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FREQUENTLY ASKED QUESTIONS - Responsible sourcing of minerals originating conflict-affected and high-risk areas: towards an integrated EU approach

What are 'conflict minerals'?

Profits from the extraction of and trade in minerals sourced from unstable regions affected by armed conflict can play a role in intensifying and perpetuating violent conflict. This can take various forms including where armed groups or their affiliates illegally control mines and mineral trading routes, use forced labour or commit other human rights abuses, or tax or extort money or minerals.

As a result, armed groups and security forces in conflict regions can finance their activities from the proceeds of mining and trading of minerals which later enter the global supply chain. Companies further down the production chain run the risk of supporting armed activities and have an interest in sourcing from such regions responsibly.

The best documented and known case relates to the problems in the eastern Democratic Republic of Congo (DRC) where the United Nations frequently reports on the devastating instability created by foreign and national armed groups generating revenues through their control over natural resources. The Heidelberg Institute for International Research estimates that, together, natural resources and conflict account for roughly 20% of global conflicts.

Under the US Dodd-Frank Act, section 1502, 'conflict minerals' are defined as minerals containing tin, tantalum, tungsten and gold originating in the DRC and the adjoining countries. The Organisation for Economic Co-operation and Development's (OECD) Due Diligence guidance is based on the same four minerals but is not geographically specific. The EU proposal uses the same basis as OECD.

What are 'conflict minerals' used for?

After mining, 'conflict minerals' are traded on local and international markets where smelters and refiners transform those minerals into metals. The metals are subsequently processed in the downstream section of the supply chain into components for a vast number of end products including cars, electronics like mobile phones, packaging, construction, aeronautics, and jewellery.

What are the goals of the EU approach?

One of the objectives of the EU's proposal is to break the link between minerals extraction, minerals trading, and the financing of armed conflicts. The root causes of the problems must be identified, as should the triggers of conflicts and structural fragility, their dynamics, and the roles of the various actors involved.

A second objective is to create a market in the EU for responsibly traded minerals that originate in conflict regions. Experience in the Great Lakes region since 2010 shows that due to risk averse business decisions, EU and US operators prefer to source these four minerals elsewhere. The practical consequence on the ground is that local mining jobs are lost, trade has partly gone underground and where formal markets are used, the minerals are not fetching the best price due to low global demand. This is not solving the first problem: the link between trade in minerals and the financing of armed groups.

A third objective is to improve the ability of EU operators wherever they are in the supply chain to comply with existing due diligence frameworks. The current situation is highly fragmented with the bulk of efforts taking place at the downstream level. For this reason, the EU proposes an approach that stimulates a better flow of information from upstream to downstream.

The Commission proposes a Regulation to set up a supply chain due diligence self-certification system of importers and a series of accompanying measures based on the three objectives just described.

In practice, this means:

- **The onus will be put on the importers – a valuable point in the EU supply chain:** The draft Regulation proposes to set up an EU system of self-certification for importers of tin, tantalum, tungsten and gold who choose to import responsibly into the European Union. It requires EU importers of these metals and their ores to exercise 'due diligence' – i.e. to avoid causing harm to others – by monitoring and administering their purchases and sales in line with OECD standards. The aim is to ensure they do not contribute to the financing of armed conflicts. Importers will have to go a step further than the OECD guidance in terms of disclosure. The Regulation introduces the obligation to pass on due diligence information to downstream purchasers.
- **Transparency:** To make the supply chain more transparent and to make it easier to source the metals and their ores responsibly, the EU aims to publish in cooperation with the OECD an annual list of EU and global responsible smelters and refiners. With more than 400 importers of such ores and metals into its territory, the EU is among the largest markets (about 35% of global trade) for tin, tantalum, tungsten and gold.

The integrated EU approach on responsible sourcing is embedded in a wider comprehensive approach on conflict-affected and high-risk areas. These promote *inter alia* conflict resolution, peace and security, respect for human rights including the need to address trafficking in human beings, good governance and the rule of law and sustainable development. Examples are the Strategic Framework for the Great Lakes Region with the issue of illegal exploitation of natural resources, but also the Horn of Africa Strategic Framework and the EU strategy for Security and Development in the Sahel.

What is supply chain due diligence?

The concept of supply chain due diligence is referred to in the updated OECD Guidelines for Multinational Enterprises¹ and is in line with the United Nations (UN) Guiding Principles on Business and Human Rights². Supply chain due diligence aims at identifying and addressing actual and potential risks when businesses source from regions affected by conflict and instability to prevent or mitigate adverse impacts, *inter alia* as regards the financing of conflicts, associated with their sourcing activities.

The EU has been actively engaged in an Organisation for Economic Co-operation and Development (OECD) initiative to advance the responsible sourcing of minerals from conflict regions, which has resulted in a government-backed multi-stakeholder process leading to the adoption of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (OECD Due Diligence Guidance³) including specific supplements on tin, tantalum and tungsten, and on gold.

What are the requirements of the US Dodd-Frank Act - section 1502?

In 2010, the United States passed the Dodd-Frank Wall Street Reform and Consumer Protection Act - the Dodd Frank Act. Section 1502 thereof introduces supply chain transparency by requiring companies listed on US stock exchanges using 'conflict minerals' in their production processes to declare the origin of such minerals and perform appropriate supply chain due diligence.

Section 1502 provisions are enforceable as of 31 May 2014 by which time affected companies must submit their first annual conflict minerals reports to the US Securities and Exchange Commission. Although the scope of the legislation is formally restricted to US-listed companies, it is having considerable effects abroad, including in the EU, mainly through global supply chains, because suppliers to US-listed companies are being asked to contribute due diligence information.

Are companies carrying out supply chain due diligence?

Not all companies carry out supply chain due diligence. Not all companies source in conflict regions either. The trend since 2010 is to find alternative sources in other producing countries which does not solve the problem of the financing of armed groups through the trade in minerals.

The transformation of minerals into metals by smelters, or refiners in the case of gold, is a key stage in the supply chain because it is the last stage where information is known about the origin of the minerals. At present, the Commission assesses that globally only about 20% of the smelters, and 40% of the refiners of gold, carry out supply chain due diligence.

¹ OECD Guidelines for Multinational Enterprises, OECD 2011 edition.

² Guiding Principles on Business and Human Rights, UN Human Rights Office of the High Commissioner, New York and Geneva 2011.

³ OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition, OECD Publishing (OECD (2013). <http://dx.doi.org/10.1787/9789264185050-en>.

Moreover, a 2013 study shows that EU due diligence is not widely spread. Only 12% of companies listed on EU stock exchanges not directly subject to the US legislation refer to conflict minerals on their websites. This is partly because the OECD Due Diligence Guidance and the Dodd-Frank Act are recent, but also because EU companies face implementation challenges (i.e. length of supply chains, multiple operators, lack of awareness).

It is estimated that 150,000-200,000 EU companies - mostly downstream firms - are involved in the supply chains of the 6,000 affected US-listed companies.

How would the new EU system for self-certification of responsible importers work?

The draft Regulation sets up a new EU system for supply chain due diligence self-certification system of responsible importers of tin, tantalum and tungsten, their ores and gold originating in conflict-affected and high-risk areas.

Although the Regulation is voluntary, EU importers opting for self-certification as responsible importers should (i) set up a management system to *inter alia* track the origin of the minerals purchased, (ii) apply supply chain risk management procedures to address and mitigate adverse impact in related to the financing of armed groups, (iii) carry out third-part audit and disclose relevant supply chain related information to downstream purchasers and the public.

The obligations are consistent with the international consensus achieved by the multi-stakeholder group that developed the OECD Due Diligence Guidance.

What is the purpose of the EU list of responsible smelters and refiners?

The aim of the annually published EU list of responsible smelters and refiners is to raise the level of public accountability as regards the supply chain due diligence practices and the level of compliance by EU and global smelters and refiners and to provide downstream purchasers of metals with a clear tool to successfully identify responsible smelters or refiners.

Moreover, the list will identify those smelters and refiners that source – at least partially – from conflict-affected and high-risk areas. The list will be drawn up in cooperation with the OECD.

How would the EU proposal help to promote supply chain due diligence among EU companies?

The EU will promote the uptake of supply chain due diligence by EU companies through:

- Its own **public procurement contracts**. Products such as mobile phones, computers, printers containing tin, tantalum, tungsten or gold purchased through the Commission's public procurement will need to respect OECD Due Diligence Guidance or equivalent due diligence schemes in order to satisfy contractual obligations.
- **Funding to promote the uptake of the voluntary certification scheme** among EU importers. Funding would be explored under the Competitiveness of Enterprises and SME's Programme (COSME), adopted on 5 December 2013.
- **Financial assistance to the OECD or other bodies for programmes** to promote transparency and due diligence practices among EU and non-EU smelters/refiners.
- Political, development, trade and security **dialogues and contacts with governments** in mining, producing, processing and consuming countries to further develop a common understanding – at country and regional level – of the needs, challenges and opportunities of conflict-free and responsible mineral extraction.
- **Existing cooperation relations with governments** in Africa, Asia, Latin America and the Caribbean to address conflict-free and responsible mineral extraction and trade.

Which countries would be concerned?

The draft Regulation is global in scope. It will target tin, tantalum and tungsten ores and metals, and gold from all conflict-affected and high-risk areas.

The draft Regulation defines '*conflict-affected and high-risk areas*' as areas in a state of armed conflict, fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses.

The EU does not intend to present a specific list of countries because the situation in such countries or areas is by definition fluid and unstable. But – more importantly – we want to avoid companies disengaging from such regions as an easy way to comply with the Regulation. This could have unintended socio-economic consequences for the people who need to be protected most in these regions – civilians who need paid work to offer opportunities to themselves and their families.

Existing compliance frameworks established by companies participating in the OECD efforts also do not name conflict countries. However, templates do exist to help guide business decisions. The World Gold Council Conflict-Free Gold Standard is one example.

In the EU proposal, companies are asked to track the origin of minerals and the conditions of trade and are requested to set up an early-warning risk-awareness system or to participate in such a system through collaborative arrangements with other companies or organisations.

The impact assessment carried out does provide, however, some examples of regions that could currently qualify, including the Great Lakes Region with trade covering both producer and transit countries. Rebels are also financed by the trade in tin, tantalum, tungsten or gold in Colombia and the impact assessment also states that gold comes from countries with known instabilities such as Mali, Sudan and Côte d'Ivoire.

Do the measures include sanctions if companies do not comply?

The draft Regulation is made up of a system of voluntary self-certification by the importer which will be enforced by the authorities in the Member States. In the case of infringement, these authorities will issue a notice of remedial action to be taken by the EU importer. If such action is inadequate, the authority will then issue a non-recognition notice for the 'responsible importer' certificate for the minerals and metals covered by the draft Regulation. The importer, as well as the smelters and refiners in its supply chain, will be removed from the EU list of 'responsible smelters and refiners'.

What is the difference between the EU's proposal and the Section 1502 of the US Dodd-Frank Act?

The US Dodd-Frank Act targets *US-listed* companies using tin, tantalum, tungsten and gold in their supply chain to disclose their activities related to 'conflict minerals'. The EU self-certification scheme is voluntary and targets *EU importers* of minerals and metals of tin, tantalum, tungsten and gold and is designed to assist downstream companies to carry out supply chain due diligence.

In addition, the EU will provide public procurement incentives to encourage companies producing end-products such as mobile phones, computers and printers are conflict-free to seek to work with a responsible EU importer.

Unlike the draft EU Regulation, Section 1502 of the US Dodd-Frank Act is region-specific targeting the Democratic Republic of Congo and neighbouring countries, which has triggered risk-adverse behaviour with companies disengaging their sourcing activities from this region: this major draw-back is well documented in UN Panel of Expert reports and other literature. Therefore the draft EU Regulation is global in scope designed to be non-discriminatory vis-à-vis any conflict zone and based on the international consensus achieved in the OECD.

The EU initiative was also preceded by a very wide consultation with stakeholders, involving companies at all stages of the supply chain, civil society, academia, EU Member States and politicians, including the European Parliament. It is based on an impact assessment and cost study.

It is intended to complement the Dodd Frank Act which is indirectly responsible for a large share of due diligence efforts among EU downstream users. The weakness in the present global system is the flow of information from the upstream to the downstream part, hence the focus of the EU proposal on importers. As the draft EU regulation is not a standalone proposal, the effect of incentives and ongoing due diligence work in compliance with the OECD guidance will help stimulate a good response among EU importers. The EU is particularly keen not to keep its market open to responsibly traded minerals from conflict-affected regions.

How big is the mineral trading industry and how much of it is made up of trade in 'conflict minerals'?

The global mineral trading industry is currently estimated to be worth in the region of €200 billion. It is difficult to say how much of this is made up of trade in 'conflict minerals' because, by its very nature, the trade is in volatile areas affected by conflict. Furthermore, groups seeking to fund themselves from such trade will endeavour to keep their trade away from scrutiny.

With a share of almost 35% of global trade, the EU is one of the largest importers of tin, tantalum, tungsten and gold ores and concentrates. The EU imports almost 25% of global trade in tin, tantalum and tungsten, and some 15% of gold metals.

2011 trade statistics show that 7% of the EU's tantalum and tungsten ores imports came from the Democratic Republic of Congo (DRC) and Rwanda. Moreover, the EU imported some €70m of tin metal imports from Malaysia, which in turn sourced 17% of its tin ore imports from the DRC and Rwanda. Furthermore, the EU imports tantalum metals from China worth €80 million and from Kazakhstan €5 million. 17% of China's and 25% of Kazakhstan's tantalum ore imports came from the DRC and Rwanda.

What happened so far in this field?

In 2010, the US passed the Dodd Frank Wall Street Reform and Consumer Protection Act. Section 1502 requires companies listed on US stock exchanges using 'conflict minerals' in their production processes to declare the origin of such minerals and perform due diligence as appropriate.

In June 2013, G8 leaders also expressed their commitment to make extractive industries more transparent and to support responsible sourcing of conflict-free minerals from conflict regions.

On 7 October 2010, the European Parliament passed a resolution calling for the EU to legislate along the lines of the US "conflict minerals" law; and the Commission announced in its Communications of 2011 and 2012⁴ its intention to explore ways of improving transparency, including due diligence, throughout supply chains. The EU proposal today lays down a first and timely approach to deal with the problem on the basis of different EU policies.

The EU is actively engaged in an OECD initiative on conflict minerals – the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas - and made a commitment to promote its observance at the May 2011 OECD Ministerial Council. The EU has already provided financial support for the implementation of the OECD Due Diligence Guidance and for the ICGLR's Regional Initiative on Natural Resources.

In 2013, the Commission carried out a public consultation on 'A possible EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas'. On that basis, the Commission defined the objectives of the EU initiative and carried out an impact assessment.

⁴ COM(2011) 25 FINAL and COM(2012) 22 FINAL

What is the next step from the legislative perspective?

Under co-decision, the European Parliament and the Council will take up the file.

For further information

[Press Release: EU proposes responsible trading strategy for minerals from conflict zones \(IP/14/218\)](#)

[Link to the draft Regulation](#)

[Link to the joint Communication by the European Commission and the High Representative](#)

[Link to the Commission staff working document](#)

[Link to the external study](#)

[OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#)

[Outcome of the public consultation](#)