing the Regulation has released a list of companies within its remit, just three months before it is scheduled to come into force. In France, Sherpa has asked the Ministry for Ecological Transition (the administration in charge of overseeing the Regulation) for a list of French companies subject to the Regulation. However, and despite a positive opinion issued by CADA (Commission in charge of access to administrative documents) stating that *“releasing a list of such companies is not, in itself, a breach of trade secret”*, the administration refused to turn over the list of companies subject to the regulation, citing business secrecy among other reasons³⁸. This evident lack of willingness to follow up on the Regulation makes it difficult to assess the measures provided for therein.

We can also point out several deficiencies specific to the Regulation that impede its implementation and follow-up. One such deficiency lies with the companies subject to the Regulation, which only covers entities that import four minerals: tin, tantalum, tungsten and

38. On 24 August 2020, Sherpa initiated a proceeding with the Paris Administrative Court to require the administration to release the list of companies, in accordance with the opinion issued by CADA

gold. And, moreover, the companies that import these four minerals will only be subject to the obligations imposed by the European regulation starting at certain import limits set by the European Commission. However, these limits are supposed to ensure that most companies, i.e. at least 95% of total volumes imported in the EU, are subject to the Regulation.

And, as explained above, the companies in question are only those located “upstream” in the mineral supply chain, in other words from the extraction site to the foundry or refinery. That means that EU companies importing manufactured products containing tin, tantalum, tungsten or gold (e.g. some batteries and smartphones) are not subject to the Regulation.

Lastly, the measures that are supposed to be implemented in accordance with the European regulation are derived from the OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas. And yet, the measures developed by this guidance require companies to define a strategy to address identified risks for prevention or mitigation purposes. The mere fact that they are made mandatory by the Regulation has a limited legal impact. Sanctions can be imposed if no such measures are defined, but not in case of abuses or damages, and only at the request of each member state’s authority responsible for overseeing the Regulation.

These identified limits highlight the necessary criteria for effective legislation to protect human rights in the operations conducted by economic agents. The scope of such legislation should be tailored to the stated purpose of preventing and remediating any human rights and environmental abuses, and be centered on a system of responsibility and rigorous application, capable of holding companies accountable and seeking justice for victims.

Recommendations



1 — FOR COMPANIES SUBJECT TO THE DUTY OF VIGILANCE LAW

- Companies subject to the Duty of Vigilance law are required to prepare, disclose and implement within and outside the Group scope the appropriate vigilance measures for their activities. These vigilance measures should be prepared and disclosed as per the expectations presented in our Vigilance Plans Reference Guidance³⁹.
- In order to identify risks and prevent serious violations associated with minerals used for the energy transition, the companies subject to the Duty of Vigilance law whose value chains contain these minerals should:
 - Draw up detailed risk maps by taking into account risks and violations associated with the use of minerals used for the energy transition.
 - Implement value chain assessment measures aimed at ensuring the traceability of these minerals in order to know their origins and therefore take appropriate vigilance measures.
 - Limit and assess the use of audit systems and certifications. These assessments should apply to the frequency of execution, the independence of the companies performing the audits and certifications, the content of their specifications, and the training of auditors, especially in the area of the Duty of Vigilance law. Should these assessments find deficiencies in the effectiveness or relevance of the audit system or certification, appropriate corrective measures should be specified. Lastly, when these assessments are performed, they should ensure that workers are protected, particularly against retaliation and the conduct of interviews without the presence of management.
 - Assess the multi-stakeholder initiatives to which the company is affiliated using the same criteria as the audit system and certification assessments. These assessment procedures should ensure that the measures implemented as part of these initiatives are relevant to the appropriate vigilance initiatives within the meaning of the Law.

2 — FOR FRANCE

- To ensure the effective implementation of the Duty of Vigilance law, France should give due reflection to the possibility of strengthening the Law, namely by considering the opportunity to create and pass civil fines or criminal sanctions.
- The effective implementation of the law should also be backed by a list, prepared every year by French authorities, of the companies that come within the scope of the Duty of Vigilance law, specifying the threshold(s) exceeded by each company in terms of number of employees.
- France should lower the headcount thresholds in order to apply the Duty of Vigilance law to more companies whose activities present risks to human rights and the environment. And since these thresholds are based on the number of employees across several entities (above 5,000 employees in France, or 10,000 worldwide), they cannot always be verified, especially for companies of the second-level threshold based in France and abroad. Should the thresholds of application be maintained, other factors, such as total revenue or balance sheet total, should be included.
- To ensure the effective implementation of the European Conflict Minerals Regulation, France should publish a list of French companies subject to the regulation. France should also ensure that the companies concerned comply with the Regulation's obligations, and should also provide for and apply sanctions for non-compliance as permitted by the Regulation.

3 — FOR THE EUROPEAN UNION

- To ensure the effective implementation of the European Conflict Minerals Regulation, the European Commission should lower the import limits for each mineral, publish a list of companies concerned by the Regulation for each member State, and extend the scope of application to downstream companies in order to cover the entire value chain.
- The European Union should adopt a binding duty of vigilance legislation requiring companies to take all necessary measures to identify risks and prevent human rights and environmental abuses resulting from their value chain. Such regulation should hold companies accountable. In particular, a company should be held jointly and severally liable for damages resulting from human rights and environmental abuses that an entity in its control caused or contributed in causing. In the absence of company control over the entity in question, the company should be required to prove that all necessary measures were taken to prevent the damage.



*Sherpa