

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)	NGO working coalition on conflict minerals: CCFD-Terre Solidaire, Christian Aid, EURAC, Global Witness, IKV Pax Christi, JESC, Justice et Paix, SOMO. This submission is co-signed by these and the following groups: ACIDI CONGO (South Kivu); AEDH; AEFJN; ALBOAN; Amnesty International; Belgian Network Natural Resources (BNNR-RBRN); Center for Trade union and Human Rights (CTUHR); Congo Calling; CREDDHO; Earthworks; ECCJ; Enough Project; Evert Vermeer Foundation/Max van der Stoel Foundation; Flif - Forum InformatikerInnen für Frieden und gesellschaftliche Verantwortung e.V.; Free the Slaves; Fundacja CentrumCSR.PL; GreenIT.fr; Good Electronics; ICAR; India Committee of the Netherlands (ICN); Inverclyde Advice and Employment Rights; Jesuit Refugee Service; makeITfair; MEMISA Belgium; PowerShift e.V.; Save Act Mine; Save the Congo; Südwind Agentur; Südwind Institute; Workers Assistance Center;.
1.3 What is your profile? -single choice reply-(compulsory)	Other non-governmental organisation
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)	NGOs working on responsible natural resource management, corporate accountability and human rights.
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)	Africa - Asia - South America
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)	Frédéric Triest, Chargé de projet "Ressources Naturelles" at Justice et Paix asbl, Rue Maurice Liéart, 31 bte 6 1150 Bruxelles, Tél. 02/738.08.01 Fax. 02/738.08.00 email: frederic.triest@justicepaix.be webpage: www.justicepaix.be

2. Rationale and existing frameworks

<p>2.1 Is the private sector interested in sourcing minerals in a socially responsible manner? -single choice reply-(optional)</p>	<p>Yes</p>
<p>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)</p>	<p>Regulatory obligation - Other</p>
<p>2.2.1 If other, please specify. -open reply-(optional)</p>	
<p>Reduce reputational risk; Gain competitive advantage; Meet existing international standards.</p>	
<p>2.3 Are you already undertaking efforts to ensure responsible sourcing of minerals? -single choice reply-(optional)</p>	<p>Yes</p>
<p>2.3.1 Please shortly describe your efforts and possible difficulties you encounter. -open reply-(optional)</p>	
<p>As NGOs we do not trade minerals. We helped to draft the OECD DDG, monitor/support implementation through the MSG forum and are involved in other relevant multi-stakeholder fora. We: • Support civil society partners in conflict-affected and high risk (CA and HR) areas who monitor mineral exploitation and trade; • Conduct wide-ranging research at all levels of supply chains to inform public campaigns/advocacy aimed at citizens, decision-makers, companies. • Ensure adherence to international standards on business/human rights. Difficulties: • Lack of regulation in key jurisdictions e.g. the EU requiring companies to act responsibly; • Company reluctance to undertake supply chain due diligence despite: o Decades of reports detailing links between minerals and conflict; o The existence of internationally accepted due diligence standards; • Limitations of consumer pressure, which have prompted some responsible sourcing efforts but are less impactful than regulatory obligation.</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>	<p>No</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>	<p>Strongly disagree</p>
<p>2.5.1 Companies have already fully integrated those international instruments into corporate risk management systems. -single choice reply-(optional)</p>	<p>Strongly disagree</p>
<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>	<p>Somewhat agree</p>
<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</p>	

instruments, how could this be achieved? -open reply-(optional)

• Due diligence standards contained within existing international instruments must be made mandatory. • The state's duty to protect and the company's responsibility to respect human rights as defined in the UN Guiding Principles, including their responsibility to identify, prevent and mitigate impacts, should be incorporated into European legislation. • The OECD DDG is increasingly accepted as the international standard for responsible sourcing of minerals and should be directly incorporated into legislation. Companies should be required to meet this standard in full. • The OECD DDG framework can and should be applied to other natural resources. The material scope of a law should be broadened beyond tin, tungsten, tantalum and gold and should cover a wide range of natural resources. • The EU should consider complementing the due diligence reporting requirements contained within these instruments with a sanction mechanism.

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)

OECD DD is a flexible, iterative and targeted way for companies to manage supply chain (SC) risk. Creating an alternative framework would be costly and burdensome for industry. OECD DD: • If properly implemented allows responsible sourcing in CR and HR areas to continue; • Has achieved wide consensus as the accepted international standard, including increasingly in non-OECD jurisdictions (e.g. China which has participated in the OECD DDG working group); • Has been adopted into domestic law (DRC, Rwanda, sign-posted in US DF1502); • Has been incorporated into industry responsible sourcing initiatives (iTSCi, CFS, CFTI); • Is already understood and is being implemented by some companies; regulation requiring all EU companies to meet this standard would level the playing-field; • Increases efficiencies as companies improve knowledge of SCs; • Teaches companies about red-flags helping to identify future sourcing risks; • Improves SC transparency making conflict-financing less likely.

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

By obligating companies to conduct supply chains checks DF1502 created unprecedented momentum for responsible mineral sourcing. Industry has engaged for the first time in responsible mineral sourcing and their reporting expenses are lower than was initially expected. Lessons from industry: •Different rules for SMEs cause practical problems; •Industry-wide efforts offer cost-effective support to company-level due diligence measures; •An EU initiative should be process-led and build in scope for mitigation. Lessons from producing countries: •Legislative delays create uncertainty in SCs and can have negative effects in producing countries; •Narrow regional approaches may incentivize companies to source from non-covered regions and contribute to potential de facto embargos; •Responsible sourcing efforts by downstream companies contribute to stable local economies. Other lessons: •Accompanying measures should be considered; •Due diligence reports must be published in a central locations

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)

DRC and Rwanda have adopted OECD DDG into domestic legislation. The ICGLR regional mineral certification scheme is based on OECD DDG. The harmonisation around this internationally accepted standard means companies have a clear due diligence standard to meet, reducing the burden that multiple requirements would bring. However, lack of political will, weak institutions or insufficient resources, as well as conflict can pose challenges for effective implementation in some countries. In the case of Colombia the Comptroller General has concluded that national and state governments are either incapable or unwilling to ensure Colombian domestic legislation is executed as it should be, for example. European legislation would regulate EU supply chains and in so doing could compliment national legislation in CA and HR areas. Companies should meet internationally accepted due diligence standards irrespective of whether state domestic legislation is in place and being enforced, however.

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)	Yes
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3.1.1 If so, what should be the geographical	Global
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scope of such action? -multiple choices reply-(optional)	
3.1.2 Which minerals should it cover? -multiple choices reply-(optional)	Tin, Tungsten, Tantalum and Gold - Other minerals - All minerals
3.1.2.1 If other minerals, please specify. -open reply-(optional)	
General DD principles apply to all natural resources; use and expand on existing tools for 3TG.	
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)	No
3.4 Should an EU initiative include exemptions for Small and Medium-sized Enterprises (SMEs)? -single choice reply-(optional)	No
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)	No
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)	
Yes. Many products containing minerals from CA and HR areas are imported into Europe that have been processed or have transited through other major economies. EU legislation that requires supply chain due diligence will affect companies in these countries. Robust EU regulation would bring leverage in other economies to adopt due diligence requirements for companies in their jurisdictions. The USA has already passed and Canada proposed legislation on responsible mineral sourcing. Due diligence regulation in the EU, one of the world's largest economies, would increase the volumes of materials passing through regulated supply chains and contribute to achieving global critical mass of companies engaged in responsible sourcing.	
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)	
Regulation with global geographical scope requiring companies to undertake risk-based supply chain DD would place emphasis on supply chains rather than on specific regions or conflicts, preventing companies from developing sourcing strategies that contribute to de facto embargos. This approach would also reduce the higher administrative cost of sourcing minerals from specific regions, which in turn encourages market access for minerals from those regions, including those that could be responsibly sourced. The EU should consider accompanying measures to encourage sustainable sourcing models for conflict-free minerals from CA and HR areas, for example by publicly highlighting best practices or exploring possibilities to develop responsible sourcing criteria in public procurement contracts. The EU could develop further guidance to help companies understand how to identify and address supply chain risks and support work by the OECD to further define specific risk indicators for companies.	
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 agree

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)

- A process-based mitigation framework, based on OECD DDG, allows companies to engage in CA and HR areas. If they identify a risk, they have a set timeframe in which they can demonstrate measurable progress towards addressing it. This encourages companies to take active steps to source responsibly from risk areas;
- The EU should give broader support to regional and other initiatives to address due diligence requirements;
- Disclosure requirements combined with public recognition and can provide incentives to investors for companies demonstrating good due diligence;
- The EU should ensure that legislation is at the core of a 'package', which includes strong accompanying measures to address root causes of conflict and fragility;
- The scheme should be designed to apply globally and with a broad material scope;
- Recognition of collective industry initiatives, while ensuring that companies take individual responsibility for their supply chains.

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)

Somewhat agree

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 against the laws of producing countries? -single choice reply-(optional)

Yes

6.3.1 If yes, which laws of the mineral producing countries should be taken into account? Please be country-specific in your examples. -open reply-(optional)

Companies should respect human rights and due diligence laws and international standards, including the requirement that companies carry out human rights due diligence, in countries where they operate or source from. Countries such as DRC and Rwanda and organizations such as the ICGLR have already introduced domestic due diligence legislation that can help companies source responsibly. But often relying on national legislation or regional initiatives alone is not enough. In many cases the legal framework or implementation of national laws, such as in the DRC, is weak. Furthermore in some cases material that has funded conflict is exported through legal channels, underlining the need for due diligence checks.

6.4 Are the laws of the mineral producing countries sufficiently developed and implemented? -single choice reply-(optional)

No

6.4.1 If you have examples to back either opinion, please share. -open reply-(optional)

In DRC domestic legislation that meets the OECD standard has been introduced although implementation and enforcement are patchy. In Rwanda legislation requiring companies to undertake due diligence is in place, although the due diligence requirements are not clearly signposted within the law, resulting in inconsistent compliance. In many states in Burma (including Kayah, Shan and Kachin) production of tin, tungsten, jade, lead and rubies is fuelling conflict and human rights abuses. There is no due diligence law in place at all.

7. Positive incentives to international corporations and businesses

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)

Yes

7.1.1 What kind of incentives could be considered? -open reply-(optional)

In principle companies should not need incentives to behave responsibly. But recognition of good reporting practices or adopting a weighting scheme whereby responsible sourcing practices are recognized during public procurement could be considered. Financial incentives should only be considered in individual cases, such as encouraging companies to co-finance pilot projects for example. Corporate tax incentives or other transfers of public resources to private entities should be avoided.

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)

Yes

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)

Don't know

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)

Somewhat agree

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)

- Within the UNGP framework governments play a role in helping companies in CA and HR areas to act responsibly. Embassies in high risk areas can assist companies in understanding due diligence obligations and raising awareness of potential red flags in operating environments, as part of a company's own risk analysis.
- EU governments should ensure that their own policies are coherent and in line with the norms contained within the UNGP, to fulfil their human rights obligations and ensure that subsidized enterprises do so as well.
- European companies and the Dutch government launched the Conflict-Free Tin Initiative in DRC; a closed-pipe system in which all players in the vertically-integrated supply chain are known. If properly implemented, responsible sourcing from CA areas can work.
- The Public Private Alliance is a joint US-based initiative of companies, governments and civil society that supports conflict-free sourcing initiatives from the GL Region.

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)

Properly implemented due diligence could break the link between mining and conflict and help stimulate local economic development. Economic growth would bring benefits for upstream companies, and responsible trading based on OECD due diligence would allow

downstream companies to market themselves as conflict-free, which could help them to gain a competitive edge on international markets. Current examples demonstrate that upstream traders can get higher prices for minerals produced under responsible sourcing initiatives.

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

Downstream companies would benefit from the level playing field that European regulation would create for European companies, many of whom are already subject to reporting requirements under DF1502. European downstream companies would be able to take advantage of the industry-wide initiatives set up following the passage of DF1502, including cost benefits. Finally, data generated since implementation of DF1502 suggests that due diligence requirements can have a positive effect on competitiveness.

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

Non-action risks: • Allowing businesses to continue irresponsible sourcing of minerals. Some companies will – wilfully or through ignorance – continue to source minerals that fund conflict and human rights abuses. A legal framework would require companies to take responsibility for their actions and the impact of exploitation of these minerals in the country of origin; • Contributing to widespread insecurity and violence in areas where conflicts are linked to the minerals trade, the effects of which are felt first and foremost by local communities; • Hampering the development of stable, sustainable economies and a transparent mining sector, which in turn impacts on prospects of international corporations investing in those areas. EU action to break the links between minerals and conflict through responsible sourcing would help to reduce the highly costly political, developmental and humanitarian impacts of resource-fuelled wars.

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)

Studies show that administrative burden and cost of DD compliance are not as high as suggested by some. Claigan Environmental recently published compliance cost estimates for DF1502 issuers 22% lower than their initial estimate of 0.03% of revenue for the first year, reducing by 50% in the two subsequent years. Green Research concludes that compliance costs tend to decline over time as companies become familiar with requirements, are manageable for companies of all sizes, and are best addressed by joining industry-wide initiatives. An iSuppli study highlights that companies share parts and suppliers, offering opportunities for price harmonization, rationalization of supply base and reduction in number of suppliers, without negative impact on business. Results of a Claigan Environmental project in which 15-year old students conducted reasonable country of origin inquiries as required by DF1502 suggests companies should also be able to trace back supply chains, and at reasonable cost.

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)

Yes

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

Due diligence helps companies better understand their supply chains and manage risk. While the EU initiative should focus on acute conflict financing and human rights, companies looking along their supply chains may find other risks, including those related to environmental damage, which can then be addressed at the same time. Addressing these impacts will help to prevent future resource related conflicts.

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

As part of a thorough risk assessment the 3TG supplements contained within the OECD Due Diligence Guidance require companies to 'know the context of the CA and HR area of mineral origin, transit and/or export'. This risk assessment includes a study of profiles relating to mineral extraction, and its potential impact on environmental harm in the country of origin. In the absence of supply chain due diligence some companies remain ignorant (unintentionally or not) of any negative environmental impacts along their supply chains.

10. Social impacts

10.1 Would you expect any social impact (positive or negative) should the EU undertake a

Yes

supply chain due diligence initiative on minerals originating from conflict-affected and high-risk areas? -single choice reply-(optional)

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

If implemented properly SC DD would: •Promote conflict free economies within CA or HR areas and reduce the so-called “war economy”; •Reduce financial flows to warring parties, changing conflict dynamics and potentially reducing conflict; •Increase government incomes through taxation and reduced corruption allowing governments to invest in improved public services. In the artisanal sector would contribute to: •Improved labour and security conditions in the mining sites; •Demilitarised mining areas, improved population security and allowing for more time and resources to be invested in building up longer term, sustainable economic development activities; •Increased mineral value on local and international markets ('conflict-free' status), improving household revenue for artisanal miners and their families, allowing local communities to invest in development (infrastructure, literacy, health care etc). Within the EU would: • Increase consumer (and investor) awareness and protection.

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

As evidenced currently in the DRC, irresponsible mineral sourcing by EU and non EU companies generates funds for armed groups and so fuels conflict and human rights abuses. Consequences include: • Continuation of violence and human rights violation in mineral-rich regions, including sexual violence and murder; • Mass displacement of people fleeing conflict, feeding both internal and international migration flows; • Pandemic food insecurity around agricultural areas located in conflict and high risk zones; • Jeopardised risk-mitigation and post-conflict reconstruction efforts giving armed groups economic reasons to continue fighting (enrichment logic); • Unfair wealth distribution from mining as (military) elites benefit over the state's public services provision and the population. • Lack of transparency and protection for EU consumers (and investors).

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)

This coalition believes an EU initiative should also: • Form part of a wider complementary approach that includes governance, security/mining reforms in CA and HR and environmentally vulnerable areas in order to have durable stabilisation, environmental sustainability and development effects; • Ensure industry sectors reluctant to implement supply chain due diligence, e.g. tungsten smelters, the arms industry, are obligated to act; • Not include exemptions for SMEs, which risk disrupting supply chain-wide efforts and creating significant reporting loopholes; • Build on lessons learned from the EU Timber Regulation, the Kimberley Process and examples of best practise i.e CFTI in South Kivu, DRC; • Be designed to further the international transparency agenda/contribute to existing (tax) transparency initiatives; mining should form a source of development finance, allowing states to invest in their own development. A civil society position paper with detailed information will follow.