


# Implementation of the EU “Conflict Minerals Regulation” **Supply Chain Due Diligence Obligations** of „Conflict Minerals“ in Germany



What is  
DEKSOR and  
how does it  
operate?

## **Workshop on Gold Traceability**

May 2<sup>nd</sup> – May 3<sup>rd</sup>, 2023, University of Lausanne, Switzerland

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DEKSOR - Deutsche Kontrollstelle EU-Sorgfaltspflichten in Rohstofflieferketten

BGR (Federal Institute for Geosciences and Natural Resources) is the central geoscientific authority in the  
**Federal Ministry for Economic Affairs and Climate Action (BMWK)**



Federal Ministry  
for Economic Affairs  
and Climate Action

**DEKSOR  
in BGR**

BGR is Geological Survey and

**Geoscientific centre of excellence within the federal government**

Research and advice on all geoscientific and natural resource matters

DEKSOR in BGR is the

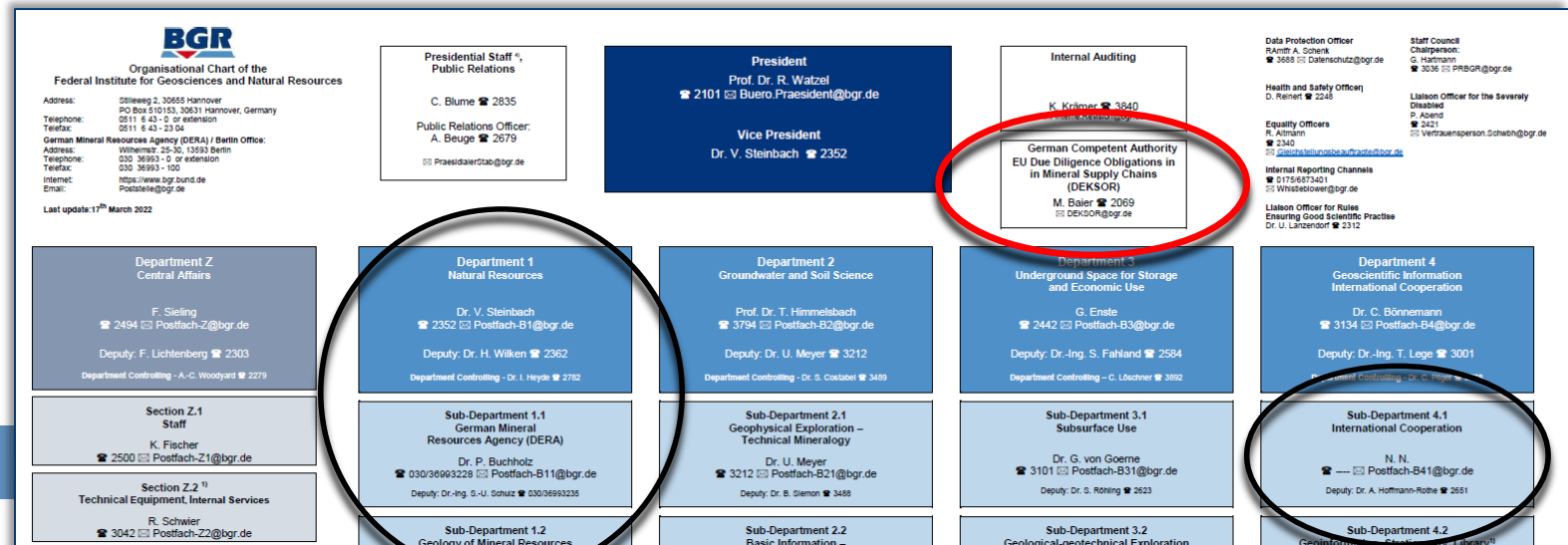
**National Competent Authority (NCA)**

for the application of Art. 10 and 11 of Regulation (EU) 2017/821

Risk-based selection:

**Ex-post checks since 2022**

min. 10% of Union importers each year



Concerns

## European Union 3TG importers

The basis is CN codes, altogether 23 minerals and metals, thresholds can be subject to changes



CMR  
Background  
Information

CMR came into force in 2017, the EU-COM is reviewing the CMR since 2023 & every three years thereafter

## Since January 2021, the CMR is mandatory

DEKSOR conducts ex-post checks since the beginning of 2022

Responsible for the application of the CMR and ex-post checks are:

## National Competent Authorities of Member States

in Germany: DEKSOR (BGR)

Content-wise

## Differences to the Dodd-Frank Act

Due diligence obligations instead of “conflict-free” status

CAHRAs have a worldwide focus instead of only focusing on Central Africa

Close

## Coordination

With the other Member States via 3TG-Expert-Group

# Development of the Regulation

● **June 2017:**  
**Regulation (EU) 2017/821** comes into force

● **May 2020:**  
German implementation law **MinRohSorgG** comes into force

● **December 2020:**  
Indicative, non-exhaustive **list of conflict-affected and high-risk areas (CAHRAs)** is published; review and update on a quarterly basis

● **January 2021:**  
Compliance with CMR is **mandatory**

● **January 2022:**  
**Ex-post checks** are carried out through national competent authorities (NCAs) (DEKSOR in Germany)

● **January 2023:**  
**Review through EU-COM** and every three years thereafter

Global reference standard

## OECD Due Diligence Guidance

Applicable to all resources, focus on 3TGs, pro- und reactive approach

### Annexes and Supplements

Annex 1: Five-Step Framework for Due Diligence Measures

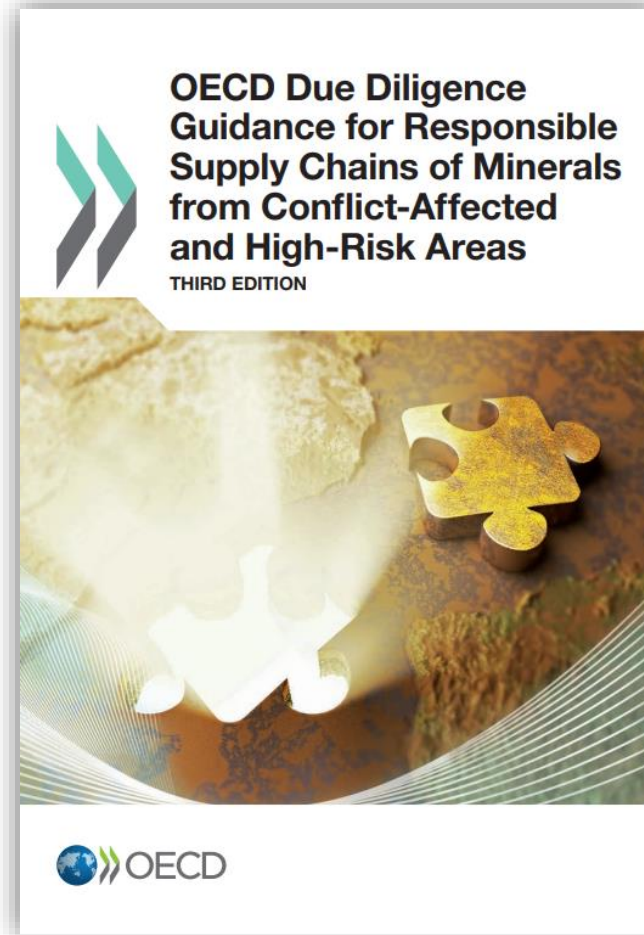
Annex 2: Model Supply Chain Policy

Annex 3: Risk Mitigation Measures

Supplements on 3T and on Gold

### Due Diligence Standard for

- DODD-FRANK ACT
- Regulation (EU) 2017/821
- Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains (CCCMC)
- Industry schemes iTSCi, RMI, LBMA, RJC, DMCC



Global Standard

Union importers must establish a

## Management system

including a chain of custody or supply chain traceability system (Art. 4)

Identify and assess risks in their supply chain and pursue

## Risk mitigation measures

in accordance with Annex II to the OECD Due Diligence Guidance (Art. 5)

Pursuant to Art. 6(1), carry out:

## Independent own third-party audits

Exemption for importers of metals: Substantive evidence, including third-party audits reports, demonstrating that all smelters and refiners comply with the Regulation (subparagraph 1 of Art. 6(2)), or evidence that all importers source exclusively from smelters and refiners listed by the Commission (subparagraph 2 of Art. 6(2))

Towards DEKSOR/NCAs, downstream purchasers and public

## Disclosure obligations

Public reports on due diligence measures (Art. 7)



Due Diligence  
Obligations

Communicate to suppliers and the public:

## Supply chain policy

and incorporate it into contracts and agreements with suppliers

Assign responsibility for supply chain due diligence to

## Senior management

Establish a

## Grievance mechanism

Operate and document a

## Chain of custody or supply chain traceability system

## Document and keep records

of management systems for a minimum of five years



Management  
System Obligations

- Description of the mineral, including its trade name and type
- Name and address of the supplier
- Country of origin of the minerals
- Quantities and dates of extraction, if available, expressed in volume or weight
- Where minerals originate from CAHRAs or in case of other supply chain risks, additional information  
Mine of mineral origin, locations where minerals are consolidated, traded and processes, and taxes, fees and royalties paid





- Description of the metal, including its trade name and type
- Name and address of the supplier
- Name and address of the smelters and refiners



**METAL** Supply  
Chain Traceability  
System

If available

- Records of the third-party audit reports of the smelters and refiners or
- Evidence of conformity with a supply chain due diligence scheme recognised by the Commission pursuant to Article 8

Or if records are not available

- Countries of origin of the minerals in the supply chain of the smelters/refiners
- Where metals are based on minerals originating from CAHRAs, or other supply chain risks, additional information

Serious abuses associated with the  
**Extraction, transport or trade of minerals**

Torture, forced labour, child labour, war crimes, genocide, etc.



**Risk Assessment  
Requirements**

Direct or indirect support to  
**Non-state armed groups**

Including risks regarding security forces



Money laundering,  
**Corruption**

Or irregularities regarding the payment of taxes and fees



Procedure:

**Importers assess their own risks and risks of their suppliers**

Minerals: Strategies in accordance with OECD Guidance (Annex II)

Metals: Assess the third-party audit reports of smelters or refiners / or conduct an own third-party audit

Generally, managing

## Due diligence measures

is independent of sourcing from CAHRAs; for CAHRAs, however, required level of detail is larger

Conflict Affected  
and High-Risk  
Areas (CAHRAs)

Definition “CAHRAs” (Conflict-Affected and High-Risk Areas; Art. 2 lit. f))

## Conflict areas, EU guidelines

e.g. weak governance, red flags, human rights violations

Indicative, non-exhaustive

## CAHRAs list

Published by EU-COM (RAND Europe) since 12/2020, quarterly update

<https://www.cahraslist.net/cahras>



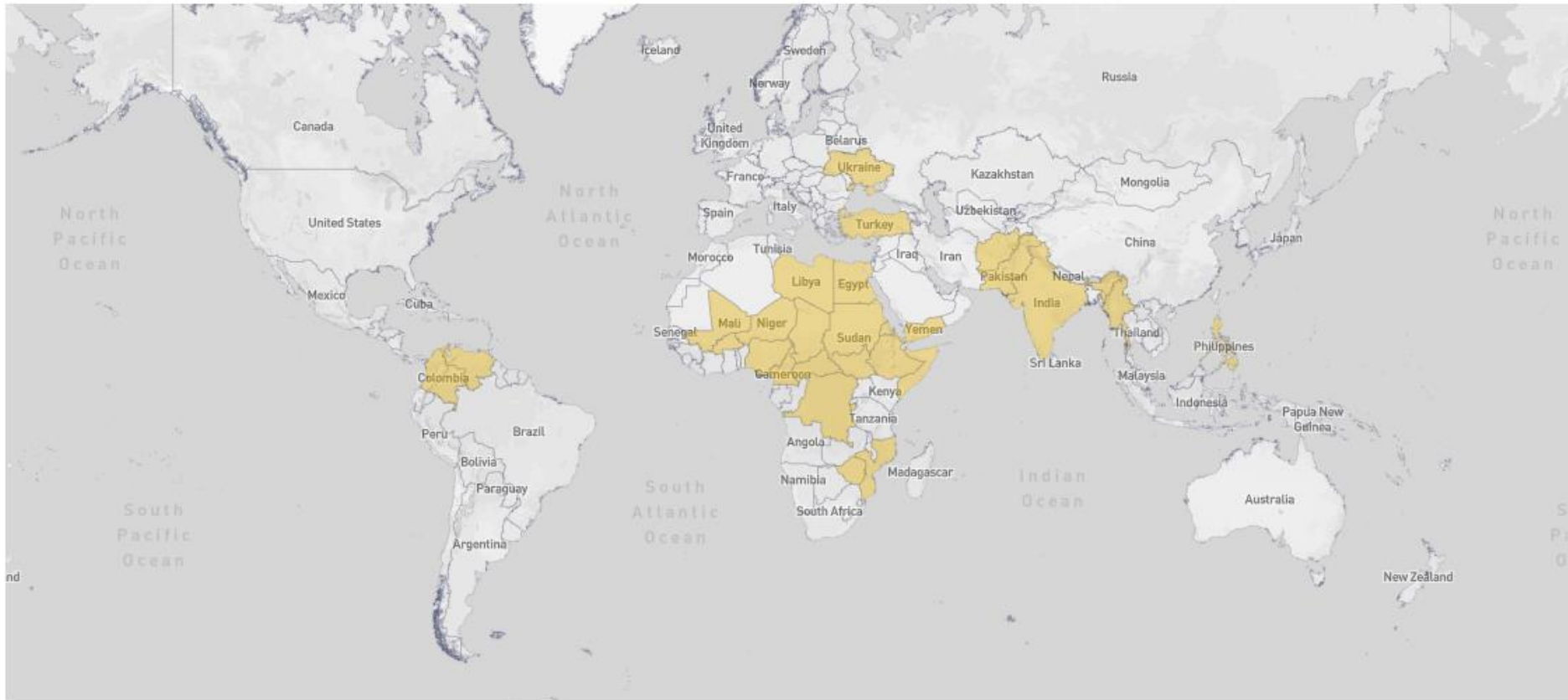
Indicative, non exhaustive list of

## CONFLICT-AFFECTED AND HIGH-RISK AREAS

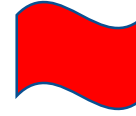
under Regulation (EU) 2017/821

# Conflict Affected and High-Risk Areas (CAHRAs)

## GLOBAL MAP

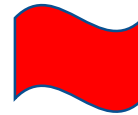


Red flag locations of mineral origin and transit:  
**Minerals originate from or have been transported through CAHRAs**

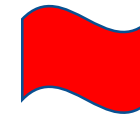


**Conflict Affected  
and High-Risk  
Areas – Red Flags**

Supplier red flags:  
**Suppliers operate in CAHRAs**  
or sourced from CAHRAs in the last 12 months

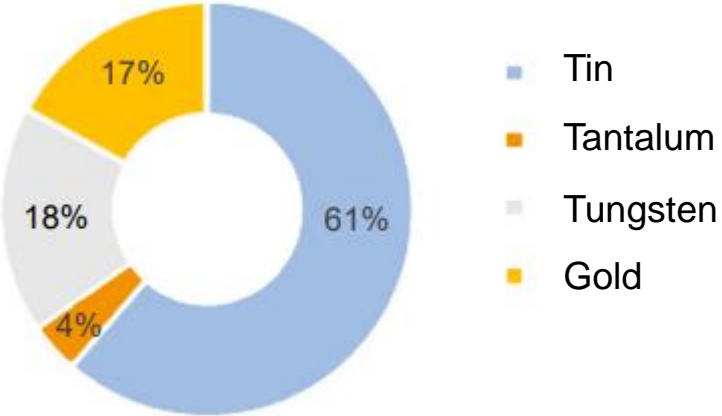


Red flag circumstances:  
**Information gives rise to reasonable suspicions**  
that minerals contribute to conflict or serious abuses

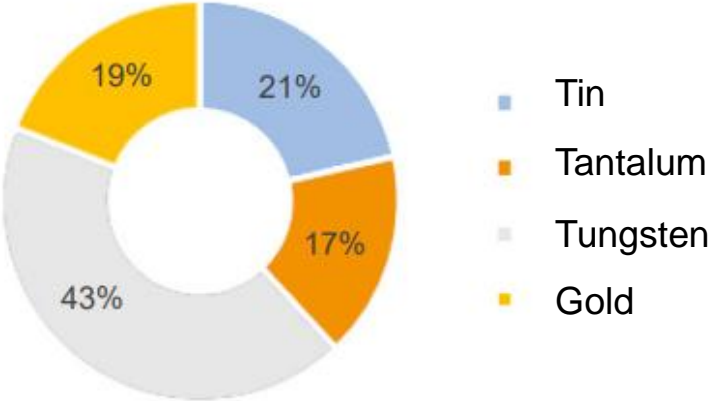


# Amount of 3TG German Importers

Amount of 3TG German importers in % - 2021

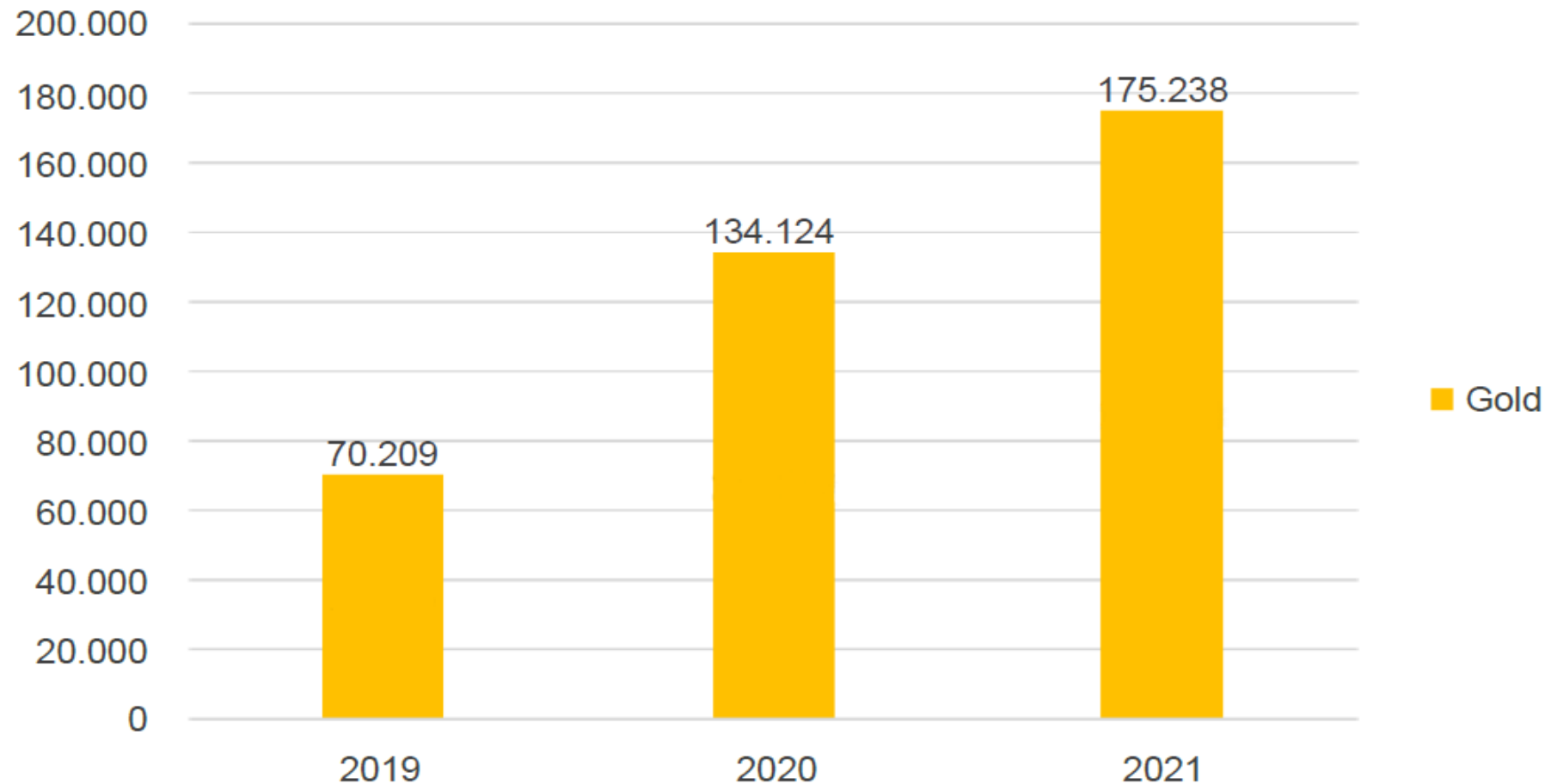


Amount of 3TG German importers above the threshold in % - 2021



## Gold Imports in Germany

Import Volume Gold in kg  
(without gold ores and concentrates)



Legal basis for DEKSOR:

## German Implementation Law (MinRohSorgG)

Came into force on 07.05.2020; substantiates the Reg (EU) 2017/821

State of Affairs I

DEKSOR receives import data from German customs

**So far, approx. 150 German Union importers lie above the threshold each year**

These were informed by DEKSOR in 2020 and 2021 (excluding non-German Union importers)

In the meantime, the transition period has expired; due diligence obligations are mandatory since 01.01.2021

**Union importers still have large information needs**

DEKSOR gives advice and information (on thresholds, the process of recognized industry schemes/smelters, CAHRAs, guidelines etc.)

Ex-post checks are carried out since the beginning of 2022

**DEKSOR conducts risk-based ex-post checks**

Preparation: Selection of Union importers, planning of controls, implementation of legally secure process, etc.

**DEKSOR reporting obligations**

Art. 17 Reg (EU) 2017/821: Submit a report to the EU-COM on the implementation of the CMR & remedial actions issued by DEKSOR

§ 3 Para. 5 MinRohSorgG: Submit a public report on shortcomings and remedial actions issued by DEKSOR without naming the Union importers



Regular meetings between the  
**Expert group in Brussels (EU-COM)**

State of Affairs II

On a rotating basis, NCAs lead the  
**3TG Informal Working Group**  
Informal meetings as to a uniform implementation / interpretation of the CMR

Data exchange of multinational Union importers  
**EU-wide aggregation of imports to check for exceeding of thresholds**  
Complex: Data exchange between Customs – DEKSOR, DEKSOR – NCAs / EU-COM  
Validation with other agencies such as the Statistical Office of Germany & commercial register

Reporting and review:  
**EU-COM reviews the functioning and effectiveness of the CMR**  
If necessary, exchange information on e.g. possible penalties, disclosure, expansion of the list of minerals and metals (e.g. cobalt),  
“minerals-related crimes”, etc.

Frequent enquiries of departments (interministerial committee), companies, NGOs, and the public regarding the  
**New “(EU-) Due Diligence Directive”**  
CMR seen as exemplary model

DEKSOR carries out checks of disclosure obligations of all Union importers above the threshold

## Quick check of approx. 150 Union importers

Aim: Risk evaluation on the basis of customs data and disclosed information on the Internet; validation



Quick Checks

The checks focused on

## Disclosure obligations

Information on management systems & risk management, disclosure of supply chain policy and audit report

Around 50 % of all Union importers

## Do not comply with disclosure obligations (Art. 7(3) of CMR)

Deficiencies regarding the disclosure of audit reports, supply chain policies and information on risk management

So far, DEKSOR received one

## substantiated concern provided by third parties

Generally, quick checks gave the impression that SMEs lack

## Awareness of due diligence obligations

However, non-SMEs do not fulfil the obligations much better → DEKSOR publishes an orientation help

Union importers mostly sent

## Insufficient documentation

i.e. missing records /documents, insufficient audit reports /missing details, no documented management information (e.g. manual)

## Shortcomings I Audit Reports

### Third-party audit reports (Article 6) of industry schemes ➔ did not meet DEKSOR's expectations

- Mostly, DEKSOR only receives summary reports
- List of audited documents mostly not attached or detailed enough
- Missing proof of auditor's competence & independence
- Corrective Action Plan: Insufficient overview of specific measures to remedy shortcomings (e.g. time frame, responsible manager)
- Union importers often make use of the exemption pursuant to Art. 6(2), without sending detailed audit reports of smelters/refiners (in particular, the auditor's name, audit scope and plan, and specific audit findings/evaluations are missing), and substantive evidence  
→ This is not in accordance with the CMR → Consequence: Audit obligation applies pursuant to Art. 6(1)

Incomplete traceability system

## Country of origin of minerals $\neq$ country of smelter or refiner

Traceability until refiner or smelter level only

## Shortcomings II Traceability

## High reliance on industry schemes and refiner information

Use of industry templates without validating the information

Smelters as bottleneck

## Lack of traceability

Information is not disclosed by smelters and refiners due to confidentiality arguments

Conformant smelter and refiner lists

## Use of lists published by schemes

Treated as equivalent with EU list of global responsible smelters and refiners (pursuant to Art. 9)

Missing records of the third-party audit reports

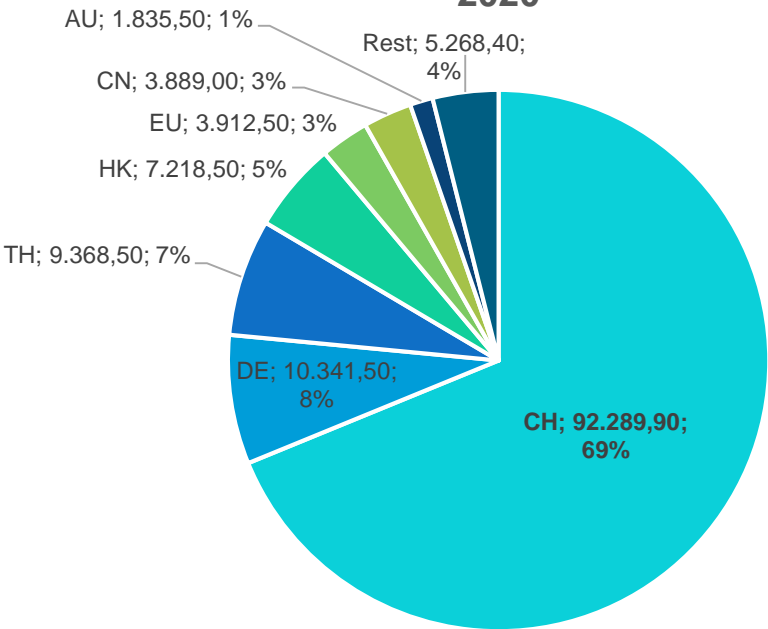
## Risk Management is not based on third-party audit reports of smelters and refiners

(Detailed) audit reports are not made available and/or the information in the audit reports is not considered for own risk management

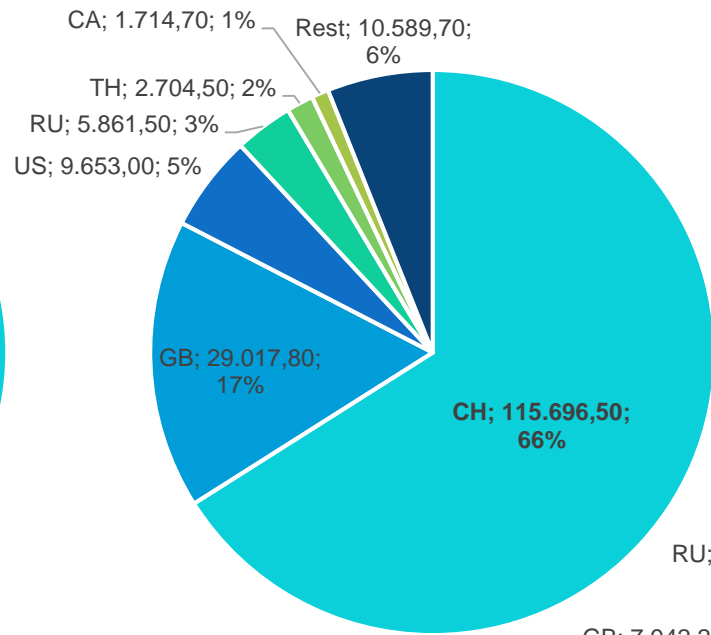


# Country of Origin of Gold Imports to Germany

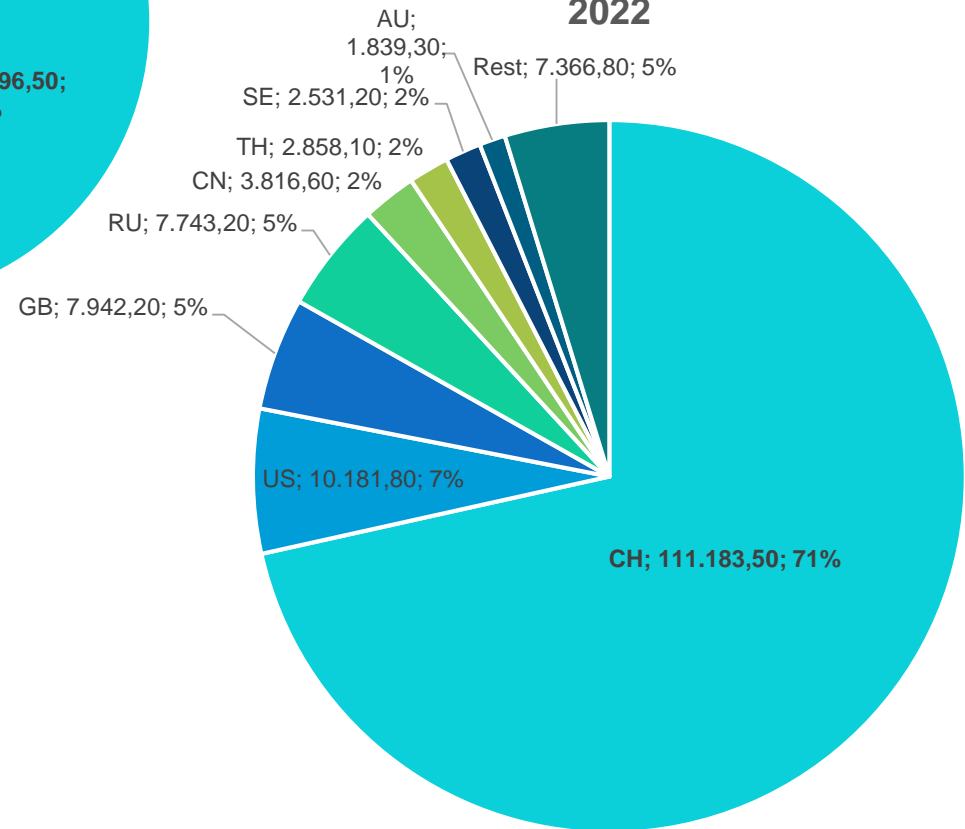
### 2020



### 2021



### 2022



Definition (Art. 60, Para. 2 Regulation (EU) 952/2013 – Union Customs Code):  
 Goods [...] shall be deemed to originate in the country or territory where they underwent their **last, substantial, economically-justified processing or working** [...].

Communication with Union importers:

## Clearly name what proof and records are expected

when requesting documents of proof

Lessons Learned  
/ Expectations

Completeness: not only summary audit reports

## All audit documents belonging to the audit report are needed

Audit scope, information on audited documents/locations/samples, (non-)conformities and CAP have to be included

Compliance with EU CMR is

## Union importer's own responsibility

No delegation to industry schemes

Dodd-Frank Act: De-risking vs.

## EU CMR: Risk mitigation

Schemes conformant smelter lists  $\neq$  EU list of responsible smelters and refiners (pursuant to Art. 9)

Challenge for Union importers:

## Certain documents (e.g. complete audit reports) are not provided by refiners/ industry schemes

Refiners as bottleneck have the responsibility of information disclosure towards public/downstream actors, see recital (16), (17), and (13)



Contact

DEKSOR

## German Competent Authority – EU Due Diligence Obligations in Mineral Supply Chains

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