

Conformance and Compatibility Analysis

CFS, iTSCi, and the OECD Due Diligence Guidance



Final Report
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Estelle Levin Limited
For EICC and GeSI



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Authorship and Acknowledgements

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List of Abbreviations

AFP	Analytical fingerprint
ASM	Artisanal and Small-scale Mining
Au	Gold
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe (<i>German Federal Institute for Geosciences and Natural Resources</i>)
CFS	Conflict-Free Smelter (Assessment Programme)
CoC	Chain of Custody
CR	Channel Research
CTC	Certified Trading Chains
DFA	Dodd-Frank Wall Street and Consumer Protection Act (Dodd-Frank Act)
DRC	Democratic Republic of the Congo
EICC	Electronic Industry Citizenship Coalition
GeSI	Global e-Sustainability Initiative
GIZ	German Technical Cooperation
GLR	Great Lakes Region
ICGLR	International Conference on the Great Lakes Region
ICMM	International Council on Mining and Metals
INGO	International Non-governmental Organisation
ITRI	ITRI Ltd.
iTSCi	ITRI's Tin Supply Chain Initiative
MoU	Memorandum of Understanding
NGO	Non-governmental Organisation
OECD	Organisation for Economic Co-operation and Development
OECD DDG	OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
OGMR	Rwanda Geology and Mines Authority
RA	Risk Assessor (iTSCi)
RCM	Regional Certification Mechanism (ICGLR)
RINR	Regional Initiative against the Illegal Exploitation of Natural Resources
SEC	Securities and Exchange Commission (US)
Sn	Tin
Ta	Tantalum
T.I.C.	Tantalum-Niobium International Study Centre
UN	United Nations
UNGoE	United Nations (Security Council's) Groups of Experts of the Democratic Republic of the Congo
UNSC	United Nations Security Council
US	United States (of America)
W	Tungsten
WGC	World Gold Council

Executive Summary

This report presents the findings of three different analyses:

- 1) A *conformance*¹ analysis of ITRI's Tin Supply Chain Initiative (iTSCi) against the Organisation for Economic Co-operation and Development's (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD DDG),
- 2) A *conformance analysis* of the EICC and GeSI Conflict-Free Smelter Programme (CFS) against the OECD DDG, and
- 3) A *compatibility analysis* between the CFS and iTSCi.

All three approaches are aimed at inducing and supporting responsible mineral trading chains from high-risk regions, such as the Great Lakes Region (GLR). However, their basic intention differs: whereas the OECD DDG and iTSCi encourage supply chain operators to continue trade (if no serious human rights abuses occur) and seek for progressive improvement, the CFS does not allow its smelters to continue to source from supply chains that evidence any benefit or finance to *any* armed group. The CFS is outcome-oriented, looking to confirm something as 'conflict-free' rather than 'conflict-managed'. This is because the CFS is primarily oriented at allowing participating smelters to provide downstream users with the information they need to report under Section 1502 of the Dodd-Frank Wall Street and Consumer Protection Act (DFA), and to achieve 'conflict-free' status.

iTSCi has been largely developed in tandem with the OECD DDG and so its design and implementation have been guided by the requirements and intentions of the OECD DDG. As such, they are largely in conformance and on some aspects iTSCi achieves a higher level of assurance than the OECD DDG requires owing to its different types of risk assessments and sophisticated database. iTSCi is a joint industry initiative that takes responsibility for achieving nearly all the requirements of all five steps of the OECD DDG on behalf of industry. It remains the case, however, that companies are ultimately responsible for ensuring conformance as it is they and not iTSCi that take the final decision to continue to engage or disengage from a trading relationship. Further, iTSCi is not able to make certain requirements of members, particularly those with commercial ramifications². This does not impact iTSCi's overall conformance with the OECD DDG but emphasizes that companies cannot leave their conformance to iTSCi alone; they achieve it through implementing iTSCi *and* taking further actions themselves.

The development of the CFS has also been guided by the OECD DDG, but in a different manner. The CFS allows smelters to rely on other chain of custody and due diligence systems that are OECD DDG-conformant (e.g. iTSCi) and adds an extra level of assurance that the minerals are also conflict-free. The CFS, which is largely an audit of whether or not conflict material has entered a smelter's supply chains, is *not* designed to be the audit which features as step 4 of the OECD DDG's 5 step framework; instead it requires that participating smelters whose inputs have come from or through specified 'at risk' countries must evidence conformance with the OECD DDG through conducting a step 4 audit before the CFS audit can occur. Since the US Securities and Exchange Commission (SEC) rules for the Dodd-

¹ Conformance means that CFS / iTSCi and OECD DDG requirements are aligned meaning that downstream users can rely on a CFS and/or iTSCi audited smelter to meet the OECD DDG (see also section 1.3). 'Compliance' would infer that there is a legal obligation for companies to meet the OECD DDG. We use the term 'compliance' when discussing the Dodd Frank Act as this is a Law.

² OECD DDG Step 1, c.2.1, c.3.1, c.4.2 and d are all not applicable for iTSCi to conduct due to commercial issues.

Frank Act (DFA) are not yet finalized -- and there are still different interpretations of what they are likely to be -- the CFS has been designed for the worst case scenario, and so operates in absolute terms. Consequently, it is more stringent than the OECD DDG on three counts. First, the CFS assesses all material flow (100%) at the smelter; second, it does not accept any armed groups (except the mine police) to ensure that material can be classed as 'DRC conflict-free'; and third, by seeking to assure that minerals are totally conflict-free, there is no space for conflict-managed minerals whereby supply chain operators would be able to mitigate (certain) identified risks and facilitate progressive improvement of suppliers, in line with the OECD DDG. This emphasis on outcome rather than process might be modified depending on the exact wording of the final rules for the DFA, expected by the end of 2011.

iTSCi and CFS are compatible in so far as iTSCi is providing the smelter with a system that allows it to demonstrate the chain of custody of its input streams and that, for 'red flag' locations, these have been subjected to adequate due diligence and risk management, in line with the requirements of the OECD DDG. There are, however, a number of incompatibilities between iTSCi and the CFS that remain to be ironed out (see section 4). Some of these incompatibilities cannot be resolved by CFS or iTSCi themselves, as they are rather the product of inconsistencies between the two regulatory frameworks to which they refer, namely the OECD DDG and the DFA. Other issues highlighted here might not address an incompatibility but an operational challenge such as creating a burden to participating smelters.

The outstanding issues preventing alignment between the CFS and iTSCi, as well as associated recommendations are:

ISSUE	RECOMMENDED ACTION
Incompatibilities between CFS and iTSCi (whose solution requires close coordination between the DFA and the OECD DDG)	
(1) Definition of armed groups (state / non-state)	
iTSCi wishes to apply the categorization contained in the OECD DDG's Model Supply Chain Policy (Annex II). The CFS follows the definition of armed groups provided in the DFA.	Agree on what kind of armed groups (e.g. police) are accepted at mine sites, transportation routes and in surrounding areas. Direction for this should come from the SEC rules relating to the DFA. A joint decision on how to monitor the acceptability of armed groups would also be helpful.
(2) Conflict free vs conflict-managed	
The two-tier approach of the CFS whereby it requires a double audit (OECD DDG Step 4 first by a third party; CFS audit second) attempts to address the different approaches to risk management accepted by the OECD DDG and the DFA. In some cases where the OECD DDG would allow buyers to continue to engage suppliers, the CFS would not.	A joint agreement coming from the SEC and the OECD DDG to clarify in what circumstances and in what ways risk mitigation would be acceptable is needed.
Incompatibilities between CFS and iTSCi (responsibility of iTSCi and CFS)	
(3) Time periods covered by the audit	
There does not yet appear to be agreement on what is a reasonable time period for the audit to	Discuss and agree on options for transit time flexibility in order to ensure the

cover. iTSCi 's implementation was interrupted due to the mining suspension in DRC from September 2010 to March 2011, and so the initiative had just begun to get going again in April 2011 in Katanga and Rwanda. It will be crucial to consider the lead time necessary for all participating smelters and programme implementers to have fully understood their roles and responsibilities and for setting up, equipping, and preparing staff for implementation. This is also necessary as the tungsten and tin protocols were only recently released in August and September 2011, respectively.

applied CoC and due diligence system is properly implemented.

(4) Validated scheme for implementing the OECD DDG

Where CFS relies on a joint initiative (i.e. GLR sourcing schemes such as iTSCi) to provide CoC assurance, that joint initiative must be validated as credible too.

Discuss and agree on the arrangements, requirements and time line for hopefully validating iTSCi (and other initiatives) as credible and adequate for demonstrating OECD DDG step 4 conformance. This analysis which shows and explains how iTSCi allows for conformance with the OECD DDG is a first step. Next steps might include assessing iTSCi's conformance with the SEC rules of the Dodd-Frank Act; and judging its performance within the OECD DDG trials.

(5) US conflict minerals map

Both initiatives refer to the US conflict minerals map.³ However, the latest update of this map says: "Given the aforementioned limitations on the data available, this map does not provide sufficient information to serve as a substitute for information gathered by companies in order to exercise effective due diligence on their supply chains."⁴ Consequently the map does not fulfil the role that the initiatives had envisaged.

Discuss and agree on other sources that provide reliable data on conflict areas in the DRC. As a starting point it might be advisable to evaluate the information generated within the iTSCi scheme, such as the mine and transportation baseline study, the monthly reporting and the incident reporting protocol. Definition of conflict areas will also rest on agreement as to which armed groups and which specific risks are manifest.

(6) Exit / entry points at the smelter

Both initiatives cover materials and procedures at the smelter in different ways. Compatibility between the initiatives, and their respective roles and responsibilities at this point of the mineral supply chain require some further clarification.

Clarify roles, responsibilities and interoperability of CFS and iTSCi at the smelter level, incorporating feedback from participating smelters to ensure efficacy with a view to minimising the cost, disruption and burden to the smelter and his / her suppliers.

Operational issues

(7) Lessons Learned from year one of Ta audits

³ See https://hiu.state.gov/Products/DRC_MineralExploitation_2011June14_HIU_U357.pdf accessed 13th September 2011.

⁴ See https://hiu.state.gov/Products/DRC_MineralExploitation_2011June14_HIU_U357.pdf accessed 13th September 2011.

<p>The first CFS audits for tantalum have already been conducted and might give helpful instruction to future audits.</p>	<p>Prepare a lessons learned brief to help smelters understand their responsibilities. Experiences from this first year of Ta audit would also help iTSCi to further develop its audit.⁵</p>
<p>(8) Harmonisation of language</p>	
<p>A lot of confusion arises from different language and definitions used in the various regulatory and industry frameworks (OECD DDG, CFS, iTSCi, DFA)</p>	<p>Harmonise language and definitions across the various regulatory and industry frameworks (OECD DDG, CFS, iTSCi, DFA-relevant SEC regulations) as well as across the various documents of each framework within the context of the international legal framework.</p>
<p>(9) Storage of CoC documentation at the smelter</p>	
<p>According to the OECD DDG the smelter needs to maintain the information generated by the traceability system for a minimum of five years, preferably on a computerized system. iTSCi does this as all documented information is entered into the database and so is available for at least five years any time and from anywhere in the world. The CFS expects to see all tags for the audit period (one year).</p>	<p>Discuss and agree on time lime and method of CoC data storage at the smelter.</p>

⁵ This information is being included in the CFS guidance, presently under development. Bob Leet (EICC), pers comm to Levin, 6th November 2011.

1. Introduction

This report presents the findings of three different analyses:

- 1) A *conformance*⁶ analysis of ITRI's Tin Supply Chain Initiative (iTSCi) against the Organisation for Economic Co-operation and Development's (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD DDG),
- 2) A *conformance analysis* of the EICC and GeSI Conflict-Free Smelter Assessment Programme (CFS) against the OECD DDG, and
- 3) A *compatibility analysis* between the CFS and iTSCi.

The report was commissioned by the Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI). The authors conducted documentary analysis and, to ensure accuracy, closely consulted the designers of iTSCi and the CFS and interviewed the OECD Secretariat.⁷ All findings are based on a process involving structured analysis of the initiatives.⁸ A *first draft*⁹ was distributed amongst members of the GEIRS group for discussion at a meeting of this group on September 21st in Brussels; all GEIRS group members were given the opportunity to submit comments. The report was finalized in November 2011 following submission of comments and questions by the designers of iTSCi, the CFS and the OECD Secretariat in October and November 2011.¹⁰

The report is structured as follows:

- **Chapter one: Introduction**
 - Background to emergence of conflict minerals initiatives.
 - Brief explanation of the report's purpose and analytical approach.
 - Overview of OECD DDG, iTSCi, and CFS, also explaining their linkages with other 'conflict minerals' initiatives implemented in the Great Lakes Region (GLR).
- **Chapter two: iTSCi – OECD DDG conformance analysis**
 - Differences in approach, how and where iTSCi is in conformance with the OECD DDG, outstanding gaps (present non-conformance), and where iTSCi goes beyond conformance.
- **Chapter three: CFS – OECD DDG conformance analysis**
 - Differences in approach, how and where CFS is in conformance with the OECD, outstanding gaps (present non-conformance), and where CFS gives a more stringent level of assurance for achieving conflict-free status, as defined by the Dodd-Frank Act.
- **Chapter four: CFS – iTSCi compatibility analysis**
 - Differences in approach, compatibilities, issues limiting programme alignment, and operational differences.

⁶ Conformance means that CFS / iTSCi and OECD DDG requirements are aligned meaning that downstream users can rely on a CFS and/or iTSCi audited smelter to meet the OECD DDG (see also section 1.3). 'Compliance' would infer that there is a legal obligation for companies to meet the OECD DDG. We use the term 'compliance' when discussing the Dodd Frank Act as this is a Law.

⁷ These included lengthy in-person, telephone and email interviews / discussions with Kay Nimmo from ITRI, Tyler Gillard from the OECD, Mike Loch and Bob Leet from EICC and GeSI Extractives Work Group Co-chairs.

⁸ The analytical tables have been submitted to EICC and GeSI for archiving.

⁹ Without recommendations.

¹⁰ The information on iTSCi and the OECD is current as of October 2011; for CFS it is current as of the date of this report.

- **Chapter five: Recommendations**

- How CFS and iTSCi can ensure better alignment with the OECD DDG, and the practicality of achieving this.
- How CFS and iTSCi could be better harmonized to build robust supply chains in conformance with the OECD DDG.

1.1. Background

The association of minerals supply chains with conflict in the African Great Lakes Region (GLR), in particular in the Democratic Republic of Congo (DRC), has grabbed the United Nations' (UN), civil society's and consequently industry and governments' intensified attention over the last five years.¹¹ Particularly the reports of the UN Group of Experts (UNGoE) on the DRC have shown evidence of linkages between the extraction and trade of minerals and the financing of ongoing conflicts in this region.¹² Since 2008, these UNGoE reports have consistently insisted upon actions to establish due diligence practices and traceability in DRC's mineral extraction and trade activities.¹³ Subsequent UNGoE reports have augmented due diligence practice and traceability requirements to encompass third party audits and comprehensive due diligence measures, not only by upstream companies (from mine to smelter), but also by downstream users (from smelter to retailer) and the financial sector (UNGoE 2010b, 2011a). In its final report in November 2010 on the DRC, the UNGoE endorsed the implementation of the OECD's *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (OECD DDG), but requested additional actions by companies on violations of the asset freeze, and on travel bans and criminal networks.

Since 2007 different national and international initiatives have emerged to improve traceability, due diligence practices and assurance of formal and responsible mineral supply chains from the GLR. These initiatives are intended to prevent total disengagement from the Great Lakes Region by industry by allowing companies to source metals from supply chains subject to some measure of assurance that specific liabilities have been managed.¹⁴ Besides the OECD DDG, iTSCi and CFS assessed in detail in this report,¹⁵ there are other relevant approaches, presented in section 1.4.

1.2. Purpose of the report

This report analyses the conformance of iTSCi and CFS with the OECD DDG for tin, tantalum and tungsten, and the compatibility of both. It assesses the extent to which iTSCi and CFS are harmonized to form a robust mineral supply chain on which due diligence has been adequately conducted and risks managed to allow upstream and downstream supply chain operators and their product to be in conformance with the OECD DDG, but in ways that is practicable for all actors. The CFS in particular aims to allow companies to source DRC *conflict-free* material.¹⁶ The report also reveals aspects under development, and ongoing

¹¹ See reports by IPIS: <http://www.ipisresearch.be/natural-resources.php>, reports by Global Witness:

<http://www.globalwitness.org/news-and-reports>, for information on EITI in DRC see <http://eiti.org/DR Congo>, etc.

¹² For all UNGoE reports from 2004 to 2011 see: <http://www.un.org/sc/committees/1533/egroup.shtml>

¹³ Final report of the UN GoE on the DRC in 2008. For further reports of the UN Group of Experts on the DRC, please see <http://www.un.org/sc/committees/1533/egroup.shtml>

¹⁴ Specifically that the minerals have been mined, traded, transported, and processed without contributing to conflict and/or human rights violations and/or environmental damage.

¹⁴ See section 1.4.

¹⁵ See section 1.4.

¹⁶ Where conflict-free material is any material other than conflict material, defined as material found in the smelter records that is from "Level 3 sources after 1st April 2011 without an OECD Guidance compliant scheme being utilized. For example as specified in part B.III.a.iii of the Tin Audit Standard. The result will be non-compliant" (EICC and GeSI 2011d: 13).

gaps and challenges impeding complete synergy between all three initiatives. Recommendations for resolving these are provided. While the report refers to the Dodd-Frank Act, this was not included in the analysis owing to the fact that the US Securities and Exchange Commission (SEC) regulations to guide its implementation have not yet been finalised.

1.3. Analytical Approach

The conformance and compatibility analyses were conducted through comprehensive readings of relevant documentation for each initiative (see table 1) and multiple meetings and written correspondence between the authors and individuals involved in the design and development of the CFS, iTSCi¹⁷ and the OECD DDG.¹⁸ This was especially important given that the core documents of CFS and iTSCi were under development and not in a final form at the time of initial analysis. Indeed, these have been iteratively improved over the course of conducting this analysis such that the authors have been working with ‘moving targets’.

Table 1: Principal documents analysed¹⁹

Author	Document
OECD	<i>Due Diligence Guidance for responsible Supply Chains of Minerals from Conflict-Affected and High-Risk-Areas (2011)</i> . ²⁰
iTSCi	Over 30 iTSCi documents such as <ul style="list-style-type: none"> • <i>iTSCi News Bulletins</i> (from April 2010 to date), • the <i>provisional iTSCi membership agreement</i> (currently being re-crafted into final form), • the <i>iTSCi Guidance</i> (currently being developed) and • further internal iTSCi documents
CFS	<ul style="list-style-type: none"> • The final <i>Audit Protocol for Tantalum</i> • The draft <i>Audit Protocols for Tin and Tungsten</i>²¹ • <i>Overall Plausibility Report (Tantalum)</i>²² • <i>Audit Checklist (Tantalum)</i> • <i>Line item Summary (Tantalum)</i> • <i>Pre-audit checklist (Tantalum)</i>.

For the conformance analyses, the following assessment criteria were used:

Beyond conformance:

CFS or iTSCi requirements offer less flexibility, are more stringent or more encompassing than the OECD DDG; participants can rely on the CFS / iTSCi to meet the OECD DDG.

In conformance:

CFS or iTSCi and OECD DDG requirements are aligned; participants can rely on the CFS / iTSCi to meet the OECD DDG.

Towards conformance (under development):

CFS or iTSCi is in the process of addressing this issue. This includes where a process or action has been identified, is being designed, but is not yet

¹⁷ Kay Nimmo, Andy Cooper of ITRI, Richard Burt of T.I.C., Karen Hayes of Pact, Cécile Collin of Channel Research, Michael Loch of GeSI, Bob Leet and Mumtaz Ahmed of EICC, Jennifer Peyser of Resolve.

¹⁸ Tyler Gillard, one of the team members of the OECD Secretariat, phone interview with the authors on 12th September 2011.

¹⁹ Many other documents were consulted, but the ones in the table were deeply evaluated.

²⁰ This did not include the Suggested Measures for Risk Mitigation and Indicators for Measuring Improvement in Annex III.

²¹ Status of analyzed documents: Tantalum: 25th April 2011, Tin: 10th August 2011, Tungsten: 10th August 2011. Since then the versions of the Tin and the Tungsten Protocol have been revised and released. The general content remains the same, though the newer versions provide greater clarification. The Ta and Au protocols will be brought up to date relative to the look and definitions of the Sn and W protocols by the end of 2011. Bob Leet (EICC) 6th November 2011

²² To date, these documents are only in a completed state at the time of the analysis.

implemented. Participants soon will be able to rely on the CFS / iTSCi to meet the OECD DDG

Gap:

The CFS or iTSCi requirements do not address the issue adequately for participants to be in conformance with the OECD DDG. This includes where a suitable process or action has not yet been identified, designed, and is not implemented; there might be clear and plausible reasons why no suitable process or action has not yet been identified and might never be which will also be explained.

The compatibility analysis reviews the alignment of the CFS and iTSCi initiatives on specific aspects such that together the approaches form a robust supply chain on which due diligence and risk management have been adequately conducted to be in conformance with the OECD DDG and is practicable for all supply chain operators.²³ Attention was especially focused on the onus at the level of the smelter given the scope of the CFS. The following aspects were assessed:

<i>Initiative Purpose:</i>	What the system is designed to achieve
<i>Initiative Scope</i>	Minerals, Geographic region, what steps of the OECD DDG are encompassed
<i>Audit Scope</i>	Time period covered by the audit, who / what will be audited, Type of audit, Audit level
<i>Level of assurance</i>	1st, 2nd, 3rd party
<i>Audit process</i>	Basic requirements to join initiative / initiate audit, General documentation to be checked, Country groups and required information, Process for conducting the audit; smelter, Process for conducting the audit; Auditor, Who pays for the audit
<i>Auditor</i>	Who does the audit, Auditor requirements (professional accreditation, experience, independence, etc.)
<i>Audit results</i>	Outcome of the audit, Consequences / follow-up of the audit, Level of disclosure of audit results

1.4. Summary of the initiatives

The following sub-sections briefly present the OECD DDG, iTSCi and the CFS, as well as other relevant initiatives.

1.4.1. OECD Due Diligence Guidance

The OECD DDG is a framework and guidance that provides “*management recommendations endorsed by governments for global responsible supply chains of minerals in order for companies to respect human rights and avoid contributing to conflict through their mineral or metal purchasing decisions and practices.*”²⁴ It covers the three T’s (tin, tantalum and tungsten) and gold.²⁵ It is for implementation by any upstream and downstream company “*sourcing minerals or metals from conflict-affected and high-risk areas, and is intended to cultivate transparent, conflict-free supply chains and sustainable corporate engagement in*

²³ This analysis is not looking for equivalence, whereby the approaches would make the same level of requirements on an issue.

²⁴ OECD 2011: 52

²⁵ The OECD DDG Supplement for tin, tantalum and tungsten has been available since the end of 2010; the supplement for gold is expected to be finalised at the end of 2011 and approved by the OECD in early 2012.

the minerals sector”.²⁶ The OECD DDG should provide the means to ensure that companies can source with confidence from the African Great Lakes Region.

The OECD DDG is a result of a “multi-stakeholder process with in-depth engagement from OECD and African countries, industry, civil society, as well as the United Nations.”²⁷ From December 2009 to April 2010, three consultations were held,²⁸ including a joint consultation with the International Conference of the Great Lakes Region (ICGLR).²⁹ The multi-stakeholder working group process encompassed engagement from the eleven countries³⁰ of the ICGLR, the UN, civil society, NGOs,³¹ industry³² and governments, as well as representatives from other initiatives attempting to address conflict minerals in the Great Lakes Region.³³

Since August 2011, the implementation of the OECD DDG is being tested along mineral supply chains emanating from the DRC primarily, but also Rwanda. Along with over 80 companies (upstream and downstream), industry associations, and the iTSCi and CFS initiatives³⁴ are participating in the trials. The trials will run for one year and complete in August 2012.³⁵ Every four months, companies, associations and initiatives will report their progress and challenges in implementing the OECD DDG. Through participating in the trials organizations are actively performing due diligence, exploring how the OECD DDG can be put into practice, and discovering its practicability. It is intended that the reporting scheme will be used to identify best practices and tools for aiding effective implementation of the OECD DDG by companies.³⁶

The main aspects of the OECD DDG are summarized in Table 2.

Table 2: OECD DDG: Main aspects

Aspects	
Main features	Guidance consisting of 5 steps: <ol style="list-style-type: none"> 1. Management systems, 2. Risk assessment, 3. Risk mitigation, 4. Independent third-party audits, and 5. Annual reporting
Main implementers	Companies (upstream and downstream)
Objective	“Help companies contribute to sustainable development and source responsibly from conflict-affected and high-risk areas, while creating the enabling conditions for constructive engagement with suppliers.”(OECD 2011: 12)
Implementation status	The guidance was established through a multi-stakeholder process (2009-2010) and began its trials in August 2011.

²⁶ OECD 2011: 52

²⁷ See http://www.oecd.org/document/32/0,3746,en_2649_34889_47691616_1_1_1_1,00.html accessed 10th September 2011.

²⁸ See http://www.oecd.org/document/32/0,3746,en_2649_34889_47691616_1_1_1_1,00.html accessed 10th September 2011.

²⁹ See http://www.oecd.org/document/41/0,3746,en_2649_34889_45793897_1_1_1_1,00.html accessed 10th September 2011.

³⁰ Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of the Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia.

³¹ Such as Global Witness and the Enough Project.

³² End user industry principally represented by EICC and GeSI on a regular basis – Loch, pers. comm. to Levin, 3rd November 2011.

³³ Such as ITRI Ltd. (ITRI) and the Tantalum-Niobium International Study Centre (T.I.C.) for ITRI’s Tin Supply Chain Initiative (iTSCi), the Bundesanstalt für Geowissenschaften und Rohstoffe (BGR) for Certified Trading Chains (CTC), the Global e-Sustainability (GeSI) and the Electronic Industry Citizenship Coalition (EICC) for the Conflict-Free Smelter Assessment Programme (CFS) and the ICGLR for the Regional Certification Mechanism (RCM), but also other associations such as the International Council on Mining and Metals (ICMM) and the World Gold Council (WGC)

³⁴ Specifically EICC and GeSI are involved in the OECD DDG pilot to provide the CFS to the process, which individual downstream participants will also individually be referencing. Leet, pers. comm. to Levin, 6th November 2011.

³⁵ Lahra Liberti (OECD), comments on draft report 4th October 2011.

³⁶ For further information on the OECD DDG trials, see http://www.oecd.org/document/15/0,3746,en_2649_34889_48584143_1_1_1_1,00.html accessed 12th September 2011.

Observations:

- The OECD DDG is a non-binding OECD *recommendation* that has been endorsed at the ministerial level by OECD countries, and eight³⁷ others.³⁸ Country adherents to the Recommendation commit to “*actively promote the observance of the Guidance by companies operating in or from their territories and sourcing minerals from conflict-affected or high-risk areas*”, and “*take measures to actively support the integration into corporate management systems*” of the OECD DDG.³⁹
- Its observance “*is voluntary and not legally enforceable*,”⁴⁰ but countries may choose to implement it as they wish, including by integrating it into national legislation. The OECD DDG *recognizes the importance of flexibility in its application*, in recognition of the varied contexts, scales and attributes of companies and situations.⁴¹ For example, it is designed so that the due diligence *exercise be scaled “to the size of the company’s activities or supply chain activities.”*⁴²
- However, the UNGoE have made recommendations that expand the scope of the OECD DDG and are legally binding. Their additional guidance aims at mitigating⁴³ the risks “*of direct or indirect support for criminal networks and/or perpetrators of serious human rights abuses within the armed forces and the broader impact of direct or indirect support for conflict in the eastern part of the Democratic Republic of the Congo.*”⁴⁴ It specifies in particular potential violations of the asset freeze and travel ban on sanctioned individuals and entities, and stipulates that relevant individuals and entities remain individually responsible for identifying their own risks.⁴⁵
- The OECD DDG acknowledges that due diligence is “*an on-going, proactive and reactive process.*”⁴⁶ In this vein, it calls on companies to “*take reasonable steps and make good faith efforts to conduct due diligence and prevent or mitigate risks of adverse impacts.*”⁴⁷ By focusing on *process* rather than *outcome*, *efforts* rather than *results*, it seeks to achieve progressive improvement in how companies manage risks and avoid supporting conflict through due diligence practices.⁴⁸ Further, it focuses on *what* to do rather than *how* to do it. For example, the OECD DDG step 1(c) requires the information that must be gained and maintained as part of CoC systems,⁴⁹ but does *not* prescribe a specific method for collecting that data (i.e. through bagging and tagging or other means).
- The OECD DDG allows for flexibility with regard to the different modalities / schemes through which the recommendations can be operationalised. For instance, ‘bagging

³⁷ Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania. See http://www.oecd.org/document/19/0,3746,en_21571361_44315115_48029523_1_1_1_1_00.html accessed 13th October 2011.

³⁸ Tyler Gillard (OECD), telephone interview with the authors, 12th September 2011.

³⁹ OECD 2011a: 8. Also Tyler Gillard (OECD), telephone interview with the authors, 12th September 2011.

⁴⁰ OECD 2011a: 15.

⁴¹ OECD 2011a: 8.

⁴² OECD 2011a: 13.

⁴³ “Mitigate means to moderate in force or intensity”, UN 2010b: 84.

⁴⁴ UNSC 2010b: 85.

⁴⁵ UNSC 2010b: 95.

⁴⁶ OECD 2011a: 8.

⁴⁷ OECD 2011a: 13.

⁴⁸ Tyler Gillard (OECD), telephone interview with the authors, 12th September 2011.

⁴⁹ OECD 2011a: 31.

and tagging' is just one option to ensure traceability. But this relates mostly to artisanal mining and does not exclude other ways to implement the same recommendation.⁵⁰

- Lastly, while the OECD DDG is designed primarily to guide companies in exercising due diligence, it is also targeted at initiatives and operational schemes intended to implement the OECD DDG like iTSCi and CFS.⁵¹

1.4.2. ITRI's Tin Supply Chain Initiative (iTSCi)⁵²

iTSCi is a joint initiative that at a very practical level assists upstream companies or individuals (e.g. artisanal miners) of all scales from mine to smelter to *"institute the actions, structures, and processes necessary to comply with [all five steps of] the OECD DDG"*. It encompasses large, medium and small enterprises, co-operatives and artisanal mine sites. *"It is designed for use by industry, but with oversight and clear roles for government officials."*⁵³ It is oriented at complying with the OECD DDG *"and takes into account the recommendations of the UN Security Council (UNSC), in particular the Group of Experts of the DRC (UNGoe) to expand due diligence to include criminal networks, as well as armed groups and to include violations of the asset freeze and travel ban on sanctioned individuals and entities."*⁵⁴

iTSCi covers tin, tantalum and tungsten, not gold. It was developed in 2009 by ITRI for the tin industry, and then expanded to the tantalum industry, when T.I.C. joined in February 2010. It was first piloted in the DRC (North and South Kivu) in 2010. Due to the mining suspension from September 2010 to March 2011 project activities in the DRC could not continue. However, it was possible to start iTSCi implementation in Rwanda and the Katanga province in the DRC, although with limited budget and less than ideal circumstances for planning due to restricted timescales.⁵⁵ It is intended to re-start the implementation of iTSCi in the areas of the former mining suspension such as North Kivu, South Kivu and Maniema.⁵⁶ Other countries of the GLR such as Burundi and Uganda have also shown their interest in implementing iTSCi. It holds an MoU with the ICGLR and cooperates with the CTC projects in Rwanda and the DRC.

iTSCi is a chain of custody and due diligence system that includes independent and third party risk assessment and independent third party audits for protection against human rights abuses including the worst forms of child labour, as required by the OECD DDG.⁵⁷ iTSCi comprises three components in keeping with the OECD DDG, namely:

- (1) Chain of custody tagging and monitoring of mineral origin,

⁵⁰ Lahra Liberti (OECD), comments on draft report, 4th October 2011.

⁵¹ OECD 2011a: 15.

⁵² Much of the information in this section is from iTSCi 2011.

⁵³ iTSCi 2011

⁵⁴ iTSCi 2011

⁵⁵ Kay Nimmo (ITRI), email to authors, 14th 15th September, 2011. This particularly applies for Rwanda.

⁵⁶ iTSCi intends to re-start at Kalimbi and work with CTC-DRC as a pilot to seek ways of integrating efforts following further discussion on security with UN experts.

⁵⁷ Additional social and environmental standards relating to the process and production methods for pre-smelter mineral extraction, processing and trade are envisaged to be included at a later stage. In the meantime, these issues are addressed at some iTSCi sites in Rwanda where participating organizations are also implementing the CTC.

- (2) Independent third party risk assessment of mine sites, transportation routes, companies and the macro-level situation⁵⁸ to identify and manage conflict-related risks, and
- (3) Independent third party audit of all operators joining iTSCi, operators like ASM who cannot become iTSCi members, and also the system data.⁵⁹

Although iTSCi's development has been initiated and overseen by international actors, it was developed with local actors such as *comptoir* and *negociant* associations and local, provincial and national authorities. It is being implemented by local organizations in DRC and Rwanda with support from Pact (an iNGO) and Channel Research (its independent third party Risk Assessor and Auditor) and relies on government officials, and local and provincial level stakeholder committees (*comités de pilotage*) to ensure the initiative's sustainable and realistic implementation on the ground.

In order for a supply chain operator and mineral shipment to be in conformance with iTSCi, the following must happen:

1. The larger supply chain operators who have owned and handled the minerals must be accepted as members into iTSCi. They must apply to iTSCi for membership and are subjected to an initial risk assessment by iTSCi's Risk Assessor, Channel Research.
2. The mine site from which the mineral originates and the transportation routes along which it travels must have been approved for inclusion in the scheme following a mine and transportation route baseline study (including risk assessment by Pact and local partners), which determines if any violations that would prevent conformance with the OECD DDG are happening, e.g. non-state armed groups are benefiting.
3. The mineral must be tagged and various information about the mineral recorded in a logbook, which is then entered into the iTSCi database.
4. Risk assessments of the supply chain operators, the general operating context, and mine sites and transportation routes must be conducted routinely. This is done through field visits, document checking, whistle-blowing mechanisms through the local stakeholder committees, and data analysis. Any risks identified are managed and mitigated by the supply chain operators or other responsible bodies in conformance with rules set out by iTSCi based on the OECD DDG requirements.
5. Each year, all supply chain operators, mine sites and the iTSCi programme are audited by Channel Research.

iTSCi's main aspects are summarised below.

Table 3: iTSCi: Main aspects

Aspects	
Main features	<ol style="list-style-type: none"> 1) Combined tracking/tracing (through bag tagging, documentation, and data management and analysis), 2) Independent third party risk assessment, 3) Independent third party audits, 4) Publication of findings of risk assessments and audits.
Main implementers	Upstream companies (from mine to smelter) and national governments supported by

⁵⁸ The scope of the macro-level risk assessments depends on the geographical scale. As an example: the macro-level risk assessment for Rwanda addresses the whole country, for DRC it is done at the provincial level.

⁵⁹ ITRI and T.I.C. 2011a: 2

	iTSCi Programme Operators. Primary ⁶⁰ smelters only.
Objective	Enable responsible mining and responsible sourcing from GLR through progressive improvement.
Implementation status	Developmental implementation phase ⁶¹ in Rwanda and in DRC (Katanga).

Observations:

- iTSCi aims to sufficiently cover nearly all of the OECD DDG requirements for all five steps for upstream actors including the smelters, though final responsibility for conformance rests with the smelters and their suppliers on specific aspects such as integrating due diligence and risk management into management systems, contracts and so on.
- iTSCi faces a number of challenges in scaling up its operations, not least the sheer extent of demand for it to do so coupled with limited funding, huge capacity building needs, the geographical and logistical challenge posed by the location of mine sites, the inadequacy of local infrastructure (e.g. electricity and telephone black-outs) in DRC, and so on.
- iTSCi will fulfil the step 4 audit of the OECD DDG on behalf of member smelters.

1.4.3. The Conflict-Free Smelter Programme (CFS)

*“The CFS is a voluntary program in which an independent third party evaluates a smelter’s procurement activities and determines if the smelter demonstrated that all the materials they processed originated from [DRC] conflict-free sources.”*⁶² The CFS is primarily an audit that verifies a.) the origin of a smelter’s input streams, b.) that where the smelter has sourced from DRC and adjoining countries, an OECD DDG audit has been adequately conducted, and the smelter has suitably responded to any identified risk that their input streams have originated from sources that may contribute to conflict in the DRC.⁶³

The CFS seeks to conform with the DFA. Since the SEC rules are not yet finalized, the CFS interprets the DFA requirements in a restrictive manner to anticipate the worst possible scenario meaning that it works in absolutes to deliver ‘conflict-free’ minerals rather than ‘conflict-managed’ ones.

CFS was developed by EICC⁶⁴ and GeSI⁶⁵ in 2009. It is intended to cover tin, tantalum, tungsten and gold. So far, CFS audits have been conducted for tantalum;⁶⁶ the audit standard and instructions (protocols) for tungsten and tin were released in August and September respectively.⁶⁷ At the time of writing (November 2011), further informative and / or supportive documents such as the pre-audit checklist etc. have only been finalized for tantalum and tungsten.

⁶⁰ Primary smelters transform mineral inputs from mined sources; secondary smelters transform recycled or scrap metals. See EICC and GeSI 2011d: 1.

⁶¹ Developmental implementation phase means that all aspects of the iTSCi programme are currently being road tested, and none of them is exactly final.

⁶² EICC and GeSI 2011f: 4

⁶³ EICC and GeSI 2010

⁶⁴ For further information on the EICC see <http://www.eicc.info/> accessed 11th September 2011.

⁶⁵ For further information on the GeSI see <http://www.gesi.org/> accessed 11th September 2011.

⁶⁶ Results can be required at <http://www.conflictreesmelter.org/> accessed 11th September 2011.

⁶⁷ This report only looks at the 3 T’s as the OECD DDG gold supplement is not yet available. See footnote 27.

The CFS, like the OECD DDG, is global in scope, applicable to smelters all over the world, regardless of whether or not their minerals might come from the GLR. Tin, tungsten, tantalum and gold smelters / refiners are eligible for a CFS audit when they initiate a request with EICC and GeSI for an audit, have a conflict minerals policy, agree to fund the audit, and sign the appropriate agreements.⁶⁸

Smelters participating in the CFS choose to undergo audits annually, as the CFS assessment is valid for one year from the date of assessment. They are audited on their management of material inputs, outputs, and stocks to produce a mass balance calculation that fits with the margin of gain or loss allowed under the CFS audit protocol (10%). The audit must further ensure that all related documentary records are in order, to support the mass balance calculation, and also evidence the material's chain of custody (CoC), and the smelter's conflict mineral policy. Where it is found that the CoC originated in or passed through specific countries (e.g. those of the Great Lakes Region or where there is evidence of smuggling or transit of conflict mineral), extra requirements are made. These may include evidence that the smelter is in conformance with the OECD DDG.⁶⁹ In case the smelter chooses a joint industry scheme like iTSCi to demonstrate its conformance with the OECD DDG (e.g. through having the OECD DDG step 4 audit conducted) the scheme needs to be validated as being in conformance with the OECD DDG.

Greater detail can be found in Table 4, below, which exemplifies how the CFS divides the sources from which a smelter purchases generally into four groups, making compounding requirements for each country level as you move from level 1 (least risk of conflict) to level 3 (highest risk of conflict). The country levels might differ for each mineral as trading routes are different too. However, the structure for the country levels for all minerals remains the same.

Table 4: CFS: Country levels and requirements for tin⁷⁰

Country level 1	Definition	Countries with known active ore production that are not identified as conflict regions or plausible areas of smuggling or export of conflict minerals
	Requirements	Conflict Mineral Policy Documentation mechanism showing all minerals' receipts and product sold and reconciliation process for receipts, inventories, losses and sales.
	Countries	All not listed as Level 2a, 2b and 3
Country level 2a	Definition	Countries that are known or plausible countries for the smuggling, export out of region, or transit of conflict mineral ores.
	Requirements	As level 1, plus: On-site mine visit reports
	Countries	Kenya, Mozambique, South Africa
Country level 2b	Definition	Countries defined as the nine surrounding countries of the DRC which has been outlined in section 1502 in the Dodd Frank Act
	Requirements	As level 2a, plus Pre-requisite: Verification of conformance with the OECD DDG
	Countries	Burundi, Rwanda, Rep. Congo, Uganda, Tanzania, CAR, Zambia, Angola, South Sudan, Sudan

⁶⁸ EICC and GeSI 2011d

⁶⁹ EICC and GeSI 2011d

⁷⁰ As of the tin Protocol form 15th September 2011, with South Sudan added further to Loch, pers comm to Levin, 3rd November 2011.

Country level 3	Definition	Countries that are currently within conflict regions and are potentially supplying mineral ore materials.
	Requirements	As level 2b, plus: Documentation that all applicable taxes and royalties have been paid. Document what kind of information they used to check whether the mine site was under control of armed groups.
	Countries	DRC

The first group (country level 1) does not need “to complete any additional, preparatory steps before undergoing an assessment.”⁷¹ However, every smelter must implement a conflict minerals policy⁷² which covers any tin, tantalum, tungsten and / or gold materials from anywhere in the world, as well as any other mineral originating in the conflict regions. This policy must be publicly communicated and embedded into standard operating procedures and staff training systems. The smelter also needs to show the date the policy was established and put into effect. Further, the smelter needs to have a documentation mechanism in place that shows all minerals’ receipts and product sold and a reconciliation process for receipts, inventories, losses and sales. Finally, the smelter must have adequate documentary proof that their material does not originate from a conflict source as defined by the DFA. The CFS auditor also checks recycled materials.⁷³

Smelters sourcing from the DRC or its adjoining countries (levels 3 and 2b respectively) after 1st April, 2011 need to demonstrate that those sources are in conformance with the OECD DDG to be eligible for the CFS. They can show conformance either by individually having their sources audited against the OECD DDG by an independent third party **OR** by using another scheme, such as iTSCi (when conformant), to do this for them. The CFS may or may not decide to rely on the iTSCi audit of the CoC and the smelter for confirming conformance with the OECD DDG. This decision rests on the acceptance by credible third parties⁷⁴ of iTSCi or any other system a smelter uses as a valid due diligence, risk management, chain of custody and audit system. This acceptance will not necessarily arise from a defined process or point in time, but may simply emerge over time. (See observations, below.)

Main aspects of the CFS are summarized below.

Table 5: CFS: Main aspects

Aspects	
Main features	CFS is an audit that does: Material analysis (mass balance calculation of inputs, outputs, stocks) Business process review (demonstration of management systems, e.g. conflict minerals policy, 100% documentation of chain of custody; and identification of origin).
Main implementers	Primary and Secondary Smelters ⁷⁵
Objective	Enable companies to demonstrate conflict-free minerals sourcing.
Implementation status	Ta audits have started and continue, pilot audits for gold suppliers have started, and audits for W and Sn will begin as soon as interested smelters come forward. ⁷⁶

⁷¹ EICC and GeSI 2011f: 6

⁷² The conflict mineral policy encompasses provisions in line with the OECD DDG’s Model Supply Chain Policy (Annex II) for ‘those companies sourcing from the DRC and its nine surrounding countries’.

⁷³ For the definition on recycled materials the CFS is referring to the OECD DDG. See EICC and GeSI 2011d: 5.

⁷⁴ Credible third parties might include the USG (e.g. through the SEC), the international advocacy NGOs that have been central to driving industry to take action on conflict minerals, or through consensus of multiple stakeholders in a designated forum, working group or alliance. The outcomes of the OECD DDG pilots presently taking place may also contribute to credibility and validity.

⁷⁵ Primary smelters transform mineral inputs from mined sources; secondary smelters transform recycled or scrap metals. See EICC and GeSI 2011d: 1.

Observations:

- For now, the main documents that have been leveraged for the development of CFS are first and foremost, the pending rules of the SEC relevant to the DFA and secondly, the OECD DDG:
 - The OECD DDG step 4 (audit) has guided the development of the requirements for the CFS audit, and how it should be technically conducted; however, it was not intended that the CFS be the OECD DDG step 4 audit. The CFS may be modified once the final rules of the SEC are modified. For the time being it will remain focused on assuring that minerals are DRC conflict-free in line with Section 1502 of the DFA rather than accepting conflict-managed minerals, which is what the OECD DDG promotes (for certain types of abuses)⁷⁷.
 - Other documents and laws may emerge to which CFS must adapt and respond.
- Where CFS relies on a joint initiative to provide CoC assurance (i.e. GLR sourcing schemes such as iTSCi), that joint initiative must be validated as credible too. A validation roadmap and validation criteria have not been decided. Credibility may simply emerge over time and become obvious to key parties when it does happen, rather than being something to be planned for.⁷⁸
- On this point of credibility, the CFS must also demonstrate its status as a credible and accepted audit for assuring the DRC conflict-free status of materials at the smelter level. This credibility is important both amongst this supply chain tier, and its downstream users.
- Due to the fact that the CFS is oriented at achieving outcome gains rather than process gains, in line with the absolutist terms of the Dodd-Frank Act, it does not allow for risk mitigation through capacity-building with violating suppliers. The CFS must therefore require disengagement rather than constructive engagement, even where the latter would be ultimately more developmental. For example,
 - If the result of the audit is non-compliant because conflict material has been found in the supply chain, the smelter will be expelled from the CFS for a year (the current timeframe) and cannot be re-audited until after this period of time.
 - If the result is non-compliant due to a lack of adequate documentation, the smelter has three months to acquire the missing information and will be re-audited after three months.⁷⁹
- To date revisions to the country list have been conducted in a reactive manner, with adjustments made further to any new information that evidences that a country should

⁷⁶ For further information see indicators on <http://www.conflictreesmelter.org/>

⁷⁷ See points 5 onwards in Annex II, the Model Supply Chain Policy. (OECD, 2011)

⁷⁸ Bob Leet (EICC), phone interview with the authors on 18th September 2011. Mike Loch (GeSI), phone interview with the authors on 23rd August 2011.

⁷⁹ Michael Loch (GeSI), and Bob Leet (EICC), phone interview with the authors on 12th September 2011.

have an elevated 'risks' status. The CFS does not have a proactive process for reviewing a country's 'level', including moving a country down on the risk scale⁸⁰

- The CFS audit protocol documents are designed primarily for the auditors;⁸¹ there is not yet any direct guidance for the smelters themselves or observers who might need to understand how it works and how to apply it.
- The CFS is due to soon publish its requirements of auditors in terms of experience and credentials (while they do leverage OECD DDG requirements, ISO and USG expectations), and its list of approved auditors.⁸²
- CFS is operating in a year zero mode, in which there is some flexibility in the system as smelters and the programme adjust to the reality of implementation and 'flush out' their supply chains. Year zero is the first year in which a smelter seeks CFS certification, and allows some flexibility in the application of the newly created rules by allowing for some mitigating actions for smelters to dispose of questionable material already at their facilities.
- iTSCi provides for artisanal miners or mining organizations to demonstrate traceability. CFS smelters will be compelled to avoid producers, traders, and places where iTSCi is not operational – which is most of the GLR – or which cannot provide proof of chain of custody and management of risks in line with the OECD DDG through another system. This will reduce marketing options for these businesses and may lead to the cessation of activities altogether.

1.4.4. Relevant Government Initiatives

On July 21st 2010, the **US Government's Dodd-Frank Wall Street Reform and Consumer Protection Act** (Dodd-Frank Act, or 'DFA') came into Law.⁸³ Section 1502 of the Dodd-Frank Act requires companies to declare whether any "*columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the conflict in the Democratic Republic of the Congo or an adjoining country.*"⁸⁴ Companies need to report on the due diligence undertaken on the source and on the chain of custody of these 'conflict minerals', provide an independent audit of this report, and make further information available such as "*description of the facilities used to process the minerals, country of origin and the efforts to determine the mine or location of origin with the greatest possible specificity.*"⁸⁵ All requested information must be published on the company's website. The US Securities and Exchange Commission (SEC) has proposed rules on how to apply the DFA⁸⁶ for which individuals and organizations are still able to submit comments, though the commenting period was officially due to end in March 2011.⁸⁷ The rules are expected to be finalized by the end of 2011.⁸⁸

⁸⁰ Bob Leet (EICC), pers comm. to the authors, 6th November 2011.

⁸¹ Current CFS audit firms are Liz Muller, Inc.; UL-STR Responsible Sourcing and SGS. Mumtaz Ahmed (EICC), emails to the authors, 18th September, 2011. See also EICC and GeSI, 2011f: 9.

⁸² Mumtaz Ahmed, emails to authors, 18th September 2011.

⁸³ See Dodd-Frank Wall Street Reform and Consumer Protection Act (H.R.4173.ENR) <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf> accessed 10th September 2011.

⁸⁴ Other minerals might be added to this list in the future. USG 2010: 843

⁸⁵ USG 2010: 839

⁸⁶ Proposed rules for the DFA are at <http://www.sec.gov/rules/proposed/2010/34-63547.pdf> accessed 10th September 2011.

⁸⁷ Extension for comment period for proposed rules <http://www.sec.gov/rules/proposed/2011/34-63793.pdf> accessed 10th September 2011. See submitted comments <http://www.sec.gov/comments/s7-40-10/s74010.shtml> accessed 10th September 2011; how to submit comments http://www.sec.gov/cgi-bin/ruling-comments?ruling=s74010&rule_path=/comments/s7-40-10&file_num=S7-40-10&action=Show_Form&title=Conflict%20Minerals accessed 10th September 2011.

⁸⁸ See <http://www.sec.gov/spotlight/dodd-frank/dfactivity-upcoming.shtml>

Canada and the EU are also considering similar measures.⁸⁹ Both iTSCi and CFS will need to support compliance with the SEC rules once they are in final form; at this point, a detailed compatibility / compliance analysis of iTSCi and CFS against the DFA and SEC rules would be useful, not least to give industry confidence that the initiatives are watertight and in conformance with one another.

The **Regional Certification Mechanism (RCM) of the International Conference of the Great Lakes Region (ICGLR)** aims to break the link between mineral returns and rebel financing in order to deprive armed groups of sources of income and thus increase regional political stability in the GLR. It forms part of the ICGLR's Regional Initiative on Natural Resources (RINR).⁹⁰ As with the OECD DDG, it covers tin, tantalum, tungsten, and gold. Its main principles are: transparency; the burden of proof falls primarily on exporters, secondly on Governments; mandatory third-party audits; adapt current systems; and design for adaptability.⁹¹ Its implementation will rely on four main system elements: (1.) Chain of custody tracking from mine site to export, (2.) Regional tracking of mineral flows via the ICGLR database, (3.) Regular independent third-party audits and (4.) Independent mineral chain auditor.⁹² The RCM, which is not yet implemented, has mainly been developed through processes internal to the ICGLR headquarters in Bujumbura, Burundi with external guidance from Partnership Africa Canada (PAC)⁹³ and the German Technical Cooperation (GIZ).⁹⁴ Input from industry has seemingly been limited so far. Further, the ICGLR conducted consultations with the international community and international and regional civil society,⁹⁵ which also included the dissemination of the RINR both to the media as well as the populations and digger-communities.⁹⁶ The RINR has been approved at the ICGLR Summit of Head of States in their Lusaka declaration in December 2010. Consequently, it will eventually be integrated into the national law of the ICGLR's eleven member states. The PAC consultants view iTSCi and BGR's CTC (see next) as being compatible with and suitable for integration into the ICGLR system.⁹⁷ Further, iTSCi holds a Memorandum of Understanding (MoU) with the ICGLR, which states that *"both initiatives are based on a common objective of limiting the ability for armed groups to source financing from the production and trade of minerals in the Great Lakes Region, and wish to take advantage of the synergies between the two initiatives to seek harmonisation and develop cooperation in activities relating to the traceability and certification of conflict minerals in the Great Lakes Region."*⁹⁸ The MoU further recognizes iTSCi *"as a scheme for traceability that is suitable for the use within the framework of the RCM"*.⁹⁹

⁸⁹ Such as Canada: Bill C-571, see: <http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=4668098&File=33#3> accessed 11th July 2011. For discussions within the European Parliament see: <http://makeitfair.org/the-facts/reports/roundtable-on-conflict-minerals-legislation> and: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2011-004340&language=EN> accessed 1st September 2011.

⁹⁰ Other elements of the RINR are: Harmonisation of laws, Regional database, EITI cross-check, Whistle-blowing, and Formalisation.

⁹¹ PAC 2011: 8

⁹² PAC 2011: 8-9

⁹³ For further information on PAC, see <http://www.pacweb.org/index-e.php>, regarding PAC's input on RCM see: *Taming the Resource Curse: Implementing the ICGLR Certification Mechanism for Conflict-prone Minerals* by Shawn Blore and Ian Smillie http://www.pacweb.org/Documents/icglr/PAC_Report_on_ICGLR_RCM-03-2011-eng.pdf accessed 10th September 2011.

⁹⁴ See <http://www.gtz.de/en/weltweit/afrika/28459.htm>

⁹⁵ Markus Wagner (GIZ), email to the authors on 14th September.

⁹⁶ A regional civil society platform (linked to the tools of certification, formalisation and whistle blowing) is under construction with the support of GIZ and PAC to serve a dual purpose (dialogue for dissemination as well as returning information and leads on illegal exploitation) as per email communication with Markus Wagner on 14th September 2011.

⁹⁷ PAC 2010: 15

⁹⁸ MoU between ICGLR and ITRI 2010: 3

⁹⁹ MoU between ICGLR and ITRI 2010: 4

The German Federal Institute for Geosciences and Natural Resources (*Bundesanstalt für Geowissenschaften und Rohstoffe*) (BGR) has initiated the development and implementation of the **Certified Trading Chains** (CTC) system that aims to improve “*supply chain due diligence and good governance in the artisanal and small-scale mining sector*” in Rwanda and DRC.¹⁰⁰ CTC contains “*twenty certification standards on mineral origin and traceability, mining conditions, and supply chain due diligence elements based on OECD and other integrity instruments, adapted to practical applicability within the central African ASM*”.¹⁰¹ The CTC concept was developed in 2008 through consultative multi-stakeholder workshops and then piloted at a number of larger mines in Rwanda in September 2009 by BGR and the Rwanda Geology and Mines Authority (OGMR).¹⁰² It covers cassiterite, wolframite, and columbite-tantalite (coltan).¹⁰³ Since September 2009 preparatory steps (e.g. establishing a working group, developing the manuals for DRC) to implement CTC in the DRC where it also covers gold were started. Piloting the CTC in DRC was due to start in September 2011 with baseline audits.¹⁰⁴ Experiences and outcomes from CTC in Rwanda and DRC are expected to contribute to the further development of ICGLR’s RCM and help its implementation in individual member states of the ICGLR.¹⁰⁵

BGR has also developed an analytical fingerprint (AFP) technology which is “*a combination of analytical evaluation methods to independently track the origin of tantalum (coltan) ore concentrates produced in Central Africa*.”¹⁰⁶ This analytical fingerprint can be included in the CTC (standard 1) as an optional exercise to verify chain of custody. It is further envisaged that the AFP technique will be integrated into the RCM. Lastly, iTSCi collaborated with the CTC at its pilot sites in Rwanda. The iTSCi auditor joined the CTC audit in December 2010 as observers; they also joined a CTC audit at Nyakabingo mine site in order to further develop iTSCi’s audit guidelines and to assess how the different traceability aspects might fit together. Collaboration between CTC and iTSCi is also planned for CTC implementation in DRC as it is envisaged to “*in cooperation with iTSCi, introduce a mineral traceability and tracking system*”.¹⁰⁷

¹⁰⁰ BGR 2011: 2

¹⁰¹ BGR 2011:1

¹⁰² http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/NewsEvents/newsevents_node_en.html accessed 10th September 2011.

¹⁰³ The CTC project in Rwanda cooperated with iTSCi as they conducted audits together; similar actions are planned for DRC.

¹⁰⁴ Gudrun Franken (BGR), email to the authors on 12th September 2011.

¹⁰⁵ See http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/FAQ/FAQ_node_en.html accessed 10th September 2011.

¹⁰⁶ BGR 2011: 2

¹⁰⁷ BGR 2011: 1

2. Conformance Analysis of OECD DDG and iTSCi¹⁰⁸

iTSCi has used the OECD DDG to guide how its system should be structured to credibly provide due diligence and chain of custody assurance to industry. Consequently, it treats the OECD DDG as one of its normative documents, along with the iTSCi membership agreement and the iTSCi guidance document.¹⁰⁹

The following presents the main conclusions of the conformance analysis. A summary table is presented as Table 6.

2.1. Differences in Approach

iTSCi has established mechanisms to meet the OECD DDG requirements for upstream companies as part of a joint initiative, as far as is possible. The OECD DDG encourages and accepts conformance through joint initiatives and expressly mentions iTSCi as one such thing.¹¹⁰ However, companies “*retain individual responsibility for their due diligence [e.g. managing risks through discontinuing trade with suppliers, integrating due diligence aspects in contractual agreements with suppliers etc.], and should ensure that all joint work duly takes into consideration circumstances specific to the individual company.*”¹¹¹ This also applies for companies participating in iTSCi.¹¹²

iTSCi is a pragmatic approach whose chain of custody system, independent risk assessment and management, and independent third-party audit helps upstream companies conform with the OECD DDG. The OECD DDG acknowledges “*due diligence in conflict-affected and high-risk areas presents practical challenges,*”¹¹³ so recognising that its application depends “*on individual circumstances and factors such as size of the enterprises, the location of the activities, the situation in a particular country, the sector and nature of the products or services involved*”.¹¹⁴ This focus on progressive improvement and flexibility allows iTSCi to adapt the requirements of the OECD DDG to the actual situation on the ground while achieving change over time in line with the OECD DDG’s recommendations. For example, small upstream companies (e.g. processors / *negociants*) in DRC may not have formal, written mineral supply chain policies and / or risk mitigation plans but operate risk management differently to larger, corporate entities, such as by ensuring they select suppliers whose mine sites are not controlled by armed groups or by temporarily suspending trade with suppliers that do not apply protection against worst forms of child labour.

We can only assess conformance against the OECD DDG recommendations that are applicable to joint initiatives, and not those requested to be done by individual companies, such as step 1 C.3.1. *Incorporate the above disclosure requirements into commercial contracts with international concentrate traders, mineral re-processors and local exporters.*¹¹⁵

¹⁰⁸ This conformance analysis considered the complete OECD DDG, except Annex III, ‘Suggested Measures for Risk Mitigation and Indicators for Measuring Improvement’.

¹⁰⁹ A final iTSCi membership agreement is planned for October 2011. The iTSCi guidance documents are currently under development.

¹¹⁰ OECD 2011:14

¹¹¹ OECD 2011: 35, 38

¹¹² See the section on companies’ obligation in the iTSCi guidance document, which is currently being finalised. (iTSCi 2011)

¹¹³ OECD 2011: 14

¹¹⁴ OECD 2011: 8

¹¹⁵ OECD 2011: 32

Table 6: iTSCi: Summary of conformance analysis iTSCi-OECD DDG

OECD DDG	How iTSCi conforms with it
Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas	
Issues 1-6 and 8-14	CONFORMS iTSCi requires this, as stated in the provisional iTSCi membership agreement. If any of the serious abuses mentioned in the OECD DDG mineral supply chain policy should happen, a company or mine site will be expelled from iTSCi unless it adopts suitable risk mitigation measures (for issues 5 onwards) or immediately disengages from the problematic relationship. This would also be a cause for denial of acceptance of prospective members.
7. Where we or any company in our supply chain contract public or private security forces, we commit to or we will require that such security forces will be engaged in accordance with the Voluntary Principles on Security and Human Rights. In particular, we will support or take steps, to adopt screening policies to ensure that individuals or units of security forces that are known to have been responsible for gross human rights abuses will not be hired.	TOWARDS CONFORMANCE Information on the presence of company security is already collected and assessed. The next revision / finalisation of iTSCi's membership agreement will include reference to the Voluntary Principles on Security and Human Rights. ¹¹⁶
Step 1: Establish strong company management systems Objective: To ensure that existing due diligence and management systems within companies address risks associated with minerals from conflict affected or high-risk areas.	
A) Adopt, and clearly communicate to suppliers and the public, a company policy for the supply chain of minerals originating from conflict-affected and high-risk areas. This policy should incorporate the standards	CONFORMS The provisional iTSCi membership agreement, 7.2.4: states that full members ¹¹⁷ must agree to “recognise all aspects of the OECD Guidelines [and] implement strong management systems for due diligence.” ¹¹⁸ As part of the membership application process companies need to send their corporate policies, including their mineral supply chain policy, to iTSCi for evaluation by the Risk Assessor (RA) and the Steering Committee. The RA assesses the company documents and makes recommendations to allow for membership (or not) along with suggestions for improvement indicators. ¹¹⁹

¹¹⁶ Kay Nimmo (ITRI), email to the authors, on 22nd August 2011.

¹¹⁷ Full Membership: „full membership of the Programme [iTSCi] is open to any local international trader or smelter, local mine company, local exporter, any ‘upstream’, and any companies associated with the upstream mineral trade (including but not limited to mineral transport and mineral assay companies).” (iTSCi provisional membership agreement 2011: 13).

¹¹⁸ iTSCi provisional membership agreement 2011: 14.

¹¹⁹ This is the initial assessment for membership. The more on-going evaluation of risks or the regular risk reports will be done after a company has been accepted into iTSCi.

OECD DDG	How iTSCi conforms with it
<p>against which due diligence is to be conducted, consistent with the standards set forth in the model supply chain policy in Annex II.</p>	
<p>B) Structure internal management to support supply chain due diligence.</p>	<p>CONFORMS Companies are responsible for ensuring that risks are adequately managed and due diligence practice is applied. These structures are checked by the Risk Assessor. (see step 2 'risk assessment').</p>
<p>C) Establish a system of controls and transparency over the mineral supply chain. This includes a chain of custody or a traceability system or the identification of upstream actors in the supply chain. This may be implemented through participation in industry-driven programs.</p>	<p>BEYOND CONFORMANCE <i>C.3.2 Maintain the information generated by the chain of custody and/or traceability system outlined below for a minimum of five years, preferably on a computerised database and make it available to downstream purchasers and to any institutionalised mechanism, regional or global, once in place with the mandate to collect and process information on minerals from conflict-affected and high-risk areas.</i></p> <p>The iTSCi database is a computerised, sophisticated web-based database. It actually offers far more options than only maintaining data of the chain of custody and/ or a traceability system. A great deal of checks for investigating any discrepancies is possible at any time from any place of the world. See iTSCi 2011.</p> <p>CONFORMS iTSCi has a comprehensive chain of custody system based on tagging, documentation and web-based database that helps companies conform with the OECD DDG.¹²⁰</p> <p>NOT APPLICABLE <i>C.2.1. Incorporate the above disclosure requirements into commercial contracts with local Exporters</i> <i>C.3.1 Incorporate the above disclosure requirements into commercial contracts with international concentrate traders, mineral re-processors and local exporters.</i> <i>C.4.3. Avoid, where practicable, cash purchases and ensure that all unavoidable cash purchases of minerals are supported by verifiable documentation and preferably routed through official banking channels.</i>¹²¹ iTSCi cannot request C.2.1. and C.3.1 of its members as they are commercial in nature and implicate or restrict trade. iTSCi does not give any recommendations on how cash purchases should be made, as it is the company's responsibility. Further, iTSCi operates in countries where official banking channels may not be practically or commercially viable. However as 'where practicable' is used this is a rather a recommendation, or 'soft requirement' of the OECD DDG, so it is not necessary to conform with this requirement. Nonetheless, iTSCi intends to make a recommendation on good practice for avoiding cash payments in the next version of the membership agreement.</p>
<p>D) Strengthen company engagement with suppliers. A supply chain policy should be incorporated into contracts</p>	<p>CONFORMS The company risk assessment checks the adequacy of integration of due diligence activities into contracts and agreements with suppliers.</p> <p>NOT APPLICABLE</p>

¹²⁰ The OECD DDG explicitly refers to iTSCi in step 1 C.4. (OECD 2011a: 33).

¹²¹ OECD 2011a: 33 "Financial institutions are encouraged to refer to this Guidance and supplement when undertaking customer due diligence for the purposes of providing their services and factor their compliance with this Guidance into their decision-making."

OECD DDG	How iTSCi conforms with it
and/or agreements with suppliers. Where possible, assist suppliers in building capacities with a view to improving due diligence performance.	iTSCi cannot require any aspects that restrict or influence trade or individual supply relationships.
E) Establish a company-level, or industry-wide, grievance mechanism as an early-warning risk-awareness system.	<p>CONFORMS Anybody can raise concerns to any of the local iTSCi staff or to the local stakeholder committees. Information received on possible violations by any member company will be investigated by the RA.</p> <p>TOWARDS CONFORMANCE The provisional iTSCi membership agreement designates a Programme Ombudsman, an individual who will be appointed “to independently deal with appeals and/ or other matters of dispute between the organisations within the operational system of the Programme and its Members, specifically relating to disputes over membership eligibility or expulsion of Members.”¹²² This ombudsman will mainly deal with disputes amongst members and the Steering Committee. However, an ombudsman is not yet in place. Additionally, an Advisory Panel is being set up which “will discuss relevant issues with the Risk Assessor in order to provide independent input into the Programme”¹²³. “The Advisory Panel will comprise of representatives of independent NGO’s, other stakeholders, industry groups and government representatives (whenever relevant) operating in the relevant implementing countries and with an in-depth knowledge of the mining sector.”¹²⁴ Further, it is considered that all local stakeholder committees will be included. “The Advisory Panel has no decision-making powers, but is involved in the Programme solely in an advisory capacity to the Risk Assessor and the Steering Committee.”¹²⁵ Additionally, “any third party may approach the Advisory Panel if they wish to provide information of relevance to the Programme or about its Members. Such information will be provided to and discussed with the Risk Assessor to ascertain whether any action is recommended.”¹²⁶</p>
Step 2: Identify and assess risks in the supply chain Objective: To identify and assess risks on the circumstances of extraction, trading, handling and export of minerals from conflict-affected and high-risk areas.	
A. Identify the scope of the risk assessment of the mineral supply chain.	<p>BEYOND CONFORMANCE iTSCi includes three different types of risk assessment:</p> <ol style="list-style-type: none"> 1) A general risk assessment is done at the macro level by a third party 2) A company-specific risk assessment is done by a third party 3) A baseline assessment of each mine (and respective transportation routes) site is conducted by the Programme Operators and their local partners. This also includes monthly reporting.¹²⁷ <p>Furthermore, the third party risk assessments do not only look at the OECD Guidelines for Multinational Enterprises, International Human Rights and Humanitarian Law; the risk assessor also uses the following documents:</p> <ul style="list-style-type: none"> • IFC Policy and Performance Environmental and Social Standards,

¹²² iTSCi provisional membership agreement 2011: 6.

¹²³ iTSCi provisional membership agreement 2011: 12.

¹²⁴ iTSCi provisional membership agreement 2011: 12.

¹²⁵ iTSCi provisional membership agreement 2011: 12.

¹²⁶ iTSCi provisional membership agreement 2011: 12.

¹²⁷ As iTSCi operators also have their own structures and procedures for security and risk issues, depending on the operator there may even be a fourth form of risk management,

OECD DDG	How iTSCi conforms with it
	<ul style="list-style-type: none"> • John Ruggie, Reports of the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations, • Equator Principles.¹²⁸ <p>CONFORMS</p> <p>The iTSCi Programme has appointed a Risk Assessor (RA) to “provide independent risk assessment advice on any potential link to conflict or serious human rights abuses impacting upon the operation or Members of the Programme.”¹²⁹ Mine and transportation route baseline studies are conducted at all potential participant mine sites (limited presently to Katanga in DRC and Rwanda) to ascertain that no serious risks are occurring at these sites.</p>
<p>B. Map the factual circumstances of the company’s supply chain(s), under way and planned.</p>	<p>CONFORMS</p> <p>The iTSCi Programme includes three types of risk assessments:</p> <ol style="list-style-type: none"> 1) A general risk assessment is done of the mineral production area by a third party 2) A company specific risk assessment is done by a third party¹³⁰ (following the OECD DDG Annex)¹³¹ 3) A baseline assessment of each mine site and associated transportation routes is conducted by Pact and their local partners (e.g local NGO, local iTSCi personnel).¹³² <p>In addition, iTSCi Programme Operators write monthly reports and incident reports to inform the iTSCi Secretariat¹³³ about what is happening on the ground.</p> <p>Moreover, risk response procedures including notification / chance of input for companies to respond to recommendations are also part of the monthly reporting scheme.</p> <p>As section B allows companies to jointly undergo risk assessment, iTSCi provides the on-the-ground assessment teams for this requirement.</p> <p>TOWARDS CONFORMANCE</p> <p>Key information and findings from the risk assessments are currently being finalised for publication.</p>
<p>C. Assess risks in the supply chain.</p>	<p>CONFORMS</p> <p>As a joint industry approach, iTSCi provides on-the-ground teams to conduct risk assessments (company, general and mine and transportation route baseline).</p> <p>CONFORMS</p> <p><i>C. 1. b) Review applicable standards, including: b) National laws of the countries where the company is domiciled or publicly-traded (if applicable); of the countries from which the minerals are likely to originate; and of transit or re-export countries.</i></p> <p>iTSCi interprets this to mean review of national laws within the Great Lakes Region only on the basis that expecting a Risk Assessor to know all relevant legislation in every country where an iTSCi member might be domiciled or publicly trade is too onerous, expensive, and</p>

¹²⁸ CR 2010a: 6.

¹²⁹ iTSCi provisional membership agreement 2011: 6, further details see 9-10. Currently, this is performed by Channel Research.

¹³⁰ Cécile Collin (Channel Research), phone interview with the authors on 1st July 2011.

¹³¹ Cécile Collin (Channel Research), phone interview with the authors on 1st July 2011.

¹³² Cécile Collin (Channel Research), phone interview with the authors on 1st July 2011.

¹³³ All information will be first sent to the Secretariat which then distributes it to the Steering Committee, the Risk Assessor (RA), the Auditor and to the companies.

OECD DDG	How iTSCi conforms with it
	<p>thus unpragmatic. Thus the iTSCi risk assessor does <i>not</i> use national laws of the countries where the company is domiciled or publicly-traded outside of the GLR in the company risk assessment. The OECD DDG, however, understands this to mean that “<i>laws relevant to contributing to conflict or human rights abuses</i>” or “<i>additional laws where a company is domiciled, such as the Dodd-Frank Act, the UK’s anti-bribery law</i>”¹³⁴ should be consulted as part of the risk assessment process. On this basis, iTSCi would not conform. Discussion and agreement on this point is required.</p> <p>TOWARDS CONFORMANCE Company’s risk assessments are all still being done at once. The Rwanda country assessment has been drafted, and a public version is being drafted. The DRC (Katanga) risk assessment (company and provincial level) is still being drafted.</p>
Guiding Note for Upstream Company Risk Assessment	
<p>A. Create enabling conditions for an effective risk assessment.</p>	<p>CONFORMS The iTSCi company risk assessment includes on the ground assessments.¹³⁵ Channel Research (CR) is contracted to be the Risk Assessor by ITRI. CR has no contractual linkages with any mining, trading or smelter company that may present a conflict of interest. The prospective CR team is well skilled and experienced in working in unstable environments and post-conflict countries. The teams have repeatedly worked in the Democratic Republic of Congo, and the neighbouring countries of Uganda, Rwanda and Burundi; they also are well experienced in conducting impact monitoring and evaluations in high-risk areas.¹³⁶</p> <p>NOTE It is deemed to be acceptable that the risk assessor (RA) and auditor will be the same body, as they are not directly contracted by the companies but through ITRI; this issue was also discussed with representatives of the UN, and no objections were raised.¹³⁷ However, to ensure the integrity of iTSCi is not questioned on this point, it would be optimal if confirmation of the acceptability of one institution acting as both RA and auditor were to also come from other relevant parties, like the OECD Secretariat and downstream users. Were there to be any conflict of interest issues, they should be becoming evident during the present phase of iTSCi implementation and OECD DDG piloting, and so could be addressed.</p>
<p>B. Establish an on-the-ground assessment team (hereafter “assessment team”) in the conflict-affected and high-risk areas of mineral origin and transit to generate and maintain information on suppliers and the circumstances of mineral extraction, trade, handling and export. Upstream companies</p>	<p>CONFORMS The iTSCi Risk Assessor consults with local and central governments as well as with civil society and local suppliers as outlined in the inception report.¹³⁸ Further, iTSCi has established local, provincial stakeholder committees to assist iTSCi’s implementation. They will be consulted by the (RA) too. The stakeholder committees are monitoring iTSCi’s implementation on the ground. They inform the RA (or other iTSCi Operators, or the iTSCi Secretariat or the iTSCi Steering committee) about anything that is happening on the ground. The mine and transportation route baseline study will also be consulted by the RA to do the risk assessment. Additionally any incident being reported will be properly assessed. Even though the company risk assessment is planned to be conducted every six months, it basically can be done any time, if certain questions and / or rumors arise and need to be investigated. The risk assessment field visits include a debriefing with the companies. In addition to that the iTSCi Steering Committee also discusses</p>

¹³⁴ Tyler Gillard (OECD), phone interview with the authors on 12th September 2011.

¹³⁵ See CR 2011: 13

¹³⁶ Based on the CV’s of the risk assessment team of CR.

¹³⁷ Kay Nimmo (ITRI), email communication with the authors on 24th August 2011.

¹³⁸ CR 2011a: 25-26.

OECD DDG	How iTSCi conforms with it
<p>may establish such a team jointly in cooperation with other upstream companies supplying from, or operating in these areas (“cooperating companies”).</p>	<p>identified risks with the companies and then agree on a list of actions to mitigate these risks. Any iTSCi member is requested to allow for the RA’s access to its facilities.¹³⁹</p> <p>NOTE The maps (DRC Map, US Department of State Map, IPIS map) mentioned in the footnote are not yet developed or provide very superficial data that cannot be used for such a detailed assessment.</p>
<p>C. Recommended questions that company assessments should answer: These questions relate to common circumstances found in the supply chain of tin, tantalum, tungsten, their ores and metal derivatives which give rise to risks.</p>	<p>CONFORMS Through the three different risk assessments: a) Macro-level risk assessment b) Company level risk assessment c) Mine and transportation baseline study. iTSCi gathered information on context of the conflict-affected and high-risk area of mineral origin, transit and/or export.</p>
<p>Step 3: Design and implement a strategy to respond to identified risks Objective: To evaluate and respond to identified risks in order to prevent or mitigate adverse impacts. Companies may cooperate to carry out the recommendations in this section through joint initiatives. However, companies retain individual responsibility for their due diligence, and should ensure that all joint work duly takes into consideration circumstances specific to the individual company.</p>	
<p>A. Report findings to designated senior management</p>	<p>CONFORMS Findings from the risk assessment are to be discussed with iTSCi member companies and other stakeholders (civil society, local stakeholder committees).¹⁴⁰ The risk assessment report will officially be sent to the Secretariat to distribute to the Steering Committee and members if relevant. The Steering Committee then also discusses the risk assessment with the companies. As stated in the provisional membership agreement “<i>Findings which identify a verified risk of links with conflict or serious human rights abuses will be shared with Members of the Programme in order to alert them to such concerns.</i>”¹⁴¹</p> <p>TOWARDS CONFORMANCE Company’s risk assessments are all still being done at once. The Rwanda country assessment has been drafted, waiting for a public version. The DRC (Katanga) risk assessment (company and provincial level) is still being drafted.</p>
<p>B. Devise and adopt a risk management plan.</p>	<p>CONFORMS iTSCi has an incident reporting protocol in place. The protocol requires companies to be informed and consulted on any relevant incident report. The RA (and if necessary the advisory panel too) is also requested to make recommendations for the most serious types of risk. For each incident that is reported, the required follow up actions are noted on the form (indicators are resolved or not resolved), together with information on what is to be done and a respective timeframe.</p> <p>Based on input from all consulted parties, including companies, the iTSCi Steering Committee recommends what actually needs to improve and will follow up on a company’s progress.</p>

¹³⁹ See ITRI 2011a: 14.

¹⁴⁰ Maybe while the risk assessor is still in the country, or by email / phone later and sent in the risk assessment reports.

¹⁴¹ iTSCi provisional membership agreement 2011: 15: 7.3.2

OECD DDG	How iTSCi conforms with it
	<p>At mine sites (ASM and larger mine sites) the stakeholder committees¹⁴² will be informed of any risk (through local iTSCi staff, Pact, RA while s/he is present) and deal with these risks directly. Any actions to solve the occurring issue will be documented and reported back to the committee and to the local iTSCi personnel. At this level it is utterly impractical to create a formalized mechanism to develop formal mitigation plans, so direct, responsive actions to solve risk and problems are more desired and effective. This conforms with the OECD DDG as risk mitigation is always context- and situation-specific but action should be clear and based on adequate consultation and communication with stakeholders.¹⁴³</p> <p>TOWARDS CONFORMANCE Company's risk assessments are all still being done at once. The Rwanda country assessment has been drafted; iTSCi is waiting for a public version from the risk assessor. The DRC (Katanga) risk assessment (company and provincial level) is still being drafted.</p>
<p>C. Implement the risk management plan, monitor and track performance of risk mitigation, report back to designated senior management and consider suspending or discontinuing engagement with a supplier after failed attempts at mitigation.</p>	<p>CONFORMS The provisional iTSCi membership agreement allows a company six months to improve after a risk has been verified and risk mitigation actions have been agreed.¹⁴⁴</p>
<p>D. Undertake additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.</p>	<p>CONFORMS Risk assessments will be conducted at least every six months. However, there is ongoing monitoring of risks done by the RA and by the Programme Operators (monthly reporting).</p> <p>Any rumours of incidents that arise will be investigated by the RA and/or the iTSCi Programme Operators (who develop the incident reports) on the ground.</p>
<p>Step 4: Carry out independent third-party audit of smelters/refiner's due diligence practices <i>Objective: To carry out an independent third-party audit of the smelter/refiner's due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas and contribute to the improvement of smelter/refiner and upstream due diligence practices, including through any institutionalised mechanism to be established at the industry's initiative, supported by governments and in cooperation with relevant stakeholders.</i></p>	
<p>A. Plan an independent third party audit of the smelter/refiner's due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.</p>	<p>CONFORMS Channel Research is the independent third party iTSCi programme auditor (directly contracted by ITRI but not by the companies). The iTSCi programme audit includes the complete upstream supply chain from mine to smelter input.</p> <p>TOWARDS CONFORMANCE A.3. c) <i>Accountability: Performance indicators may be used to monitor the ability of the auditors to carry out the audit in conformity with the</i></p>

¹⁴² Depending on the in-country situation there are local, provincial and / or national stakeholder committees. The severity of an incidents indicates what stakeholder committee level is dealing with the issue.

¹⁴³ Tyler Gillard (OECD), email to the authors on 4th October 2011.

¹⁴⁴ iTSCi provisional membership agreement 2011: 16.

OECD DDG	How iTSCi conforms with it
	<p><i>audit programme based on the objectives, scope and criteria of the audit, judged against audit programme records.</i>¹⁴⁵ The contract for the auditor is being developed.</p> <p>The audit will be performed according to the ISO 19011 auditing principles, procedures and techniques. The first trial audits are planned for November 2011.</p>
<p>B. Implement the audit in accordance with the audit scope, criteria, principles and activities set out above.</p>	<p>TOWARDS CONFORMANCE</p> <p>This is planned. Generally no audit has been done yet owing to lack of clarity before this analysis (in this report) as to whether it should be iTSCi or the CFS auditor who would conduct the OECD DDG step 4 audit.¹⁴⁶ The first trial audits are planned for November 2011; respective audit guidelines (e.g. performance indicators for the auditor) are under development.</p> <p>OUTSTANDING GAP</p> <p>The procedure for accrediting auditors remains unclear.</p>
<p>Step 5: Report annually on supply chain due diligence <i>Objective: To publicly report on due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas in order to generate public confidence in the measures companies are taking.</i></p>	
<p>A. Annually report or integrate, where practicable, into annual sustainability or corporate responsibility reports, additional information on due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.</p>	<p>CONFORMS</p> <p>The programme auditor will “provide a report on the Programme, at the very least annually, the findings of which will be publicly available.”¹⁴⁷ There will also be an annual risk assessment report written by the Risk Assessor and published by the iTSCi Secretariat containing information on due the diligence practices of member companies.¹⁴⁸ The template is under development.</p> <p>TOWARDS CONFORMANCE</p> <p>iTSCi will publish an annual report on risk assessments and an annual audit report. Companies need to report their own report on due diligence but can refer to the iTSCi report.</p>

¹⁴⁵ OECD 2011a: 41 “See Chapter 5.6 of ISO 19011.”

¹⁴⁶ Kay Nimmo, email to authors, 15th September 2011.

¹⁴⁷ iTSCi provisional membership agreement 2011: 12.

¹⁴⁸ Discussion at ITRI 25th July.

2.2. Conformance

iTSCi is generally in conformance with the OECD DDG. In its membership agreement, iTSCi requires members to adopt and implement the model supply chain policy and helps companies implement the five-step framework for risk-based due diligence in the mineral supply chain (including its specifications in the supplement for tin, tantalum and tungsten).

2.3. Outstanding Gaps: Present Non-conformance and Towards Conformance

Though iTSCi is largely in conformance with the OECD DDG, our analysis reveals three different kinds of present non-conformance: (1) programme components that are presently under development (which we term 'towards conformance'), (2) OECD DDG requirements that are not applicable to iTSCi and that iTSCi cannot request of its members as they are commercial in nature and implicate or restrict trade,¹⁴⁹ and (3) issues where the OECD DDG might not be feasible (e.g. extensive review of national laws) for a joint industry approach.

Elements under development (towards conformance) such as the publication of already conducted risk assessments (in Rwanda and Katanga), the conduct (of) further risk assessments (in DRC), and the realization of first audits will be put in place by the end of this year. (see table 6)

Gaps identified under 2 and 3 will remain since these recommendations are not applicable for a joint industry scheme like iTSCi. This is also due to the fact that the companies are ultimately responsible for their own *business* decisions (e.g., where to trade / buy from, how to mitigate risk); while iTSCi is able to assist them and give support, iTSCi cannot decide for them. These gaps do not affect iTSCi's overall conformance with the OECD DDG as all applicable requirements for joint industry approaches are covered by iTSCi. The trials of the OECD DDG in which iTSCi is participating will help distil best practices for due diligence as well as ways to fill identified gaps.

2.4. Beyond Conformance

iTSCi's chain of custody / traceability system goes beyond the recommendations of the OECD DDG. This especially applies to the sophistication of the iTSCi database and the iTSCi risk assessments, of which there are three types.

Table 7: iTSCi: Beyond conformance

OECD DDG	Beyond Conformance
Step 1: Establish strong management systems	The iTSCi database is a computerised, sophisticated web-based database. It actually offers far more options than only maintaining data of the chain of custody and / or a traceability system. A great deal of checks for investigating any discrepancies is possible at any time from any place of the world. However the utility of the database depends on the quality of data produced by those implementing the initiative on the ground, which is an ongoing challenge. ¹⁵⁰ iTSCi further offers more information on the chain of custody than the OECD DDG requires, as it also includes information on (mine site) tunnel number, time, price, and concentration of extracted minerals
Step 2: Identify and assess risks in the supply chain	iTSCi includes three different types of risk assessment: 1) A general, risk assessment is done at the macro level by a third party 2) A company-specific risk assessment is done by a third party 3) A baseline assessment of each mine (and respective transport routes) site is conducted by the Programme Operators and their local partners;

¹⁴⁹ For example, it is the responsibility of companies to determine their contracts.

¹⁵⁰ Kay Nimmo (ITRI), email to authors, 15th September 2011.

OECD DDG	Beyond Conformance
	<p data-bbox="635 219 1038 248">this also includes monthly reporting¹⁵¹</p> <p data-bbox="580 277 1390 387">Furthermore, the third party risk assessments do not only look at the OECD Guidelines for Multinational Enterprises, International Human Rights and Humanitarian Law; the risk assessor also uses the national laws of relevant countries in the GLR and the following documents:</p> <ul data-bbox="635 416 1385 566" style="list-style-type: none"><li data-bbox="635 416 1385 445">• IFC Policy and Performance Environmental and Social Standards,<li data-bbox="635 448 1385 528">• John Ruggie, Reports of the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations,<li data-bbox="635 530 911 566">• Equator Principles.¹⁵²

¹⁵¹ As iTSCI operators also have their own structures and procedures for security and risk issues, depending on the operator there may even be a fourth form of risk management,

¹⁵² CR 2010a: 6.

3. Conformance Analysis of OECD DDG and CFS

The CFS evaluates whether all material at the smelter is DRC conflict-free. According to the CFS conflict-free material is anything other than material from Level 3 countries “*after 1st April 2011 without an OECD Guidance compliant scheme being utilized.*”¹⁵³ The CFS system is primarily an audit, which consists of four different standard audit instructions (protocols) that correspond to each of the four minerals (tin, tantalum, tungsten and gold) within scope. To be clear, the CFS is an audit and not a programmatic approach for supporting companies to implement management systems, risk assessment and mitigation, like iTSCi; however, CFS does upon request conduct pre-audit visits to assist smelters in identifying gaps in their systems, and has a three month improvement period for those smelters not passing their initial audit.

Adoption of the Model Supply Chain Policy (which the CFS calls ‘Conflict Mineral Policy’) and the implementation of step 1 of the OECD DDG are *pre-requisites* for a smelter to undergo a CFS audit and are not part of the CFS audit, and so were not included in the gap analysis. Nor were steps 2 and 3 (risk assessment and risk mitigation) as the CFS does not embody any risk assessment or mitigation in line with the types of actions promoted by the OECD DDG due to its interpretation of the DFA (see section 1.4) which means it allows for CFS-compliant smelters to have processed only DRC conflict-free rather than conflict-managed material. Thus only steps 4 and 5 were suitable for conformance assessment. Strictly speaking, however, the CFS audit is not the step 4 audit of the OECD DDG. Where the auditor has found evidence of material coming from level 3 or 2b countries, then s/he is to confirm that an OECD DDG step 4 audit has taken place, and that this audit has demonstrated conformance with the OECD DDG. In these circumstances, then, the CFS provides an *extra guarantee* that not only are the material outputs from supply chains upon which due diligence and risk management have been adequately performed, but that these materials are also DRC conflict-free.

It was only when we had fully understood that the CFS was *not* seeking to conduct the OECD DDG step 4 audit, and was a different, additional type of audit that it became clear that it did not entirely make sense to assess the conformance of the CFS with the OECD DDG in the same way as for iTSCi. In spite of this, its development has been *guided* by the recommendations of the OECD DDG in the pursuit of best practice in how to audit a chain of custody. (Rather, the CFS is *oriented at achieving* the DFA and associated SEC rules.) It is on this basis that we conducted the conformance analysis.

3.1. Differences in Approach

The OECD DDG is a guidance document for companies sourcing minerals from conflict and high-risk areas on how to conduct due diligence, assess and manage risks in their supply chains, and responsibly report on their findings; it is *process-oriented* and seeks to cultivate continued, constructive engagement by corporate actors in the GLR by nurturing progressive improvement.¹⁵⁴ For example, it emphasizes the importance of companies taking “*reasonable steps and mak(ing) good faith efforts to conduct due diligence and prevent or mitigate risks of adverse impacts.*”¹⁵⁵ The majority of steps in the model supply chain policy allow for risk

¹⁵³ EICC and GeSI 2011d: 13

¹⁵⁴ Tyler Gillard (OECD), comments on draft report, 4th October 2011.

¹⁵⁵ OECD, 2011: 13.

management and only call for disengagement where there is evidence of serious human rights abuses or direct or indirect support to non-state armed groups.¹⁵⁶

On the other hand, the CFS is an *outcome*-oriented audit to confirm in absolute terms that materials at a smelter are 'DRC conflict-free'. The CFS does not allow for conflict-managed materials and instead promotes smelters to disengage from all problematic supply chains or risk exclusion from the CFS for a year (the current timeframe).¹⁵⁷

This could be evaluated not only as a difference in approach but as a fundamental non-conformance issue for the CFS and the OECD DDG. For example, in the introduction of the OECD DDG the authors note that it "*builds on and is consistent with the OECD Guidelines for Multinational Enterprises,*" which say that companies should consider the social and economic effects of supply chain management practices on developing countries.¹⁵⁸ It must be understood, however, that the CFS is oriented at compliance with the DFA first (a legal requirement for GeSI and EICC members, and other companies) and the OECD DDG second (technically a voluntary requirement) and this 'non-conformance' issue is really born of the outstanding contradictions between these two regulatory frameworks. It is rather the DFA that encourages industry to entirely disengage rather than constructively engage with problematic suppliers, so compromising end-users' ability to ensure that their supply chain management systems are ultimately developmental and sustainable, and actually worsening poverty in DRC where so much economic activity is created on the back of the mineral sector. It remains to be seen if the final rules on how to apply the DFA (expected to be finalized by the end of 2011) will use language that will more fully resolve this conformance challenge than the present situation.¹⁵⁹

It is in this context of uncertainty that the CFS is effectively combining the process- and outcome-oriented approaches and provides downstream users with two things. First, it offers assurance to buyers that the materials are the output of supply chains upon which due diligence and risk management have been adequately performed for 'red flag' locations. Second, it offers downstream companies the information they need to report adequately to be in compliance with the DFA and its final rules, and prove their material is 'DRC conflict-free'. What the CFS cannot offer, however, is a means by which smelters might constructively engage with suppliers currently identified as supporting conflict under DFA to manage and proactively minimize the conflict risk in specific supply chains. Instead, this is left to whatever other system the smelter is using to conform with the OECD DDG.

There are practical implications to this approach that must be taken into consideration. Where a smelter is sourcing from a level 2b or 3 country it must evidence through a step 4 audit (OECD DDG) that the OECD DDG has been satisfactorily implemented before a CFS audit can be undertaken. This can be done either by being a participant in a scheme (such as iTSCi) or by the smelter undergoing the OECD DDG step 4 audit independently. Either avenue for demonstrating conformance with the OECD DDG must be 'validated' by the CFS. The scope, process and requirements for demonstrating validity have not yet been developed though auditor credibility and quality of method will no doubt be taken into

¹⁵⁶ OECD, 2011: 18-19.

¹⁵⁷ see D. 2. B, EICC and GeSI 2011d: 14, which directs that smelters must change their purchasing policies within 3 months of the audit.

¹⁵⁸ see Chapter II(B)(2) of the MNE Guidelines. From Tyler Gillard (OECD), comments on draft report, 4th October 2011.

¹⁵⁹ See <http://www.state.gov/e/eeb/diamonds/docs/168632.htm>. Accessed 13th October, 2011. See also the letter from ICGLR, OECD and UNGoE to SEC: <http://www.sec.gov/comments/s7-40-10/s74010-282.pdf> accessed 20th October 2011.

consideration. Note that this validation is *not* the OECD DDG step 4 audit, but a validation of the credibility of the step 4 audit showing that the scheme the smelter applies conforms with the OECD DDG. The institutionalized mechanism envisaged by the OECD (but which has not yet been identified or created) could serve to accredit auditors for conducting the step 4 audit, which would solve this problem.¹⁶⁰ Importantly, this also means that the smelter will be subjected to two audits: an OECD DDG step 4 audit and a CFS audit, so increasing costs and inconvenience for the smelter.¹⁶¹ This will further disincentivise companies to not source from the DRC or adjoining countries rather than support this extra administrative burden. This emphasizes the need for continued efforts to streamline processes, both during the OECD DDG's implementation phase but also once the final rules of the DFA are published.¹⁶²

3.2. Conformance

Before a smelter can be eligible for a CFS audit, and where a smelter is known to source from the DRC and its adjoining countries, the CFS ensures that another scheme or management system has assured the smelter's conformance with the OECD DDG.¹⁶³ So the CFS does effectively encompass and conform with the DDG, albeit indirectly.¹⁶⁴ In other words, the CFS does not conduct the step 4 audit of the OECD DDG, but uses the findings of this audit to confirm eligibility of the smelter for a CFS audit.¹⁶⁵

Doing a conformance analysis of the CFS against the OECD DDG does not obviously make sense in this context. Nonetheless, the purpose of this conformance analysis was to see if the CFS is adopting best practice (in line with what the OECD DDG requires). The results are summarized in Table 8.

Table 8: CFS: Summary of conformance and outstanding gaps

OECD DDG	How the CFS conforms with it
Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas	CONFORMS A conflict mineral policy that incorporates the OECD DDG Annex II Model Supply Chain Policy is a pre-requisite for any smelter sourcing from the DRC and its adjoining countries to participate in the CFS audit. ¹⁶⁶ The CFS checks if such a policy is set in place and adequately implemented.
Step 1: Establish strong company management systems <i>Objective: To ensure that existing due diligence and management systems within companies address risks associated with minerals from conflict affected or high-risk areas.</i>	
A-E	CONFORMS Pre-requisite for any smelter joining the CFS as for sources from country levels 2b and 3 the smelter needs to demonstrate the implementation of the OECD DDG. In its own audit, the CFS does check if adequate human resources are in place to implement due diligence and risk management, but the CFS does not directly support smelters to do these things.

¹⁶⁰ Lahra Liberti (OECD), comments on draft report on 4th October 2011.

¹⁶¹ Kay Nimmo (ITRI), email to authors on 5th October 2011,

¹⁶² See http://www.oecd.org/document/15/0,3746,en_2649_34889_48584143_1_1_1_1,00.html accessed on 28th November 2011.

¹⁶³ The CFS interprets 3 and 2b level countries as the 'red flag locations' which trigger the application of the OECD DDG. (OECD 2011: 29) Further, sources from country level 2a (transit countries) need to have documentation for CoC and reports of the on-site mine visits by the smelter. This means that 2a is already a higher level of review than level 1, but is distinct from level 2b to make the system manageable and affordable for smelters.

¹⁶⁴ EICC and GeSI 2011f: 6 and EICC and GeSI: 2011d: 9

¹⁶⁵ EICC and GeSI 2011f: 6.

¹⁶⁶ EICC and GeSI 2011n: 6.

Step 2: Identify and assess risks in the supply chain

Objective: *To identify and assess risks on the circumstances of extraction, trading, handling and export of minerals from conflict-affected and high-risk areas.*

A-C

CONFORMS

Demonstrating implementation of the OECD DDG is a pre-requisite for any smelter sourcing from the DRC and its adjoining countries. (level 2b and 3)
Note that the CFS does not *do* the risk assessments, but rather checks if they have been done.
The OECD DDG also requires supporting smelters to build capacity towards due diligence practices. The CFS pre-audit visits to the smelter are designed to build the smelter's capacity to conform with the CFS (covering how the programme works, what types of systemic gaps to work on closing, what to expect from the audits) but it does not involve or require the smelter to build the capacity of its suppliers to conform.

Step 3: Design and implement a strategy to respond to identified risks

Objective: *To evaluate and respond to identified risks in order to prevent or mitigate adverse impacts. Companies may cooperate to carry out the recommendations in this section through joint initiatives. However, companies retain individual responsibility for their due diligence, and should ensure that all joint work duly takes into consideration circumstances specific to the individual company.*

A-D

CONFORMS

Demonstrating implementation of the OECD DDG is a pre-requisite for any smelter sourcing from the DRC and its adjoining countries. (level 2b and 3)
The CFS checks if the smelter is in conformance with the OECD DDG.

Step 4: Carry out independent third-party audit of smelters/refiner's due diligence practices

Objective: *To carry out an independent third-party audit of the smelter/refiner's due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas and contribute to the improvement of smelter/refiner and upstream due diligence practices, including through any institutionalised mechanism to be established at the industry's initiative, supported by governments and in cooperation with relevant stakeholders.*

A. Plan an independent third party audit of the smelter/refiner's due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.

CONFORMS

Sourcing from the DRC and its adjoining countries: To be eligible for the CFS the smelter needs to demonstrate that due diligence according to the OECD DDG has been implemented (through a verified independent third party audit) for minerals sourced after April 2011. This audit may be conducted through a scheme like iTSCi.
Generally the CFS conforms via reliance on another smelter audit already performed.

For the CFS audit, the third party auditing firms must conduct the audits in accordance with the requirements in ISO 19011:2002 (EICC and GeSI 2011n: 10). The auditor has to demonstrate experiences in traceability schemes, have a background in environmental, health and safety audits and be able to comply with the OECD DDG auditor requirements.¹⁶⁷

The CFS audit covers document review (re business processes and structures and materials)

The CFS audit includes pre-audit visits for (preparation for the audit) and visits to the smelter / refiner facilities for all smelters participating in CFS, but it does not include on-the-ground checks. Those need to be done by the smelter or by whichever scheme the smelter chooses to fulfil its obligations against the OECD DDG. The CFS requires that on-the-ground checks be realised as part of the OECD DDG implementation.

TOWARDS CONFORMANCE

*A.3. c) Accountability: Performance indicators may be used to monitor the ability of the auditors to carry out the audit in conformity with the audit programme, based on the objectives, scope and criteria of the audit, judged against audit programme records.*¹⁶⁸

CFS has not yet identified which organisations would be able to credibly

¹⁶⁷ Bob Leet and Mumtaz Ahmed (EICC), phone interview with the authors on 18th September 2011.

¹⁶⁸ OECD 2011a: 41 "See Chapter 5.6 of ISO 19011."

	<p>conduct the OECD DDG conformance assessment. This decision could be made by 'the institutionalized mechanism' (as referred to in the OECD DDG), should this come into being. In the meantime, the GEIRS group is gathering a list of credible entities.¹⁶⁹</p> <p>CFS makes reference to the OECD DDG and the U.S. SEC draft ruling to guide the auditor to take a 'reasonable' approach to making determinations but the meaning of this requirement is vague and requires clarification.¹⁷⁰</p> <p>Performance indicators for the CFS auditors are under development: So far, auditors have been counselled about report writing, tantalum smelters are providing feedback on the audit process, and third party observers on audits are being established.¹⁷¹ This is all for the sake of quality assurance / quality control in the interest of continuous improvement of the CFS.¹⁷²</p>
<p>Step 5: Report annually on supply chain due diligence <i>Objective: To publicly report on due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas in order to generate public confidence in the measures companies are taking.</i></p>	
<p>A. Annually report or integrate, where practicable, into annual sustainability or corporate responsibility reports, additional information on due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.</p>	<p>TOWARDS CONFORMANCE: Details of the CFS audit will not be disclosed in a disaggregated fashion. Instead, the CFS will issue a summary report providing the names of conformant smelters, their conflict minerals policy; level1: countries of origin; level 2a: plus countries of origin, mines of origin and in-/export routes, level 2b and 3: plus weights/amount of ore for countries surrounding the DRC, mine production capacity; plus the outcome of the OECD DDG 3rd party due diligence conformance audit. It will be up to the smelters to publish the audit findings and to decide how much detail they wish to provide in this report.¹⁷³ The CFS intends to proactively encourage smelters to report in detail the audit findings in the interest of achieving greater transparency.¹⁷⁴</p>

3.3. Outstanding Gaps: Present Non-conformance and Towards Conformance

Remember that the CFS is designed to assist companies in meeting their reporting obligations under the DFA, including to be able to report that material is 'DRC conflict-free', and to check that its member smelters are in conformance with the OECD DDG through the adoption of a suitable chain of custody and due diligence joint initiative or other mechanisms. The CFS aims to achieve the performance standards set by the OECD DDG, particularly in steps 4 and 5 on auditing and reporting along with providing downstream actors the information need to comply with the DFA.

There are some elements under development that prevent the CFS from being fully conformant with the performance levels set by OECD DDG at this point in time. This relates to the publication of the auditors' credentials and what will count as an acceptable OECD DDG conformance audit for the purposes of smelter eligibility for a CFS audit. There is still a lot of ambiguity on these points, and greater definition is needed.

Details of the CFS audit will not be publicly disclosed, except for the names of compliant smelters, their conflict minerals policy and the countries of origin they source from. For sources from the DRC or the countries adjoining it, further information to be disclosed might include countries of origin, mines of origin and import/export routes, weights / amount of ore

¹⁶⁹ Bob Leet (EICC), pers. comm. to Levin, 7th November 2011.

¹⁷⁰ Tyler Gillard (OECD), phone interview with the authors on 12th September 2011.

¹⁷¹ Bob Leet and Mumtaz Ahmed (EICC), phone interview with the authors on 18th September 2011; Bob Leet (EICC), pers comm to Levin, 7th November 2011.

¹⁷² Michael Loch (GeSI), pers comm to Levin, 3rd November 2011.

¹⁷³ Bob Leet (EICC), pers comm to Levin, 7th November 2011.

¹⁷⁴ Michael Loch (GeSI), pers comm to Levin, 3rd November 2011.

for countries surrounding the DRC, and mine production capacity. Decisions as to how the OECD DDG conformance audit will be conducted and by whom will rest with the smelters and / or their upstream suppliers. However, CFS will publish a list of credible entities.¹⁷⁵

There is a possible contradiction in the CFS system whereby it requires smelters to have a supply chain policy modelled on that provided by the OECD DDG Annex II, but will not allow risk mitigation on certain points. In the protocols, conflict material is defined as Level 3 sources without an OECD DDG conformant scheme being utilized.¹⁷⁶ Other types of non-compliance with the CFS relate to unwillingness to participate and lack of information to confirm that the material is 100% DRC conflict-free. The contradiction arises were a smelter to discover that there is material from DRC and an OECD DDG conformant scheme is being utilized (allowing one to judge it as DRC conflict-free) but there is also evidence of public or private security forces having benefited from the material in line with abuses listed from clause 5 onwards of Annex II of the OECD DDG. In this circumstance, iTSCi and the OECD DDG stipulate that the buyer should continue engagement, build capacity of the supplier and eliminate the threat (unless serious human rights abuses have been committed). By the CFS system, however, smelters would be required to disengage immediately or the material is non-compliant. This may confuse smelters so the correct course of action should be clarified in guidance being created for smelters.

Further, the protocol talks of 'payments to armed groups' only as the critical factor in determining whether or not something is a conflict mineral: "*After April 1st 2011, the smelter must [...] document the source of information used to determine whether the mine or mineral transport routes were under the control of armed groups.*"¹⁷⁷ No other supply chain risks are specified as mattering. Do they? Is it just about preventing financing of armed groups (points 3 and 4) and so continued engagement for management of all other possible risks is acceptable? Or is the definition of armed groups presumed to capture all the human rights violations specified in point 1 of Annex II as unacceptable (e.g. child labour)? Again, this requires clarification in the smelter guidance, as well as the protocols.

3.4. Beyond Conformance

The CFS is more stringent on three issues. First, its definition of precluded armed groups is more encompassing than that of the OECD DDG. Second, the CFS does not allow for any progressive mitigation along the supply chain.¹⁷⁸ This is also due to the fact that CFS is taking the position that it is easier to lower the bar than raise it once the SEC finalises the rules for Section 1502 of the DFA.¹⁷⁸ And, third the CFS is assessing all material flow (100%) at the smelter.

The OECD DDG allows the presence of "*public and private security forces*" (i.e. including state armed groups) which are solely there to "*maintain the rule of law, including safeguarding human rights, providing security to mine workers, equipment and facilities, and protecting the mine site or transportation routes from interference with legitimate extraction and trade.*"¹⁷⁹ By contrast, the CFS does not allow *any* armed groups to be present at mine sites, transportation routes and surrounding areas, including state armed groups, except for mine police. For example, in line with the OECD DDG, iTSCi would accept the presence of

¹⁷⁵ Bob Leet (EICC), pers comm to Levin, 7th November 2011.

¹⁷⁶ EICC and GeSI 2011n, p. 13.

¹⁷⁷ EICC and GeSI 2011n, p. 9; section III.a.iii:

¹⁷⁸ Discussion at GEIRS meeting, 20th September, 2011.

¹⁷⁹ OECD 2011: 20

the FARDC at a mine site provided that no human rights violations are occurring, whereas the CFS would not. Given the Dodd-Frank's definition of 'armed group' to be "*perpetrators of human rights abuses as defined in the annual Country Reports on Human Rights Practices*",¹⁸⁰ then elements of the FARDC are included.

This means that the DFA, OECD DDG and CFS are united in requiring that actors discontinue trade if risks of direct or indirect support of non-state armed groups or public or private security forces responsible for serious human rights abuses are identified. However, unlike the CFS, the OECD DDG *does* allow for trade to continue (progressive improvements) if the risk is of direct or indirect support of public or private security forces not involved in serious human rights abuses. In such cases the OECD DDG allows the upstream companies a six month time period for improvement. One might call these minerals 'conflict-managed' rather than 'conflict-free'. The ICGLR, the OECD and the UNGoE have called on the SEC to confirm that these materials should not be identified as conflict materials.¹⁸¹ Until the rules are finalised, however, the CFS does not allow these 'conflict-managed' materials to be assured as conflict-free and requires that the smelter removes any unwanted (conflict) material from the site within a 3-month period of the corrective action plan being agreed.¹⁸²

¹⁸⁰ USG, 2010, Sec. 1502, (e) (3). For country reports see <http://www.state.gov/g/drl/rls/hrrpt/2010/index.htm>. Accessed 20th October 2011.

¹⁸¹ ICGLR, OECD, UNGoE 2011: 3., "*Since public or private security forces that are not involved in serious human rights abuses would not qualify as armed groups under Section 1502 of the Dodd-Frank Act, issuers are entitled not to describe their products as 'not DRC conflict-free'*". See <http://www.sec.gov/comments/s7-40-10/s74010-282.pdf> accessed 20th October 2011.

¹⁸² EICC and GeSI 2011d: 14.

4. Compatibility Analysis of iTSCi and CFS

iTSCi and CFS both involve assessment of smelters, albeit of different aspects: iTSCi assesses a smelter's due diligence processes and compliance with its CoC requirements as the final operator in its system for assuring the upstream mineral supply chain from mine to smelter, whereas the CFS is focused on material flows and management structures at the smelter, leaving the assessment of due diligence and risk management practices to another party doing the OECD DDG conformance audit for smelters sourcing from level 2b and 3 countries. The optimal scenario is that together they will provide adequate assurance to downstream users that a smelter, its suppliers and thus its product originating in the Great Lakes Region is in conformance with the OECD DDG and the Dodd-Frank Act.

This compatibility analysis is not looking for equivalence, whereby the approaches would make the same level of requirements on an issue. Rather, it considers the extent to which iTSCi and CFS are aligned on specific aspects such that the aspect is in conformance with the OECD DDG and is practicable for all supply chain operators. This report can contribute towards the validation of iTSCi as a suitable CoC, due diligence and risk management system under the CFS requirements.

The following section summarises the findings of the tabulated compatibility analysis between the CFS and iTSCi.

4.1. Differences in Approach

iTSCi and CFS follow different approaches: iTSCi is a CoC and due diligence *process* that combines a tracking and tracing system, risk assessment and mitigation, and independent third-party audits from mine to smelter. It is further largely based on the OECD DDG and allows for progressive improvements. The iTSCi audit checks that the operators are implementing the OECD DDG requirements, including the ones that iTSCi itself does not do relating to contracts and other commercial matters. CFS is an *audit* only of a smelter's procurement practices and input streams. But it is not the OECD DDG step 4 audit. The joint entry point for both initiatives is that for minerals originating in the DRC and its adjoining countries smelters need to demonstrate that they and their suppliers have conducted due diligence and risk management in line with the OECD DDG, either through participation in a validated scheme¹⁸³ (like iTSCi) or through another independent third party audit.

Considering these differences in approach, the following aspects were compared for compatibilities and incompatibilities: initiative purpose, coverage of the OECD DDG, kind of minerals covered, geographic scope, time period, who will be audited, type of audit, audit level, level of assurance, basic requirements to join initiative/ initiate audit, required checks/documentation (what is audited), who does the audit, auditor requirements (professional accreditation, experience, independence, etc.), who pays for the audit, process for conducting the audit (how is it audited), level of disclosure of audit results, consequences of results/ follow-up process level of disclosure of audit results.

The underlying questions of the analysis are:

- *Does iTSCi provide the CFS with the right information and documentation for its audit?*

¹⁸³ The CFS requires validation that the scheme is in conformance with the OECD DDG.

- Does the CFS audit complement the iTSCi smelter audit sufficiently well to allow the initiatives together to offer a smelter and downstream users full conformance with the OECD DDG?

4.2. Compatibilities

The CFS and iTSCi are compatible in the following ways:

Aspect	CFS	iTSCi
Minerals	Primary (and secondary) tin, tantalum and tungsten. ¹⁸⁴	Primary tin, tantalum and tungsten
Geographic Region of sources	Global, including Rwanda and DRC ¹⁸⁵	Rwanda and DRC
Who will be audited	Primary and secondary smelter	Primary smelter (and suppliers)
Type of audit	Documentation visits of a smelter's warehouse ¹⁸⁶	Documentation and site visits (including at the smelter)
Level of assurance	3 rd party audit	3 rd party audit
Audit level	Input ¹⁸⁷ and output	Input only
Auditor requirements	Professional accreditation, experience, independence, etc. "The third party auditing firms must conduct the audits in accordance with the requirements in ISO 19011:2002." ¹⁸⁸	Professional accreditation, experience, independence, etc.
Who pays for the audit	Smelter (through CFS)	iTSCi Secretariat (from the general project budget) ¹⁸⁹

4.3. Issues limiting Programme Alignment between CFS and iTSCi

For now, the following issues prevent CFS and iTSCi from forming supply chains that are both conflict-free and in conformance with the recommendations and requirements of the OECD DDG. This is mainly due to CFS's orientation towards compliance with the DFA primarily, and iTSCi's orientation towards conformance with the OECD DDG.

- (1) Different definition of armed groups (state / non-state)
iTSCi wishes to apply the categorization contained in the Annex II Model Supply Chain Policy of the OECD DDG. The CFS follows the definition of armed groups provided in the DFA. See 3.4 above.
- (2) Conflict free versus risk mitigation
iTSCi wishes to apply the OECD DDG which allows for gradual improvement through risk mitigation. Depending on the nature of the risk iTSCi operators may have a time period of six months to mitigate risk and show improvement. Serious abuses such as evidence of the worst forms of child labour are not accepted and require immediate action (issue resolved, suspension, change supplier). Risk mitigation on the part of a smelter under the CFS tends to mean disengagement from suppliers who have provided conflict material or managing 'the disposition of any non-conforming

¹⁸⁴ CFS is also applicable for gold. It also checks if recycled materials meet the definition for recycled material.

¹⁸⁵ CFS is a global audit and as smelters are not necessarily be based in the GLR, it could happen everywhere.

¹⁸⁶ EICC and GeSI 2011d: 11.

¹⁸⁷ All incoming material

¹⁸⁸ EICC/ GeSI 2011d: 3. Also, Mumtaz Ahmed (EICC), emails to authors, 18th September 2011.

¹⁸⁹ The general project budget is based on membership fees and programme levy.

material' and making "documented changes in the smelter's purchasing policies and recognition of prior issues."¹⁹⁰ Progressive improvement – as recommended by the OECD DDG and applied by iTSCi – is not accepted if there is any chance the material could still be classified as conflict mineral under the DFA definition.

(3) Validated scheme for implementing the OECD DDG

It is very conceivable that iTSCi could be the validated scheme for implementing the OECD DDG for the smelter for supply chains originating from Rwanda and DRC. If so, the CFS and iTSCi need to determine what steps are necessary for this validation to take place, and who should give this approval.¹⁹¹

(4) US conflict minerals map:

Both initiatives refer to the US conflict minerals map.¹⁹² However, the latest update of this map says: "Given the aforementioned limitations on the data available, this map does not provide sufficient information to serve as a substitute for information gathered by companies in order to exercise effective due diligence on their supply chains."¹⁹³ Consequently the map does not fulfil the role that the initiatives had envisaged. So, both initiatives need to find another compatible source to determine the conflict zones in the DRC.

(5) Exit / entry points at the smelter

As both initiatives cover materials and procedures at the smelter in different ways, compatibility between the initiatives, and their respective roles and responsibilities at this point of the mineral supply chain require some further clarification.

4.4. Operational Differences

In addition to the above-presented issues that limit the programme alignment between CFS and iTSCi, smelters wishing to participate in both programmes might face the following practical challenges:

(1) Storage of CoC documentation at the smelter

According to the OECD DDG the smelter needs to maintain the information generated by the traceability system for a minimum of five years, preferably on a computerized system. iTSCi does this as all documented information is entered into the database and so is available for at least five years any time and from anywhere in the world. The CFS expects to see all tags for the audit period (one year).¹⁹⁴

(2) Time periods covered by the audit

Principally the time periods covered by the audits match each other. Under iTSCi, the tin smelter should have gathered all necessary shipment documents ('phase 1

¹⁹⁰ EICC and GeSI 2011d: 14

¹⁹¹ However, prior to this research, iTSCi had been operating on the understanding that the CFS would do the OECD DDG conformance assessment and so must make plans to ensure that the iTSCi audit of the smelter is sufficiently expanded to achieve this. Kay Nimmo (ITRI), email to authors, 16th September 2011.

¹⁹² See https://hiu.state.gov/Products/DRC_MineralExploitation_2011June14_HIU_U357.pdf accessed 13th September 2011.

¹⁹³ See https://hiu.state.gov/Products/DRC_MineralExploitation_2011June14_HIU_U357.pdf accessed 13th September 2011.

¹⁹⁴ See EICC and GeSI 2011d: 9.

documents')¹⁹⁵ and show these going back to 1st July 2009;¹⁹⁶ a second audit of the so-called phase 1 documents is planned to cover the period from 1st July 2010 to 30th June 2011. It is further envisaged that complete audits (combining phases 1 and 2 into one audit) will cover time periods from 1st April to 31st March. So, first audits are planned to cover 1st April 2011 to 1st April 2012. This is compatible with the CFS whose protocols state that any minerals to enter the smelter after April 1st 2011 from level 2b and 3 countries must be subject to the OECD DDG, including on-the-ground assessments. However, since the system was just being set in place by April 2011¹⁹⁷ and the tungsten protocol announcing this was not released until early August 2011, some flexibility is essential to allow participating smelters and programme implementers to transition towards full understanding of the CFS and OECD DDG requirements and completing setting up, equipping, and training staff to be capable of implementing these.

¹⁹⁵ This includes information as such: Description of material (physical characteristics) Origin of material (including mine area and declaration on 'mine controlled by') Supply route (including declaration on known armed group involvement) Supplier to the *comptoir*, Trader/smelter purchasing from the *comptoir*, Licence of Export of Goods, Certificate of Analysis of Stanniferous minerals from artisanal production, Packing Statement, Certificate of Origin and Export, Authorisation of mineral export, Certificate for Verification of Export, Assay Report, Declaration of Final Export or Movement Certificate, and Ocean Bill of Lading.

¹⁹⁶ At that time, iTSCi was not yet expanded to tungsten and tantalum. Shipments documents for tungsten and tantalum have been gathered by iTSCi participating smelters from April 2011 onwards.

¹⁹⁷ Also due to the fact that the mining suspension in DRC from September 2010 to March 2011 stopped all activities and iTSCi needed to start again in Katanga and Rwanda.

5. Conclusions and Recommendations

iTSCi and OECD DDG

Pending the completion of elements that are currently under development (timeline end 2011 latest), iTSCi is in conformance with the OECD DDG to a large extent. iTSCi's participation in the OECD DDG trials will allow it to improve its system further. Where iTSCi does not yet conform with the OECD DDG it is either for legal reasons, e.g. as iTSCi cannot make requirements of members that restrict trade, or because the OECD DDG recommendation is not fully feasible.¹⁹⁸ On some aspects, iTSCi achieves a higher level of assurance than the OECD DDG requires owing to its different types of risk assessments (mine and transportation route baseline study, company risk assessment, macro-level risk assessment) and sophisticated database, which not only stores data but also contributes to risk assessment by making possible on-going monitoring, automatic discrepancy reporting, and extraordinary checks.

CFS and OECD DDG

The CFS generally conforms with the OECD DDG, but it should develop and publish written requirements for auditors and a guidance for smelters, and consider how to encourage smelters to disclose as much as they can of the audit results. The CFS is more stringent than the OECD DDG on three counts: first, the CFS is assessing *all* material flow (100%) at the smelter; second, it induces disengagement rather than constructive engagement on points where the latter would be encouraged by the OECD DDG; and, last, it does not accept any armed groups (except the mine police) to ensure that material is conflict free. CFS should also clarify what smelters should do should they find that their inputs include material from DRC that is OECD DDG conformant (allowing one to judge it as DRC conflict-free) but there is also evidence of public or private security forces having benefited from the material in line with abuses listed from clause 5 onwards of Annex II of the OECD DDG (for which the DDG allows for continued engagement as well as disengagement). Further clarification is also required as to whether material would be classed as conflict mineral if any of the human rights violations specified in point 1 of Annex II (e.g. child labour) are discovered to have been committed by supply chain operators, or if it is simply a question of determining "*whether the mine or mineral transport routes were under the control of armed groups*"¹⁹⁹ and if illegal armed groups have benefited from the mineral's production, transport and/or trade.

CFS and iTSCi

iTSCi and CFS are compatible in so far as iTSCi is providing the smelter with a system that allows it to demonstrate the chain of custody of its input streams and that these have been subjected to adequate due diligence and risk management, in line with the requirements of the OECD DDG. There are, however, a number of incompatibilities between iTSCi and the CFS that remain to be ironed out (see section 4). Some of these incompatibilities cannot be resolved by CFS or iTSCi themselves, as they are rather the product of inconsistencies between the two regulatory frameworks to which they refer, namely the OECD DDG and the

¹⁹⁸ e.g. see table 6, OECD DDG step2 C 1. b

¹⁹⁹ EICC and GeSI 2011n, p. 9; section III.a.iii:

DFA. Other issues highlighted here might not address an incompatibility but an operational challenge such as creating a burden to participating smelters.

The outstanding issues preventing alignment between CFS and iTSCi, and associated recommendations are:

<u>ISSUE</u>	<u>RECOMMENDED ACTION</u>
Incompatibilities between CFS and iTSCi (whose solution requires close coordination between the DFA and the OECD DDG)	
(1) Definition of armed groups (state / non-state)	
iTSCi wishes to apply the categorization contained in the OECD DDG's Model Supply Chain Policy (Annex II). The CFS follows the definition of armed groups provided in the DFA.	Agree on what kind of armed groups (e.g. police) are accepted at mine sites, transportation routes and in surrounding areas. Direction for this should come from the SEC rules relating to the DFA. A joint decision on how to monitor the acceptability of armed groups would also be helpful.
(2) Conflict free vs conflict-managed	
The two-tier approach of the CFS whereby it requires a double audit (OECD DDG Step 4 first by a third party; CFS audit second) attempts to address the different approaches to risk management accepted by the OECD DDG and the DFA. In some cases where the OECD DDG would allow buyers to continue to engage suppliers, the CFS would not.	A joint agreement coming from the SEC and the OECD DDG to clarify in what circumstances and in what ways risk mitigation would be acceptable is needed.
Incompatibilities between CFS and iTSCi (responsibility of iTSCi and CFS)	
(3) Time periods covered by the audit	
There does not yet appear to be agreement on what is a reasonable time period for the audit to cover. iTSCi's implementation was interrupted due to the mining suspension in DRC from September 2010 to March 2011, and so the initiative had just begun to get going again April 2011 in Katanga and Rwanda. It will be crucial to consider the lead time necessary for all participating smelters and programme implementers to have fully understood their roles and responsibilities and for setting up, equipping, and preparing staff for implementation. This is also necessary as the tungsten and tin protocols were only recently released in August and September 2011, respectively.	Discuss and agree on options for transit time flexibility in order to ensure the applied CoC and due diligence system is properly implemented.
(4) Validated scheme for implementing the OECD DDG	
Where CFS relies on a joint initiative (i.e. GLR sourcing schemes such as iTSCi) to provide CoC assurance, that joint initiative must be validated as credible too.	Discuss and agree on the arrangements, requirements and time line for hopefully validating iTSCi (and other initiatives) as credible and adequate for demonstrating OECD DDG step 4 conformance. This analysis which shows and explains how iTSCi allows for conformance with the OECD DDG is a first step. Next steps might include assessing iTSCi's

	conformance with the SEC rules of the Dodd-Frank Act; and judging its performance within the OECD DDG trials.
(5) US conflict minerals map	
Both initiatives refer to the US conflict minerals map. ²⁰⁰ However, the latest update of this map says: “Given the aforementioned limitations on the data available, this map does not provide sufficient information to serve as a substitute for information gathered by companies in order to exercise effective due diligence on their supply chains.” ²⁰¹ Consequently the map does not fulfil the role that the initiatives had envisaged.	Discuss and agree on other sources that provide reliable data on conflict areas in the DRC. As a starting point it might be advisable to evaluate the information generated within the iTSCi scheme, such as the mine and transportation baseline study, the monthly reporting and the incident reporting protocol. Definition of conflict areas will also rest on agreement as to which armed groups and which specific risks are manifest.
(6) Exit / entry points at the smelter	
Both initiatives cover materials and procedures at the smelter in different ways. Compatibility between the initiatives, and their respective roles and responsibilities at this point of the mineral supply chain require some further clarification.	Clarify roles, responsibilities and inter-operability of CFS and iTSCi at the smelter level, incorporating feedback from participating smelters to ensure efficacy with a view to minimising the cost, disruption and burden to the smelter and his / her suppliers.
Operational issues	
(7) Lessons Learned from year one of Ta audits	
The first CFS audits for tantalum have already been conducted and might give helpful instruction to future audits.	Prepare a lessons learned brief to help smelters understand their responsibilities. Experiences from this first year of Ta audit would also help iTSCi to further develop its audit. ²⁰²
(8) Harmonisation of language	
A lot of confusion arises from different language and definitions used in the various regulatory and industry frameworks (OECD DDG, CFS, iTSCi, DFA)	Harmonise language and definitions across the various regulatory and industry frameworks (OECD DDG, CFS, iTSCi, DFA-relevant SEC regulations) as well as across the various documents of each framework within the context of the international legal framework.
(9) Storage of CoC documentation at the smelter	
According to the OECD DDG the smelter needs to maintain the information generated by the traceability system for a minimum of five years, preferably on a computerized system. iTSCi does this as all documented information is entered into the database and so is available for at least five years any time and from anywhere in the world. The CFS expects to see all tags for the audit period (one year).	Discuss and agree on time lime and method of CoC data storage at the smelter.

²⁰⁰ See https://hiu.state.gov/Products/DRC_MineralExploitation_2011June14_HIU_U357.pdf accessed 13th September 2011.

²⁰¹ See https://hiu.state.gov/Products/DRC_MineralExploitation_2011June14_HIU_U357.pdf accessed 13th September 2011.

²⁰² This information is being included in the CFS guidance, presently under development. Bob Leet (EICC), pers comm to Levin, 6th November 2011.

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