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PART 1/7

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

PART 1 (Impact Assessment)

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council

setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas

{COM(2014) 111 final}
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EXECUTIVE SUMMARY SHEET

Impact assessment on a proposal for a regulation setting due diligence requirements for the responsible importation of selected ores, concentrates and metals originating in conflict areas
A. Need for action
Why? What is the problem being addressed?
1. The continued financing of armed groups and security forces via the (proceeds of) extraction and trade of minerals in conflict-affected and high-risk areas. 2. The implementation challenges faced by EU downstream enterprises attempting to sustain legitimate trade, or voluntarily, performing due diligence within the current frameworks. 3. Market distortion in the form of reduced demand and prices in formal sector for minerals from the DRC and other Great Lakes Region countries.
What is this initiative expected to achieve?
1. Provide enhanced visibility and transparency for due diligence practices (and level of compliance) of EU and global smelters/refiners. 2. Raise awareness of due diligence, ethical dimensions, and the importance of improving due diligence compliance with governments of main non-EU smelters/refiners. 3. Empower downstream users by providing a mechanism to identify due diligence compliant operators (including smelters), and thus to facilitate switching of suppliers. • 4. Introduce certainty and transparency in the supply chain nearer to downstream users. 5. Promote increased awareness of due diligence and ethical dimensions among EU operators. 6. Create additional financial incentives in order to promote/support due diligence practices among downstream users. 7. Support the uptake of OECD Guidance among smelters/refiners willing to source in conflict-affected areas. 8. Support demand from conflict-affected areas: facilitate switching by EU operators to due diligence compliant smelters/refiners sourcing in those areas
What is the value added of action at the EU level?
EU-level intervention provides more 'critical mass' and leverage at a global level relative to possible action by individual Member States acting on the identified problems. Moreover, there is a clear need for EU-level action to address the demand-side of minerals originating from conflict zones and the associated trade to avoid a fragmented approach in the EU market.
B. Solutions
What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?
Option 1. Standalone Communication (joint European External Action Service / European Commission) including diplomatic, development and public procurement measures. Option 2. "Soft Law" approach + measures of Option 1. Option 3. EU importer self-certification (voluntary), including disclosure requirements and a list of smelters/refiners + measures of Option 1. Option 4. EU importer self-certification (mandatory), including disclosure requirements and a list of smelters/refiners + measures of Option 1. Option 5. EU-listed company disclosure requirements + measures of Option 1. Option 6. Prohibition of imports of ores + measures of Option 1. Option 3, which includes the measures of Option 1, as the preferred option is expected to contribute the best to reducing the funding from proceeds of minerals' extraction and trade that reaches armed groups in conflict zones by: providing support to EU downstream companies to comply, without unnecessary burden, to their due diligence requirements (including the US DFA), while contributing to reducing the distortions in the market for

minerals from the Great Lakes Region allowing it to benefit from its natural resources wealth.
Who supports which option?
The preferred Option 3 is supported by the business stakeholders. Mandatory obligations such as under Option 4 are not supported by a majority of stakeholders. Option 5 has been criticised by business stakeholders throughout the consultation process, although considered by a number of civil society organisations as the most – albeit imperfect – means of addressing the financing of armed groups. Option 6 is not supported by a majority of businesses. Over 90% of civil society organisations are in favour of obligations for business actors.
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise main ones)?
1. Expected to contribute to reducing the funding from proceeds of minerals' extraction and trade that reaches armed groups or security forces in conflict-affected areas. 2. Improve the ability of EU downstream operators to comply with existing due diligence frameworks, including US DFA. 3. Contribute to reducing the distortions in the market for minerals from the Great Lakes Region.
What are the costs of the preferred option (if any, otherwise main ones)?
The economic cost of due diligence for EU importers, including SMEs, that voluntarily participate in the self-certification scheme (although partaking triggers mandatory conditions and ex-post controls) are estimated at 0.014% (initial costs) and 0.011% (annual recurrent costs) of turn over.
How will businesses, SMEs and micro-enterprises be affected?
The overwhelming majority of affected EU importers (i.e. traders, smelters/refiners, and manufacturing companies) are SMEs or micro-enterprises.
Will there be significant impacts on national budgets and administrations?
The expected impact for EU Member States is 1.2 FTE (per Member State) in addition to a possible maximum 0.014% increase of the public procurement budget.
Will there be other significant impacts?
Other significant impacts have not been identified.
D. Follow up
When will the policy be reviewed?
EU would undertake an intermediate evaluation of its new initiative within three years of its adoption and the results will be used for decision-making needs on the future of the EU approach and for amendments to the regulatory framework, making it mandatory, if appropriate, on the basis of a further impact assessment.

GLOSSARY

3Ts and GOLD means tin, tantalum and tungsten, their ores, and gold.

ARTISANAL MINING means mineral extraction undertaken by individuals, small groups of individuals, or cooperatives working with hand tools or very basic forms of mechanisation.

BGR means the German Federal Institute for Geoscience and natural resources (Bundesantstalt für Geowissenschften und Rohstoffe).

DOWNSTREAM SECTION OF THE MINERAL SUPPLY CHAIN means the metal supply chain from the smelters or refiners to the end use.

CASSITERITE means the metal ore from which tin is extracted.

CHAIN OF CUSTODY or supply chain traceability system means a record of the sequence of entities which have custody of minerals and metals as they move through a supply chain.

COLOMBITE-TANTALITE also known as COLTAN means the metal ore from which tantalum is extracted.

CONFLICT MINERALS are defined under the 2010 US Dodd-Frank Act *(see below)* as columbite-tantalite; cassiterite; gold; and wolframite or their derivatives to be financing conflict in the Democratic Republic of Congo or an adjoining country listed in the Act as Angola, Burundi, the Central African Republic, the Republic of Congo, Rwanda, Sudan, Tanzania, Uganda and Zambia.

CONFLICT-AFFECTED and HIGH-RISK AREAS means 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,

COUNTRY OF ORIGIN means the country where a shipment of minerals has been mined or extracted.

SUPPLY CHAIN DUE DILIGENCE refers to the process undertaken by operators in relation to their management system, risk management, third party audit and disclosure of information with a view to identifying and addressing actual and potential risks linked to conflict-affected and high risk-areas to prevent or mitigate adverse impacts associated with their sourcing activities.

DRC is the Democratic Republic of Congo.

ICGLR means the Intergovernmental Conference of the Great Lakes Region.

IMPORTER means any natural or legal person that imports into the European Union.

EICC means the Electronic Industry Citizenship Coalition.

ITRI/iTSCi means the International Tin Research Institute/ITRI Tin Supply Chain Initiative.

METALS are products resulting from smelting or refining processing operations.

MINERALS are defined as metal ores and concentrates.

MINERAL SUPPLY CHAIN means the system of activities, organisations, actors, technology, information, resources and services involved in moving and processing the minerals from the extraction site to their incorporation in the final product.

OECD GUIDANCE is the 2013 version of the due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas issued by the Organisation for Economic Co-operation and Development (OECD) including its annexes and supplements on tin, tantalum, tungsten and on gold.

SMELTING and REFINING are forms of extractive metallurgy involving processing steps with the aim to produce a metal from its ore or concentrate.

UPSTREAM SECTION OF THE MINERAL SUPPLY CHAIN means the mineral supply chain from the extraction sites to the smelters or refiners, included.

WOLFRAMITE means the metal ore from which tungsten is extracted.

US DFA means the US Dodd-Frank Wall Street Reform and Consumer Protection Act, section 1502.

INTRODUCTION

Armed groups and security forces in conflict regions finance their activities *inter alia* from the proceeds of extraction and the trade of minerals which later enter the global supply chain. Consequently, business operators further down the chain run the risk of supporting armed activities through their purchases of mineral ores or derivatives and have an interest in sourcing from such regions in a *responsible* manner.

The concept of *responsible sourcing* is referred to in the updated OECD Guidelines for Multinational Enterprises[1] and in line with the objectives and principles of the United Nations Guiding Principles on Business and Human Rights[2]. Both aim at encouraging businesses to proactively and reactively verify through an ongoing process known as due diligence, that their commercial activities are not contributing to conflict.

The EU has been actively engaged in an OECD initiative to advance the issue of 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 Guidance). In May 2011, the EU made a commitment at the OECD Ministerial Council to promote the observance of the OECD Guidance (Annex I/3).

At the highest international level, UN Security Council Resolution 1952 (2010) specifically targeted the DRC and its neighbours in Central Africa calling for due diligence to be observed; the UN Group of Experts in the DRC that is following up on the response to the Security Council resolution has taken on board the 2011 OECD Guidance.

In June 2013, G8 leaders also expressed their commitment to increase transparency in extractives and noted that minerals should be sourced legitimately - not plundered - from conflict zones. The UN General Assembly is expected to adopt – before the end of 2013 – a resolution on the promotion of sustainable development by means of transparency in the management of natural resources.

Also in 2010, the United States passed the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (US DFA) whose section 1502 (Annex I/5) requires companies listed on US stock exchanges and which use "conflict minerals"[3] to declare the origin of such minerals used in their supply chain as well as to perform due diligence as appropriate. The Act covers columbite-tantalite, cassiterite, gold, and wolframite whose trade has been a significant source of financing of conflict in the eastern provinces of the DRC sometimes involving adjoining countries.

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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 The term "conflict mineral" is defined in the US Dodd-Frank Act as columbite-tantalite also known as coltan (the metal ore from which tantalum is extracted); cassiterite (the metal ore from which tin is extracted); gold; wolframite (the metal ore from which tungsten is extracted) or their derivatives to be financing conflict in the DRC or an adjoining country listed in the Act as Angola, Burundi, the Central African Republic, the Republic of Congo, Rwanda, Sudan, Tanzania, Uganda and Zambia.

On 7 October 2010, the European Parliament passed a resolution[4] calling for the EU to legislate along the lines of the US "conflict minerals" law; and the European Commission announced in its Communications of 2011[5] and 2012[6] its intention to explore ways of improving transparency throughout the supply chain, including aspects of due diligence. In the latter communication, and in line with the commitment it had made at the May 2011 OECD Ministerial Council, the Commission also advocated greater support for and use of the OECD Guidelines for Multinational Enterprises, and of the OECD Guidance – even beyond OECD countries.

In line with the commitment undertaken by the EU and based on the issues brought to the attention of the European Commission by stakeholders in the public consultation[7], this impact assessment evaluates the identified policy options to support responsible sourcing of minerals from conflict-affected areas. The options are assessed in accordance with the relevant impact assessment guidance as appropriate, including an assessment of the expected impact on small and medium sized enterprises (SMEs).

An EU initiative also aims at contributing to the EU foreign policy goals and development strategy of better governance and sustainable management and law enforcement in relation to the exploitation of natural resources in mineral-producing conflict areas. Likewise, it should contribute to the policy areas of trade, enterprise, corporate social responsibility (CSR) safeguarding the free but responsible choice of supply for EU operators. The most recent example is the adoption by the EU of Directive 2013/34/EU aiming *inter alia* at promoting financial transparency in the extractive and logging sector.

In the annexes to this document, extensive background information is provided on other relevant EU initiatives currently pursued in relation to natural resources, financial transparency and conflict-sensitive management of international trade in diamonds and forestry products (Annex I/1). Other international voluntary or mandatory transparency and due diligence initiatives are also described, together with the results of the related online public consultation and of the external study conducted in support of this impact assessment.

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4 European Parliament resolution of 7 October 2010 on failures in protection of human rights and justice in the Democratic Republic of Congo, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0350+0+DOC+XML+V0//EN&language=EN.

5 *Commodity markets and raw materials*, COM(2011) 25 FINAL.

6 *Trade, growth and development*, COM(2012) 22 FINAL.

7 Public consultation on a possible EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas conducted between 27 March and 26 June 2013.

1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1. Internal consultation / Impact Assessment Steering Group

A Commission Impact Assessment Steering Group (IASG) was set up to guide and monitor the impact assessment. The IASG was led by DG Trade with the participation of the following Commission Directorate Generals and EU Services: Secretariat-General, Development and Cooperation, Employment Social Affairs and Inclusion, Enterprise, Environment, European External Action Service, Eurostat, Informatics, Internal Market and Services, Legal Service, Service for Foreign Policy Instruments, Taxation and Customs Union. Other services were also invited to join but did not respond to the call.[8]

1.2. Public consultation

As part of the impact assessment process the Commission conducted a web-based public consultation between 27 March and 26 June 2013. The consultation sought views on a potential EU initiative for responsible sourcing of minerals coming from conflict-affected and high-risk areas – for example, war zones, post-war zones, and areas vulnerable to political instability or civil unrest. The objective of the consultation was to deepen the understanding of issues such as the sourcing and security of supply of minerals, supply chain transparency and good governance; and to assess whether to complement and/or support, in a reasonable and effective manner, on-going due diligence initiatives on responsible sourcing of minerals and support for good governance in mineral mining, especially in developing countries affected by conflicts. EU Delegations have outreached the authorities of some producing countries - the Democratic Republic of Congo (DRC), Rwanda, Burundi, Colombia, and Venezuela – to raise awareness and invite feedback to the public consultation.

A summary of the results of the public consultation is attached to this Impact Assessment (Annex I/8 and Annex II). The overall message indicates that the Commission should take an approach that is consistent with the global nature of complex supply chains, by relying on an international framework such as that set out in the OECD Guidance.

Overall, 280 replies were received by the deadline. 73.2% of all records came from the business sector, including 146 companies and 59 trade organisations representing business. Large companies represented 47.2% of all replies while SMEs represented 23.4% of all records. The NGOs sector participated with 31 responses while citizens, academics, unions and government authorities contributed with 7.5% of all replies. Most answers originated in the European Union, notably in Germany, UK and Belgium; but a significant amount also came from the US and the DRC. Finally, all relevant sectors are represented including: metals and metal products; energy, mining and quarrying; electrical machinery and equipment; chemicals and plastics; television and communication equipment etc.

[8] The group met five times on 20/03/2013, 19/04/2013, 21/06/2013, 02/09/2013 and 09/09/2013.

1.3. Workshops and other consultations

Stakeholders were also consulted by means of a workshop, and through numerous focused interviews.

In December 2012, the EU organised an internal workshop with the participation of internationally recognised external experts in order to initiate the discussion on possible options for an EU initiative on minerals originating from conflict areas.

At the 5th international OECD/UN/ICGLR (International Conference on the Great Lakes Region) forum on due diligence guidance for responsible sourcing of conflict minerals[9], the Commission organised a consultation workshop on a potential EU initiative on responsible sourcing of minerals originating in conflict areas. More than 150 participants attended. In addition, side meetings were held with about 50 stakeholder organisations including governments, industry, and NGOs.

At the 11th GeSI (Global e-Sustainability Initiative) and EICC (Electronic Industry Citizenship Coalition) Conflict-Free Minerals Supply Chain Workshop[10], the Commission also organised a consultation session on a potential EU conflict minerals initiative that focused on the on-going public consultation. Further side meetings were held with different individual stakeholders throughout the supply chain.

The Commission attended a conference[11] organised by the Federation of German Industries (BDI) and Business Europe at the occasion of the publication of the study "Conflict minerals – an evaluation of the US DFA and other resource related measures" by the Öko-Institute (Annex I/10). The conference was attended by over 150 participants including Members of the European Parliament and industry.

1.4. Study on due diligence compliance costs, benefits and related effects on competitiveness

In order to better assess the costs of compliance with the US DFA for both public and private organisations, DG Trade commissioned a study (Annex I/9 and Annex III) in 2013 focused on the costs and benefits of performing due diligence; as well as on other effects on the competitiveness of selected operators in relation to responsible sourcing of certain minerals from conflict-affected and high-risk areas. While a number of studies are available to assess the cost for companies of performing due diligence (especially in the US), they tend to estimate the aggregated cost for the economy as a whole[12] and do not compare the costs for individual businesses relative e.g. to turnover. In order to obtain such information, the study included a survey conducted among the different industries that use conflict minerals as defined by the US DFA.

The main finding of the survey was that a majority of the participants reported a relatively low level of cost for due diligence and reporting efforts, with expenditures predominantly estimated at €13,500 for initial efforts (74%), and €2,700 for subsequent on-going efforts (63.8%). Other important findings of the study relates to the main industrial sectors and products involved,

[9] Paris, 2-3 May 2013.

[10] Hong Kong, 8-9 May 2013.

[11] Brussels, 3 September 2013.

[12] According to US industry estimates, it amounts roughly to USD 5-16 billion per year for almost 6,000 companies including companies in their supply chain.

position in the supply chain and number of suppliers, and department responsible for conflict minerals reporting.

1.5. Recommendations of the Impact Assessment Board

A first draft of the impact assessment was presented to the Impact Assessment (IA) Board on 18 September 2013. In the opinion it issued on 18 October 2013, the IA Board recommended the report to be strengthened in a number of important respects. The following changes have therefore been made in the revised version that was resubmitted to the IA Board on 2 December 2013:

- The revised version of the assessment report provides a clearer presentation of the main problems to be addressed: the introduction of a third problem (i.e. the market distortion) therefore appeared necessary. It assesses in particular the extent to which EU companies are involved in the financing of armed groups and analyses further the reasons for the current low uptake of the OECD Guidance based on a more explicit analysis of the views expressed by (business) stakeholders of the public consultation: notably, the number of stakeholders who provided similar responses to the open questions has been included, as this clearly indicates the significance of a problem.
- The revised draft includes further elaboration of the baseline scenario, in particular so as to show both how the current initiatives (including the few already taken by EU Member States) and the related implementation issues are likely to evolve, and how well they are likely to address problems identified over time. It also explains in greater detail the implications for EU companies of the entry into force of the US DFA.
- The revised report provides more detail on the different policy options. To better assess the added value of the measures previously presented under Options 3, 4 and 5, a new option (Option 1) has been added combining these measures as a package that could be included in a standalone EU Communication. That package then becomes the foundational element for all the other options.

On 20 December 2013, the IA Board provided a positive opinion on the revised report while recommending it to be strengthened in a number of respects. The following changes have been made to the final version of the impact assessment report in order to:

- Fully present in the baseline the various measures in place at Member State level and clarify the obligations for EU companies arising from legislation in third countries, as well as the associated costs and possible impact on their market position.
- Include further data (recorded export volumes of minerals of the countries concerned) to support the problem of the market distortion occurring in the Great Lakes Region.
- Provide more detail on the actual content of the options, and better present the different views of industry and stakeholders in relation to each option. In particular, in relation to Option 3, it more concretely describes the key elements of the voluntary self-certification. Also the purpose of the implementing guidelines is further set out and whether an additional impact assessment would be envisaged.
- Strengthen its assessment of the preferred Option 3 and 1 as a package, and further assess the impact the measures may have on the expected uptake (performance) of due diligence practices by downstream companies, the security of supply of the minerals concerned, and the relevant conflict regions. The issue of how to level the playing field for these regions with non-conflict producing countries is also assessed.
- More fully assess the impact of an EU initiative on business/SMEs.

2. PROBLEM DEFINITION

2.1 Policy context

Responsible sourcing of minerals from conflict-affected and high-risk areas has received considerable attention from the international community over the past few years. The problem is prevalent in countries rich with natural resources but vulnerable to armed conflict across the whole or part of their territory. While the issue arises world-wide, the impact assessment focuses primarily on the well documented case of the eastern DRC and neighbouring countries, which has received high-profile attention by advocacy groups these last 10-15 years. The challenge posed by the desire to minimise the financing of armed groups and continuing to source legitimately from the region, has been taken up by governments and international organisations together with business communities and civil society organisations.

BOX 1

OECD model supply chain policy

1. Zero tolerance for human rights abuses associated with extraction, transport or trade of minerals.

2. No support to non-state armed groups

3. No support to Illegal activities of public and private security forces

4. No bribes to disguise origin of minerals

5. Elimination of money laundering and ensure taxes are paid to the government.

As a result, the following prescriptive due diligence frameworks (in various forms and with differing scope) are in place:

– In 2010, the United States Dodd-Frank Wall Street Reform and Consumer Protection Act was adopted, whose section 1502 (Annex I/5) requires companies listed on US stock exchanges that are using "conflict minerals"[13] in their supply chain to disclose annually whether any of those minerals originated in the DRC or an adjoining country. If this is the case, companies are required to submit a report including a description of measures taken to exercise due diligence. In the EU there are 40 dual-listed (EU/US) companies subject to the US DFA that are expected to disclose the information by 31 May 2014 for the first time. Moreover, 150,000-200,000 EU companies[14] are indirectly affected as they are in the supply chain of US listed companies. They are expected to provide information to their clients as to the origin of the minerals/ products containing minerals they supply and how they implemented the chain of custody.

[13] The term "conflict mineral" is defined in the Dodd-Frank Act as columbite-tantalite also known as coltan (the metal ore from which tantalum is extracted); cassiterite (the metal ore from which tin is extracted); gold; wolframite (the metal ore from which tungsten is extracted) or their derivatives to be financing conflict in the DRC or an adjoining country listed in the Act as Angola, Burundi, the Central African Republic, the Republic of Congo, Rwanda, Sudan, Tanzania, Uganda and Zambia.

[14] This number is based on i) an identified number of 880,000 EU companies operating in manufacturing sectors and potentially working with tin, tantalum, tungsten and gold: it can be reasonably expected that a high number of those companies is involved in processing of the mentioned minerals, but this number represents a ceiling; ii) information resulting from the public consultation where 20-30% of companies indicated that they are subject to the US DFA. The latter companies could have been overrepresented in the public consultation. As a result of both i) and ii) it could be expected that the total number of 150,000-200,000 EU companies might be an over-estimation.

– In 2011, the OECD issued due diligence guidance[15] to assist companies identifying and responding to risks against the "model supply chain policy" (Box 1) in mineral supply chains originating from conflict and high-risk areas. Supplements were developed to provide specific due diligence guidance for tin, tantalum, tungsten and gold. In practical terms, companies are expected to establish a system of controls and transparency over the mineral supply chain by collecting and disclosing information to immediate downstream purchasers on *inter alia* the mine of origin, trade routes and conditions so as to be able to identify, assess and act (notably through mitigation) on supply chain risks. An independent third-party audit is required to ensure smelters/refiners' due diligence compliance and companies are expected to publish an annual report on their policies and practices with a view to generating public confidence (Box 2).

– On the 29 February 2012, the DRC issued a Ministerial Order requiring all operators involved in the mineral chain of custody in the DRC to adopt and respect the OECD Guidance.

– On 28 March 2012, Rwanda adopted legislation based on the five-step framework and the OECD model supply chain policy.

Only a few EU companies are operating, and therefore affected by the due diligence legislation in the DRC and Rwanda. Despite the fact that both countries have legislation in place, serious implementation problems persist as export certificates as part of the conformity procedures have not been issued. Both countries recurrently prolong the deadline for issuing such certificates.

BOX 2

OECD Due Diligence Guidance

5-step framework for companies

– Establish a system of controls and transparency over the mineral supply chain
– Identify and assess risks in the supply chain against the **model supply chain policy** (bow below)
– Design and implement a strategy to respond to the identified risks
– Carry out an independent **third-party audit of the due diligence practices of the smelter/refiner**
– Public disclosure of on supply chain due diligence policies and practices

In terms of product scope, the US DFA is comparable to the legislation adopted by the DRC and Rwanda and takes on the coverage determined by the OECD product supplements. US DFA restrictively defines an "armed group" as being one that has been identified as a perpetrator of serious human rights abuses in an annual US State Department report. Contrary to the OECD Guidance – on which the DRC and Rwandan legislation is based – the US DFA leaves open the question of how to treat minerals in situations where public or private security forces are not perpetrators of serious human rights abuses for which a risk management plan can be adopted.

More third countries are preparing to take up the OECD Guidance into law: Uganda is presently revising its mining law and Burundi took steps to integrate the international initiative for building conflict-free and transparent 3Ts extraction and trade. It is expected that more countries will follow based on the political commitment of the Heads of States and Governments of the International Conference of the Great Lakes Region (ICGLR) to fight the illegal exploitation of natural resources in the region and to establish a regional certification mechanism based on the

[15] OECD (2013), *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-affected and High-risk Areas: Second Edition*, OECD Publishing. http://dx.doi.org,10.1787/9789264185050-en.

OECD Guidance. Moreover, Colombia and Côte d'Ivoire are presently considering whether to participate in the implementation programme of the OECD with regard to due diligence.

EU Member States have no due diligence legislation in place, but nevertheless provide diplomatic and organisational support and development aid to some specific projects in mineral-rich conflict zones. The aid is targeted at solving some of the practical problems faced by operators and authorities along the upstream side of the supply chain as described in Annex I/2.

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. In view of this political demand, this report assesses the different policy options which would best take forward this request for EU legislation in collaboration with the European Parliament.

In December 2012, the Commission received a petition signed by hundreds of EU citizens expressing their concern that companies operating within the boundaries of the EU are not held accountable for their involvement in the illicit extraction and trade of conflict minerals. The petition stated that as a consequence conflict minerals present in electronic devices link consumers to the current conflict in the DRC. The petitioners requested that legislation be proposed to the European Parliament to hold companies accountable to OECD and UN Guidelines.

2.2 Definition of problems

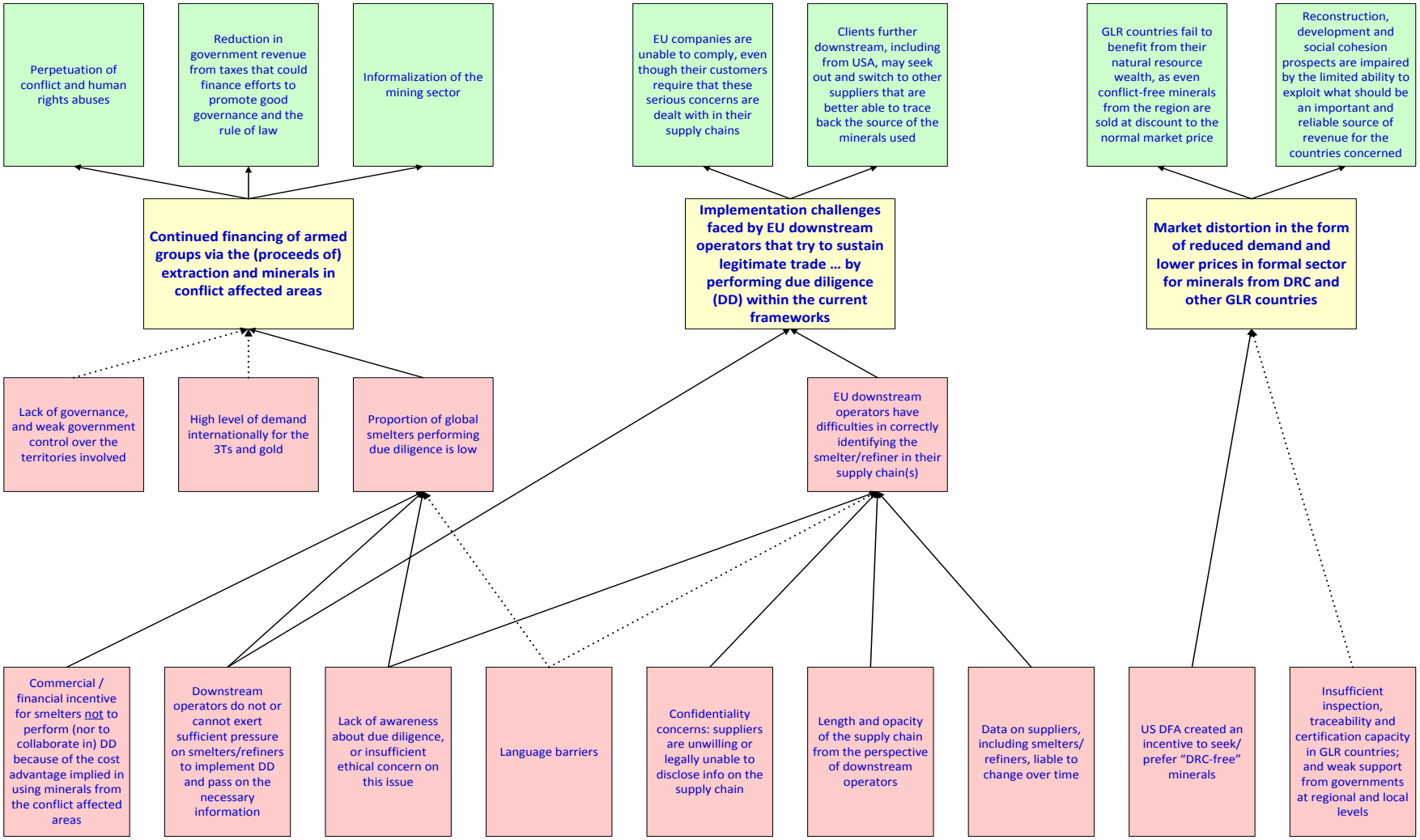
This section outlines the main problems relating to the responsible sourcing of minerals originating from conflict-affected and high-risk areas as identified by stakeholders in the public consultation and analysed by Commission services. The problems include:

(i) the continued **financing of armed groups** via the (proceeds of) extraction and trade of minerals in conflict-affected and high-risk areas;

(ii) the **implementation challenges** faced by EU downstream enterprises attempting to sustain legitimate trade, or voluntarily, performing due diligence within the current frameworks;

(iii) **market distortion** in the form of reduced demand and prices in formal sector for minerals from the DRC and other Great Lakes Region countries.

This is illustrated by the problem tree on the next page where the 3 core problems are shown in the boxes on the second row, the boxes above represent consequences of the core problems, and the boxes below represent underlying factors (drivers) that have been taken into account.



Import of minerals from conflict-affected areas:
***PROBLEM TREE** showing main problems, consequences, and underlying drivers (precursors)*

2.3 Continued financing of armed groups via the (proceeds of) extraction and trade of minerals in conflict-affected and high-risk areas

– *The problem*

In conflict-affected and high-risk areas, companies are at risk of contributing to, or being associated with the financing of non-state armed groups which perpetuate conflict and the associated human rights abuses. The financing through mining and trading activities takes various forms including where non-state armed groups or their affiliates illegally:

- Control mine sites, transportation routes or points where minerals are traded: in this case militia may enforce compulsory labour or commit other human rights related violations to extract and benefit from the services of a person.
- Tax or extort money or minerals at points of access to mine sites, along transportation routes or at points where minerals are traded.
- Tax or extort intermediaries, export companies or international traders.

Those minerals are subsequently traded by local exporters and international traders on global markets including the EU. Smelters/refiners further process those minerals into metals. These metals are then processed for the manufacturing of components, and semi-finished and end products for a large number of industries including automotive, electronics, aerospace, packaging, construction, lightening, industrial machinery and tooling and jewellery.

Figure 1 illustrates a simplified global supply chain for minerals: the upstream section includes companies active in mining, trading and smelting/refining of mineral ores; the downstream sections includes metal traders and producers of components and finished products.

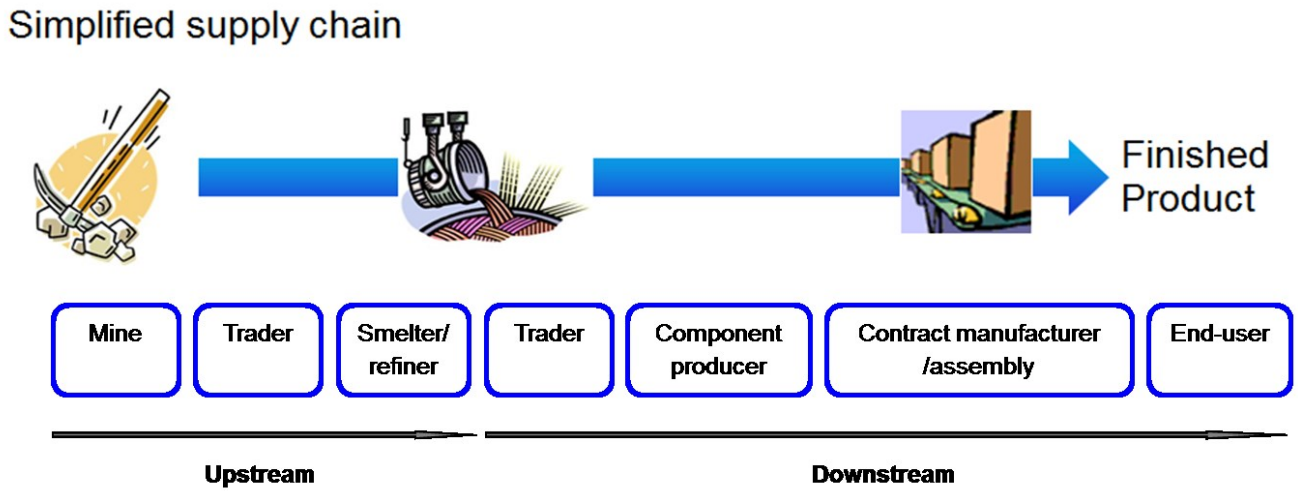


Figure 1

Conflict zones and minerals potentially involved: as reported in 2012 by the Heidelberg Institute[16], the combination of resources and conflict accounts for about 20% of the 396 registered conflicts. Resource-related conflicts are currently present in Africa (27 conflicts, e.g. the DRC, Kenya, Sudan, Uganda), the Americas (21 conflicts, e.g. Colombia, Guatemala, Peru) but rare in Europe, Asia, Oceania and in the Middle East. This situation is not static however and the risk of deeper or new conflicts continues.

The OECD so far identified ores containing tin, tantalum, tungsten and gold being the minerals supporting armed groups. To this end, specific supplements have been issued under the OECD Guidance. According to the external study commissioned by DG TRADE, part of the tin, tantalum, tungsten and gold reserves are hold in unstable or extremely unstable countries. The production figures in 2011 are as follows:

Tin: resources are principally located in western Africa, south-eastern Asia, Australia, Bolivia, Brazil, China and Russia. The main mine producers by decreasing order of importance are China (46.8%), Indonesia (26.9%) and Peru (8.7%). Rwanda, the DRC, Nigeria and Myanmar respectively produce 1.4%, 1%, 0.5% and 0.2% of the world production. The DRC has important global reserves.

Tungsten: main world producer is China (85%), followed from a far distance by Russia (3%) and Canada (2.9%). Rwanda, Myanmar, Burundi, Uganda and the DRC respectively produce 0.7%, 0.2%, 0.1% and 0.01% of the world production. In addition, tungsten is on the EU critical raw materials' list[17].

Tantalum: the main producers are Brazil (96%) and Canada (3%). Rwanda, Mozambique, the DRC, Ethiopia, Nigeria and Burundi respectively produce 0.5%, 0.3%, 0.2%, 0.1%, 0.1%, 0.04% of the world production. Somalia is also a small producer. Moreover, the latter countries following the US Geological Survey host important global reserves.

Gold: China is the leading gold-producing nation, followed by Australia, the US and South Africa. The DRC holds important gold reserves. The gold production in countries with known instability includes Colombia: 55,900 (kg), Mali: 42,100 (kg), Sudan: 23,700 (kg), Guatemala: 11,900 (kg) and Côte d'Ivoire: 11,700 (kg).

Scale of the problem: the best documented and known case is related to the problems in the Eastern DRC. The United Nations Group of Experts[18] on the DRC reported again on 15 November 2012 to the President of the Security Council on the instability created by foreign and national armed groups generating revenue through their control over natural resources. In successive reports since 2004, the Group has documented the involvement of armed groups in the exploitation and trade of natural resources. Smugglers, export houses and members of armed groups are mentioned by name.

BOX 3

Gold production (kg)

(source: TRADE external study)

In countries with known instability (2011)

- **Colombia: 55,900**
- **Mali: 42,100**
- **Sudan: 23,700**
- **Guatemala: 11,900**
- **Côte d'Ivoire: 11,700**

[16] Conflict Barometer, Heidelberg Institute for International Conflict Research, 2012.

[17] http://ec.europa.eu/enterprise/policies/raw-materials/critical/

[18] UN Group of Experts Report of 12 November 2012 to the UN Security Council, S/2012/843.

Some stakeholders in the public consultation highlighted that the on-going conflict in the DRC is the deadliest war since World War II. It has claimed more than 5.5 million lives and is responsible for countless incidents of sexual violence. The exploitation of natural resources – notably in the Eastern part of the country – is an underlying driver of this war. For almost two decades, the DRC government has essentially competed for control over mines with armed groups who continue to thrive and finance their unlawful activities by controlling the mines and taxing trading routes for the tantalum, tungsten tin and gold minerals.

IPIS,[19] a research group, is developing an interactive map of militarised mine sites in the DRC and reported in November 2013 that gold mining is currently the most important subsector in Eastern DRC's artisanal mining business. The collected data suggests that the number of miners active in gold mining is up to 4 times higher than that for tin, tantalum and tungsten combined. The current scale of artisanal gold mining has important consequences on the issue of armed group financing, especially because the DRC's gold production is exported almost entirely unrecorded. Out of 800 3T and gold mines mapped by IPIS, at least 410 cases involve illegal taxation by armed groups or the Congolese army. This is more than half of the mines monitored.

Presently out of the estimated 2,000 artisanal 3Ts-mining sites in the DRC, only 78 have been validated and only 3 mines have a traceability system in place in conformity with OECD Guidance. Despite all efforts, the region continues to face the challenge of how to trigger the virtuous cycle of the collection of royalties and taxes that in turn allows the State to uphold good governance and rule of law thereby boosting investor confidence and pressing on with the formalisation of the mining sector.

Stakeholders also provided other examples of problematic areas such as in Colombia, Côte d'Ivoire, Panama, Peru, Venezuela and Guatemala where gold, tantalum or tungsten can be a source of illegality and conflict.[20] Paragraph 25 of UN Security Council resolution 2101 (2013) encourages the Government of Côte d'Ivoire to participate in OECD implementation programmes for due diligence guidance.

EU companies implicated in the funding armed groups: in the DRC, though there are no European companies on the latest update of the UN list of persons and entities violating UN Security Council Resolution 1533[21], previous reports by the UN Group of Experts have named European companies involved in the minerals supply chain in the DRC with links to local private operators whose record is not impeccable. These and other international companies have since been delisted after having restructured their operations and after their local business counterparts got involved in cleaner supply chains. More generally, the UN list can be used for due diligence purposes to help determine persons and entities with whom business relations could be damaging to a corporate reputation.

In the EU, it is estimated that almost 880,000 companies are trading and processing tin, tantalum, tungsten ores and their metals and gold (Annex I/7). These include about 300 EU traders and 19 EU smelters/refiners importing ores and metals, and over 100 manufacturers of components and semi-finished products importing metals. The other EU companies, further downstream, are

[19] International Peace Information Service.

[20] Sources include the public consultation for this initiative, a presentation on Colombia given at a seminar entitled *Towards an EU Initiative on conflict minerals?,* hosted by the Belgian Senate in Brussels on 13 March 2013, as well as a Bloomberg report of 8 August 2013: http://www.bloomberg.com/news/2013-08-08/terrorist-tungsten-in-colombia-taints-global-phone-to-car-sales.html.

[21] http://www.un.org/sc/committees/1533/pdf/1533_list.pdf

manufacturers of components, semi-finished or end-products based on those minerals and metals. As all of them potentially use tin, tantalum, tungsten and gold, they can be linked to the financing of armed groups. The volume of funds from EU companies reaching armed groups cannot be reliably estimated precisely because so little due diligence is currently performed on the sourcing and supply of the 3Ts and gold. Nevertheless, the following data give an indication of the extent to which EU companies may be implicated in the funding of armed groups.

In 2011, trade statistics[22] indicate that 7% of the EU's tantalum and tungsten ores imports originated in the DRC and Rwanda representing more than €10 million – €3 million of these are likely to have been smuggled through Tanzania via land, water or air routes, involving other countries bordering the eastern provinces of the DRC[23]. Moreover, EU tin metal imports from Malaysia represent €67 million while 17% of Malaysia's tin ores consumption originated in the DRC and Rwanda. Furthermore, the EU imports tantalum metal from China for €80 million and from Kazakhstan for €5 million while 25% of Kazakhstan's and 17% of China's tantalum ore consumption originates in the DRC and Rwanda.

The UN Group of Experts reported on 12 November 2012 that nearly all gold from Eastern DRC is smuggled out of the country and traded through Burundi and Uganda to the United Arab Emirates where most of the gold is smelted and sold to jewellers.

The EU in 2011 also imported large volumes of components, semi-finished and end products[24] including an unknown percentage of minerals from conflict zones. For instance, the EU imported safety glass containing a certain amount of tin from Malaysia for the amount of €2 million while 17% of Malaysia's tin originated in the DRC and Rwanda. Furthermore, the EU imported electrical tantalum capacitors from China for the amount of €40 million while 17% of China's tantalum ore consumption originates in the DRC and Rwanda.

In all cases, a proportionate share of EU imports can be expected to have originated in the DRC and Rwanda. However, trade statistics do not reveal the exact extent to which minerals from the DRC and Rwanda enter the EU market through the various products. Also, trade statistics do not capture illegal and unreported flows of minerals which make it difficult to establish with precision the full extent of possible involvement of EU companies in "contaminated" supply chains. At best, due diligence can help establish which entities in the upstream part of a supply chain have a clean record.

In terms of risk mitigation and given that the DRC is not the only conflict region where trade in minerals is funding militant activity, the EU, is in a position where it can leverage more constructive outcomes in view of the high number of minerals, metals and related components and final products entering the EU market. This is because it cannot be excluded that the supply chains

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22 International Trade Centre, Trade Map.

23 UN Group of Experts Report of 12 November 2012 to the UN Security Council, S/2012/843, documents smuggling chains out of the eastern DRC. See pp. 41-46.

24 Final products including minerals from conflict regions are included in every day goods such as light bulbs, ballpoint pens, cans, as well as PVC windows, cars, jewellery and aerospace components. Tantalum is present in automotive electronics, mobile phones, computers, super alloys for jets and power plant turbines, cutting tools, as well as surgical implants and prosthetic devices; tungsten in applications such as tools, aerospace components, electric lighting, and electronics as well as window heating systems, automobile horns, X-ray machines, dental drills, golf clubs, darts, and remote-controlled cars; tin is used in solders, coatings for food cans, and chemical applications such as catalysts and stabilizers; and finally gold in jewellery, electronics, medical equipment and aerospace, as well as anti-lock brakes, airbag-inflating sensors, and dental fillings.

delivering minerals to EU consumers - mostly in highly processed forms - are, beyond any reasonable doubt, conflict-free.

– *Underlying drivers*

Conflict zones are generally characterised by lack of governance and control of the government over its territory. This underlying driver is important but cannot be acted upon through this supply chain initiative.

BOX 4

EU and global smelters/refiners conducting due diligence

Type of smelters/refiners	Number	Conducting due diligence
EU smelters 3Ts	11	18%
Global smelters 3Ts	280	16%
EU refiners of gold	9	89%
Global refiners of gold	140	40%

The objective of this initiative is to act on other underlying drivers. Minerals from conflict regions continue to experience global demand from smelters/refiners. Smelters/refiners are well placed to identify and record the origin of the purchased mineral as they are the last stage in the supply chain where all minerals pass (see Figure 2) and where it is still technically feasible to trace back the origin of minerals and leverage responsible supply behaviour in producer countries.

When smelters/refiners fail to conduct due diligence, useful information on origin is impossible to retrieve further down the supply chain. As illustrated by the figures in the box, not all smelters/refiners conduct due diligence so as to minimise the risk of financing of armed groups as:

- Minerals from conflict zones represent a **cheap source in a very competitive market** offered at a discount estimated at 30-40% of normal value by BGR (Annex I/2).
- They are **insufficiently aware, or ethically concerned** about, the importance of the link between minerals and the financing of armed groups. This was indicated by 7 trade associations in the public consultation as a problem for companies to conduct due diligence. For a number of smelters/refiners supplying conflict minerals, ignoring the issue reduces their immediate exposure to the corporate social responsibility priorities compared to their purchasers further down the supply chain.
- They or do **not experience sufficient pressure from clients** and other downstream operators to change their behaviour and conduct due diligence: over 13 companies, including 5 trade organisations, mentioned that their efforts to purchase metals from smelters/refiners conducting due diligence are thwarted as they lack influence on the latter to obtain due diligence information i.e. smelters/refiners are often in a better bargaining position representing a dominant force relative to the often less powerful downstream companies.

Smelters/refiners: the chokepoint in the supply chain

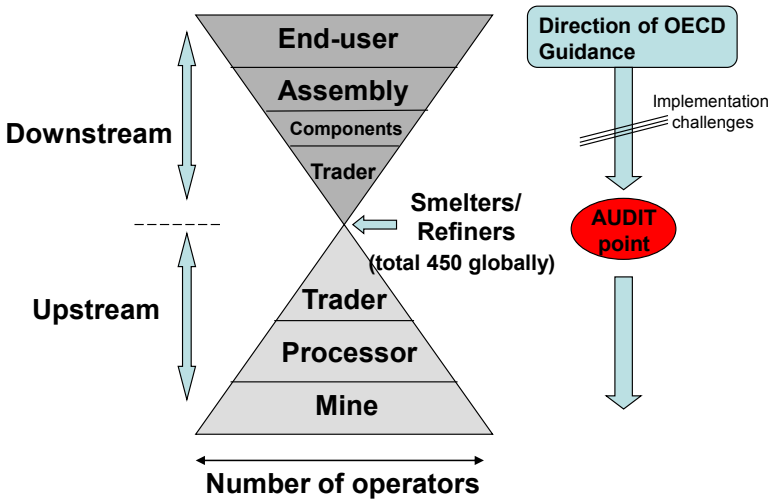

Figure 2

Based on DG Trade desk research,[25] Box 4 illustrates that out of a total estimated number of 300 smelters for tin, tantalum and tungsten currently only 16-18% conduct due diligence. Out of a total estimated number of 150 refiners of gold, 40-89% conduct due diligence so as to minimise the risk of financing armed groups. Most of the smelters/refiners are located outside the EU.

So far, the US DFA has not been fully effective in addressing the problems in terms of exerting adequate pressure on smelters/refiners to change their behaviour and conduct due diligence. Box 4 shows that a critical mass of smelters engaging in responsible sourcing still has to be reached for tin, tantalum and tungsten in particular. Many smelters/refiners are state-owned, yet few of them are exercising due diligence. The problems faced by downstream operators to identify the smelters/refiners in their supply chain and to exert pressure on them are described in section 2.4.

Actions conducted by EU Member States – Germany, Belgium, the Netherlands (Annex I/2) – to date have not resulted in smelters/refiners' increased uptake of due diligence as these actions do not effectively address the problems, impacting only a specific segment i.e. upstream of the supply chain or a low volume of trade in minerals.

[25] Regarding gold, data are based on information from the London Bullion Market Association of which most of the members conduct due diligence but which excludes an estimated number of 50 refineries in the world.

2.4 Implementation challenges faced by EU downstream enterprises attempting to sustain legitimate trade, or voluntarily, by performing due diligence within the current frameworks

– *The problem*

The public consultation revealed that over 50% of downstream respondents is interested – or indeed legally compelled – to engage in responsible sourcing by tracing back the origin of minerals and conducting due diligence over their supply chain. In this respect, downstream operators, for various reasons (CSR, regulatory obligation, image and consumer satisfaction) are ahead of smelters/refiners' due diligence practices.

However, DG Trade own analysis (Annex I/6) indicated that out of a sample of 153 relevant EU companies in 24 Member States only 7% refer in their annual reports or on their corporate websites to a conflict minerals supply chain due diligence corporate policy. Moreover, a recent SOMO paper[26] revealed that only 12% of EU-listed companies that are not directly subject to the US DFA, refer to conflict minerals on their websites. This discrepancy between companies' intentions and their practices can be explained by the fact that a high number of companies and trade organisations, including 50% of small companies and civil society respondents in the public consultation, report that existing instruments such as the OECD Guidance and the US DFA do not appropriately support due diligence efforts.

Indeed, the structure of international supply chains and their inherent opacity act in such a way that existing schemes have not provided downstream users with enough of the necessary tools and/or the necessary leverage to effectively engage smelters/refiners and prompt them to provide information on the source of minerals and their trading routes. Industry sources report that the present frameworks lack reliable mechanisms to collect the necessary data. If and when the data is obtained it is fraught with errors. Companies do not expect to have any reasonable or reliable data for the next upcoming years given the lack of maturity of the entire process.

BOX 5

EU downstream operators

50% of companies are interested or legally compelled to conduct due diligence: but they have **difficulties identifying the smelters/refiners** and to collect due diligence related **information**.

These challenges are all the more relevant for those operators compelled to engage in due diligence efforts under the US DFA[27] such as the 40 dual-listed (EU/US) companies. DG Trade carried out desk research into the Annual Reports (CSR, or sustainability chapters) indicating that so far only 13 dual-listed companies have conflict minerals supply chain due diligence policies and measures in place. In other words, at the date of the analysis, only about 30% of EU companies directly affected by mandatory compliance requirements had taken the steps necessary to ensure that they can meet the conditions of US legislation.

[26] Conflict due diligence by European Companies, Stichting Onderzoek Multinationale Ondernemingen October 2013.

[27] The first conflict minerals reports are due by spring 2014.

This relatively low level of compliance on the one hand may be explained by the wait-and-see approach adopted by some companies in view of the recently rejected legal challenge brought by the US Chamber of Commerce against US DFA[28], on the other hand it is also evidence that a number of real challenges remain in conducting due diligence as reported by companies in the stakeholder consultation. US DFA is unlikely to be successfully challenged in the future. Therefore, EU companies and their suppliers are now under increased pressure to support by 31 May 2014 the compliance requirements of filers to the US Securities and Exchange Commission with respect to US DFA and trace back the origin of the minerals in their products.

BOX 6

US Dodd-Frank Act – section 1502

- **40 dual-listed (EU/US) companies are directly subject to the Act.**
- **150,000–200,000 EU companies are indirectly, through the supply chain of the following sectors:**

  - Mining
  - Metal & machinery equipment manufacturing
  - Electrical equipment producers
  - Computer, electronics and optical products producers
  - Motor vehicle manufactures
  - Medical and dental instruments producers
  - Jewellery manufacturers

Moreover, many more EU companies are receiving requests from their US clients to disclose the origin of minerals in their supply chain[29]. Several EU trade organisations responding to the public consultation indicated that many of their SME-members simply lack the information and do not know how to handle these requests. They fear that clients further downstream including from the US may seek and switch to other suppliers that are better able to trace back the source of the minerals used. To this end, they have asked the EU for assistance. Considering that there are about 880,000 EU companies active in the relevant sectors (Annex I/7) and based on the public consultation results that a proportion of 20 to 30% of respondents are indirectly subject to the US DFA, it is estimated that presently 150,000 and 200,000 EU companies[30] need to take action.

The following EU export values to the US in 2012 for relevant sectors illustrate the importance of the US market for EU companies: office and telecommunication equipment (€10 billion), chemicals (€66 billion), transport equipment (€52 billion) and other machinery (€ 60 billion). The bottom-line consequence is that EU companies have difficulties to comply even though their customers require that these serious concerns are dealt with in their supply chains.

[28] In October 2012, the US Chamber of Commerce, the National Associations of Manufacturers and the Business Roundtable brought a suit against the SEC to challenge the implementing rule of Dodd-Frank Act section 1502. The industry challenged the rule arguing that the SEC failed to estimate the costs and benefits of the rule, failed to use its discretion to design a proper rule in light of alternatives, failed to design an adequate rule in conformity with Congressional intent, and designed a rule that violates the companies' First Amendment right. In July 2013, the US District Court for the District of Columbia rejected the industry's challenge.

[29] See also *Conflict minerals – An evaluation of the Dodd-Frank Act and other resource-related measures*, Öko Institut, Germany, September 2013, p. 26.

[30] This number is based on i) an identified number of 880,000 EU companies operating in manufacturing sectors and potentially working with tin, tantalum, tungsten and gold: it can be reasonably expected that a high number of those companies is involved in processing of the mentioned minerals, but this number represents a ceiling; ii) information resulting from the public consultation where 20-30% of companies indicated that they are subject to the US DFA. The latter companies could have been overrepresented in the public consultation. As a result of both i) and ii) it could be expected that the total number of 150,000-200,000 EU companies might be an over-estimation.

– *Underlying drivers*

EU downstream operators report the following challenges in collecting the required information from their suppliers to conduct due diligence under the present frameworks: first, the identification of the smelters/refiners in their supply chain is a problem, and second, if and when identified, it is difficult to exert adequate pressure on the smelter/refiner so as to obtain the required information. As there is a limited number of smelters/refiners who trace back the origin of the minerals and conduct due diligence over their supply chain, this situation can be considered to be widespread.

First, EU downstream companies attempting to exercise due diligence, are faced with the following difficulties linked to the **identification of smelters/refiners** in the supply chain:

- **Opaque supply chains**: the complexity, length and breadth of the supply chain with thousands of downstream companies changing over the years is by far the biggest problem in the identification of smelters and the verification of the origin of the minerals. The reason is the high number of steps and participants (potentially up to 10-20) from the downstream operator up to the smelter where relevant information may be lost, withheld, modified etc. This was reported by over 30% of the companies and trade organisations in the public consultation. In particular, companies without direct smelter contacts indicated serious challenges in obtaining information from the smelters. Several companies indicated that the maximum number of steps in order to realistically trace back a mineral is 2 to 3 tiers in the supply chain. Moreover, a high number of large trade associations also indicated that SMEs in particular often lack the organisational capacity to manage due diligence properly which entails consequences for all supply chain actors since it results in a damageable interruption of the information flow. The problem is further exacerbated, as reported in the public consultation by the fact that sub-suppliers and smelters/refiners in the **supply chain change over time depending on transactions. The information** must therefore be updated regularly. Moreover the a**ccuracy of smelter/refinery data can be compromised since a number of companies are kn**own under multiple names or have subsidiaries with a different name.
- **Confidentiality concerns**: a substantial number of downstream companies (15) in the public consultation as a reply to an open question indicated intellectual property protection, contractual agreements and other corporate secrets as a major obstacle to exercise due diligence as suppliers are not in a position to disclose sensitive technical and business-related information, including smelters/refiners' names. This is a recurring debate among OECD Guidance stakeholders since traders in particular report instances in which they have had to disclose the origin of their minerals and quickly found themselves by-passed by their clients who immediately seized the opportunity to source directly from the disclosed sources. This concern acts as an important disincentive to inject transparency into the supply chain thereby preventing downstream users from accessing the necessary information to source responsibly.

Secondly, when and if smelters/refiners have been identified by EU downstream companies in their supply chain, they face the following **additional problems** to obtain information from them on the origin of minerals and on the chain of custody:

- **Lack of leverage over the smelter**: over 13 companies, including 5 trade organisations in the public consultation in reply to an open question, mentioned that their desire to purchase metals from smelters/refiners conducting due diligence is frustrated as they lack influence on the smelter to obtain due diligence information i.e. smelters are often in a better bargaining position representing a dominant force relative to the often less powerful downstream

companies. The OECD Guidance in this case proposes to downstream players to group together so as to create leverage. Grouping in itself is however a difficult process as it should involve a high number of possibly globally scattered and difficult to identify downstream players. Moreover, it requires potential competitors to overcome their confidentiality concerns to cooperate.

- **Language barriers**: the OECD mentions this is a problematic aspect of communication with smelters/refiners with limited ability to interact in English, particularly in Asia where a high number of smelters operate.
- **Lack of awareness and of ethical concerns about due diligence** in mineral markets among suppliers, particularly small companies in third countries, and smelters/refiners located in Asia. This was indicated by 7 trade associations in the public consultation as a problem for companies to conduct due diligence. For a number of smelters supplying conflict minerals, ignoring the issue reduces the immediate exposure to the corporate social responsibility priorities compared to purchasers further down the supply chain.

Until today, the US DFA and the voluntary application by companies of the OECD Guidance have not effectively addressed the underlying problems identified in this section. EU Member States' actions do not address these problems either.

2.5 Market distortion in the form of reduced demand and prices in formal sector for minerals from the DRC and other Great Lakes Region countries

- *The Problem*

Since 2010, the DRC has experienced a de facto "embargo" on tin, tantalum and tungsten ores in the form of reduced formal export volumes and lower prices as well as an important increase of informal trade (i.e. smuggling) of 3Ts and gold. This has been confirmed in various UN Group of Experts reports.

In the wake of the international campaign against the financing of armed groups in the DRC and the adoption of the US DFA in particular, the 10 countries covered suffered an immediate collapse in their formal exports of 3Ts and gold with the negative side effect that exports were largely squeezed into low-profit parallel trading channels[31]. Price penalties could

BOX 7

DRC exports (MT)

(Source: ITC)

	2008	2009	2010	2011	2012
Tin ores and concentrates	2632	160	338	510	1670
Tungsten ores and concentrates	152	471	77	10	0
Niobium, tantalum, vanadium ores and conc.	321	121	184	101	326
Precious metal ores and concentrates	21	0	0	0	213

[31] The UN group of Expert report on the DRC of 2011 reported that the US DFA resulted in an increase in unrecorded trade and fraud for 3Ts ores and gold based on the purchasing decisions of smelters and refiners seeking conflict free smelter status http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/738.

be up to 30-40% according to BGR (Annex I/2).

In response, Rwanda and the DRC passed their own legislation mirroring OECD requirements that were also agreed on at a regional level (ICGLR). The rest of the covered countries and notably Uganda, Burundi, Tanzania and Zambia have been much slower in taking legislative action which remains to be adopted to this date.

On 19 July 2013, in its midterm report the UN Group of Experts on the DRC informed that the production of tin, tantalum and tungsten varied greatly by province. In the province of north Kivu no tin and tungsten ore was officially exported from January to April 2013, tantalum production had significantly increased. In south Kivu only exports of tin were recorded. In Maniema the mining authorities recorded a gradual increase in tin exports but no tantalum and tungsten exports. The Group has confirmed that smuggling of minerals continuous within and from the eastern DRC. The Group has documented smuggling from Maniema province to Bukavu (South Kivu) and Goma and from Bisie to Goma and Bukavu.

In the Ituri region gold production had not declined in recent years; in fact, it might have increased as the price of gold had increased dramatically after 2007. Nevertheless, the Group was informed that in 2012 only 16.17 kg of gold had been legally exported from Ituri. In south Kivu business people only exported 39 kg of gold. However the Group was informed that gold production was in the order of several tonnes per year. The Group notes that nearly all gold smuggling continuous to follow the path from the eastern DRC through Kampala and Bujumbura to Dubai and the United Arab Emirates.

Finally, the Group reported about efforts in the region to tackle smuggling notably seizures by the customs or mining authorities of Burundi, Rwanda and Uganda in 2013.

As a result, as reported by the Öko Institut[32] seven due diligence and traceability schemes following the OECD Guidance have since been implemented locally. Some are entirely private-sector-led such as the Motorola Solutions for Hope in Katanga. Others involve government, donors, companies and civil society such as the ITRI/iTSCI certification instrument for tin. Capacity-building is provided

BOX 8

Exports from other GLR countries (MT)

(Source: ITC)

	2008	2009	2010	2011	2012
UGANDA - Tin ores and concentrates	39	59	48	14	18
BURUNDI - Tungsten ores and concentrates	899	264	503	330	32
RWANDA - Niobium, tantalum, vanadium ores and conc.	2334	3244	2158	1452	1266
TANZANIA - Precious metal ores and concentrates	54	74	53	46	42

[32] *Conflict minerals – An evaluation of the Dodd-Frank Act and other resource-related measures*, Öko Institut, Germany, September 2013, p. 35-49.

by donors, such as the German BGR, or NGOs. Thanks to these international efforts and support schemes significant progress has been achieved to develop a credible chain of custody for a number of mines and upstream supply chains.

However, so far only one traceability scheme in the DRC (ITRI/iTSCi implemented via PACT) is recognised by the major buyers mainly operating in closed pipe supply chains. In the overwhelming majority of cases, the other schemes in the region have not provided a sufficient level of confidence and effectiveness to attract the involvement of smelters/refiners actively engaged in the US and EU markets. The consequence is that mining communities and local traders fail to benefit from their natural resource wealth as even minerals from conflict-free regions are sold at a discount to the normal market price.

The current fragmented situation hampers reconstruction, development and social cohesion prospects as well as the formalisation of the small-scale mining sector which reduces taxation revenues for central and provincial governments. An important corollary is the undermining of the significant potential of wealth creation, empowerment and improved livelihoods of local communities and territories associated with the artisanal mines.

BOX 9

EU downstream operators

80% of companies are interested in sourcing minerals in a socially responsible manner but there is **insufficient availability of certified minerals** and DRC is stigmatized under the US Dodd-Frank.

– *Underlying drivers*

Between September 2010 and March 2011, the DRC imposed a presidential ban on minerals exports from artisanal mining in order to reorganise the sector on the basis of legislation that was later adopted to enforce due diligence in the country (Annex I/4). This had the effect of collapsing the entire artisanal sector together with the corresponding employment and trading opportunities. After the ban was lifted, it was almost immediately followed by the new implementing provisions of the US DFA whose reporting obligations are stimulating reorientation of US and some international supply away from the Great Lakes region. The loss of trade is in turn stimulating the emergence of an informal market for the minerals concerned.

Reporting in October 2012, the UN Group of Experts also attributes the steep decline in trade to the suspension in May 2012 by the DRC Minister of Mines in north and south Kivus of two export houses, Huaying and TTT Mining, for failure to undertake due diligence in compliance with UN and OECD Guidance. Around the same time the DRC minister of mines banned the transport of minerals by air from Maniema to Goma and Bukavu. Also, some Chinese importers previously buying untagged minerals had started to require mineral tagging under the ITRI Tin Supply Chain Initiative and their clients were not yet organised to meet these requests.[33]

As reported by IPIS[34], some DRC provinces such as Maniema that were considered relatively conflict-free, are as a result presently also negatively affected by the US DFA as their products need to be evacuated via other provinces considered conflict-prone. The resulting market distortion is largely due to business choices made by companies which choose to avoid sourcing from the

[33] See quoted report S/2012/843, p. 40.

[34] IPIS upstream implementation of the OECD Due Diligence Guidance report, January 2013

region altogether rather than even considering engagement in due diligence and adopting a nuanced risk assessment. By requiring no additional action and cost for enterprises when they can reasonably establish that "conflict minerals" do not originate in the DRC or the adjoining countries the US DFA has created an incentive to avoid sourcing from the region, and in particular from DRC. Sourcing outside the region is therefore a low-cost and a low-risk business decision whereas remaining engaged entails significant due diligence, audit and organisational costs. The probably unintended result is that DRC minerals continue to be exported, yet informally and at very low prices, to countries from which sourcing is considered conflict free.

In contacts with stakeholders in 2013, other challenges in relation to the validation of mines and minerals in the DRC have been reported. Presently, an insufficient number of mines are OECD-compliant which requires more capacity: more mines need to have traceability systems in place so as to allow for OECD-compliant exports. As reported by smelters, the traceability services provided by organisations such as iTSCi are open for improvement in terms of capacity and swiftness so as to be relevant for smelters/refiners. Closed pipeline projects such as the CFTI which uses iTSCi (Annex I/2) have been shown to carry a certain risk of predatory pricing as they create a situation of (quasi) monopoly. Overall, more competition between systems and between buyers will certainly benefit local artisanal small-scale miners as well as downstream operators. Various stakeholders expressed views in bilateral contacts that the political support at regional level should be reinforced compared to the national level where the government is highly motivated to formalise the mining sector.

Until today, the mandatory and voluntary application of the OECD Guidance, including actions by EU Member States has not effectively addressed the underlying problems identified in this section.

2.6 Subsidiarity and proportionality

According to the subsidiarity principle, the EU should act only where it can provide better results than by intervention at EU Member States' level. In addition, the preferred option identified in this document should be limited to what is necessary in order to attain the objectives laid down in section 3 of this report and comply with the principles of proportionality.

With respect to the identified problems and the underlying drivers in the previous sections, there is a clear need for EU-level action in order to have the largest impact on EU companies' due diligence objectives and in conflict zones: EU intervention will provide more 'critical mass' and leverage at a global level compared to possible action by individual Member States. To this end, for example, the Belgium Senate has adopted a resolution asking for more transparency in the supply chain based on an EU-level initiative.

The risk however is that if EU Member States take individual initiatives, EU companies will be treated differently across the EU internal market, with mixed results and leading to confusion in the market. It therefore appears preferable to take action or legislate through EU law rather than at Member State level, also with a view to better organising the ongoing parallel due diligence responses.

The regulatory approach described under the options in section 4.4, 4.5 and 4.7 dealing with trade in minerals and metals from outside the EU, falls within the exclusive competence for external trade (Article 207 TFEU) granted to the EU by the Treaties. The option considered in section 4.6 would be based on Articles 50 (freedom of establishment) and 114 (approximation of laws) TFEU.

Finally, the current situation is not satisfactory. Existing interventions via the actions of a few EU Member States, third-country legislation and some voluntary frameworks, have not effectively addressed the identified problems and underlying issues. There is a very strong push on the demand side, especially through the actions of downstream users, and it is safe to assume that this situation will continue in a context where the US DFA is unchanged. Stronger engagement from the upstream side of the supply chain would help develop more efficient ways of conducting due diligence, and this is precisely where action at EU level is needed. Options for action at EU level considered in this report would come on top of Member States' action and would in this sense re-enforce due diligence practices in the entire supply chain.

3. OBJECTIVES

Article 3 TFEU lays out that in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to inter alia peace and security as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

In this respect, the Union shall contribute to the overall policy objective of the proposal by means of its common commercial policy as defined under Article 207 TFEU which shall be conducted in the context of the principles and objectives of the Union's external action and in accordance with the UN Guiding principles on Business and Human Rights as well as UN Security Council Resolution 1952 (2010).

An EU initiative should contribute to the EU foreign policy goals and development strategy of better governance, sustainable management and law enforcement in relation to the exploitation of natural resources in mineral-producing conflict areas. It should also contribute to EU trade and enterprise policy, which *inter alia* concerns corporate social responsibility safeguarding the free but responsible choice of supply of EU operators.

General objectives (GOs)

1. Contribute to reducing the funding from proceeds of minerals' extraction and trade that reaches armed groups in conflict-affected areas.

2. Improve the ability of EU downstream operators to comply with existing due diligence frameworks, including US DFA.

3. Contribute to reducing the distortions in the market for minerals from the Great Lakes Region.

Specific objectives (SOs)

1. Increase the proportion of EU and global smelters/refiners that perform due diligence.

2. Raise the level of public accountability for due diligence performance (and level of compliance) by EU and global smelters.

3. Increase the ability of EU downstream companies to successfully identify smelters/refiners.

4. Improve the bargaining position of EU downstream companies (on due diligence) vis-à-vis companies further back in the supply chain.

5. Improve awareness of due diligence, of the importance of due diligence compliance, and of ethical dimensions throughout the supply chain – both inside and outside the EU.

6. Increase the uptake (performance) of due diligence practices by downstream companies.

7. Offset/reduce the adverse commercial incentive created or exacerbated by US DFA.

Operational objectives (OOs)

1. Provide enhanced visibility and transparency for due diligence practices (and level of compliance) of EU and global smelters.

2. Raise awareness of due diligence, ethical dimensions, and the importance of improving due diligence compliance with governments of main non-EU smelters/refiners.

3. Empower downstream users by providing a mechanism to identify due diligence compliant operators (including smelters), and thus to facilitate switching of suppliers.

4. Introduce certainty and transparency in the supply chain nearer to downstream users.

5. Promote increased awareness of due diligence and ethical dimensions among EU operators.

6. Create additional financial incentives in order to promote/support due diligence practices among downstream users.

7. Support the uptake of OECD Guidance among smelters/refiners willing to source in conflict-affected areas.

8. Support demand from conflict-affected areas: facilitate switching by EU operators to due diligence compliant smelters/refiners sourcing in those areas.

4. POLICY OPTIONS

Commission Services have considered the following broad range of policy options:

4.1 Base line scenario

Under the baseline scenario, no additional EU action is undertaken to address the identified problems. The Commission provides - in the context of the *Instrument for Stability* - support for a committed amount of up to €1 million during a maximum two years, for the implementation programme of the OECD Guidance by providing capacity-building in conflict-affected and high-risk areas in particular, by targeting the authorities, the private sector and civil society organisations.

A few EU Member States (Germany, Belgium and the Netherlands) continue providing support to the DRC and Rwanda as presented in Box 10 and as fully described in Annex I/2.

BOX 10

EU Member States act in upstream activities in the DRC and Rwanda – EU complementarity

- **Germany** developed a mine certification and traceability system in cooperation with authorities in the DRC and Rwanda. The Regional Certification Mechanism of the ICGLR integrated those standards to ensure traceability from mine to export. In addition, the Analytical Fingerprint tool was developed in support.
- The **Netherlands** together with a number of partners developed a tightly controlled conflict–free tin supply chain from mine to final producer.
- **Belgium** supports a mapping exercise of the independent Belgian Research Initiative 'International Peace Information Service' (IPIS) which together with the Congolese Mining Cadastre (CAMI) organised a permanent system to monitor artisanal mining activities and the involvement of armed groups, the Congolese army (FARDC) and criminal networks, especially in conflict and high risk areas in Eastern DRC.

Under the baseline scenario, Member States are not expected to adopt legal due diligence requirements targeting their downstream operators, nor are they expected to introduce the application of performance clauses on due diligence in their public procurement contracts to incentivise downstream operators carrying out due diligence.

Furthermore the baseline case takes into account the impacts of the US DFA on businesses and the Great Lakes Region as well as ongoing actions by countries in this region, and beyond, to implement the OECD Guidance. This includes ongoing efforts by ICGLR States formalising the mineral sector and implementing regional certification mechanisms. Presently, Rwanda is the most advanced in terms of implementing its OECD consistent legislation and can be expected to remain a forerunner. The DRC while having OECD-based law in place is expected to build up only gradually its capacity to effectively implement the OECD Guidance: this requires more mines to be validated and to put traceability systems in place. The other States such as Uganda and Burundi are expected to make progress on formalising the mining sector by integrating the OECD Guidance. EU companies are presently not operating in the above countries.

Côte d'Ivoire and Colombia are expected to take initial action which would allow them to better understand the functioning of the OECD Guidance, and the benefits it would bring to their countries' mining sector.

Except for the United States, other third-countries are not expected to promote the uptake of due diligence by their operators.

4.2 Option 1 – Standalone EU Communication

This option consists of the following measures to be included in a joint Commission/High Representative Communication in order to address the objectives set in section 3.

1. **National Contact Points** (NCPs) would be established under the OECD Guidelines for Multinational Enterprises and other relevant networks to help raise awareness. By way of example, the **Enterprise Europe Network** (EEN) – a business support network that offers services supporting European enterprises – could raise the awareness of EU operators about the importance of due diligence and the consequences of irresponsible sourcing from conflict zones. To this end, the Commission, in cooperation with the OECD, would develop material for outreach events as well as awareness-raising actions through NCPs and EEN websites.

2. **EU public procurement**: the application of performance clauses in European Commission public procurement purchases for relevant products (e.g. computers, mobile phones, printers) which contain 3Ts and/or gold: eligibility would depend on compliance with OECD Guidance or other equivalent due diligence schemes in order to satisfy contractual obligations. To this end, the Commission will develop implementing Guidance for authorising officers.

   Moreover, the application of performance clauses in public procurement purchases by EU Member State authorities (as foreseen under the EU Public Procurement Directive) is possible to foster the uptake of OECD Guidance or equivalent schemes. To this end, the Commission develops recommendations and implementing guidance to Member States' authorising officers. EU Member States presently do not have performance clauses in public procurement contracts in place to promote due diligence.

3. **Financial support to the activities of OECD**: to further promote and develop Guidance and assistance in support of due diligence practices of EU and global smelters/refiners when sourcing responsibly in conflict-affected and high-risk areas. Notably, the OECD would be required to identify the smelters/refiners with a keen interest in sourcing in conflict zones and their problems when dealing with traders in conflict zones. The EU assistance may support outreach and training activities as well as capacity building and the promotion of those smelters/refiners.

4. **'Letters of Intent' by the European industry**: the EU industry has signalled its readiness through the public consultation, position papers and studies to increase its engagement in the responsible sourcing of minerals from conflict-affected and high-risk areas. The EU would take action to provide visibility to the efforts of companies that provide 'Letters of Intent' announcing relevant commitments and steps for concrete action to purchase conflict-free material from smelters or refiners sourcing responsibly from conflict regions.

5. **Government-to-government actions**: Governments in producing countries have the regulatory power to set national requirements for companies involved in the extraction, handling and trading of mineral resources. The Commission and the High Representative would use their existing contacts and political, security, trade and development dialogues to engage with governments in resource-rich developing countries to further promote responsible sourcing including through project-funding.

– *Honest broker – raw materials diplomacy*
The EU would develop a role to act as an honest broker in the context of multi-stakeholder initiatives and will consider ways of supporting and encouraging responsible sourcing and trade between third parties. EU Delegations, as well as the operations and missions are also used to gather data gathering and perform analysis which could be the basis for mediation or prevention of conflicts originating around or in close relation to mining activities.

– *Policy dialogues with third countries and other stakeholders*
The EU would use its existing dialogues and contacts with governments, industry and NGOs to further develop the common understanding – at country and regional level – of the needs, challenges and opportunities of conflict-free and responsible mineral extraction.

The EU would also increase engagement with countries where the majority of the world's smelters/refiners are located, notably China, Malaysia, Indonesia, Thailand and Russia. The EU would set out specific outreach strategies to this end. The EU would call an international conference on the role of, and contribution of responsible sourcing in 2015.

The EU would use its raw materials dialogues with China, Japan and Mongolia to promote the EU conflict minerals approach. The Commission would also launch a raw materials dialogue with Myanmar/Burma in the near future.

– *Development cooperation with third countries*
The EU would also use its existing cooperation relation with governments to address conflict-free and responsible mineral extraction. The key lines of intervention through which the EU may support partner countries are:

- Transposing the OECD Guidance into national due diligence frameworks.
- Building further capacity to implement the national due diligence frameworks.
- Supporting advocacy and political dialogues in the country between local and central government authorities, civil society organisations and companies operating in the regions.
- Creating visibility for the actions carried out and the results achieved by the country.

The EU would also foster cooperation between producer and consumer countries, including through joint projects, for instance on sustainable mining and good governance, also taking into account the specificity of artisanal mining.

4.3 Option 2 - "Soft-law" approach

This option combines the measures described under Option 1, with a Council Recommendation that would be instrumental in raising awareness of, and promoting the voluntary uptake by EU enterprises of the OECD Guidance for the 3Ts and gold, notably for those enterprises that are not already subject to a mandatory third-country scheme.

4.4 Option 3 - Regulation establishing obligations under an "EU responsible importer" certification based on the OECD Guidance - VOLUNTARY

This option combines the measures described under Option 1 with a Regulation targeting all EU importers of tin, tantalum and tungsten ores and metals, and gold, regardless of the origin of the products. The number and type of EU importers directly targeted under this Regulation are: > 300 traders, 19 smelters/refiners and > 100 manufactures of components and semi-finished goods of which the majority are small and medium sized companies (SMEs).

The EU is a relatively large importer of the above mentioned ores with a 34% share of global trade.

The Regulation relies on the OECD Guidance to define obligations for EU importers that opt to be self-certified as responsible importers of tin, tantalum and tungsten ores and metals, and gold on the basis of a self-declaration of compliance.

BOX 11

Number of EU importers

Direct EU importers of 3Ts and gold ores and metals close to the upstream:

- **Traders: > 300**
- **Smelters/refiners: 19**
- **Manufacturers: > 100**

Only few EU companies are active as traders in the DRC and Rwanda and therefore subject to local due diligence laws.

Although the Regulation is voluntary, EU importers choosing self-certification are obliged to integrate all elements of the OECD Guidance in their management system by: (i) maintaining a system of controls and transparency over the mineral supply chain, which includes *inter alia* the mine of mineral origin and the smelters/refiners; (ii) when minerals and/or metal originate from conflict-affected and high-risk areas, identifying and assessing risks in the supply chain against the OECD model supply chain policy (see Box 11); (iii) designing and implementing a strategy to respond to identified risks; (iv) obtaining independent third-party audits of supply chain due diligence of the EU importer; and (v) reporting publicly on supply chain due diligence.

In order to be self-certified, the EU importer is also required to provide annually to the Member State competent authority independent third-part audits. When importing metals, also the identity of the smelters/refiners in its supply chain as well as independent third-party audits of those smelters/refiners is required. When sourcing from conflict-affected and high-risk areas, the EU importer should disclose the proportion of minerals originating from such areas relative to its total amounts of minerals purchased as confirmed by independent third party audits. When importing metals, this information should be provided relative to the smelters/refiners in the supply chain.

On the basis of the information disclosed by the importer to the Member States' competent authorities and transmitted by them to the European Commission, the latter as part of the Regulation would draw up annually a list (by implementing act) of the responsible smelters/refiners which conduct due diligence as confirmed by an independent third-party audit. This list of responsible smelters/refiners will be issued after consultation with the OECD. Responsible smelters and refiners sourcing from conflict-affected and high-risk areas will be specifically identified on the list.

BOX 12

Obligation to EU importers to exercise due diligence

Integrate the "5-step" OECD frame in management system:

- Maintain a system of controls and transparency over the supply chain, including the mine of mineral origin and the smelter/refiner
- Identify and assess risks in the supply chain against the **model supply chain policy**
- Design responses to the identified risks
- Obtain an independent third-party audit of the EU importers due diligence practices.
- Report publicly on due diligence policy and practice

Disclose:

Smelter/refiner name and location and its third-party audit results to Member States' competent authorities.

The number of smelters/refiners in the EU targeted by the list is presently 19. The number of global smelters/refiners also targeted cannot be determined at this point since information on the name of exporters to each of the Member States is only available to customs authorities. It should be noted however, that the EU is a relatively large importer of 3Ts and gold metals with presently a 23% and 13% share of global trade respectively.

The Regulation would be followed by a Commission communication as regards implementing guidelines. The purpose of this communication will be to set out the detailed rules and additional guidance necessary to ensure a uniform application by the Member States' competent authorities of the Regulation. To this end, no further impact assessment would be envisaged.

Ex-post compliance checks by the Member State competent authority to verify if the self-certified EU importer complies with the set obligations would be conducted in accordance with a periodically reviewed plan following a risk-based approach. In addition, checks may be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning compliance by an importer with this Regulation. In case of an infringement of the Regulation, competent authorities would issue a notice of remedial action to be taken by the importer. Inadequate remedial action would result in the withdrawal of the responsible importer certificate, and where applicable the smelter/refiner would be removed from the list.

Finally, the voluntary application of the Regulation should be reviewed after 3 years and the results will be used for decision making needs on the future of the EU approach and for amendments to the regulatory framework, making it mandatory, if appropriate, on the basis of a further impact assessment.

BOX 13

OECD model supply chain policy

Zero tolerance for human rights abuses associated with extraction, transport or trade of minerals.

- No support to non-state armed groups
- No support to Illegal activities of public and private security forces
- No bribes to disguise origin of minerals
- Elimination of money laundering and ensure taxes are paid to the government.

4.5 Option 4 - Regulation establishing obligations under an "EU responsible importer" certification based on the OECD Guidance - MANDATORY

This option combines the measures described under Option 1, with a compulsory version of the Regulation described in section 4.4 under which all EU importers of tin, tantalum and tungsten ores and metals, and gold, are subject to the obligations defined under the Regulation. The number and type of EU importers concerned are: > 300 traders, 19 smelters/refiners and > 100 manufactures of components and semi-finished goods.

As per Option 3, the EU would establish under the Regulation a list of smelters/refiners.

From the entry into force of the Regulation, Member States' competent authorities should carry out ex-post checks on EU importers' compliance with the set obligations. Checks should be conducted in accordance with a periodic review plan following a risk-based approach. In addition, checks may be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning compliance by an importer with this Regulation. In case of an infringement of the Regulation, competent authorities will issue effective and proportional financial penalties.

4.6 Option 5 - Directive establishing obligations for EU-listed companies based on the OECD Guidance

This option combines the measures described under Option 1, with a Directive targeting almost 1,000 EU-listed companies using tin, tantalum, tungsten and gold, regardless of origin, in their supply chain.

The Directive would define the obligations for EU-listed companies to integrate the "five-step" OECD Guidance framework in their management system by (i) maintaining a system of controls and transparency over the mineral supply chain, which includes the mine of mineral origin and the smelter/refiner; (ii) identifying and assess risks in the supply chain against the OECD model supply chain policy (see Box 10); (iii) designing and implementing a strategy to respond to identified risks; (iv) obtaining an independent third-party audits of supply chain due diligence of the EU-listed company; and (v) reporting publicly on supply chain due diligence.

EU-listed companies should disclose to Member States' competent authorities on an annual basis the result of their third-party audited due diligence.

From the entry into force of the Directive, Member States' competent authorities should carry out ex-post checks on EU-listed companies' compliance with the set obligations. Checks should be conducted in accordance with a period review plan following a risk-based approach. In addition, checks may be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning compliance by the company with this Directive. In case of an infringement of the Directive, competent authorities shall issue effective and proportional financial penalties.

This option partly mirrors the requirements of US DFA, however with a different geographical scope: whereas US DFA targets "conflict minerals" originating in the DRC and the adjoining countries this option targets the same minerals regardless of origin.

In contrast to the Regulation proposed under Options 3 and 4, the legal basis of Option 5 would be an EU Directive that builds on existing EU legal frameworks (i.e. the Accounting and Transparency

Directives) under which EU-listed companies are required to disclose financial and notably non-financial information. If this option were to be adopted, this legal framework would serve as a basis for the new rules to be adopted.

4.7 Option 6 – Prohibition of imports when EU importers of ores fail to demonstrate compliance with the OECD Guidance – import ban

This option consists of the measures described under Option 1, and in addition it would require EU importers to mandatorily demonstrate compliance with the OECD Guidance. Providing evidence on compliance to Member States' customs authorities, importers will be eligible to access the EU market.

This option would follow the approach taken by the Kimberley Process Certification Scheme (KPCS) targeting the trade in rough diamonds and Council Regulation 2368/2002 of 20 December 2002 based on Article 133 EC (now Article 207 TFEU) which sets out the rules applicable for imports and exports of rough diamonds (Annex I/1). In this case an international agreement supports the importation ban for so called "conflict diamonds".

As regards minerals from conflict-affected and high-risk areas, such an international agreement between countries would define the exact trading arrangement based on the OECD Guidance. Based on the KPCS model, the agreement would impose a requirement on its members to enable them to certify shipments of minerals as ‘conflict-free' and prevent conflict minerals from entering the legitimate trade.

To this end, the option targets the following number of EU importers of mineral ores: > 50 traders and 19 smelters/refiners.

From an EU perspective the preferred mineral scope of the agreement would be tin, tantalum, tungsten ores and gold, whereas the preferred geographical scope consists of all mineral producing countries where risks exist in relation to mineral mining and the financing of armed groups through trade.

Ex-ante border controls/compliance checks by Member States' competent authorities are carried out to determine whether the EU importer meets the obligations set in the agreement. This may result in an EU import ban of minerals when requirements are not fulfilled on the basis of documentation.

However, it should however be noted that setting up an international agreement requires a lengthy process with an uncertain outcome. There is presently no certainty that such an agreement can be achieved in the foreseeable future.

Summary of the options:

OPTIONS	Instrument	Application	Scope (product, geographical)	Measures
1. Communication	Commission/ High Representative Communication	NA	NA	– NCP and EEN – EU Public Procurement – Financial assistance OECD – Letters of Intent – Government to Government actions
2. "Soft law"	Council Recommendation	Voluntary	3Ts and gold + Global	– NCP and EEN – EU Public Procurement – Financial assistance OECD – Letters of Intent – Government to Government actions
3. EU importer certification, including disclosure requirements + list of smelters/ refiners	Regulation	Voluntary	3Ts and gold + Global	– NCP and EEN – EU Public Procurement – Financial assistance OECD – Letters of Intent – Government to Government actions
4. EU importer certification, including disclosure requirements + list of smelters/ refiners	Regulation	Mandatory	3Ts and gold + Global	– NCP and EEN – EU Public Procurement – Financial assistance OECD – Letters of Intent – Government to Government actions
5. EU-listed company disclosure requirements	Directive	Mandatory	3Ts and gold + Global	– NCP and EEN – EU Public Procurement – Financial assistance OECD – Letters of Intent – Government to Government actions
6. Prohibition of imports (ores)	Regulation	Mandatory	3Ts and gold + Participating countries	– NCP and EEN – EU Public Procurement – Financial assistance OECD – Letters of Intent – Government to Government actions

Table 1

5. ANALYSIS OF IMPACT (INCLUDING ON SMES)

The analysis of impact for the different options is as follows.

5.1 How will the problem evolve without EU action?

Under the baseline only a moderate uptake of supply chain due diligence, including as per the requirements of the US DFA, can be expected by EU downstream companies as they presently lack reliable data to effectively review their supply chain. This situation is likely to persist for the coming years: under the present conditions, EU businesses and their supply chains are not prepared for implementation as the entire due diligence process and practices lack maturity. The current trend of EU downstream companies strengthening their management systems (i.e. assuming associated costs) and simply sending forms mainly up the supply chain to receive declarations from their suppliers that they do not source from conflict areas will continue, and meaningful due diligence efforts are expected to be rare.

Similarly, the uptake of supply chain due diligence by smelter/refiners is also expected to be modest at best as access to minerals from conflict zones will continue to represent a cheap source in a very competitive market. Furthermore, smelters/refiners will continue to be insufficiently aware or ethically concerned about the issues, and finally in the absence of sufficient pressure from clients and other downstream operators they will not be compelled to change behaviour and conduct due diligence. The existing legal frameworks or other actions such as those carried out by EU Member States do not address those issues.

In sum, we could expect mainly as a result of the US DFA, an improvement of the situation on the medium-term basis where the total number of EU downstream operators and EU and global smelters/refiners carrying out due diligence will moderately improve over time. However, this will certainly be a difficult process, notably with a problematic start as global supply chains need to reorganise by selecting or switching to those suppliers that carry out due diligence. EU companies trading with the US not being able to satisfy due diligence requests see face their US clients switch to other more capable suppliers[35], which in a baseline scenario should not necessarily be easily available.

Under the baseline scenario, the market distortion experienced by the Great Lakes Region is expected to worsen as an increasing number of global companies, including EU companies, are expected to comply with the US DFA requirements avoiding sourcing in the covered countries. Only the ongoing efforts by the DRC and other neighbouring country governments and operators, with some development assistance by *inter alia* EU Member States, can result in a gradual improvement of the situation: more mines validated, and trading routes and exports certified.

Finally, as also considered by stakeholders in the public consultation, EU non-action would undermine global efforts to reduce funding to armed groups and the perpetuation of conflict, and not strengthen political and resource governance including the mining sector in affected conflict

[35] The following EU export values to the US in 2012 for relevant sectors illustrate the importance of the US market for EU companies: office and telecommunication equipment (€10 billion), chemicals (€66 billion), transport equipment (€52 billion) and other machinery (€ 60 billion). An estimation of the associated cost for EU companies to comply with US DFA requirements is presented in the sections 5.4 and 5.6.

areas and would generate a perception that the EU does not take the issues of transparency and due diligence in mineral supply chains seriously.

Nine business respondents (including 3 trade organisations) in the public consultation argue that they will continue to experience problems taking up due diligence and that this would negatively affect their image and performance relative to US clients.

Likewise, non-intervention fails to support the development of sustainable economic models relying on natural resource wealth and transparent extractive sector providing better prospects for reconstruction and social cohesion as well as investment by international corporations in those areas.

5.2 Option 1 – Standalone EU communication

– *Effectiveness of the option*

The effectiveness of this option in achieving the operational objectives set out in section 3, are assessed as follows:

OO2: raise awareness of due diligence, ethical dimensions, and the importance of improving due diligence compliance with governments of main non-EU smelters/refiners: this option, through the government to government actions (honest broker, existing policy dialogues) contributes to this objective.

OO5: promote increased awareness of due diligence and ethical dimensions among EU operators: this option through actions outlined for the NCPs and EEN contributes to this objective.

OO6: create additional financial incentives in order to promote/support due diligence practices among downstream users: the EU public procurement measures contribute to this objective.

OO7: support the uptake of OECD Guidance among smelters/refiners willing to source in conflict-affected areas: the financial assistance to the existing OECD activities in particular support to EU and global smelters/refiners sourcing responsibly in conflict areas, contributes to this objective.

The other operational objectives (1, 3, 4 and 8) are not addressed by this option.

As regards the overall effectiveness of this option achieving the specific objectives set out in section 3, this option contributes to *SO5* (i.e. improving awareness of due diligence, of the importance of due diligence compliance, and of ethical dimensions throughout the supply chain, both inside and outside EU), *SO6* (i.e. increasing the take-up (performance) of due diligence practices by downstream companies), and *SO7* through European Commission funding to the OECD the option contributes to offset/reduce the adverse commercial incentive created or exacerbated by US DFA. This option is therefore expected to moderately impact the uptake of due diligence practices by downstream operators but is only marginally expected to increase the proportion of EU and global smelters/refiners performing due diligence. The contribution to the reduction of the distortion in the market for minerals from the Great Lakes Region is addressed to a limited extent. Overall the impact on reducing the funding of armed groups from proceeds of minerals' extraction and trade in conflict zones is expected to be limited.

– *Economic impact, including on SMEs*

This option does not create additional administrative costs for EU downstream operators, including SMEs. On the contrary, it creates positive financial incentives for downstream companies to take up due diligence. Moreover, the other forms of assistance could alleviate the burden to acquire specialised competences when setting up a system for due diligence. As the option does not address all of the objectives set it implies that not all companies are expected to successfully take up due diligence and that some of them may face downstream clients switching to other suppliers.

– *Social impact*

The social impact of this option is limited to a slight positive impact that might result from the measures provided to smelters/refiners that are willing to source from the conflict zones. This impact should not be overstated.

As this option only addresses the EU downstream problems to a limited extent this could result in the possible withdrawal of some clients.

– *Environmental impact*

This option does not create any specific impact on the environment.

– *Administrative impact for European Commission and Member State authorities*

The cost of promotion via the NCPs and the Enterprise Europe Network (EEN) is estimated at 0.05 FTE[36].

The cost of providing financial assistance to the OECD due diligence action is estimated at €0.2 million annually over period of 5 years. The annual budgetary provisions are subject to the on-going negotiations between the co-legislators and future programming of these instruments.

Due diligence requirements relating to the European Commission's public procurement contracts for IT hardware are expected to impose an additional cost of about 0.014% of the total annual of the DG DIGIT budget of about €50 million; which amounts to maximum €7,000 per annum. It is however expected that these small cost increases will not be passed on to the final consumer, in this case the EU Institutions, in the form of a price increase. In terms of Commission staff, one full-time equivalent (FTE) is expected to be involved in drafting of public procurement guidance and further outreach.

Voluntary uptake of due diligence requirements (under the EU Public Procurement Directive) by Member States' public authorities is expected to give rise to a similar level of additional costs. In the EU 18% of GDP, which is €420 billion, is used for public procurement. A maximum of 0.014% cost increase would apply to procurement contracts in the relevant sectors in case opting for introducing due diligence requirements. Again, it is expected that these small cost increases will not be passed on to the final consumer (i.e. Public Authorities) in the form of a price increase. In terms of staff, 0.2 full-time equivalent (FTE) is expected to be involved in contractual procurement work.

[36] A full-time equivalent (FTE) is a unit to measure employed persons in a way that makes them comparable although they may work a different number of hours per week. The unit is obtained by comparing an employee's average number of hours worked to the average number of hours of a full-time worker. Eurostat.

– *Stakeholders' views of the option*

Finally, public procurement measures were mentioned by 3 trade organisations and 5 downstream companies in the public consultation as a possible incentive to stimulate uptake of due diligence.

Also, many business stakeholders (42) recommend diplomatic efforts in order to engage other economies. A number of business stakeholders have expressed concern about the feasibility of reaching critical mass for the effective uptake of due diligence on a global scale. Indeed, a large number of companies and trade organisations (51) participating in the public consultation emphasised that a system would need to include at least all major economies in order to be effective.

5.3 Option 2 - "Soft law" approach

– *Effectiveness of the option*

The effectiveness of this option is comparable to Option 1. However, it could be expected that the added value of a Council Recommendation would reside in the improved visibility that a soft law option would entail for the EU to promote due diligence. This might result in some improved awareness of EU operators resulting in some increased due diligence up-take.

To the extent that such an approach succeeded in raising awareness of EU companies' responsibilities in respect of OECD Guidance, there might be some improvement in the underlying situation, i.e. a diminution in the potentially perverse role played by minerals extraction and trade in conflict-affected and high-risk areas.

– *Impacts*

The overall impact of such a soft law option would essentially be equivalent to the first option (see section 5.2).

5.4 Option 3 – Regulation establishing obligations under an "EU responsible Importer" certification based on the OECD Guidance - VOLUNTARY

– *Effectiveness of the option*

The effectiveness of this option achieving the operational objectives set out in section 3, are assessed as follows:

OO1: provide enhanced visibility and transparency for due diligence practices (and level of compliance) of EU and global smelters: this option contributes to this objective through the list of responsible smelters/refiners established under the Regulation.

OO2: raise awareness of due diligence, ethical dimensions, and the importance of improving due diligence compliance with governments of main non-EU smelters/refiners: this option, through the government to government actions (honest broker, existing policy dialogues) contributes to this objective.

OO3: empower downstream users by providing a mechanism to identify due diligence compliant operators (including smelters), and thus to facilitate switching of suppliers: this option does

address this issue by providing a certificate to EU importers and through the list of responsible smelters/refiners.

The "EU responsible importer" certificate would facilitate the identification of operators including smelters/refiners exercising due diligence for downstream operators to rely on. Moreover, the list of responsible smelters/refiners drawn up on the basis of information provided by self-declaration will represent an important reference point for downstream producers to facilitate and redirect their purchasing activities to the smelters identified in the list. In itself, the list will act as an incentive for smelters/refiners, especially those based in the EU since most of their downstream clients have an interest in responsible sourcing *inter alia* because of the indirect effects of the US DFA.

OO4: Introduce certainty and transparency in the supply chain nearer to downstream users: this option does address this issue by providing a certificate to EU importers and through the list of responsible smelters/refiners.

The implementation of an EU due diligence scheme would coincide with the first years of full implementation of the US DFA which also encourages affected companies to identify the smelters/refiners in their supply chain and leverage greater transparency about commercial relations in the upstream part of the supply chain, including information about the origin of the minerals used. This option therefore offers support to those EU companies (according to the public consultation 20 to 30 % of EU businesses) subject to the US DFA due diligence requirements (directly/indirectly) facing implementation challenges linked to the lack of transparency in the supply chain.

OO5: promote increased awareness of due diligence and ethical dimensions among EU operators: this option through actions outlined for the NCPs and EEN contributes to this objective. The list of responsible smelters/refiners may contribute to this as well.

OO6: create additional financial incentives in order to promote/support due diligence practices among downstream users: the EU public procurement measures contribute to this objective.

The effectiveness of Option 3 is further enhanced by this measure which allows for downstream producers of end products to give visibility to their due diligence efforts through performance clauses in public procurement contracts of EU institutions for relevant products (e.g. computers, cell phones) which include 3Ts and gold.

Moreover, this measure would provide an additional incentive to conflict-free downstream products from abroad. Performance clauses would indeed make the award of contracts by the European Commission and Member States conditional upon compliance with OECD Guidance or with an equivalent scheme including for instance the EU list, a Dodd-Frank DRC conflict free report or recognised industry schemes.

OO7: support the uptake of OECD Guidance among smelters/refiners willing to source in conflict-affected areas: the list of responsible smelters/refiners is important in this respect as it identifies those entities that source from conflict-zones. Also the financial assistance to the existing OECD activities in particular support to EU and global smelters/refiners sourcing responsibly in conflict areas contributes to this objective.

OO8: support demand from conflict-affected areas: facilitate switching by EU operators to due diligence compliant smelters/refiners sourcing in those areas: the list of responsible smelters/refiners will be instrumental to this end.

Moreover, as the list of responsible smelters/refiners would explicitly highlight those which in spite of conflict continue to source from these regions, and as this option also envisages to provide financial support to the OECD to promote the scheme so as to facilitate decisions to support sourcing from such areas, this will have direct consequences in favour of local populations and their livelihoods. This logic is not borne out by the present reality. On the contrary, local communities dependent on mining activities should continue to be able to exercise their legitimate trade through improved access to global mineral markets.

Overall the effectiveness of this option in achieving the specific objectives set out in section 3 is high, as all of them are met. In order to allow for a detailed comparison between the options the following assessment is carried out:

SO1: with the list and other measures in place it might be expected that over time the proportion of EU and global smelters/refiners performing due diligence will gradually increase, as it raises the level of public accountability (SO2) for due diligence performance (and level of compliance) by EU and global smelters that clearly have an interest to get on the list and being visible for downstream operators.

SO3: the list increases, at the same time, the ability of EU downstream companies to successfully identify smelters/refiners and improves their bargaining position (SO4) on due diligence vis-à-vis companies further back in the supply chain.

SO5: this option improves awareness of due diligence, of the importance of due diligence compliance, and of ethical dimensions throughout the supply chain, both inside and outside EU.

SO6: this option increases the take-up (performance) of due diligence practices by downstream companies.

EU importers (traders) could be motivated to apply the "EU responsible importer" certificate in relation to their downstream identification. An increased uptake by importers – both those which supply ores/concentrates to EU smelters/refiners, and those which supply metals/derivatives to component producers – is expected to be driven by increased awareness in the EU and buyers' interest. Public recognition is viewed as an important incentive by a substantial number of companies. During the public consultation, 20 business respondents (including a smelter and 3 other upstream companies) indicated that a label, stamp of excellence, award or similar form of public signalling would increase motivation to join the initiative, because it would enhance the corporate image and/or brand value.

In combination with the list, the public procurement measures are expected to act as strong incentives for downstream companies to take up due diligence.

SO7: this option also offsets/reduces the adverse commercial incentive created or exacerbated by US DFA.

By focussing on importers, who are only a few steps removed from the mines where minerals are extracted, the scheme is applied at an effective point in the supply chain. As a result this option improves the ability of EU downstream operators to comply with existing due diligence frameworks, including US DFA. It also contributes to the reduction of funding of armed groups from proceeds of minerals' extraction and trade in conflict affected areas and reduces the market distortion for minerals from the Great Lakes Region.

– *Economic impacts including on SMEs*

Due to the voluntary nature of this option, we can assume that EU importers will not take on the burden of due diligence compliance unless the expected benefits are higher than the expected costs. As resulted from the public consultation over 80% of business respondents indicate that they are interested in responsible sourcing, an indication of the fact that the benefits for companies are expected to exceed the cost. Some of the benefits to companies participating in the self-certification scheme may derive from unquantifiable externalities which can be used for marketing purposes such as public image, Corporate Social Responsibility (CSR) and consumer satisfaction.

As a result of the voluntary measure, EU importers opting in would incur the costs involved with self-certification. These costs can be either internal or external and are associated with gathering information and reporting, IT systems and software, strengthening internal management systems, consulting and training and audits.

As shown in the study commissioned by DG Trade, estimated initial costs for nearly three quarters of the 330 respondents already carrying out due diligence as per the US DFA requirements are around €13,500 while recurrent costs are estimated at €2,700 for approximately two-thirds of surveyed companies (a breakdown of cost is provided in Annex I/9). More specifically, the average initial costs add up to 0.014% of average turnover of surveyed companies, while recurrent costs represent about 0.011%. For SMEs, in absolute terms, these costs are estimated at the same level (€13,500, while recurrent costs are estimated at €2,700) however resulting in somewhat higher average initial cost of 0.154% of average turnover, while recurrent costs reach 0.127%.

A further decomposition of these cost-equivalents by sector and company size (Table 2 below) underlines the fact that the estimated costs for complying with due diligence guidelines represent only a small fraction of total turnover. Initial and recurrent costs vary among the sectors identified. Initial costs for large companies vary from 0.001% of total turnover in *Manufacturing of basic metals* and *Wholesale and Retail trade of goods except of motor vehicles and motorcycles* to 0.02% in *Other manufacturing*. The recurrent costs for large companies of complying with due diligence requirements tend to be lower.

Because of lower turnover, the relative burden on SMEs tends to be higher, with initial costs that range from 0.011% in *Manufacture of machinery and equipment n.e.c.* to 0.382% in *Manufacture of fabricated metal products, except machinery*. The high initial cost of 0.382% for SMEs in the *manufacture of fabricated metal product sector* can be explained by the fact that although the sector was well represented in terms of respondents (with a total of 21 SMEs in this sector answering the question) two SMEs estimated the cost over 1 million, and one SME estimating it over 5 million, which drove up the average. While the impact on SMEs tends to be somewhat greater, these costs are thought to be manageable notably in the context of a voluntary approach allowing for sufficient adjustment time.

Therefore based on the results of the study the total initial cost for the roughly 400 EU importers (smelters/refiners, traders, and manufactures) if they would all decide to carry out due diligence is estimated at **€5.4 million**. The recurrent annual cost would reach **€1.1 million**.

As a consequence of the low compliance cost presented above, no significant impact on the competitiveness of EU industries, including SMEs, or on delocalisation is expected. As the scheme is voluntary, companies can time, phase-in and thereby adjust the introduction cost to the level appropriate to their business. A total number of 17 companies and trade organisations feared a price increase for (certified) minerals, which would put upstream EU/US companies at a competitive

disadvantage and/or decrease access to certain minerals. 43 business stakeholders felt that this concern applied to downstream industries. On the other hand, concerning the upstream part of the supply chain, 15 business stakeholders pointed out that an EU initiative could encourage demand for ethically and legitimately sourced minerals, and that it could create a level playing field for conflict and non-conflict regions alike. Concerning the downstream part, this opinion was echoed by 6 companies and trade organisations.

The subset of EU importers which currently source from non-compliant sources and choose to undergo self-certification will also have to bear the costs of mitigating risks and/or switching suppliers.

Due to the voluntary nature of this self-certification, the overall cost of due diligence compliance for EU importers will depend on the exact participation rate and the due diligence cost in relation to the company turnover. As shown above, these costs are nevertheless expected to be manageable – if not minor – over the long run for most companies. If an importer is certified, the cost for downstream companies is very low. Under the scheme, an importer opting for self-certification is obliged to pass on to clients due diligence information while duly respecting business confidentiality concerns. Downstream operators should gain by this requirement which allows them to minimise the costs for their own due diligence needs. The availability of incentives as offered in Option 1 as well as the annual publishing by the Commission of a list of smelters that perform due diligence should enhance interest in the scheme. This is important as it provides an incentive to EU downstream product manufacturers relying on the import of minerals/metals to buy EU certified materials and continue producing in the EU rather than to shift their production outside the EU where due diligence requirements may differ.

Industrial Sectors surveyed	Large companies		SMEs	
	Initial costs	Recurrent costs	Initial costs	Recurrent costs
Manufacture of basic metals	0.001%	0.000%	0.022%	0.010%
Manufacture of computer, electronic and optical products	0.005%	0.002%	0.024%	0.009%
Manufacture of electrical equipment	0.005%	0.002%	0.076%	0.035%
Manufacture of fabricated metal products, except machinery &	0.015%	0.011%	0.382%	0.345%
Manufacture of machinery and equipment n.e.c.	0.002%	0.001%	0.011%	0.002%
Manufacture of motor vehicles, trailers and semi-trailers	0.008%	0.006%	0.020%	0.010%
Manufacture of other transport equipment	0.003%	0.002%	0.037%	0.004%
Manufacture of rubber & plastics products	0.005%	0.004%	0.043%	0.024%
Other manufacturing	0.020%	0.012%	0.029%	0.008%
Repair and installation of machinery and equipment			0.026%	0.005%
Retail trade, except of motor vehicles & motorcycles	0.000%	0.000%	0.131%	0.026%
Specialised construction activities			0.026%	0.011%
Wholesale trade, except of motor vehicles & motorcycles	0.001%	0.000%	0.191%	0.150%
Overall	**0.010%**	**0.007%**	**0.154%**	**0.127%**

Table 2: Cost equivalents (% of turnover) of complying with due diligence

From a dynamic perspective it is expected that the due diligence participation rate of downstream companies will increase over time as the market provides incentives for certification, i.e. downstream operators place a preference or a premium on certified final and intermediate products, in addition to the European Commission and Member State public procurement incentives envisaged under the measures accompanying this option.

The costs of downstream companies taking up due diligence are expected to be only a small fraction of total costs of producing a good, so it is likely that these costs will be absorbed by companies and not passed on to the final consumer in the form of a price increase. However, if the costs of due diligence certification are passed on to consumers, a price differential may emerge for certified products over non-certified ones, since not all consumers may be willing to pay higher prices for certified products. Once the number of participants in this scheme would be above a certain critical mass, price premiums are expected to disappear. Complementary awareness-raising initiatives (by NGOs in particular) are useful in this regard. Studies in the economic literature highlight the point of consumers' willingness to pay higher prices for certified products[37]. According to a 2010 survey commissioned by the European Commission on international trade, a significant proportion of Europeans (about 40%) are willing to pay more for products which help the environment, respect social standards, help developing countries or which are made in their countries.[38]

With respect to the security of supply of the minerals within the scope of this Option, the certificate provides EU importers legitimacy as to their imports of ores from conflict zones. This is notably important for tungsten that is on the EU critical raw material list[39] and that is found in some conflict zones.

Finally, under this option EU downstream companies are expected to be able to serve better their US clients' due diligence requests which might avoid them switching to other compliant suppliers as the EU Regulation is supportive of the efforts mandated by the US DFA and helps to generate the required due diligence information[40].

– *Social and environmental impact*

The impact on EU jobs is expected to be limited given that the cost of compliance represents only a small share of the total costs of the EU importers' companies, which are not expected to change hiring practices but potentially allocate existing workforce to the task of assuring compliance. Furthermore, limited job creation is expected in the areas of audit, consulting and training etc.

In view of its effectiveness and the expectation by stakeholders that an EU initiative could encourage demand for ethically and legitimately sourced minerals as it would create a level playing field for conflict and non-conflict regions[41], this option is expected to contribute to reduce the

[37] Jensen, Kimberly L., Jakus, Paul M., English, Burton C. and Menard, R. Jamey, (2004), Consumers' Willingness to Pay for Eco-Certified Wood Products, Journal of Agricultural and Applied Economics, 36, issue 03; and Janssen, M. and Hamm, U., (2011), Consumer Willingness to Pay for Organic Certification Logos, Certcost Project Working Paper, European Commission 7th Framework Programme.

[38] http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146945.pdf.

[39] http://ec.europa.eu/enterprise/policies/raw-materials/critical/

[40] It should be noted that the US DFA Section 1502 creates obligations for US-listed companies whereas the proposed EU Regulation targets importers of the same minerals and metals which should facilitate US DFA compliance. The scope of the latter is limited to the DRC and its neighbouring countries whereas the EU Regulation is global in scope and targets the armed groups and security forces in line with Annex II of the OECD Guidance.

[41] As the proposed EU Regulation targets the minerals in scope regardless of origin.

funding of armed groups from proceeds of minerals' extraction and the distortions in the minerals markets from the Great Lakes Region. This option is effective in that it gives a positive signal to business whose decisions to source or not in conflict-affected areas have a direct impact on demand for minerals. As reported by respondents to the public consultation positive impacts can be expected in the region including increased governments revenues though taxation and reduced corruption, formalized mining sectors, more sustainable development and environment, increased prospects for private investment and jobs in mining communities that in turn stimulate local economies. This potentially can translate into improved public services and benefits for local communities depending on mineral extraction and trade.

As shown in the study commissioned by DG Trade, 60% of the 330 respondents believe that an EU due diligence scheme would bring political and social stability for local operators and communities in conflict regions. Moreover, 7% of those respondents consider an EU scheme to contribute to strengthen environmental aspects. 22% of the respondents believe that an EU due diligence scheme would result in further impoverishment and unemployment of local operators and communities in conflict zones. Also, 18% considers that an EU initiative could create an embargo and reduced economic activity in the regions concerned. Finally, respectively 18% and 16% of the respondents consider that an EU initiative would create increased bureaucracy for companies and governments and more corruption. The outcome of the study in this respect could also bear relevance for the assessment of the other options.

Some respondents to the public consultation also expect that an EU initiative would promote conflict-free economies and reduce financial flows to warring parties, changing conflict dynamics and potentially reducing conflict.

– *Administrative impact for European Commission and Member State authorities*

The additional costs compared to option 1 incurred by the European Commission and Member State administrations are estimated[42] as follows:

The Regulation would require 1.5 full-time equivalents (FTE) at the European Commission to deal with the implementing guidance. Additional financial resources required are estimated at €200,000 for one external study on the implementing guidance; and at €60,000 for the cost of management committee meetings twice a year with Member States.

In each of the EU Member States, the scheme would require one FTE in designated control bodies to deal with the coordination of ex-post compliance controls and inspections.

– *ICT impact*

The ICT implications of the proposed Regulation on the concerned companies and the Members States' responsible authorities present low implementation complexity at low budget. As regard the EU Institutions, no budgetary impact is foreseen to operationally support the Regulation; should the ICT providers of the EU Institutions decide to shift all or some of the cost to their customers, a slight increase in the prices could be expected. The list of responsible smelters/refiners will most probably be hosted and operated by the EU Institutions preferably by the means of a, web-based information system that, with a moderate staff input, should collect, retrieve, update, publish data and produce statistics reports. However, these are all generic functionalities supported already by

[42] Estimates are based on information derived from experience under the EU Timber Regulation.

existing solutions within the Commission and their re-use should result in negligible fees or costs in terms of staff time. It should be highlighted that whatever decision to proceed with a new IT development (which would practically mean additional cost and longer implementation time) should first receive the approval of the EU Institutions' governance bodies which will examine why the business needs cannot be fulfilled by re-using existing solutions.

Finally, it has to be noted that the ICT implications as presented in this options are generally applicable to Options 4, 5 and 6 that follow.

– *Stakeholders' views of the option*

The responses received during the public consultation confirm that failure to undertake due diligence at an early stage in the supply chain significantly complicates attempts further downstream for operators interested in, or required to perform due diligence. Given the supply chain difficulties that downstream companies face (see section 2.4) many (43) business respondents agree that any EU initiative should focus on the upstream. Of these, over half specify that certification of smelters/refiners would enable companies to implement an effective due diligence scheme.

A significant number (15) of business stakeholders in the public consultation suggested that a list of certified global smelters/refiners would help overcome practical difficulties in the identification of smelters/refiners. It would, therefore, be a support for the work of those downstream companies that want to give preference to trustworthy smelters/refiners in their supply chain they can rely on.

Those EU companies importing the minerals and metals concerned and already applying the OECD Guidance would therefore be in a position to declare compliance without additional efforts. A large number of companies would welcome an initiative that provides maximum recognition of existing initiatives, as highlighted by 35 business stakeholders during the public consultation. Another 20 companies and trade organisations expressed a wish for mutual recognition of schemes between the US and the EU.

Only a low proportion of global smelters/refiners currently exercise due diligence. In the public consultation, companies repeatedly suggested that if and when a sufficiently large list of certified smelters/refiners becomes available, they would gradually be able to redirect sourcing to those certified smelters/refiners. This approach aims at progressively building a critical mass of responsible smelters/refiners.

5.5 Option 4 - Regulation establishing obligations under an "EU responsible importer" certification based on the OECD Guidance - MANDATORY

– *Effectiveness of the option*

The effectiveness of this option achieving the operational objectives set out in section 3, are assessed as follows:

OO1: *provide enhanced visibility and transparency for due diligence practices (and level of compliance) of EU and global smelters:* this option contributes to this objective through the list of responsible smelters/refiners established under the Regulation. Since the participation of EU importers is mandatory it is expected that a higher number of EU and global smelters/refiners as compared to option 3 will be included on the list and more transparency would be injected into the system.

OO2: *raise awareness of due diligence, ethical dimensions, and the importance of improving due diligence compliance with governments of main non-EU smelters/refiners:* this option, through the government to government actions (honest broker, existing policy dialogues) contributes to this objective.

OO3: *empower downstream users by providing a mechanism to identify due diligence compliant operators (including smelters), and thus to facilitate switching of suppliers:* this option does address this issue by providing a certificate to EU importers and through the list of responsible smelters/refiners. Compared to Option 3 a higher number of importers and smelters/refiners might be captured under this option since all EU importers would be required to demonstrate due diligence for the benefit of a higher number of downstream operators.

OO4: *Introduce certainty and transparency in the supply chain nearer to downstream users:* this option does address this issue by providing a certificate to EU importers and through the list of responsible smelters/refiners. Compared to Option 3 a higher number of importers and smelters/refiners might be captured under this option.

OO5: *promote increased awareness of due diligence and ethical dimensions among EU operators:* this option through actions outlined for the NCPs and EEN contributes to this objective. The list of responsible smelters/refiners contributes to this as well.

OO6: *create additional financial incentives in order to promote/support due diligence practices among downstream users:* the EU public procurement measures contribute to this objective.

OO7: *support the uptake of OECD Guidance among smelters/refiners willing to source in conflict-affected areas:* the financial assistance to the existing OECD activities in particular supports to EU and global smelters/refiners sourcing responsibly in conflict areas contribute to this objective.

OO8: *support demand from conflict-affected areas: facilitate switching by EU operators to due diligence compliant smelters/refiners sourcing in those areas:* this objective is not expected to materialise, possibly worsen the situation, since under this mandatory option some disengagement of companies may occur as sourcing from conflict zones would represent an additional administrative burden.

Overall the effectiveness of this option achieving the specific objectives set out in section 3 is high as all of them are met. In order to allow for a detailed comparison between the options the following assessment is carried out:

SO1: with the list and other measures in place, and based on its mandatory character, it might be expected that a large proportion of EU smelters/refiners as they also directly import will respond by carrying out due diligence. Similarly, it can be expected that the number of global smelters/refiners taking up due diligence will increase somewhat faster as compared to option 3. The level of public accountability (SO2) for due diligence performance (and level of compliance) by EU and global smelters will raise as this option is mandatory and as they clearly have an interest to get on the list and being able to supply EU downstream operators.

SO3: the number of entities on the list increases the ability of EU downstream companies to successfully identify smelters/refiners and improves their bargaining position (SO4) on due diligence vis-à-vis companies further back in the supply chain.

SO5: this option improves awareness of due diligence, of the importance of due diligence compliance, and of ethical dimensions throughout the supply chain, both inside and outside EU.

SO6: this option increases the take-up (performance) of due diligence practices by downstream companies. In combination with the list the Public procurement measures are expected to act as strong incentives for downstream companies to take up due diligence.

As a result this option improves the ability of EU downstream operators to comply with existing due diligence frameworks, including US DFA. It also contributes to the reduction of funding of armed groups from proceeds of minerals' extraction and it is expected to possibly worsen the market distortion for minerals from the Great Lakes Region caused by profoundly risk averse sourcing decisions.

– *Economic impacts including on SMEs*

The impact of a mandatory self-certification scheme on economic agents in the supply chain of 3Ts and gold might be different from that of a voluntary scheme. The working assumption of this impact assessment is that the more binding the Regulation, the more additional distortions may emerge compared to those described in option 3.

While the participation rate of EU firms can be increased with a mandatory self-certification scheme, this option does not necessarily mean that the overall benefits would be maximised. If the costs of such an undertaking override the benefits, companies will take appropriate decisions. Those EU importers unable to adequately address the challenges in a timely way may potentially lose market share to more efficient EU competitors or be displaced. This may also trigger an incentive for some EU downstream product manufacturers relying on the import of minerals/metals to avoid buying EU certified materials but rather shift their production outside the EU where due diligence requirements do not exist. If it is not mitigated properly through incentives (e.g. public procurement) EU competitiveness in these sectors could be affected.

Although these risks exist, one should bear in mind the relatively limited costs associated with due diligence compliance as shown in Table 2. According to the industry survey conducted in the external study commissioned by DG Trade, a majority of respondents face marginal to manageable costs which may or may not be passed on to downstream customers. The resulting market distortion and incentive for EU businesses to somewhat fundamentally review structural business relations and patterns may only involve a minority of operators.

With respect to the security of supply of the minerals within the scope of this Option, the certificate provides EU importers legitimacy as to their imports of ores from conflict zones. This is notably important for tungsten as discussed in Option 3. However, the mandatory self-certification could result in importers avoiding sourcing from conflict zones which would be the least risky and burdensome way of compliance. This could diminish some of the security of supply of the minerals in scope.

Finally, under this option EU downstream companies are expected to be able to serve better relative to Option 3 their US clients' due diligence requests which might avoid switching them to other compliant suppliers: due to the mandatory character of the scheme by nature it involves a higher number of EU upstream operators relative to the voluntary option 3.

– *Social and environmental impact*

As regards EU jobs, this Option - despite the limited cost associated with due diligence - could result in some undesired economic impact on EU operators notably SMEs and their trading and production facilities in the EU; it might likewise affect to a certain extent the employment situation.

A mandatory approach may incentivise companies to seek the least risky and burdensome way of complying – by avoiding sourcing from conflict–affected and high-risk areas. It is expected that initially such areas will experience a relative fall in demand for their 3Ts and gold; as well as prices below the normal market price. Re-establishing demand for minerals from those regions will depend heavily on the readiness of companies to re-direct their sourcing to conflict-affected and high-risk areas, which the Regulation would allow provided due diligence is undertaken.

Some respondents to the public consultation also expect that an EU initiative could create negative social impacts similar to the consequences of a de facto embargo resulting from disengagement from conflict zones. This could lead to an increase in conflict mineral smuggling into neighbouring regions.

Negative impacts on the environment could also be triggered to the extent that operators replacing international companies that have redirected their sourcing elsewhere are less environmentally responsible. However, this applies only to companies with direct business links to or that are physically established in conflict and high-risk areas.

On balance, the compulsory scheme is expected to produce some possible negative impacts on local livelihoods, and may increase the good governance challenges in conflict-affected and high-risk regions especially in the early years of its existence when perceived costs may inhibit compliance. Falls in mineral exports would imply reduced revenues for the local/central governments and as well as a lower chance of economic and social development in the affected regions not to mention worsening working conditions in the mines.

To enhance the positive impact of such an option, stakeholders in the EU public consultation indicated that, in addition, considerable capacity building measures in the affected regions would be required in order to increase the supply of certified minerals from the regions, and thus mitigate the impact on local livelihoods.

– *Administrative impact for European Commission and Member State authorities*

The additional costs compared to Option 1 incurred by the European Commission and Member State administrations are estimated as follows:

The Regulation would require two FTEs at the European Commission to deal with the implementing guidance. Additional financial resources required are estimated at €200,000 for one external study on the implementing guidance; and at €120,000 for the cost of management committee meetings four times a year with Member States.

In each of the EU Member States, the scheme would require 1.5 FTEs in designated control bodies to deal with the coordination of ex-post compliance controls and inspections.

– *Stakeholders' views of the option*

Similarly to the views of stakeholders presented under Option 3, business respondents advocate that any EU initiative should focus on the upstream of the supply chain. However, a majority of 49% of the respondents to the public consultation disagree that an EU initiative should include a degree of obligation on business operators. For the business sector, almost 80% of trade organisations and almost 62% of companies are against a mandatory initiative. Specifically large companies lead this trend with 60% of them willing to avoid any mandatory provision. SMEs are open to a certain degree of obligation with 48% of medium-sized companies and 52% small companies in favour. As

to the civil society, over 90% of NGOs and citizens are in favour of an obligation for business actors.

5.6 Option 5: Directive establishing obligations for EU-listed companies based on the OECD Guidance

– *Effectiveness of the option*

The effectiveness of this option achieving the operational objectives set out in section 3 are assessed as follows:

OO2: *raise awareness of due diligence, ethical dimensions, and the importance of improving due diligence compliance with governments of main non-EU smelters/refiners*: this option, through the government-to-government actions (honest broker, existing policy dialogues) contributes to this objective.

OO5: promote increased awareness of due diligence and ethical dimensions among EU operators: this option through actions outlined for the NCPs and EEN contributes to this objective.

OO6: *create additional financial incentives in order to promote/support due diligence practices among downstream users:* the EU public procurement measures contribute to this objective.

OO7: *support the uptake of OECD Guidance among smelters/refiners willing to source in conflict-affected areas:* the financial assistance to the existing OECD activities in particular supports to EU and global smelters/refiners sourcing responsibly in conflict areas contribute to this objective.

OO8: *support demand from conflict-affected areas: facilitate switching by EU operators to due diligence compliant smelters/refiners sourcing in those areas:* this objective is not expected to materialise since under this proposed Directive some disengagement of companies avoiding sourcing in conflict zones may occur as this would lessen the additional burden.

The other operational objectives (1, 3 and 4) are not addressed by this option as EU-listed companies are typically not situated at one specific point in the supply chain, but mainly operate in the downstream part of the mineral supply chain. They are therefore unlikely to effectively reduce the risk present in the upstream part of the supply chain. The implementation challenges described in the problem definition would therefore not be solved (i.e. the problem for downstream companies of successfully identifying and exercising leverage on the smelters/refiners, and/or for smelters/refiners of identifying the source of the minerals).

Overall the effectiveness of this option achieving the specific objectives set out in section 3 is not very high as only a few are addressed. In order to allow for a detailed comparison between the options the following assessment is carried out:

SO5: this option improves awareness of due diligence, of the importance of due diligence compliance, and of ethical dimensions throughout the supply chain, both inside and outside EU.

SO6: this option attempts to increase the uptake (performance) of due diligence practices by downstream companies. As under this option there are no effective tools in place to support downstream operators taking up due diligence, the extent to which they might be successful remains uncertain.

SO7: this option does not offset/reduce the adverse commercial incentive created or exacerbated by US DFA.

As a result, this option improves the awareness of due diligence among EU downstream companies, however it does not contribute to the implementation challenges to take up the due diligence effectively. This is because downstream companies are further removed from the entry point of minerals into the EU market, sometimes with dozens of suppliers in between. The further the position of the company in the supply chain, the higher the cost of implementing due diligence. As such, the reduction of funding of armed groups from proceeds of minerals' extraction is not expected to be effectively addressed. The option does not address the market distortion for minerals from the Great Lakes Region some disengagement from the region cannot be excluded.

– *Economic impact, including on SMEs*

This option would initially apply to an estimated number of roughly 1,000 EU-listed companies out of a total of 7,959 EU-listed companies in the relevant industry sectors; that is to say, companies in the relevant industry sectors which are thought to use tin, tantalum, tungsten and gold in their supply chains (Table 2 and Annex I/7).

This option would indirectly affect up to 880,000 EU downstream companies in the same industry sectors: that is to say, those companies using tin, tantalum, tungsten and gold that potentially are in the supply chains of the roughly 1,000 EU-listed companies that would be directly affected.

About 99% of these downstream companies are small and medium-sized enterprises (SMEs). The number of companies identified as being potentially affected represents a ceiling, since there are no accurate statistics available on the actual number of companies using specifically the 3Ts and gold in the selected industry sectors (Annex I/7). Based on the due diligence costs summarised under option 3, the total cost incurred by all EU downstream companies potentially concerned (excluding the estimated 20 to 30% of EU companies that already exercise due diligence on request of their US clients) is estimated at **€8.4 billion** initially, and approximately **€1.7 billion** on a recurrent annual basis thereafter. It should be stressed that these costs are mainly attributable to carrying out the tasks concerning due diligence and not to reporting obligations.

While Options 3 and 4 apply only to the subset of EU companies that are involved in the direct importation of 3Ts and gold in the form of mineral ores and metals, Option 5 would affect a much larger number of downstream companies, i.e. EU-listed companies that import products that contain these minerals in either raw or processed form. Given the sheer number of companies involved and the length of the supply chains concerned, this option could easily become unworkable. The excessive burden implied by this option on EU industries that use 3Ts and gold as an input into their production will probably exceed the benefits from imposing such a stringent measure (when compared for instance with Option 3).

The risk of EU companies delocalising as a result of the requirements introduced under this option is assessed to be potentially small as the cost represents only a fraction of the total cost of EU downstream companies. Nevertheless, the possible target population (1000 companies) is wider than for Options 3 and 4.

As to the security of supply of the aforesaid minerals, since the Option is compulsory it might be expected that downstream companies may seek the least burdensome and lower-risk risk form of compliance: i.e. by avoiding sourcing from conflict-affected regions which could diminish some of

the security of supply of EU companies. However, this impact might be considered less pronounced than under Option 4 because of lengthy supply chains and the distance from upstream entities.

– *Social and environmental impact*

As regards EU jobs, since this option is not expected to have only a small impact on delocalisation and as due diligence costs are relatively limited, a noticeable impact on the overall employment situation in the EU is not expected. There might be some limited job creation in the areas of audit, consulting and training.

Since the option is compulsory it might be expected that downstream companies may seek the easiest, least risky and burdensome way of complying: i.e. by avoiding sourcing from conflict-affected regions. Although because of the lengthy supply chains and the distance from upstream entities this impact might be considered less than under Option 4. However, as a consequence these regions potentially could experience a fall in demand and prices below the global norm, for their 3Ts and gold. Re-building demand for minerals from the affected regions would depend heavily on the readiness of companies to source in the conflict areas.

Negative impacts on the environment potentially could also be triggered: following the possible trend as described in the previous paragraph, but mainly in the case of companies with direct business links to or a physical presence in conflict- and high-risk areas. Indeed, mineral flows could be diverted towards other companies with lower environmental standards and norms, and thus result in negative impacts on the environment.

Some respondents to the public consultation also expect an EU initiative could create negative social impacts similar to the consequences of a de facto embargo resulting from disengagement from conflict zones. This could lead to an increase in conflict mineral smuggling into neighbouring regions.

On balance, the proposed Directive may produce some undesirable impacts in conflict regions as described Option 4 but to a lesser extent.

To enhance the positive impact of such an option, stakeholders in the EU public consultation indicated also that considerable capacity building measures in the affected regions would be required in order to increase the supply of certified minerals from the regions, and thus mitigate the impact on local livelihoods.

– *Administrative impact for European Commission and Member State authorities*

The additional cost compared to option 1 incurred by the different EU and Member States' administrations are estimated as follows:

The scheme would require two FTEs at the Commission to deal with the implementing guidance. Additional financial resources required are estimated at €300,000 for one external study on the implementing guidance.

In each of the EU Member States, the scheme would require two FTEs in designated control bodies to deal with the coordination of ex-post compliance controls and inspections.

– *Stakeholders' views of the option*

This option has been extensively criticised by stakeholders throughout the information process in particular in light of the consequences deriving from the implementation of US DFA. Although considered by a number of civil society organisations as the most effective - albeit imperfect - means of addressing the issue of the financing of armed conflicts, a majority of stakeholders views the disclosure approach for EU listed companies as a system that would generate disproportionately high costs for EU downstream businesses while strengthening the tendency to avoid sourcing from difficult regions.

From the public consultation, there emerged a sub-category, namely of 44% of US-listed company respondents, that are in favour of a mandatory EU initiative.

5.7 Option 6 – Prohibition of imports when EU importers of ores fail to demonstrate compliance with the OECD Guidance – import ban

– *Effectiveness of the option*

The effectiveness of this option achieving the operational objectives set out in section 3, are assessed as follows:

OO2: raise awareness of due diligence, ethical dimensions, and the importance of improving due diligence compliance with governments of main non-EU smelters/refiners: the international agreement will by definition be instrumental in achieving this objective. In addition, this option, through the government to government actions (honest broker, existing policy dialogues) contributes to this objective.

OO4: introduce certainty and transparency in the supply chain nearer to downstream users: this option does address this issue by having in place a system of export and import certificates for minerals which downstream operators can rely on for their due diligence.

OO5: promote increased awareness of due diligence and ethical dimensions among EU operators: this option through the international agreement and actions outlined for the NCPs and EEN contributes to this objective.

OO6: create additional financial incentives in order to promote/support due diligence practices among downstream users: the EU public procurement measures contribute to this objective.

OO7: support the uptake of OECD Guidance among smelters/refiners willing to source in conflict-affected areas: the financial assistance to the existing OECD activities in particular supports to EU and global smelters/refiners sourcing responsibly in conflict areas contribute to this objective.

The other operational objectives (1, 3 and 8) are not addressed by this option.

Overall the effectiveness of this option achieving the specific objectives is assessed as follows:

SO1: it might be expected that over time the proportion of EU and global smelters/refiners performing due diligence will gradually increase but subject to the participation of smelter/refiner countries in the agreement.

SO5: this option improves awareness of due diligence, of the importance of due diligence compliance, and of ethical dimensions throughout the supply chain, both inside and outside EU.

SO6: this option increases the uptake (performance) of due diligence practices by downstream companies as the international agreement in combination with the public procurement measures are expected to act as strong incentives for downstream companies to take up due diligence.

SO7: this option may provide a certain incentive to offset/reduce the adverse commercial incentive created or exacerbated by US DFA when there is a critical mass of Great Lakes Region countries participating in the agreement.

As a result this option highly depends on whether an agreement is achievable in the foreseeable future, and subsequently on the number of participating countries to the international agreement with minerals from conflict zones in scope. If broad participation can be attained the effectiveness to reduce the financing of armed groups by mineral proceeds in conflict zones is expected to be high. Implementation challenges by EU downstream operators are addressed to a certain extent, however certification by producer countries could further mitigate the market distortion. It is not the most timely option given that the problem as described above needs to be handled now.

– *Economic impacts, including on SMEs*

The cost for EU imports is expected to be comparable to the cost outlined under Option 3. However, failure to comply will the certification requirements as set out in the international agreement would result in an outright ban on the imports concerned.

Moreover, by limiting the availability of imported non-certified products, Option 6 could potentially lead to an increase in price for certified minerals. Such potential price increase could create market incentives that are very different from those described under Options 3 and 4 – where consumers can place a price premium on certified products which subsequently creates dynamic incentives for downstream and upstream producers to supply certified products.

As to the compliance challenge faced by EU downstream companies under the US Dodd-Frank Act, an international agreement to which both the EU and US would be signatories would certainly facilitate their reporting obligations and support their market position in the US.

Delocalisation of smelters/refiners may potentially be an issue if important mineral consuming countries were not to participate or only to a limited extent in the international agreement.

Finally, the security of supply of the minerals within the scope of this Option might be affected to the extent that the exclusion of important producing countries could affect the EU market relative to some critical raw materials.

– *Social and environmental impact*

The impact on the employment situation in the EU may potentially be an issue if important mineral consuming countries were not to participate or only to a limited extent in the international agreement as EU smelters/refiners might potentially delocalise production to such regions.

An international agreement, should have a positive impact on addressing the identified problems (i.e. reducing the financing of armed conflicts through mineral proceeds in conflict areas) because it would promote greater reliance on intervention by governments to ensure that due diligence is exercised in the upstream part of the supply chain, where the problems exist.

– *Administrative impact for European Commission and Member State authorities*

The additional cost compared to option 1 incurred by the different EU and Member States' administrations are estimated as follows:

The scheme would require three FTEs at the Commission to deal with the negotiation of an international agreement, as well as with the implementing guidance; and one FTE to deal with outreach towards third countries. Additional financial resources required are estimated at €300,000 for one external study on the implementing guidance; and at €120,000 for the cost of management committee meetings four times a year with Member States. In addition, the cost of handling stockpiled shipped goods that had been refused entry should also be included, though the amount involved is difficult to estimate at this point.

In each of the EU Member States, the scheme would require 1.5 FTEs in designated control bodies to deal with the coordination of ex-ante compliance controls, inspections, and handling of stockpiled shipped goods that had been refused entry.

– *Stakeholders' views of the option*

Similarly to the views of stakeholders presented under Option 4, business respondents advocate that any EU initiative should focus on the upstream of the supply chain. Like outlined in Option 4, a majority of 49% of the respondents to the public consultation disagree that an EU initiative should include a degree of obligation on business operators. For the business sector, almost 80% of trade organisations and almost 62% of companies are against a mandatory initiative. Specifically large companies lead this trend with 60% of them willing to avoid any mandatory provision. SMEs are open to a certain degree of obligation with 48% of medium-sized companies and 52% small companies in favour. As to the civil society, over 90% of NGOs and citizens are in favour of an obligation for business actors.

6. COMPARING THE OPTIONS

In light of the findings of the impact assessment process, certain conclusions can be drawn in relation to the effectiveness of each of the identified options in achieving the general, specific and operational objectives. Additionally, we need to compare the economic, social and environmental impacts of the most effective options identified. Tables 3 to 6 present an overview.

– *Effectiveness*

Policy option 1 which is a collection of measures outlined in an EU Communication is among the least effective options in achieving the objectives set.

Policy option 2 which is an extension of Option 1 reinforced by a Council Recommendation is on the same level in terms of effectiveness relative to Option 1.

Policy option 3 consisting of a voluntary self-certification combined with a list of smelters/refiners, in addition to the set of measures of Option 1 is one of the most effective means of achieving the set objectives.

Policy option 4 establishing a mandatory self-certification scheme for EU importers including a list of smelters/refiners in addition to the set of measures of Option 1 would be equally effective relative to Option 3 but would also generate negative impacts and not address one of the key problems – the market distortion in the Great Lakes Region.

Policy option 5, establishing obligations for EU-listed companies, in addition to the set of measures of Option 1 is equivalent to Options 1 and 2 in terms of effectiveness.

Policy option 6 applying an import ban through an international agreement including export and import requirements of minerals is mid-way in terms of effectiveness between the least effective Options 1, 2 and 5, and most effective 3 and 4. It should however be noted that setting up an international agreement requires a lengthy process with an uncertain outcome. There is presently no certainty that such an agreement can be achieved in the foreseeable future and the described problems, in particular the current difficulties faced by EU supply chain operators, need to be addressed now. As a result Options 3 and 4 should be compared in terms of their broader impact.

– *Broader impacts (economic, social and environmental)*

Comparing policy options 3 and 4 in terms of their administrative burden for the targeted importers, most of them SMEs, Option 3 is assessed to be the less burdensome as it affects those companies that decide to opt for self-certification based on their own cost-benefit analysis. Contrary to this, Option 4 imposes requirements on importers (Table 4).

In terms of EU downstream users' ability to respond to clients' due diligence request including US clients, Option 4 is expected to serve better those requests since the mandatory character of the scheme by nature involves a higher number of EU upstream operators relative to the voluntary option 3. Nevertheless, there is a risk that without addressing the market distortion, most of the extra due diligence thus generated could amount to "green washing", with operators meeting corporate social responsibility goals without sourcing in conflict-affected areas.

As far as the potential for delocalisation of EU importers is concerned, we need to refer again to the voluntary nature of Option 3 where this risk has been assessed inferior relative to Option 4.

When comparing Options 3 and 4 in terms of potential impact on EU employment, the assessment points to some possible higher undesired impact of Options 4.

Concerning the expected social impacts on the livelihood of people and the environment in conflict zones, it might be expected that Option 3 delivers the better results relative to Option 4.

Effectiveness in meeting OO and SO objectives	Base line	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
OO1 – enhance visibility/transparency of smelters/refiners' due diligence practices	0	0	0	+	++	0	0
OO2 – raise awareness of due diligence with governments in non-EU States	0	+	+	+	+	+	++
OO3 – empower downstream operators to facilitate switching of suppliers	0	0	0	+	++	0	0
OO4 – introduce certainty/transparency in the supply chain nearer to downstream	0	0	0	+	++	0	++
OO5 – promote increased awareness of due diligence among EU operators	0	+	+	++	++	+	++
OO6 – financial incentives to promote due diligence for downstream operators	0	+	+	+	+	+	+
OO7 – support the uptake due diligence among smelters/refiners willing to source from conflict zones	0	+	+	++	+	+	+
OO8 – support demand from conflict zones: facilitating EU operators switching	0	0	0	+	– –	–	0
SO1 – increase the proportion of smelters /refiners conducting due diligence	0	0	0	+	++	0	+
S02 – raise the level of public accountability by smelters/refiners	0	0	0	+	++	0	0
SO3 – increase the ability of downstream users to identify smelters/refiners	0	0	0	+	++	0	0
SO4 – improve the bargaining position of downstream users vis-à-vis upstream S04	0	0	0	+	++	0	0
SO5 - improve awareness of due diligence	0	+	+	++	++	+	++
SO6 – increase the uptake of due diligence by downstream users	0	+	+	++	++	+	++
SO7 – offset/reduce adverse commercial incentives for Great Lakes Region	0	+	+	++	– –	–	+
Overall effectiveness in meeting OOs and SOs	0	+	+	+++	+++	+	++

Table 3

Broader Impacts	Base line	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
Economic							
• Administrative burden	0	0	0	–	– –	– – –	–
• Burdens on SMEs	0	0	0	–	– –	– – –	–
• Responding to clients' due diligence needs	0	–	–	+	++	–	++
• Security of supply	0	0	0	+	–	0	–
• Delocalisation impacts	0	0	0	0	–	–	–
Social							
• EU employment	0	0	0	0	–	0	0
• Livelihood in conflict zones	0	0	0	+	– –	–	0
Environmental	0	0	0	+	–	–	0
Consistency with overarching EU objectives	0	+	+	+++	++	0	+
Overall broader impact	0	+	+	++	–	–	+

Table 4

	Base line	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
Overall assessment	**0**	**+**	**+**	**+++**	**+**	**0**	**++**

Table 5

Finally, in terms of administrative impact, Table 6 compares the levels of administrative cost imposed by each of the options to the European Commission, EU Member States and in relation to the NCPs and the Enterprise Europe Network. The costs of public authorities differ for each of the options as a result of the different compliance control mechanisms of the different regulatory schemes.

Option	EC	Per Member State	NCPs & EEN	EU financial assistance to the OECD	European Commission procurement	MS procurement
1	1 FTE	0.2 FTE	0.05 FTE	€200,000	€ 7,000	0.014% of total budget
2	1 FTE	0.2 FTE	0.05 FTE	€200,000	€ 7,000	0.014% of total budget
3	2.5 FTE + €260,000	1.2 FTE	0.05 FTE	€200,000	€ 7,000	0.014% of total budget
4	3 FTE + €320,000	1.7 FTE	0.05 FTE	€200,000	€ 7,000	0.014% of total budget
5	3 FTE + €300,000	2.2 FTE	0.05 FTE	€200,000	€ 7,000	0.014% of total budget
6	4 FTE + €420,000	1.7 FTE	0.05 FTE	€200,000	€ 7,000	0.014% of total budget

Table 6

6.1 Preferred option

In summary, Option 3, which includes the set of measures of Option 1, is the most favourable option to reach the objectives taking the impact on EU operators, third-countries and the authorities at Member States and EU-level into account. It bests responds to the operational imperative to develop an EU framework for responsible sourcing that is both effective and reasonable.

As far as consistency with other EU policies is concerned, Option 3 appears to be the best. Notably, it improves the ability of EU downstream operators to comply with existing due diligence frameworks, including US DFA, and is expected to contribute to the corporate social responsibility objectives of the EU enterprise policy. By contrast, Options 1, 2, 5 and 6 contribute to a lesser extent.

As Option 3 is expected to contribute to the reduction of financing of armed groups from proceeds of minerals' extraction and trade in conflict affected areas, and to reduce the market distortion for minerals from the Great Lakes Region it supports likewise the EU foreign policy and development objectives that contribute to reconstruction, improved governance and social cohesion based on the countries resource wealth. This is attained to a lesser extent by the other options.

7. MONITORING AND EVALUATION

In light of the policy objectives set out in section 3, the following arrangements are proposed in order to set up an appropriate monitoring and evaluation framework.

7.1 Monitoring

The Commission will ensure that Member States implement efficiently the requirements of the proposed regulation. Monitoring of implementation will be carried out in cooperation with Member States. In compliance with the principle of subsidiarity, the relevant information should be gathered primarily by Member States. Periodic reporting will be required in order allow for appropriate evaluation of the implementation. The Commission will inform the European Parliament and the Council regularly on the implementation of the new initiative.

Benchmarks/indicators for assessing the effectiveness of the proposed Regulation:

- Evolution of the number of smelters/refiners on the EU list relative to the total number of smelters/refiners, including the proportion of smelters/refiners sourcing in conflict-affected and high-risk areas

- Evolution of the number of operators exercising due diligence on the basis of the OECD Guidance, identifying in particular:

    a. EU downstream companies, including smelters/refiners
    b. Global smelters/refiners
    c. (non-) certified EU importers

- Evolution of European Commissions' and Member States' public procurement contracts that include performance clauses on due diligence

- Evolution of the level of financial commitment provided to the OECD for project funding

- Evolution of the level of relevant mineral exported (quantities and value) from conflict zones, including from the Great Lakes Region

- Evolution of the level of relevant minerals and metals imported (quantity and value) into the EU originating from conflict zones, including the Great Lakes Region

7.2 Evaluation

The Commission should undertake an intermediate evaluation of its new initiative within three years of its adoption assessing the extent to which its results are consistent with the objectives set. The evaluation results will be used for decision-making needs on the future of the policy, and for amendments to the regulatory framework notably by making it mandatory, if appropriate. The Commission will communicate the evaluation results to the European Parliament and the Council.