

Public consultation on a possible EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas

1. Information on respondents	
1.1 Do you agree that your contribution may be made public? -single choice reply-(compulsory)	Yes
1.2 Please state the name of your business / association/ organisation. -open reply-(compulsory)	BUSINESSEUROPE
1.3 What is your profile? -single choice reply-(compulsory)	Trade organisation representing business
1.4 What is your main area/sector of activities/interest? -multiple choices reply-(compulsory)	Other
1.4.1 If other, please specify. -open reply-(compulsory)	All industrial sectors
1.5 In which country are your headquarters located? -multiple choices reply-(compulsory)	Belgium
1.6 In which regions do you operate? -multiple choices reply-(compulsory)	Europe
1.7 Are you listed on a regulated market? -single choice reply-(compulsory)	No
1.8 Do you prepare due diligence reports on a mandatory basis? -single choice reply-(compulsory)	No
1.9 Do you prepare due diligence reports on a voluntary basis? -single choice reply-(compulsory)	No
1.10 Can the European Commission contact you if further details on the information you submitted is required? -single choice reply-(compulsory)	Yes
1.10.1 Contact details, including email address. -open reply-(optional)	Sofia Bournou, Adviser, International Relations Department, tel.: 022376529, e-mail: s.bournou@businessseurope.eu
2. Rationale and existing frameworks	
2.1 Is the private sector interested in sourcing minerals in a socially responsible manner? -single choice reply-(optional)	Yes
2.2 What would you consider the single most compelling motivation for the private sector to source minerals in a socially responsible way? -multiple choices reply-(optional)	Image - Corporate Social Responsibility agenda

<p>2.3 Are you already undertaking efforts to ensure responsible sourcing of minerals? -single choice reply-(optional)</p>	
<p>2.4 Do you consider it unachievable for the private sector to source minerals in a socially responsible way? -single choice reply-(optional)</p>	Yes
<p>2.4.1 If yes, please specify. -open reply-(optional)</p> <p>The business sector cannot do it alone. Responsible sourcing primarily depends on regulatory frameworks applied in resource-holding countries. Although desirable, lack of such legislation as well as lack of proper enforcement and monitoring imposes extreme challenges and burden to downstream companies in their efforts to prove that their supply chain - in particular the upstream, mine to smelter part - is clean of conflict minerals. Under these circumstances, coordinated efforts at local, regional and international level, that jointly address sourcing and good governance issues, would significantly improve the situation.</p>	
<p>2.5 Would you consider existing international instruments under the corporate social responsibility and supply chain due diligence agenda such as the <i>UN Guiding Principles on Business and Human Rights</i>, <i>OECD Guidelines for Multinational Enterprises</i> and <i>OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas</i> sufficient as they stand? -single choice reply-(optional)</p>	Somewhat agree
<p>2.5.1 Companies have already fully integrated those international instruments into corporate risk management systems. -single choice reply-(optional)</p>	Somewhat disagree
<p>2.5.2 Those instruments appropriately address the issue of responsible sourcing in resource-rich, high-risk developing countries affected by conflicts. -single choice reply-(optional)</p>	Somewhat agree
<p>2.5.3 If in questions 2.5 / 2.5.1 / 2.5.2 you disagree and think there is scope for improving or complementing the existing instruments, how could this be achieved? -open reply-(optional)</p> <p>Companies more and more incorporate international instruments in their risk management systems. Some even take a step further by developing their own responsible sourcing initiatives, based on the existing schemes. International experience is still gathering however. For instance, the OECD Due Diligence Guidance and the UN Guiding Principles were only adopted in 2011. Perhaps more time should be given to the private sector to fully implement these instruments.</p>	
<p>2.6 What practical lessons can we draw from existing supply chain due diligence schemes such as the OECD Due Diligence? What are the advantages and downsides for industry and producing countries? -open reply-(optional)</p> <p>The OECD Guidance describes a process-based approach that allows companies in 5 steps to identify, assess and mitigate the risk of having conflict minerals in their supply chain. Furthermore, its supplements for the 3Ts and Gold are helpful tools for the private sector to develop tailor-made solutions for their sectors. The value-added of the OECD scheme lies in its flexibility, pragmatism and focus to the ultimate goal, which is delinking business activities from illegal practices without creating any trade embargoes. The OECD Guidance is a complex scheme however, and often smaller companies find it difficult to interpret it. This is a point which needs to be further improved.</p>	
<p>2.7 What practical lessons can we draw from existing supply chain due diligence schemes adopted by third countries to promote mineral supply chain transparency (e.g. US Dodd - Frank Act section 1502)? What are the advantages and</p>	

downsides for industry and producing countries? -open reply-(optional)

Contrary to the OECD Guidance which is process-based, the DFA section 1502 is a product-based approach. Its strictly binding nature has resulted in a de facto trade embargo against minerals from the DRC and the Great Lakes region. In the 3rd quarter of 2011 alone, a 90% decrease in the DRC's exports has been reported. The law also has a significant negative impact on the social situation in the region. Companies affected by the DFA abandoned the region, mines closed, unemployment rose and legal economic activity ceased. This facilitates the recruitment of young people to armed groups, as they are left with no other source for income. The DFA already has global affects, as many EU and other companies are US-listed or are suppliers to US-listed companies.

2.8 In some cases, mineral producing developing countries have introduced regulatory schemes to allow trade of minerals to be conducted in a socially responsible way. What is your assessment of such national or regional initiatives and regulatory schemes? -open reply-(optional)

The ICGLR and the development of a regional certification scheme or the iTSCi-ITRI initiative play a significant role in improving traceability and transparency in resource-holding countries. Although the monitoring part of such instruments, as well as their ability to attract more companies to participate need to be improved, these are valid efforts that can be the basis of future EU activities, as further recognition and support by the EU will add credibility to the schemes.

3. Need and scope of a possible EU initiative

3.1 Is there a need for the EU to promote responsible sourcing of minerals through actions focused on transparency of the supply chain, in addition to what already exists in the policy landscape? -single choice reply-(compulsory)

No

3.2 Should the scope of an EU initiative refer to specific end-products or downstream industry sectors? -single choice reply-(optional)

No

3.3 Should an EU initiative target specific segments in the minerals' supply chain? -single choice reply-(optional)

Yes

3.3.1 If yes, which segment(s) should be targeted? -multiple choices reply-(optional)

Mines - Traders - Smelters - Refiners

3.4 Should an EU initiative include exemptions for Small and Medium-sized Enterprises (SMEs)? -single choice reply-(optional)

Yes

4. Continuation of activity, security of supply and other international actors

4.1 Should an EU initiative explore ways to support security of supply of the identified minerals for EU industry? -single choice reply-(optional)

Yes

4.2 Would an EU initiative reach the necessary critical mass to motivate other major economies (e.g. China, Brazil, Indonesia, and Malaysia) to engage in similar initiatives? -open reply-(optional)

Any EU initiative alone would not reach the necessary critical mass unless other major players are taking comparable measures as well. The EU should therefore engage more actively with China, Brazil and other important players in the global market in order to increase awareness on the complexities of the issue. Responsible sourcing is not only an issue of market access. It is a global problem that requires global solutions where trade, security and humanitarian aspects are jointly taken into account. It also requires that governments, international organisations, the private sector and the civil society work closely together. In this framework, in order for an EU initiative to reach the necessary critical mass, it should then take a multi-stakeholder approach with strong diplomatic elements.

4.3 To the extent that the response strategies of some businesses to the U.S. Dodd-Frank Act section 1502 provisions is

to stop sourcing minerals in Central Africa, what could an EU initiative do to support both market access and due diligence concerns? -open reply-(optional)

The creation by the DFA of a trade embargo in the Great Lakes region is already fully reported and denoted as devastating for the growth and development of the region. Furthermore, EU companies that are listed in the US will have to comply with the DFA. The EU should therefore avoid any duplication of the DFA system and ensure that in the framework of the TTIP negotiations a future EU initiative is being recognised as equivalent by US authorities. Companies should be able to choose to comply to either scheme. The EU should also avoid placing the burden to only one segment of the supply chain, rather take a more risk-based approach, where costs are distributed according to each segment's responsibility. Finally, the EU should engage in dialogue with the governments in the areas that would be affected by a future EU initiative. The governments of the countries in the Great Lakes region were left out of the US SEC consultations, deprived of the opportunity to raise their concerns.

5. Nature of the initiative

5.1 To ensure sufficient private sector participation, the implementation of an EU initiative on supply chain, due diligence should not only be voluntary but should include a degree of obligation on business operators.

-single choice reply-(optional)

Strongly disagree

5.2 How should a scheme be designed to make sure companies keep engaging and sourcing responsibly in conflict-affected and high-risk regions rather than simply move on to different regions to source their products? -open reply-(optional)

The advantage of voluntary schemes, such as the OECD Due Diligence Guidance and other industry-led initiatives based on the former, is that they leave room for solutions tailor-made to the needs of different sectors and industries. The DFA has proven that strict, inflexible and extremely burdensome legislation creates adverse results and disrupts trade. An EU initiative should therefore allow for enough room for flexibility, give adequate time for its proper implementation, involve the minimum possible costs for the industry and contain a strong political component that would aim to improving the situation on the ground. Furthermore, the EU should provide clear guidance on suitable due diligence methodologies to be applied in order to avoid any uncertainties, especially as regards certification and auditing. The EU also should limit the definition of conflict minerals and geographic scope of its initiatives and not go beyond what is provided under the DFA and consider de minimis rules.

6. Lessons learned from the EU Timber Regulation

6.1 The EU has some experience in promoting due diligence along the supply chain of the timber sector. Should the EU consider an initiative for minerals modelled on the 2010 Timber Regulation?

-single choice reply-(optional)

Strongly disagree

6.2 As is the case in the EU Timber Regulation, should an EU initiative promote responsible sourcing of minerals by requiring that the entity first placing a selected mineral (processed or not) on the EU market must provide evidence of due diligence thereby giving reasonable assurance that its supply chain is conflict-free?

-single choice reply-(optional)

No

6.3 Should the EU initiative consider preventing the placing on the market of specific minerals/end products extracted and exported

No

<p>against the laws of producing countries? -single choice reply-(optional)</p>	
<p>6.4 Are the laws of the mineral producing countries sufficiently developed and implemented? -single choice reply-(optional)</p>	<p>No</p>
<p>6.4.1 If you have examples to back either opinion, please share. -open reply-(optional)</p>	
<p>By prohibiting the placement of illegally harvested timber and timber products on the EU market, the EUTR constitutes a demand-side approach, which aims to clean the EU market. The problem of illegally harvested timber and deforestation is however a global one, which requires good governance (legislation and good practices in timber producing countries) and security elements (conflicts over land use) to be taken into account. If a similar approach is adopted in the case of conflict minerals, it will only reassure that the EU internal market is kept clean of conflict minerals while not contributing the least towards improving the situation in the conflict-affected areas. Furthermore, the EUTR only entered into force on 3 March 2013. More time should be therefore given to operators and legislators to properly assess the implementation of the EUTR before the EU decides to move to a similar direction in other policy fields.</p>	
<p>7. Positive incentives to international corporations and businesses</p>	
<p>7.1 Should an EU initiative provide positive incentives to businesses to foster clean trade from conflict-affected and high-risk areas (i.e. not contributing to adverse impacts and conflicts)? -single choice reply-(optional)</p>	<p>Yes</p>
<p>7.1.1 What kind of incentives could be considered? -open reply-(optional)</p>	
<p>Businesses would participate in multi-stakeholder initiatives, which operate in a risk-sharing manner. The support of the EU and of governments (both European and local), adding legitimacy to the projects, would be a strong incentive on its own. Furthermore, the participation of civil society would guarantee the smooth conduct of the project on the ground (observing certification and transport, engaging with local communities). Private sector would be then properly supported to contribute their part in cleaning the supply chains. A telling example of a scheme proving strong incentives for the industry to participate is the Conflict-Free Tin Initiative (also refer to answer 7.5). In this context, the EU could also promote and reinforce the Conflict-Free Sourcing Initiative (CFSI), which includes the Conflict-Free Smelter Program.</p>	
<p>7.2 Business would benefit in terms of brand image and consumer recognition by complying with an EU initiative on responsible sourcing. -single choice reply-(optional)</p>	<p>Yes</p>
<p>7.3 Can existing frameworks such as OECD Due Diligence Guidance or certification initiative by the International Conference on the Great Lakes Region be used to facilitate incentives considered by the EU? -single choice reply-(optional)</p>	<p>Yes</p>
<p>7.4 Numerous private sector initiatives currently carried out allow to promote responsible sourcing from conflict-affected and high-risk areas. -single choice reply-(optional)</p>	<p>Strongly agree</p>
<p>7.5 How can governments complement private sector led initiatives? Are there examples of positive incentives provided by governments in non-EU jurisdictions? -open reply-(optional)</p>	
<p>- The Conflict-Free Tin Initiative is a valuable example of how governments can effectively support business-led initiatives. The Dutch government is the leader and guarantor of the whole project, sharing costs with the companies which participate in the scheme and, along with the government of the DRC, securing the legality of the private sector operations in South Kivu. - Governments, via their local representations, also facilitate dialogue with authorities, from the government to the local level. The EU could also help and increase</p>	

bilateral dialogue and understanding through its diplomatic missions. - As regards non-EU government initiatives, the ICGLR is a prominent example. Governments from the Great Lakes region in Africa have cooperated with the private sector to put in place a regional certification scheme. More support from the part of the EU would improve its effectiveness.

8. Economic and Competitiveness impacts

8.1 Would you expect any competitiveness impact (positive or negative) should the EU undertake a supply chain due diligence initiative on minerals originating from conflict-affected and high-risk areas? -single choice reply-(optional)

Yes

8.1.1 If yes, what impact do you expect for the upstream industries? -open reply-(optional)

Greater support to clean supply mechanisms at the upstream industries will have positive externalities for the whole supply chain, as not only the competitiveness but also the reputation of companies will improve. For instance, certified smelters will enjoy competitive advantages as downstream users will have a preference to source from these particular smelters. There is of course the possibility that the prices of minerals will temporarily rise, pressure from the markets will be nevertheless created and eventually more smelters will get certified. The EU should make sure that its initiative further supports and reinforces existing initiatives such as the Conflict-Free Smelter Program or the ICGLR regional certification scheme. To avoid unfair competitive advantage for non-EU smelters, it would be important to ensure that all certificate systems are fully functioning and verifiable.

8.1.2 If yes, what impact do you expect for the downstream industries? -open reply-(optional)

Binding legislation would impose huge administrative burden and costs to EU companies. This will ultimately harm their competitiveness as companies from other countries (especially from China) would have the advantage of not being obliged to comply to similar requirements. Similar phenomena of trade embargoes, as those following the DFA section 1502, may be also created, limiting access to third markets and secure supply of raw materials for the EU industry. In a time of crisis, it would not be wise for the EU to put more pressure to the industry, as this type of legislation would certainly not contribute to more growth and jobs. Furthermore, unless mutual recognition is achieved with the US regime, EU US-listed companies will have to face more costs and bureaucracy.

8.2 What would be the possible impact of non-action? -open reply-(optional)

Non-action from the part of the EU at the level of binding legislation should not be perceived as non-action at all. Strong political action should be taken towards the direction of further supporting existing workable initiatives, such as the OECD Due Diligence Guidance, the UN Guiding Principles, the ICGLR regional certification scheme and numerous other initiatives that are based on international standards.

8.3 In case a due diligence system will be proposed, what would be the expected impacts both in terms of administrative burdens and compliance cost (e.g. cost of collecting relevant information and cost of auditing). If you already apply due diligence please provide exact information on your costs. -open reply-(optional)

A thorough impact assessment currently conducted by the EU should also shed light on the expected costs of such legislation. Moderate estimates of the costs implied by the US DFA though, show that they will reach 7 to 9 billion USD in 2014 alone (the first year of that covered end user companies will be required to conduct a due diligence report). Experience shows that the actual implementation costs surpass the initial estimates. More data should be therefore collected and more studies should be carried out in order for the EU to have a more clear view of the overall costs of a future legislation in conflict minerals.

9. Environmental impacts

9.1 Would you expect any environmental impact (positive or negative) should the EU undertake a supply chain due diligence initiative on minerals originating from conflict-affected and high-risk areas? -single choice reply-(optional)

Don't know

9.2 What would be the possible impact of non-action? -open reply-(optional)

10. Social impacts

10.1 Would you expect any social impact (positive or negative) should the EU undertake a supply chain due diligence initiative on minerals originating from conflict-affected and high-risk areas? -single choice reply-(optional) Yes

10.1.1 If yes, what impact do you expect? -open reply-(optional)

Please refer to answer 10.2

10.2 What would be the possible impact of non-action? -open reply-(optional)

In order to avoid or mitigate any negative social impacts on the ground, any future EU initiative should be accompanied by measures that would target to improving employment, securing legal income sources for the local communities and overall improve living and labour conditions. This can only be achieved via close cooperation with and support by local governments.

11. Other issues

11.1 If there are any other issues that are not mentioned in this questionnaire that you would like to address, please use the space below to set them out. -open reply-(optional)

Overall messages that the EU should take into consideration: - An EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas should effectively contribute to the ultimate goal, which is to improve the situation on the ground. - The EU should not duplicate the Dodd Frank Act section 1502 in order to avoid negative effects such as trade embargoes and loss of market access and secure supply of minerals for the EU industry. - Equivalence should be achieved with the US regime through the TTIP negotiations.