

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)	Global Witness (GW)
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)	Break links between natural resources, conflict, corruption, human rights and environmental abuse.
1.5 In which country are your headquarters located? -multiple choices reply-(compulsory)	United Kingdom
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)	Sophia Pickles, 6th Floor, Buchanan House, 30 Holborn, London, EC1N 2HS spickles@globalwitness.org
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)	Regulatory obligation - Other

2.2.1 If other, please specify. -open reply-(optional)	
Protect reputation Meet international standards developed and endorsed by OECD and UN	
2.3 Are you already undertaking efforts to ensure responsible sourcing of minerals? -single choice reply-(optional)	Yes
2.3.1 Please shortly describe your efforts and possible difficulties you encounter. -open reply-(optional)	
As an NGO we do not trade minerals. GW participated in drafting and is now supporting/monitoring implementation of the Organisation for Economic Cooperation and Development (OECD) Due Diligence Guidance (DDG) through the OECD Multi-Stakeholder Group (MSG). Our efforts include to: Ensure companies at all levels of the supply chain (SC) adhere to international standards on business/human rights; Conduct wide-ranging research at all levels of SCs, publish reports/briefings to inform public campaigns/advocacy aimed at citizens, decision-makers, companies; Support civil society partners in conflict-affected and high risk (CA and HR) areas who monitor mineral exploitation and trade. Key difficulties include: Lack of regulation in key jurisdictions such as the EU requiring companies to act responsibly; Company reluctance to undertake SC due diligence despite: -Decades of reports detailing links between minerals and conflict; -The existence of internationally accepted due diligence standards.	
2.4 Do you consider it unachievable for the private sector to source minerals in a socially responsible way? -single choice reply-(optional)	No
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)	Strongly disagree
2.5.1 Companies have already fully integrated those international instruments into corporate risk management systems. -single choice reply-(optional)	Strongly disagree
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)	Somewhat agree
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)	
Published in 2011 the OECD DDG was developed by a tri-partite working group of companies, governments, civil society. Endorsed by OECD member states and increasingly accepted as the international SC due diligence (DD) standard, many EU companies do not adhere to the standard. The OECD DD framework should become a mandatory requirement. It should be directly incorporated into European legislation, which should: •Require natural or legal persons/undertakings placing minerals on the internal market for the first time to meet the OECD standard in full; •Be applied to other natural resources; the material scope of a European law should be broadened beyond tin, tungsten, tantalum and gold to cover a wide range of natural resources, including diamonds; 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 reflected in European legislation.	

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 SC risk. OECD DD: •If properly implemented allows for responsible sourcing in CA and HR areas, making conflict financing less likely; •Is already implemented by some companies reporting under US law; •Has achieved wide consensus as the accepted international standard, including increasingly in non-OECD jurisdictions (e.g. Chinese companies have participated in the OECD DDG working group); •Has been adopted into domestic law (DRC, Rwanda, sign-posted in US Dodd Frank Section 1502 (DF1502)) and regional schemes (ICGLR); •Has been incorporated into industry responsible sourcing initiatives (e.g. iTSCi, CFS, CFTI) and sign-posted in industry programmes (e.g. LBMA, WGC); •If made mandatory in the EU would level the playing field for companies; •Increases efficiencies as companies improve knowledge of SCs; •Teaches companies about red flags, helping to identify future sourcing risks and secure stability of supply.

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 chain checks DF1502 created unprecedented momentum for responsible mineral sourcing along global supply chains. For industry; • Mandatory requirements have propelled engagement in responsible sourcing; • Reporting expenses are lower than initially expected. • Different rules for SMEs can cause practical problems; • Industry-wide efforts offer cost-effective support to company-level due diligence measures; • Operating in CA and HR areas requires scope for mitigation. For producing countries: • Legislative delays create uncertainty in SCs and can have negative effects in producing countries; • A non-specific regional approach will help incentivise companies to engage responsibly in CA and HR areas; • Responsible sourcing efforts by downstream companies can contribute to stable local economies; • In some countries accompanying measures should be considered.

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 high degree of harmonisation around the internationally accepted OECD standard means companies have one clear due diligence standard to meet, reducing the cost and burden that adhering to multiple standards would bring. However, lack of political will, weak institutions or insufficient resources – and in some cases conflict – can pose challenges for effective implementation in some countries. European legislation based on OECD DD would regulate EU supply chains and in so doing could complement existing national legislation in CA and HR areas. Companies should meet internationally accepted due diligence standards irrespective of whether 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

3.1.1 If so, what should be the geographical scope of such action? -multiple choices reply-(optional)

Global

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)

OECD DDG can and should be applied to supply chains for all natural resources.

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

Yes

segments in the minerals' supply chain? -single choice reply-(optional)	
3.3.1 If yes, which segment(s) should be targeted? -multiple choices reply-(optional)	All segments
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)	
<p>Yes. Many products containing minerals from CA and HR areas are processed in or have transited through other major economies before being imported into Europe. Requiring OECD SC DD of companies placing raw materials/products containing these onto the EU internal market will influence the behaviour of tier suppliers along supply chains. Robust EU regulation could influence governments in other major economies to adopt due diligence requirements for companies operating in their jurisdictions in order to level the playing field and ensure that their industry is not at a competitive disadvantage globally. The USA has passed, and Canada has 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.</p>	
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)	
<p>The EU should adopt a regulation with global geographical scope requiring companies to undertake risk-based SC DD. A global scope would: • Require companies to scrutinise individual supply chains rather than focusing on specific regions/HR and CA areas. This would help to encourage companies to develop responsible sourcing strategies across all of their supply chains; • Reduce the risk of creating higher administrative costs for companies sourcing minerals from specific regions, ensuring a level playing field that encourages market access for minerals from all regions; The EU should consider accompanying measures that could support responsible sourcing models in CA and HR areas. The EU could consider developing guidance to accompany a regulation that builds upon that contained within the OECD DDG to help companies understand how to identify and address risks in their SCs. The EU could support work by the OECD to further define specific risk indicators for companies, for example.</p>	
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)	
<p>•Regulation should be centred on a risk-based approach, whereby companies check all SCs for risk and are then required to act only where a 'red flag' is identified. SCs from CA and HR areas may be free of risk; taking an iterative approach allows sourcing to continue and risks addressed as they are detected. •Regulation that builds in a process-based mitigation framework based on that contained</p>	

within the OECD DDG would allow companies to continue to engage in CA and HR areas. If they identify a risk that has not contributed to or been associated with significant adverse impacts, including human rights abuses and conflict, companies would have a set timeframe in which to demonstrate measurable progress towards addressing the risk. The flexibility of this approach allows companies to continue to source responsibly from CA and HR areas rather than withdraw from them.

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)

Yes

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 meet international standards and abide by national laws in the countries in which they operate, including human rights and due diligence legislation. Countries such as DRC and Rwanda and organizations such as the ICGLR have already introduced domestic due diligence legislation that can allow companies source responsibly. But relying on national legislation or regional initiatives alone is not enough. In many cases, such as in the DRC, the legal framework or implementation of national laws is weak. Furthermore in some cases material that has funded conflict is exported through legal channels, reinforcing 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 implementation.

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. Financial incentives should only be considered in individual cases, encouraging companies to co-finance pilot projects. 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)

Under the UNGP framework EU governments have a responsibility to support companies in CA and HR areas to act responsibly. EU governments may consider supporting companies' involvement in responsible sourcing initiatives, e.g.: o The Dutch government's launch of the Conflict-Free Tin Initiative in DRC; a closed-pipe system in which all players in the vertically-integrated supply chain are known. o 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. If properly implemented, responsible sourcing from CA and HR areas can work.

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 help to break the links between mining and conflict and help stimulate local economic development. Those upstream companies able to prove through third party audit and public reporting that they meet the OECD DD standard would be able to gain access to a larger segment of the market by being able to sell to companies whose sourcing practises meet international standards and could also gain a competitive edge on international markets by being able to offer responsibly sourced natural resources. Current examples demonstrate that traders can get higher prices for minerals produced under responsible sourcing initiatives, for example.

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

European regulation based on the OECD DDG would: • Create a 'level playing field' across European companies, some of whom are already subject to DD reporting requirements under DF1502; • Reduce reputational risk for EU companies not yet undertaking responsible sourcing that meets the OECD DD standard; • Provide shareholders and investors with proper assurances about company sourcing practises; • Allow companies undertaking responsible trading to market themselves as such; • Help European downstream companies to better manage SC risk and efficiencies. Data generated since implementation of DF1502 suggests that due diligence requirements can have a positive effect on competitiveness, for example. In addition, European companies could take advantage of industry-wide initiatives set up following the passage of DF1502, including associated cost benefits.

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

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. 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.

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 abuses, 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.

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

As part of a thorough risk assessment the OECD DDG supplement for tin, tantalum and tungsten and supplement for gold require companies to 'know the context of the CA and HR area of mineral origin, transit and/or export'. The risk assessment required by the OECD DDG 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 may remain ignorant (intentionally 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 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)

If implemented properly SC DD would: • Promote conflict-free economies within CA or HR areas helping to prevent natural resources from contributing to "war economies"; • Reduce financial flows to warring parties, changing conflict dynamics and potentially reducing conflict; In the artisanal sector SC DD could contribute to: • Improved labour and security conditions in mining sites; • Improved security in local communities where responsible sourcing is being undertaken, leading to economic development including access to agricultural fields and local markets; • Demilitarisation of mining areas which may improve population security and in the longer term allow for economic development; • Increased mineral value on local and international markets which may improve household revenue for artisanal miners and their families, allowing local communities to invest in socio-economic infrastructure.

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; • 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)

An EU initiative should also: - Form part of a wider complementary approach led by the relevant DGs that includes governance, security/mining reforms in CA and HR areas in order to have durable stabilisation and development effects; - Ensure industry sectors reluctant to implement supply chain due diligence, i.e. tungsten smelters, the arms industry, are obligated to act; - Not include exemptions for SMEs, which risk disrupting supply chain-wide efforts (as DF1502 experience shows) and creating significant reporting loopholes; - Build on lessons learned from the EU Timber Regulation, the Kimberley Process and examples of best practise e.g. CFTI in South Kivu, DRC. Please see our upcoming joint NGO position paper for detailed information.