

Eurometaux final reply to the EU public consultation on a possible EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas

26.06.2013

1.1 Do you agree that your contribution may be made public?

Yes/No

Answer: Yes

1.2 Please state the name of your business / association/ organisation

Answer: Eurometaux

1.3 What is your profile?

Answer: Trade organisation representing business

1.3.1 If "other", please specify

1.3.2 If you are a business, what is your company size?

- Large company (>250 employees)
- Medium (≥50 and ≤ 250 employees)
- Small (< 50 employees)

1.4 What is your main area/sector of activities/interest?

Answer: Metals and metal product

1.4.1 If "other", please specify

1.5 In which country are your headquarters located?

Answer: Belgium

1.6 In which regions do you operate?

Answer: Europe

1.7 Are you listed on a regulated market?

Yes/No

Answer: No

1.7.1 If yes, in which country (ies)? (at most 3 answers)

1.8 Do you prepare due diligence reports on a mandatory basis?

Yes/No

Answer: No

1.9 Do you prepare due diligence reports on a voluntary basis?

Yes/No

Answer: No

1.10 Can the European Commission contact you if further details on the information you submitted is required?

Yes/No

Answer: Yes

1.11 Contact details, including email address

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2.1 Is the private sector interested in sourcing minerals in a socially responsible manner?

- Yes
- No
- Don't know

Answer: Yes

2.2 What would you consider the single most compelling motivation for the private sector to source minerals in a socially responsible way? (at most 3 answers)

- Consumer satisfaction
- Image
- Corporate Social Responsibility agenda
- Regulatory obligation
- Other
- Don't know

Answer: -1 Corporate Social Responsibility agenda, -2 Regulatory obligation

2.2.1 If "other", please specify

Answer: N/A

2.3 Are you already undertaking efforts to ensure responsible sourcing of minerals?

- Yes
- No
- Don't know

Answer: Yes

2.3.1 Please shortly describe your efforts and possible difficulties you encounter

Answer: As global players, many European non-ferrous metals companies are listed on US stock exchanges or are also part of the US companies' supply chains. Thus, they are already required to conduct, document and report their due diligence practices along the supply chains of the minerals concerned. In this context the implementation of the DFA has and will continue to have a significant impact on EU companies, whether the EU deploys its own ruling or not. In addition to that, Eurometaux members are in line with the OECD guidelines and actively involved in a number of voluntary sector-specific initiatives which head towards the implementation of more transparency along their supply chains. Those initiatives include (non-exhaustive list):

- The ITRI Initiative ,
- The supply chain initiative of EICC/GeSI,
- Initiatives by the Gold sector (LBMA, RJC),
- Tungsten industry initiative called the Tungsten Industry Conflict Mineral Commitment or "TI-CMC" (under development)

2.4 Do you consider it unachievable for the private sector to source minerals in a socially responsible way?

- Yes
- No
- Don't know

Answer: Yes

2.4.1 If yes, please specify

Unachievable, not due to unwillingness of the industry, but due to the complexities, challenges and associated high costs of the problem as such. However, the private sector could contribute towards the increased transparency along supply chain by ensuring its activities comply with Corporate Social Responsibility (CSR) rules, OECD guidelines and by pursuing sector-specific voluntary initiatives.

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?

- a: Strongly agree
- b: Somewhat agree
- c: Somewhat disagree
- d: Strongly disagree
- e: Don't know

Answer: a: Strongly agree

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

- a: Strongly agree
- b: Somewhat agree
- c: Somewhat disagree
- d: Strongly disagree
- e: Don't know

Answer: b: Somewhat agree

2.5.2 Those instruments appropriately address the issue of responsible sourcing in resource-rich, high-risk developing countries affected by conflicts.

- a: Strongly agree
- b: Somewhat agree
- c: Somewhat disagree

d: Strongly disagree
e: Don't know

Answer: c: 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? (maximum 1000 characters)

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? (maximum 1000 characters)

Answer: The OECD Guidance provides a widely recognized tool for supply chain Due Diligence from conflict-affected and high-risk areas. For industry it provides a step by step approach and creates a room for continuous improvement. The value-added of the OECD scheme lies in its flexibility, pragmatism and focus to the ultimate goal, which is delinking business activities from illegal practices without creating any trade embargos. However, further progress could be made regarding the confidentiality issues, hands-on guidance on how to implement due diligence process etc. Moreover, effective sector-specific adaptations of this guidance should be taken into account. One should not underestimate the complexities, challenges and as consequence, related high costs that are associated with the requirements to implement these initiatives, nor the difficulties in applying the 'conflict-affected, high-risk area' criteria in a consistent manner.

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? (maximum 1000 characters)

Answer: As a result of a 2010 US leg. proposal, exports of minerals from the DRC and its adjoining countries have dramatically decreased, increasing unemployment, poverty and consequently worsening the economic situation. Local civil society activists estimate that 1-2 mill. Congolese artisanal miners are currently out of work. In order to avoid an excessive administrative burden, many companies stopped sourcing minerals from this region. Some might suggest that these impacts can be avoided by steering clear of geographic limitations, but there is no evidence to believe the same problems would not occur in other regions under a broad-based "conflict affected" area approach. An another hand, distortions of competition will arise, if no international level playing field, incl. China, is ensured. Before proposing an EU initiative, we recommend the EU to undertake an analysis which should include a consideration of any unintended impacts on the companies and citizens of the producing countries.

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? (maximum 1000 characters)

Answer: Local regulatory schemes are a vital component to mineral supply chain transparency. However, a dedicated regulatory frame does not always exist and when it exists it is sometimes

outdated (dating from colonial arrangements) or not enforced due to a lack of resources and/or the chronic occurrence corruption or bribery. Thus, an EU regulation would not necessarily be transposable to these local regulatory needs and hence is of little added-value to promote this local reinforcement of rules.

We would encourage the EU to support the efforts in case of ICGLR regional initiative against the illegal exploitation of natural resources and on the broader aspect of addressing core underlying issues of conflict. Some of the testimony from the recent US Congress hearing is relevant on those issues.

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?

- Yes
- No
- Don't know

Answer: No

3.1.1 If so, what should be the geographical scope of such action?

- Global
- Region - specific
- Country - specific
- Don't know

Answer: N/A

3.1.2 Which minerals should it cover?

- Tin
- Tungsten
- Tantalum
- Gold
- Tin, Tungsten and Tantalum
- Tin, Tungsten, Tantalum and Gold
- Other minerals
- All minerals
- Don't know

Answer: N/A

3.1.2.1 If other minerals, please specify (maximum 100 characters)

3.2 Should the scope of an EU initiative refer to specific end-products or downstream industry sectors?

- Yes
- No
- Don't know

Answer: No

3.2.1 If yes, please specify which end-products or downstream industry sectors should be targeted?

(maximum 100 characters)

Answer: N/A

3.3 Should an EU initiative target specific segments in the minerals' supply chain?

- Yes
- No
- Don't know

Answer: No

3.3.1 If yes, which segment(s) should be targeted? (at most 4 answers)

- Mines
- Traders
- Smelters
- Refiners
- Semi-finished manufacturer
- End-product manufacturer
- All segments
- Don't know

Answer: N/A

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

- Yes
- No
- Don't know

Answer: No

4.1 Should an EU initiative explore ways to support security of supply of the identified minerals for EU industry?

- Yes
- No
- Don't know

Answer: Yes

4.2 Would an EU initiative reach the necessary critical mass to motivate other major economies (e.g. China, Brazil, Indonesia, and Malaysia) to engage in similar initiatives? (maximum 1000 characters)

Answer: It is extremely important that similar due diligence initiatives are developed worldwide. Responsible sourcing is a global problem that requires global solutions where trade, security and humanitarian aspects are jointly taken into account. The way forward for this issue would be to involve in open dialogue with the representatives of large economies as China, Brazil, USA etc. Therefore, the EU should engage in diplomatic talks with an objective to have a multi-stakeholders solution to this issue.

Should the EU decide to take unilateral action, it should particularly aim to avoid creating an administrative burden on European companies which might reduce their incentive to produce or deal with products containing the concerned minerals, or lead to their withdrawal from the market and replacement by companies from other regions that are not bound by similar rules.

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? (maximum 1000 characters)

Answer:

- Avoiding “de-facto embargo” situation could be done by allowing the private sector to organise itself in a CSR agenda/process-driven manner.
- Engaging in diplomatic talks with large economies as China, Brazil, USA etc. with an objective to have a multi-stakeholders approach.
- Collaborating with local governments to enhance good governance, invest in associated infrastructure, and trace/tackle illicit trade on an ad hoc and integrated manner. In particular, support the ICGLR Regional Initiative against the Illegal Exploitation of Natural Resources (also supported by BDR, Germany), iTSCi or other initiatives. We believe the focus of an EU initiative should be on the conditions on site in the conflict-affected country.
- If a regulation is proposed, the EU proposal shall above all take note of existing initiatives inspired from the private sector’s best practice and implementation of the OECD guidelines, and avoid undermining them.

Please see also answers 2.7, 4.2, 5.2, 8.1.1, 8.2, 11.1.

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.

- a: Strongly agree
- b: Somewhat agree
- c: Somewhat disagree
- d: Strongly disagree
- e: Don't know

Answer: 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? (maximum 1000 characters)

Answer: Eurometaux believes the EU should avoid unilateral action which would create multiple regulatory and reporting requirements. The EU should promote more concerted and comprehensive international intervention and mediation efforts regarding conflict free minerals, building on the existing frameworks such as OECD Due Diligence Guidance, the voluntary sector-specific initiatives and the US DFA Section 1502.

Furthermore, Eurometaux would encourage the EU to deploy efforts in supporting ground activities in conflict regions. Please see also answers to questions 2.5.3, 2.7, 4.3 and 7.5.

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 modeled on the 2010 Timber Regulation?

- a: Strongly agree
- b: Somewhat agree
- c: Somewhat disagree
- d: Strongly disagree
- e: Don't know

Answer: 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?

- Yes
- No
- Don't know

Answer: 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?

- Yes
- No
- Don't know

Answer: No

6.3.1 If yes, which laws of the mineral producing countries should be taken into account? Please be country-specific in your examples (maximum 1000 characters)

Answer: NA

6.4 Are the laws of the mineral producing countries sufficiently developed and implemented?

- Yes
- No
- Don't know

Answer: Don't know

6.4.1 If you have examples to back either opinion, please share (maximum 1000 characters)

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)?

- Yes
- No
- Don't know

Answer: Yes

7.1.1 What kind of incentives could be considered? (maximum 1000 characters)

Answer: In case of EU initiative, it is absolutely vital to establish a scheme of efficient incentives in order to create a level-playing field with non-EU companies that are not following similar due diligence procedures. In this context our industry would be open to support from national governments that will incentivize the work of the industry, which is already in place, and will help to develop further industry's engagement. However, it is necessary that these incentives are introduced in pragmatic way and based on market and competition analysis. We are open to discuss a form of possible incentive with the EU authorities, incl.

- Tax levies on EU listed companies combining responsible sourcing actions with in-region capacity-building and other programs.
- Public-Private Partnership programs to promote responsible implementation, sourcing, and rehabilitation of mining sites in conflict areas.
- Integration of EU initiatives on responsible sourcing with other EU initiatives with other DGs.

7.2 Business would benefit in terms of brand image and consumer recognition by complying with an EU initiative on responsible sourcing

- Yes
- No
- Don't know

Answer: 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?

- Yes
- No
- Don't know

Answer: Yes

7.4 Numerous private sector initiatives currently carried out allow to promote responsible sourcing from conflict-affected and high-risk areas.

- a: Strongly agree
- b: Somewhat agree
- c: Somewhat disagree
- d: Strongly disagree
- e: Don't know

Answer: 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? (maximum 1000 characters)

Answer: Eurometaux believes the role of government goes beyond a complementing role. Indeed, unless governments act on the need to build a strong basis, private sector initiatives are very unlikely to ever be successful in tackling conflicts.

Nevertheless, governments can complement by improving regulations and regional initiatives such as different sourcing initiatives. Combating crime requires providing the population with the necessary infrastructure to develop other 'career options' than joining armed groups. It requires combating

corruption and bribery and forming cross-country/regional alliances to better control and catch smugglers and smuggled materials.

Thus, before launching an EU initiative, we believe, the EU should further improve development programs towards the DRC or any other region concerned, for example, in terms of good governance, education, training of the artisanal workers etc., in partnership with business and civil society stakeholders engaged in the area.

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?

- Yes
- No
- Don't know

Answer: yes

8.1.1 If yes, what impact do you expect for the upstream industries? (maximum 1000 characters)

Answer: A legally binding mechanism unilaterally imposed by the EU will worsen the current competitive disadvantage that the EU upstream industries are facing vis-à-vis third countries, with negative consequences on growth and jobs in the EU. Thus, the EU should particularly aim to avoid creating an administrative burden on European companies which might reduce their incentive to produce or deal with products containing the concerned minerals, or lead to their withdrawal from the market and replacement by companies from other regions that are not bound by similar rules. In this context the EU should thoroughly analyse the experience of US DFA legislation and in particular, impacts and consequences it caused on the companies, the citizens and economies of the producing countries.

8.1.2 If yes, what impact do you expect for the downstream industries? (maximum 1000 characters)

Answer: Without a global approach towards conflict minerals issue, the competitiveness of the downstream companies in Europe might be affected as well. Assuming the EU initiative is not accompanied by an active involvement of the third-countries economic actors, it is likely to decrease the competitiveness of EU industry that will need to work in accordance with and report on the implementation of sourcing standards which are not respected in other regions. Considering the EU actors should continue to supplying their minerals at prevailing rates, it will cause a breach of the global level playing field of companies in global market.

8.2 What would be the possible impact of non-action? (maximum 1000 characters)

Answer: Non-action from the part of the EU at the level of binding legislation should not be perceived as non-action at all. Also without an EU unilateral binding legislation, the increase of sourcing standard would be driven by market pressure. Following international initiatives as well as other EU

initiatives (such as Corporate Social Responsibility) the EU industries are already engaged in efforts to address this concern. Strong political action should be taken towards the direction of further supporting existing workable initiatives such as the OECD Due Diligence Guidance, the UN Guiding Principles, the ICGLR regional certification scheme and many others.

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. (maximum 1000 characters)

Answer: It is very difficult to estimate costs in case of EU due diligence system, since the requirements of this system are not known yet. However, if a third-party audit is required, this will be highly burdensome for the industry. Hence, assuming that a due diligence mechanism is proposed, priority should be given to internal due diligence to be conducted by internal audit.

As a good reference point the EU could use the cost assessment for the implementation of SEC / Dodd-Frank Acts rules. The US SEC has estimated the costs of initial compliance with the Dodd Frank Act rules to be 3-4 billion USD, and thereafter to 206-609 million USD per year. An independent Tulane University economic impact assessment study found that the costs of implementing section 1502 will be approximately 7.93 billion USD, which is significantly higher than costs estimated by the SEC.

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?

- Yes
- No
- Don't know

Answer: Yes

9.1.1 If yes, what impact do you expect? (maximum 1000 characters)

It is very difficult to estimate an environmental impact of a possible EU initiative, since details are still unknown. Assuming the EU initiative is not accompanied by an active involvement of third-countries economic actors, raw materials flows are likely to be diverted towards non-EU countries with less ambitious/strict or no environmental standards and norms, and thus result in negative impacts on the environment.

9.2 What would be the possible impact of non-action? (maximum 1000 characters)

Answer: A positive environmental impact will take place as the result of international initiatives as well as other voluntary initiatives. In this context it is very important that the EU aims at recognizing, promoting and supporting existing initiatives. See answer to the question 8.2. for further details.

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?

- Yes
- No
- Don't know

Answer: Yes

10.1.1 If yes, what impact do you expect? (maximum 1000 characters)

Answer: Without solid development program and international recognition, an EU initiative is more likely to result in a negative social impact similar to the consequences of the 'embargo de facto' resulting from the avoidance of the region resulting from the US DFA legislation.

It is now recognized that the Dodd Franck Act has created unemployment and poverty in some East African countries. Local civil society activists engaged in the mining sector estimate that 1-2 million Congolese artisanal miners and those who work in other aspects of the mining sector are currently out of work. Multiplied by the 5-6 direct dependents that each miner has, section 1502 has inadvertently and directly negatively affected up to 5-12 million Congolese civilians. (M. Drajem, J. Hamilton "A Rule Aimed at Warlords Upends African Mines", Bloomberg Businessweek, 2011). Thus, the social and economic conditions prevailing for the population living in those conflict risks areas should be taken into consideration.

10.2 What would be the possible impact of non-action? (maximum 1000 characters)

Answer: Existing international initiatives as well as other voluntary initiatives have already a positive social impact on the conflict-affected areas.

See answer to the question 8.2. for further details.

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. (maximum 1000 characters)

Answer: Acting according to the principles of responsible trading and CSR, the EU NFM industry recognizes the need to ensure the responsible sourcing from the DRC and any other area. We encourage a comprehensive, pragmatic and effective proposal which would avoid putting the competitiveness of the EU industry at risk.

In addition to submitted replies, we propose the following considerations:

- Secondary raw materials have to be exempted from any regulation or to be acknowledged as "conflict free".
- Should the EU adopt an approach which is not geographically limited, it is vitally important to have a clear guidance to determine the scope.

- If mandatory requirements are adopted, businesses should be allowed adequate time to implement new rules.
- Public disclosures concerning supply chain transparency should not be required as part of annual reports.
- The EU initiative should not undermine efforts achieved under the EU strategy on access to raw materials (esp. EU Critical Raw Materials issue).