

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)	DIGITALEUROPE
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)	Instrument engineering (medical equipment, optical equipment) Computers and office equipment - Electrical machinery and equipment - Radio, television and communication equipment - IT services
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)	Valentina Bolognesi valentina.bolognesi@digitaleurope.org +32 2 609 5313
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 - Regulatory obligation
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)

The electronics industry, with supply chain participants, is addressing responsible sourcing via EICC® and GeSI's joint "Conflict Free Sourcing Initiative". This group developed the CFS Program and Conflict Minerals Reporting Template, and undertook research on conflict minerals and metals used in the electronics sector. The CFSI is open to any industries wanting to source responsibly. An increased participation from other industries and a large number of smelters/refiners is needed to make it a long-lasting change. The CFSI recognizes that smelters/refiners (less than 500 worldwide processing tin, tantalum, tungsten or gold) are the pinch point in the complex supply chain. Smelters joining the CFS Program are audited by independent auditors, which validate that the purchased minerals reasonably have not supported illegal armed groups. The audit results support due diligence efforts of companies further down the supply chain. Individual companies support initiatives such as CFTI and SfH.

2.4 Do you consider it unachievable for the private sector to source minerals in a socially responsible way? -single choice reply-(optional)

Don't know

2.5 Would you consider existing international instruments under the corporate social responsibility and supply chain due diligence agenda such as the *UN Guiding Principles on Business and Human Rights*, *OECD Guidelines for Multinational Enterprises* and *OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas* sufficient as they stand?

-single choice reply-(optional)

Somewhat agree

2.5.1 Companies have already fully integrated those international instruments into corporate risk management systems.

-single choice reply-(optional)

Somewhat 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)

Strongly 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)

Existing instruments, such as the OECD Guidance and the Conflict Free Sourcing Initiative (see 2.3) provide a strong basis for companies at various points in the supply chain to conduct due diligence with their suppliers. An EU initiative could further promote the implementation of existing tools in relevant economies. For example, there is an opportunity for the OECD to play an important role in reaching out to supply chain companies, including smelters and refiners, in order to motivate due diligence in minerals sourcing. A European Initiative could support such an OECD effort. Furthermore, efforts to develop and scale a system to validate responsible sources from the DRC should be supported as a priority. Until such a system is in place that is recognized as legitimate by local and international governments, purchasers of raw materials (e.g. smelters) will have a disincentive to source from the region.

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)

The OECD Due Diligence is a voluntary, risk-based and systematic framework which gives advantages in that: it enables a consistent approach to due diligence across a complex and global supply chain; it recognizes the need for appropriate/different due diligence processes at each point in the supply chain; companies can meet the OECD guidance despite differences in their specific internal processes, as well as continue sourcing from the region if certain due diligence steps are taken; it enables companies to exercise due diligence with relevant suppliers in a cost-efficient, practical and planned way; it is risk-based and does not have the inadvertent consequence of disincentivizing or prohibiting sourcing from an entire region. The guidance was developed through multistakeholder consultation approach, which gives it credibility and wide acceptance as appropriate international guidance. The OECD Guidance is useful as a base to develop company processes for conflict mineral compliance.

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)

Market distortion: by requiring more costly reporting, the easiest way to fulfill the requirements is to avoid the DRC. It has been stated by many that this has resulted in an unintended de facto embargo against minerals originating from the region. A decrease in the DRC's exports was reported by the UN SC Group of Experts (resolution 1553, report S/2011/738). This has led to unemployment and lack of income in one of the poorest regions of the world. Inefficiency: the OECD Guidance allows companies to have flexibility to address the conflict mineral issue where the risk is highest, whereas the Dodd-Frank Act drives high administrative costs with product-based reporting. Inconsistency with OECD Guidance: the nature of Dodd-Frank is in conflict with the more progressive approach of the OECD Guidance. Companies wanting to stay engaged in the region face additional reporting and auditing burdens. Global effect: the Dodd-Frank has a global effect also on companies outside the US.

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 Great Lakes Initiative (ICGLR) is a laudable initiative which has established strict standards. However, significant efforts remain to achieve implementation and enforcement within its member states. An EU initiative should consider supporting such local initiatives aiming towards good governance.

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)

Don't know

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)

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)

To have a successful approach to responsible sourcing in the minerals supply chain relevant economies such as China, Brazil, Indonesia and Malaysia, all with significant smelting and refining capacity, must be engaged. An EU initiative should recognize that the greatest impact can be made at the smelter/refiner level and therefore identify opportunities to engage with relevant economies both bi-laterally and through multilateral organizations such as the OECD. If the EU can involve other major economies and harmonize requirements, ensuring compliance will become more efficient. Simply setting reporting requirements for European companies is not likely to solve the issue. A successful approach must be based on existing international policies, such as the OECD Guidance and recognize existing industry initiatives, such as the Conflict-Free Sourcing Initiative. Any overlaps must be considered, and inconsistencies or conflicting requirements should be avoided.

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)

- Create incentives for trade and support the region with local capacity building. Companies should be encouraged rather than penalized for sourcing responsibly from the region. - Solutions must be pragmatic, adapted to the needs of the local community and result in a concerted effort between local governments, civil societies and industry. - Support implementation and development of existing systems, e.g. the CFS program - The EU can support in-region sourcing projects like the CFTI and SfH to stimulate responsible trade and support local economic development and stability. - The EU should engage in dialogue with governments and local authorities to ensure that any initiative addresses all relevant parts of the minerals supply chain. - It should investigate the stream of illegitimate minerals, possibly in cooperation with the UN Group of Experts on Congo, from the level of the mine instead of starting at an end product that contains tiny quantities of non-traceable metals.

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)

Somewhat 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)

Create incentives for companies to support in-region sourcing or conflict-free mineral programs and upstream, drive incentives for smelter and refiners to participate in programs e.g. the CFS program; Support implementation and development of existing systems, e.g. the Conflict Free Sourcing Initiative. Creating alternative systems generates the risk of increasing uncertainties and administrative burden, and at worst creates differing requirements that would undermine accomplished efforts; Consistency with OECD guidance: an internationally consistent approach is needed that would allow for mutual recognition of different schemes to reach the shared goal and avoid unnecessary administrative costs; Support the development of formal responsible trade in the region in collaboration with relevant governments, industry, local communities, NGOs and other stakeholders; The PPA for Responsible Trade, the CFTI and SfH are examples of good practices to develop responsible minerals sourcing.

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)

-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)

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

No

No

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

7. Positive incentives to international corporations and businesses

7.1 Should an EU initiative provide positive incentives to

Yes

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)

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

- Create a demand for responsibly sourced minerals from conflict region by building incentives for example with public procurement. - Provide tax credits or other trade incentives for companies that participate in GLR conflict-free mineral sourcing initiatives such as the CFTI program - Offer trade preferences to GLR countries that implement their conflict-free mineral certification processes and coordination with ICGLR more quickly. - The EU should certify that the metals coming from certain smelters / mines are clean (white list). And/or provide transparency on which smelters / mines / etc. are not clean (blacklist). This will facilitate business in their purchasing decisions. Given the limited number of smelters in the world, once a critical mass of smelters is certified, the key enabler for responsible sourcing is to get the critical mass of smelters on the CFS list.

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)

No

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)

Strongly 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)

Exerting political pressure through diplomacy and development aid in order to address the roots of the actual conflict (failed states, security, human right violations). By: Promoting and reinforcing initiatives such as the Conflict Free Sourcing Initiative; Acting as a neutral broker to connect different stakeholders (a good example is the role played by the Dutch government in the Conflict-Free Tin Initiative); Providing funding to implement e.g. traceability mechanisms, assessing different mine sites and validating the due diligence performed on actors involved in the minerals trade in the DRC; Facilitating, via the permanent representations, dialogue with local authorities on certifying smelters and voluntary activities of companies in the DRC region; Providing financial incentives for smelter/refiners to participate in programs such as CFS programs, as well as for smelters that obtain certification; Supporting the establishment of management structures and of the proof of origin.

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)

The impact would fully depend on the nature of the EU initiative, and it could have a positive as well as a negative effect on the industry. If the EU would make it more burdensome or more costly for downstream industry to use minerals from conflict areas, then this could create a de facto embargo as the downstream industry will shy away from sourcing in those regions. If the EU establishes requirements that are inconsistent with the OECD Guidance, this could cause confusion in the supply chain, reduce the focus and momentum of making progress in the DRC and GLR. On the other hand, if the EU would succeed in stimulating and encouraging the demand for clean minerals from the GLR, then the upstream industry present in those regions will be able to compete on the world market for metals, creating a level playing field for conflict regions and non-conflict regions.

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

We do not see any positive competitiveness impacts for downstream companies. There is no shortage of 3TG metals, and there is no price difference between metals from different origin, since the metals are traded on the world market and any price difference

disappears after the minerals have been smelted. We do see a possible negative impact if EU legislation would require substantial additional efforts for downstream companies, e.g. related to administrative burden, mandatory reporting, auditing or other requirements. This would impact the competitiveness of EU companies negatively compared to non-EU companies. If the DRC cannot trade their minerals on the world market and cannot sell the minerals to European business, then these minerals will be sold at a lower price to other regions that do accept their minerals. This creates a competitive disadvantage for European downstream industry.

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

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)

During the last years many companies have put in place a due diligence system in an effort to implement the OECD due diligence guidance, plus meeting the requirements from the SEC rules on Dodd-Frank Section 1502. Awareness raising and communication internally and externally with suppliers, as well as collecting data from our tier 1 suppliers requires substantial investment of resources. A large Electronics manufacturer can have approximately 10,000 tier 1 suppliers. The impact is mainly related to human resource costs for implementing due diligence throughout our organization as well as in our supply base. The majority of the efforts is related to administrative tasks for data collection and follow-up work with suppliers.

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)

Part of the issue of social development is rooted in lack of security and availability of developmental aid for social issues. The primary objectives should be on regaining control of security so that development can then begin to tackle social issues deemed needed by local civil society in conjunction with local government agreement.

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

NGO reports have estimated that the efforts underway in Congo and Rwanda have already led to: - A 65% decrease in profit over the past two years for armed groups in eastern Congo from their trade in conflict minerals, as well as a 75% decrease in size of the Rwandan Hutu FDLR militia*. - 80% of the population in the conflict-ridden areas has an average income of \$1 per day, compared to a national average of \$2-2.5**. - Conflicts over mines often lead to waves of displacement***. - iTSCi estimated that there are at least 100,000 miners in the DRC and Rwanda. Assuming 5 dependents per miner, half a million people depend on income from mining activities.

*<http://www.enoughproject.org/blogs/new-enough-report-dodd-frank-decrease-conflict-minerals-trade-congo-smuggling>

http://www.globalwitness.org/sites/default/files/Summary_of_baseline_studies_Global_Witness.pdf *

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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)

EU can help by: Promoting industry-led initiatives; Facilitating dialogue with local authorities on certifying smelters and other voluntary activities; Creating PPA; Providing financial incentives for smelters to participate in e.g. CFS program; Supporting the establishment of management structures and proof of origin; Exerting political pressure to address roots of conflict. On questions 1.7–1.9, some companies are listed on a regulated market and provide DD reports either on a mandatory or voluntary basis. On question 3.1, supply chain transparency does not lead to conflict resolution. On question 3.1.1, an EU initiative should be scalable and flexible to address other conflicts. On question 3.1.2, an EU initiative should cover 3Ts and gold. On question 6.1, risk is that failing states are unable to meet the EU requirements. On question 6.2, upstream entities (between mine and smelters) that first place a mineral on the market must provide due diligence evidence.