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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 6 March 2014

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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Subject: COMMISSION STAFF WORKING DOCUMENT  
IMPACT ASSESSMENT  
PART 2 (Annex I and II to the 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

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Delegations will find attached document SWD(2014) 53 final - PART 2/7.

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Brussels, 5.3.2014  
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PART 2/7

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**IMPACT ASSESSMENT**

**PART 2 (Annex I and II to the Impact Assessment)**

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**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**

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## **1. EU initiatives on transparency and natural resources**

The EU pursues the following initiatives in relation to natural resources, financial transparency and conflict-sensitive management of international diamond trade and forestry as indicated in this section.

### – *EU Kimberley*

The Kimberley process (KP) is based on an international agreement that brings together 75 diamond producing, trading and manufacturing countries, including the 28 EU Member States that are represented by the European Commission. The KP Certification Scheme (KPCS) was set up to stem the flow of conflict diamonds used by rebel movements to finance wars against legitimate governments and regulates international diamond trade through a set of minimum requirements to enable its members to certify shipments of rough diamonds as conflict free. In the EU the KPCS is implemented through Regulation 2368/2002 which sets out the rules applicable for imports and exports of rough diamonds.

### – *Existing due diligence requirements in the EU*

The EU FLEGT (Forest Law Enforcement, Governance and Trade) Action Plan sets out a voluntary licensing system to ensure that only legally harvested timber is imported into the EU from countries agreeing to take part in this scheme. This system involves bilateral Voluntary Partnership Agreements (VPAs) between the EU and timber exporting countries.

Because VPAs are bilateral and voluntary, the Commission proposed in 2008 legislation that would require all operators placing timber products on the EU market to put into place systems to ensure that their timber is of legal origin. The EU Timber Regulation is enforced by all EU Member States as of 3 March 2013. The law aims at breaking the supply chain of illegal wood from the world's forest-rich countries. It requires all operators who place timber products on the EU market to exercise due diligence.

The EU is a party to the UN Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) only permitting export in compliance with national legislation.

### – *EU financial transparency action for extractive industries*

On 26 June 2013, in order to sustain a more transparent environment by promoting government accountability and reducing the risk of corruption, the EU adopted requirements under the Directive 2013/34/EU for large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests to prepare and make public a report on payments made to governments on an annual basis under the EU Accounting Directives.

### – *EU commitment to promote responsible sourcing from conflict-affected and high-risk areas*

On the 25 of May 2011, the EU made a commitment at the OECD Ministerial Council to actively promote the observance of the OECD Guidance by EU companies sourcing from conflict-affected and high-risk areas and to take measures to actively support the integration of this Guidance into corporate management systems and to ensure its widest possible dissemination and active use by other stakeholders.

To this end, the Commission provides - in the context of the *Instrument for Stability* - support for a previously committed amount of up to €1 million and during 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.

– *Strategic Framework for the Great Lakes Region*

The joint EEAS/Commission communication of 19 June 2013 on a *Strategic Framework for the Great Lakes Region*<sup>1</sup> seeks to remedy the drivers of instability, since lack of governance and the failure to assure security and the rule of law in this area are among the underlying causes which produce instability, aggravate suffering, and contribute to a deepening of local cleavages.

To remedy the situation in the Great Lakes Region the Communication identifies actions in five areas:

- a) to support states in the region to become more efficient, accountable and capable of delivering basic services and reliable physical, judicial and administrative security throughout the country, if desired, through a devolved political structure;
- b) to ensure security in Eastern DRC and rebuild trust among the communities there;
- c) to rebuild the economy of the region to enable the people to benefit from their mineral riches, from the opportunities of a more integrated regional market, and from better access to global markets;
- d) to build cooperation and trust between the countries of the region and establish mechanisms to enable that cooperation to be effective;
- e) to ensure the international community's engagement in encouraging countries and other actors in the region to fulfil their undertakings and act responsibly both internally and towards their neighbours.

## **2. Overview of support to due diligence initiatives, including by EU Member States**

With increased international awareness various actors started initiatives to cope with the risk of conflict financing within supply chains. While some of the systems focus on managements systems on company and supply chain level, others aim at implementing minimum standards regarding conflict involvement and transparency. Furthermore some efforts aim at improving artisanal mining schemes on the ground. This section provides an overview on some of the most important of these initiatives starting with initiatives by EU Member States.

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<sup>1</sup> JOIN(2013) 23 FINAL.

### a. BGR Certified Trading Chains (CTC)

A scheme of the German Federal Institute for Geosciences and Natural Resources (BGR)<sup>2</sup> was developed in close cooperation with national authorities of Rwanda and the DRC. The Certified Trading Chains (CTC) system contains twenty minimum certification standards targeting artisanal and small-scale mining including on mineral origin and traceability, working conditions, security and human rights, supply chain due diligence elements based on the OECD Guidance and other integrity instrument. The CTC standards include existence of documentary on environmental impact assessment; properly treat hazardous material and waste, provisions of mine closure and site rehabilitation. BGR has also worked closely with ICGLR to incorporate CTC into their Regional Certification Mechanism. CTC has been developed in 2008 and is covering Rwanda, Katanga and North Kivu (DRC).

For information, the cost of due diligence systems in conflict-affected and high-risk areas: BGR presented the following cost calculation of tin ore certification in Rwanda including the following elements: ITRI (International Tin Research Institute) fee (USD/ton 160-260) to provide assistance to

upstream companies on traceability and risk management; governmental fee (USD/ton 200-300) covering the cost of mine-side inspection, traceability cost (tagging staff and data management) and audit and certification transport cost; costs for a regional (ICGLR) oversight are not included.

Based on an average export price of USD/ton 16,000 for tin ore the certification costs would represent about 3-4% of the export price. For tungsten ore, based on an average export price USD/ton 15,000 the certification costs would represent about 1-2% of the export price of tin ore. For tantalum ore based on an average export price USD/ton 50,000 the certification costs would represent about 1% of the export price. Certification costs for gold are currently the subject of a pilot project for gold. The penalty for non-certified material is reported to be about 30-40%.

### b. Analytical Fingerprint (AFP)

Analytical Fingerprint is an instrument developed by the German Federal Institute for Geosciences and Natural Resources (BGR) and allows for the identification of the origin of 3T mineral concentrate. AFP makes use of specific unique features of these minerals much like DNA can be used in forensics to single out a particular person. BGR research has shown that tin, tantalum and tungsten ores form in association with mineral deposits which are characterised by source-specific mineralogical, geochemical, and geochronologic features related to the unique geological context of each deposit, in the Great Lakes region and beyond. The composition of minerals in ore

#### EU Member States act in the upstream 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.

<sup>2</sup> Bundesanstalt für Geowissenschaften und Rohstoffe (BGR).

concentrates originating from a given deposit reflects these source-specific features. Identifying these special features for each deposit and storing them in a reference database subsequently allows their comparison to the composition of minerals contained in a given mineral shipment – the origin of the mineral shipment may thus be tracked all the way up the supply chain (i.e. from the smelter, via local exporters and processors back to the original mine site). BGR researchers have identified these special features and determined a combination of scientific techniques to allow their efficient detection – this combination of techniques is referred to as the AFP method. It may be used to trace the origin of minerals along the supply chain at a high spatial resolution, provided certain input parameters are met. Applying AFP generates mineral traceability information which is completely independent of any shipping documentation and tagging procedures thus allowing the robust verification of the integrity of these standard traceability measures. AFP may be applied proactively by a mining company or their customers wishing to demonstrate a conflict-free origin of their minerals, or as a forensic tool in the frame of chain of custody risk assessments and supply chain due diligence audits (e.g. as part of a mineral certification scheme). In the latter case, it may be applied as a regular or optional (i.e. reserved for special investigations) spot check procedure to verify supply chain integrity and standard mineral traceability measures.

### **c. Conflict-Free Tin Initiative (CFTI)**

The Dutch government played an important role in initiating the CFTI which is a coalition of governments, private sector, and civil society stakeholders promoting due diligence system for the tin sector in South Kivu (DRC). Participants: Dutch Ministry of Foreign Affairs, USAID, IOM, Philips, Motorola, Fair phone, ITRI, NGO PACT, Enough Project and MSC (Malaysian Smelter), ICGLR and NGO Media. The project has developed a tightly controlled conflict-free supply chain outside the control of armed groups. The CFTI uses the iTSCi traceability and due diligence mechanism which contains an integrated design and the implementing partners account for multidisciplinary expertise. The project involves various consultation mechanisms to secure local ownership and trigger activities that bring economic development.

### **d. IPIS mapping exercise**

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.

### **e. ITRI Tin Supply Chain Initiative (iTSCi)**

An initiative developed in 2009 by the International Tin Research Institute (ITRI) and Tantalum-Niobium International Study Centre (TIC) which assists upstream companies or individuals, of all scales and at all supply chain tiers, from mine to smelter, to comply with the OECD Guidance. It involves: i) chain of custody (bag tagging, documentation and monitoring of mineral origin); ii) third party assessment (of mine sites, transportation routes); iii) independent third party audit of all operators. The focus is on upstream companies from mine to smelter. The implementation phase has been completed in Rwanda and Katanga (DRC) which is overseen by international actors and government officials participating in tagging and logging of the data.

## **f. Solutions for Hope**

In July of 2011 the 'Solutions for Hope Project' was announced by Motorola Solutions Inc., a leading manufacturer of mission critical public safety and enterprise wide communications equipment and AVX Corporation, a leading tantalum capacitor manufacture. The 'Solutions for Hope Project' was launched as a pilot initiative to source conflict-free tantalum from the DRC. Tantalum is a metal used in capacitors for electronic products and is derived from the mineral coltan, which is in rich supply in the DRC. The Solutions for Hope Project's unique approach to mineral sourcing in the region utilises a closed-pipe supply line and a defined set of key suppliers – mines (including artisanal cooperatives), smelter/processor, component manufacturer and end user – identified in advance of initiating the project. The project is open for all companies including mining, smelters, component manufactures and product manufacturers (end-users) to join, and its success will be largely measured by the industry participation in the closed-pipe supply system. Currently, such leading technology companies as Foxconn, HP, Intel, Motorola Solutions, Nokia, and Research In Motion participate in the Solutions for Hope Project.

## **g. Conflict-Free Smelter (CFS) Programme**

The CFS Programme is an industry-led initiative launched by a working group of companies, mostly members of the Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI) in early 2011. It aims at providing assurance on the sources of strategic resources used in electronics and is one of the industry responses to concerns on conflict minerals from the Great Lakes Region. An independent third-party audit programme intends to evaluate a smelter's procurement activities in order to determine if the smelter can demonstrate that all the materials processed originate from DRC conflict-free sources and conform to the OECD Guidance. The audit includes: a mass balance calculation to ensure inputs, outputs and stocks balance and business process review (demonstration of management systems, e.g. conflict minerals policy, 100% documentation of chain of custody; and reasonable identification of origin). Main implementers: primary and secondary smelters and refiners. Issue covered: conflict financing only. The CFS is complemented by the multi-sector Conflict Minerals Reporting Template (CMRT) which downstream companies use to comply with Step 2 of the OECD Guidance (assessing risks relating to conflict minerals in their supply chains).

There are currently 45 smelters/refiners out of a 440 global smelters/refiners certified under the CFS programme.

## **h. The Responsible Jewellery Council's (RJC) Code of Practice and Chain of Custody standards**

The RJC is a non-profit organisation with 440 members, mostly companies active in the supply chain of jewellery from to retail (RJC 2013). All members commit to Council's Code of Practice and are periodically audited by accredited independent auditors. The Code of Practice is applicable to gold and diamond producers and traders, as well as manufacturers, wholesalers, retailers and assayers and laboratories (RJC 2009). In addition, the RJC developed a Chain of Custody (CoC) Standard for Precious Metals which was published in March 2012 and applies to Gold and Platinum Metals only. A requirement that mined materials cannot benefit armed groups to ensure implementing the CoC can be in line with the US DFA. Chain-of-custody certification is a complementary element to the RJC certification process.



**i. World Gold Council’s (WGC) Conflict-free Gold (CFG) standard**

The World Gold Council and its members have developed a framework of standards to track gold from the mine to the end of the refining process. These consist of a “conflict-free gold” standard (on whether the mine has responsible policies, systems and skills) and a “chain of custody” standard (on providing an infrastructure for identifying that a consignment of gold mined according to a conflict-free standard has not been tampered with during its transport between the mine and refinery “. The standards are subject to an independent audit.

Gold produced in conformance with the Conflict-Free Gold Standard will provide confidence that it has been extracted in a manner that does not cause, support or benefit unlawful armed conflict or contribute to serious human rights abuses or breaches of international humanitarian law. The Standard is based upon internationally recognised benchmarks and conformance will be subject to external assurance. It has been widely recognised as credible and workable.

**j. London Bullion Market Association (LBMA) responsible gold guidance**

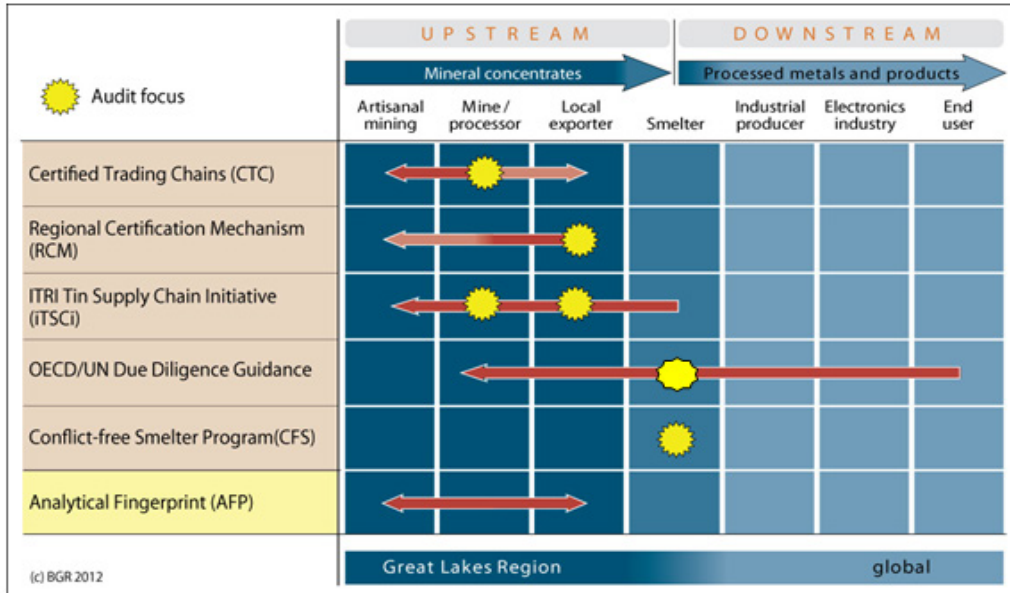
LBMA has set up a Responsible Gold Guidance for Good Delivery Refiners in order to combat systematic or widespread abuses of human rights, to avoid contributing to conflict, to comply with high standards of anti-money laundering and combating terrorist financing practice. This Guidance formalises and consolidates existing high standards of due diligence amongst all LBMA Good Delivery Refiners. This Guidance follows the five steps framework for risk-based due diligence of the OECD Guidance adopted on 15 December 2010 and follows the requirements detailed in the OECD Gold Supplement adopted on 17 July 2012.

All Refiners producing LBMA good delivery gold bars (“Refiners”) must comply with this LBMA Responsible Gold Guidance in order to remain on the LBMA Good Delivery List. Any Refiner applying to be a LBMA Good Delivery accredited Gold Refiner after 1 January 2012, must implement the LBMA Responsible Gold Guidance and pass an audit prior to becoming a member of the Good Delivery List.

OECD Guidance: see Annex I/3

k. Audit focus of the above mentioned initiatives

### Mineral / Metal Supply Chain Initiatives



### **3. OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas**

The OECD Guidance provides a framework for detailed due diligence as a basis for responsible global supply chain management notably for tin, tantalum, tungsten, their ores and minerals derivatives, and gold.

The purpose of this guidance is to help companies source responsibly by respecting human rights and to avoid contributing to conflict through their sourcing decisions, including the choice of their suppliers. By doing so, the guidance helps companies contribute to sustainable development and source responsibly from conflict-affected and high-risk areas, while creating the enabling conditions for constructive engagement with suppliers. The Guidance is the result of a collaborative initiative among governments, international organisations, industry and civil society to promote accountability and transparency in the supply chain of minerals from conflict-affected and high-risk areas.

Moreover, non-OECD members such as Brazil have also supported the OECD Guidance as a result of the efforts to associate other large consumer countries of conflict minerals in the promotion of responsible sourcing. Though inspired by the situation in the Great Lakes Region, the Guidance is not geographically specific.

The OECD Guidance identifies the following 5-steps for companies to:

1. Establish strong management systems with the objective to ensure that due diligence and management systems address risks associated with minerals from conflict-affected and high-risk areas: companies need to collect and disclose information to immediate downstream purchasers, who will then pass them down the supply chain and to any institutionalised mechanism. Information *inter alia* includes the mine of mineral origin; quantities, dates and method of extraction, location where minerals are consolidated, traded, processed or upgraded; identification of upstream intermediaries, transportation routes; taxes, fees or royalties paid to governments, any other payment made to officials, security forces or armed groups. Downstream producers are recommended to identify the smelters/refiners in their supply chain.
2. Identify and assess risks on the circumstances of extraction, trading, handling and export of minerals from conflict-affected and high-risk areas.
3. Design and implement a strategy to respond to identified risks in order to prevent or mitigate their adverse impacts.
4. Carry out an independent third party audit of the smelters/refiners' due diligence for responsible supply chain of minerals from conflict-affected and high-risk areas and contribute to the improvement of smelters/refiners and upstream due diligence practices.
5. Publicly report annually on due diligence for responsible supply chain of minerals from conflict-affected and high-risk areas in order to generate public confidence in the measures companies are taken.

### **4. Other jurisdictions – ICGLR Regional Certification Mechanism**

Further to their political objectives Heads of States and Governments of the Great Lakes Region (ICGLR) on 15 December 2010 committed in Lusaka to fight the illegal exploitation of natural resources in the region and approved *inter alia* six tools developed to curb illegal exploitation of

natural resources, namely: (1) regional certification mechanism; (2) harmonisation of national legislation; (3) regional database on mineral flows, (4) formalisation of the artisanal mining sector; and (5) promotion of the Extractive Industry Transparency Initiative (EITI) and (6) whistle blowing mechanism. There was an understanding that some of these tools are still work in progress and need further reflection and refinement.

To this end, on 29 February 2012 the Democratic Republic of Congo enacted legislation to set up a certification scheme imposing due diligence requirements for economic operators based on the OECD Guidance. In 2012, Rwanda also incorporated the OECD Guidance into its national legislation.

### **5. Other jurisdictions – US Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1502**

The United States has adopted provisions under the *Dodd-Frank Wall Street Reform and Consumer Protection Act* Section 1502 addressing the supply chain transparency by requiring all US listed companies to disclose annually whether they and their suppliers use "conflict minerals" (specifically defined as the minerals tin, tantalum and tungsten or gold if originating in the DRC or a neighbouring country). When the latter is the case, companies must report on the measures taken to exercise due diligence and are liable for the accuracy of the information provided and accountable to the general public for their corporate behaviour.

The Securities and Exchange Commission estimates that some 6,000 US-listed companies are concerned by implementation. A further 16,000 companies, many of which are registered outside the US, are also affected through supply chain relations with those companies directly affected. Implementation is underway as companies prepare to file conflict minerals reports by the end of May 2014. Since the law was adopted in 2010, company responses can be broadly categorised as follows: development of information management systems to obtain better information about the origin of minerals used in the supply chain; adherence to due diligence processes or schemes such as the OECD Guidance, conflict-free smelter programme, etc.; termination of sourcing relations with Central Africa. It would also be fair to point out that in the specific case of DRC, the government imposed a mining ban between September 2010 and March 2011 in order to get the sector reorganised on the basis of legislation that was later adopted to enforce due diligence in the country. This had the effect of dampening the prices of minerals and restricting employment and trading opportunities.

80 EU-listed companies are also listed in the US, according to Commission estimations almost 40 of these companies are subject to the US DFA requirements. In addition, a large number of EU companies are involved in the supply chains US listed companies, and therefore indirectly affected by the US DFA.

### **6. European Commission desk analysis: supply chain due diligence practices by EU companies in targeted industry sector**

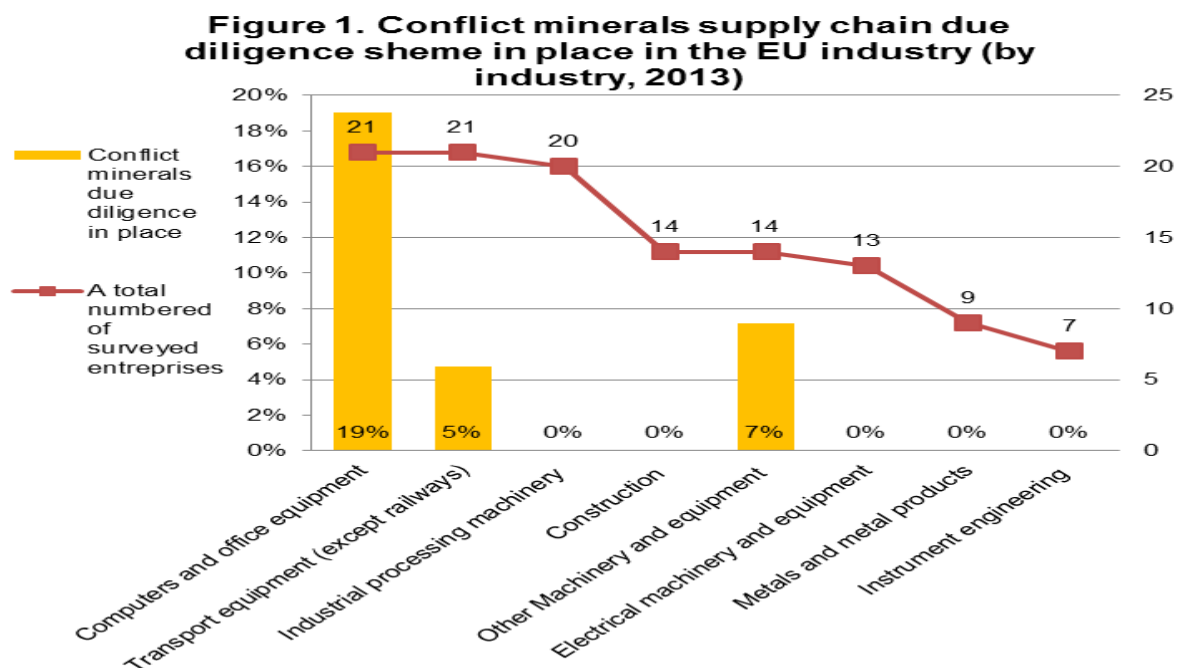
A small industry analysis was carried out by DG Trade to identify the status of supply chain due diligence practices by the EU companies in 24 EU Member States. To meet this end, a random selection of 153 enterprises was made on the basis of three criteria: the size of the enterprise (only large ones with more than 250 employees); listed in the EU countries and performing their economic activities in relevant sectors most likely to use 3Ts and Gold in their supply chains.

The sample included the following number of enterprises in each of the target sectors: 21 firms in Computers and office equipment sector, 21 in Transport equipment (except railways), 20 on Industrial processing machinery, 14 in Construction, 14 in Other Machinery and equipment (domestic appliances, agricultural machinery), 13 in Electrical machinery and equipment, 9 in Metals and metal products, 7 in Instrument engineering (medical equipment, optical equipment), 5 in Chemicals, rubber and plastics (includes pharmaceuticals), 5 in Energy, mining and quarrying and 24 in other sectors.

On the basis of information found in the annual reports or on the corporate websites we found, that 47% of enterprises do have some supply chain due diligence schemes in place. Most of them are concentrating on sustainable business activities, Corporate Social Responsibility on environmental and social issues, Human Rights, security and health issues reporting. In the same time we found that only 7% of the surveyed enterprises had conflict minerals supply chain due diligence schemes.

The highest number of enterprises already having conflict minerals supply chain due diligence scheme was noted in Computers and office equipment industry (Figure 1, 19% of firms). A marginal number of firms with a conflict minerals reporting policy was also found in Transport equipment (except railways) and in Other Machinery and equipment.

The country breakdown of the sample shows that the highest number of firms with conflict minerals reporting is registered in France (30%) and in Ireland (20%). At least one firm with such policy in place was found in Belgium, the United Kingdom, Italy and the Netherlands.



**Source: European Commission, DG Trade, Supply chain due diligence schemes industry survey**

## **7. Detailed information on the options**

### OPTION 3 and 4: "EU Responsible Importer" self-certification

CN code	Product description	Global production <sup>3</sup> (000 kg)	EU import volumes <sup>4</sup> (000 kg)			Estimated number of EU importers <sup>5</sup> (types/number)		
			2010	2011	2012	Smelters/ refiners	Traders	Manu- facturing
2609 00	Tin ores and concentrates	333,211	307	457	254	1-3 (secondary)	NA	NA
2611 00	Tungsten ores and concentrates	82,278	1,039	733	14,977	2	5-10	NA
2615 90	Tantalum (niobium, vanadium) ores and concentrates	176,648	98,755	112,106	76,316	2	10	1
261690 00	Gold ores and concentrates		433	11,244	8,855	5	10	NA
2825 90 40	Tungsten oxide hydroxide		3,688	5,389	3,509	6	10-5	NA
2849 90 30	Tungsten carbides		1,491	1,632	1,417	NA	10-15	10-15
7108 11 00	Gold (non-monetary) powder		8	5	6	NA	150	10
7108 12 00	Gold, unwrought forms		277	196	147			
7108 13	Gold bars, rods and wire + other		807	839	1,069			
8001 10 00	Tin, not alloyed		48,152	46,859	40,664	NA	100	50
8001 20 00	Tin alloys		2,975	2,841	3,561			
8003 00 00	Tin bars, rods, profiles and wires		2,354	1,473	1,067	NA		25
8101 10 00	Tungsten, powder		955	1,070	666	4-5	10-15	NA
8101 94 00	Tungsten, unwrought, including bars and rods		242	201	124			
8101 96 00	Tungsten wire		154	159	172			
8101 99 xx	Tungsten bars and rods		378	369	282	NA	10-15	10-15
8103 20 00	Tantalum, unwrought including bars and rods, and powders		374	289	217	11	7	8
8103 90 00	Tantalum bars and rods + others		98	178	129	1	3	5

<sup>3</sup> Reichl, C., Schatz, M. and Zsak, G. (2013): World Mining Data. Weltbergbaudaten. Vol.28. Vienna: BMWFI

<sup>4</sup> Eurostat Comext, last updated on 28 May 2013

<sup>5</sup> Figures based on information received from industry sources; it has to be noted that there is some overlap between activities of the companies.

**Table 1**

Table 2 provides the EU import 2011 figures of tin, tantalum, tungsten, their ores and gold relative to the global trade figures. The EU is an important importer of both the minerals and metals.

<b>CN code</b>	<b>Product description</b>	<b>Global trade (million USD)</b>	<b>EU imports (million USD)</b>	<b>EU share of global trade (%)</b>
2609 00	Tin ores and concentrates	589	7	1
2611 00	Tungsten ores and concentrates	469	91	19
2615 90	Tantalum (niobium, vanadium) ores and concentrates	463	107	23
2616 90	Precious metals ores and concentrates	2,606	1,203	46
<b>Sub-total</b>	Ores and concentrates	4.127	1.408	34
8001, 8003, 8004 and 8005	Unwrought tin, and tin bars, rods, profiles and wires	9,379	2,056	22
8101, excluding 8101 97	Tungsten and articles thereof, excluding waste and scrap	1,048	355	33
8103, excluding 8103 30	Tantalum and articles thereof, excluding waste and scrap	1,049	269	26
<b>Sub-total</b>	Tin, tantalum and tungsten	11,476	2,680	23
7108	Gold, unwrought or in semi-manufactured forms, or in powder form	187,925	22,477	13

The tin, tantalum, tungsten and gold minerals and metals are imported into the EU at volumes as shown in the Table 1. The indicated products are suggested as an annex of products in scope of the Regulation.

As per the outcome of the study commissioned by DG Trade (Annex III "External Study") EU importers exercising due diligence would be typically faced with the following cost:

- i. internal and external cost of strengthening their internal management system;
- ii. instituting the necessary IT software and systems to collect information;
- iii. using consultancy and training services;
- iv. training and cost for gathering information;
- v. audit cost in case of smelters/refiners.

The study estimates the first years' cost for large companies<sup>6</sup> performing due diligence at €13,500 (reported by 66% of the large companies surveyed) €27,000 (reported by 10% of the large companies surveyed); and the recurrent cost for following years at €2,700 (reported by 56% of the large companies surveyed) and €13,500 (reported by 17% of the large companies surveyed).

The study also estimates the first years' cost for SMEs at €13,500 (reported by 85% of the SMEs surveyed) and €27,000 (reported by 6% of the SMEs surveyed); and the recurrent cost for following years at €2,700 (reported by 74% of the SMEs surveyed) and €13,500 (reported by 14% of the SMEs surveyed).

In the case of EU smelters/refiners importing and carrying out due diligence, an additional cost of €1,000-8,000 per smelter/importer should be taken into account for an annual third-part audit.

#### OPTION 5: Directive establishing obligations for EU-listed companies based on the OECD Guidance

The option to requiring EU-listed companies to integrate the "five-step" OECD Guidance framework in their management system would potentially apply to an estimated number of almost 1,000 EU-listed companies out of a total of 7,959 EU-listed companies in the relevant industry sectors i.e. companies in those sectors that are expected to use tin, tantalum, tungsten and gold in their supply chain. These companies would be subject to exercising due diligence and reporting publicly on supply chain due diligence in their annual statements.

Moreover, it would indirectly affect up to 871,384 EU companies in the same industry sectors i.e. those using tin, tantalum, tungsten and gold that potentially are in the supply chains of the almost 1,000 EU-listed companies that would be directly affected. About 99% of those companies are SMEs. The identified companies represent the maximum number of companies as there are no statistics available on the actual number of companies using specifically the 3Ts and gold in the selected industry sectors as per table 2 below.

The initial and recurrent costs are considered on the basis of the tasks to be carried out under the 5-step framework of the OECD Guidance at the different levels in the supply chain for companies in the EU.

Based on the due diligence costs summarised under option 3 and 4, the total cost incurred by 800,000 EU companies potentially concerned, excluding the estimated 20 to 30% of EU companies that already prepare mandatory due diligence reports, is estimated at €8.4 billion initially, and between €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.

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<sup>6</sup> Over 250 employees and turnover over €50 million and/or balance sheet total €13 million.



<b>NACE codes<sup>7</sup></b>	<b>EU industrial sectors</b>	<b>Number of total companies in the EU</b>	<b>Number of SME<sup>8</sup>s in the EU</b>
<b>0729</b>	Mining and other non-ferrous metals ores	203	88%
<b>099</b>	Support activities for other mining and quarrying	478	99%
<b>2059</b>	Manufacture of other chemical products	4 376	98%
<b>23</b>	Manufacture of other non-metal mineral product	102 346	99%
<b>24</b>	Manufacture of basic metals	17 953	96%
<b>25</b>	Manufacture of fabricated metal products except machinery and equipment	388 192	99.7%
<b>26</b>	Manufacture of computer, electronic and optical products	44 100	98%
<b>27</b>	Manufacture of electrical equipment	52 000	98%
<b>28</b>	Manufacture of machinery and equipment	98 059	98%
<b>29</b>	Manufacture of motor vehicles, trailers and semi-trailers	20 525	94%
<b>30</b>	Manufacture of other transport equipment)	14 300	97%
<b>321</b>	Manufacture of jewellery, bijouterie and related articles	37 909	100%
<b>324</b>	Manufacture of games and toys	7 846	99.6%
<b>325</b>	Manufacture of medical and dental instruments and supplies	62 353	99.6%
<b>329</b>	Manufacture of n.e.c.	30 744	99.8 %
<b>Total</b>		<b>871 384</b>	<b>99%</b>

**Table 2**

### ICT impact

The proposed options allow the identification of ICT implications in a modest way, given that it asks for compliance with the well-known existing OECD Guidance that define with precision the business processes and serve as a solid basis for the specifications that need to be implemented.

In the Guidance, it is mentioned that the information should be kept “preferably in computerised databases” – in certain cases web access is recommended. Therefore, it is reasonably expected that the vast majority of the supply chain companies will use electronic means to exercise the due diligence procedure.

Special attention should be given to the semantic aspects, notably the formulation of the templates that will be used to collect and retrieve data. Various standards are already available for the semantic description of parts of the datasets, i.e. the W3C Organization Ontology and more specifically the “Registered Organisation Vocabulary” which is a specialization for private

<sup>7</sup> Eurostat.

<sup>8</sup> Below 250 employees.

organisations (companies), whereas on the technical side, XML would be an ideal solution to transport and store data. Possible interconnection with base registers i.e. the Business Registers could also be considered, on request of the Member States' authorities.

In DG TRADE's external study it has been revealed that complete technical solutions implementing due diligence for minerals originating from high-risk areas have been made commercially available and can be used following subscription and a licensing schema.

In terms of cost and in the same study, ICT has been considered as a separate cost item on the list of the overall effort that has to be made by the companies to ensure compliance with OECD Guidance. ICT has been seen from two possible angles, namely internal (in-house implementation) and external (purchase of ICT systems and/or services by external providers) related to the set up and maintenance of the required infrastructure and the collection, processing, storing, reporting and exchange of information with the supply chain stakeholders and the regulating authorities.

From the above it can be concluded that 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 white list of smelters/refiners will most probably be hosted and operated by the EU Institutions by the means of a, most preferably web-based, Information System that should collect, retrieve, update, publish data and produce statistics reports. However, these are all generic functionalities supported already by existing solutions within the Commission and their re-use should result in negligible fees. 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 are generally applicable to options 3, 4, 5 and 6.

## **8. EC Public Consultation Report**

The overall message from the public consultation requires the European Commission on the issue of responsible sourcing of minerals from conflict-affected and high-risk areas to take a consistent approach that recognises the global nature of today's complex minerals supply chains and relies on an international framework as set out in the OECD Guidance.

According to 82% of companies' respondents the private sector is interested in responsible sourcing. To this end, more than 36% of all responding EU companies indicate that they exercise due diligence on a voluntary basis while over 22% of them are preparing mandatory due diligence reports. The most compelling motivations for companies to source in a responsible way include (in ranked order): Corporate Social Responsibility (CSR) agenda, regulatory obligation, image, and consumer satisfaction.

The existing frameworks, although generally considered sufficient, are not always adequately or effectively implemented. The main apprehensions stem from the reported impossibility of tracking back the origin of the minerals, due to the complexity, length and breadth of the supply chain. There is a substantial lack of cooperation in receiving information from suppliers, especially where supply chains contain more than 5-6 tiers. Moreover, small companies in third countries are not necessarily familiar with requirements of the schemes inter alia due to capacity and other

limitations. This results in the fact that smelters/refiners as the choke-point of the supply chains are not fully engaging in due diligence strategies.

Moreover, stakeholders agreed that the approach taken under the US Dodd-Frank Act Section 1502 has not necessarily resulted in short-term tangible results for the Great Lakes Region. Business considered the Act burdensome, impairing competitiveness and leading to higher costs for consumers. Companies claimed a competitive disadvantage as compared to operators in countries such as China, Malaysia, Indonesia, and Brazil where most of the economic actors are reported to continue to source from conflict areas without exercising due diligence.

Regarding the certification of mineral mining and trade such as those initiated by some of the producing countries of the Great Lakes Region, stakeholders reported that more capacity building is required to address the deficiencies of local enforcement resulting from instable political and social frameworks.

Generally, to advance responsible sourcing practices, the business sector counts on EU assistance for clear direction on where to source or not, however not on the basis of additional rules. Flexibility represents a key aspect of due diligence management systems where the OECD Guidance represents the best reference as the only international standard available: companies require a proactive and reactive due diligence risk-based approach to progressively meet their objectives whilst having differences in their internal processes. This would allow companies to easily identify tailor-made solutions respecting the need of different sectors. Hence, the voluntary nature needs to be maintained.

NGOs and other organisations state that an EU initiative should maximise the existing tools (OECD) by however complementing them within an obligatory framework to ensure that the financing of armed group in conflict-affected and high-risk areas is reduced while at the same time a multi-stakeholder approach should be encouraged to foster responsible sourcing.

Furthermore, respondents encourage the EU to:

- Provide political and financial support to currently operating programmes and to allow for the gradual and on-going improvement of minerals certification;
- Avoid onerous tracking or reporting obligations;
- Limit cost and burdens of audits;
- Support the concept of identification and mitigation of risk and focus on the process of due diligence instead of taking an outcome-based approach focussed on whether the material is conflict free or not;
- Exercise the proper leverage on other key economies (China, Malaysia, Indonesia, etc.);
- Against this background the possible impacts on mining communities should be taken into account and efforts should be focused on locally reinforcing capacity-building so that the review, update, structuring and enforcement of the relevant local certification schemes can be achieved.

Finally, due to the international nature of the supply chain, 70% of respondents favour an EU initiative with a global scope covering mainly the upstream section of the supply chain (i.e. mines, traders, smelters and refiners). Moreover, the focus should be either on all minerals or on the 3Ts (tin, tantalum, tungsten) and gold. Respondents clarified that an effective EU initiative at the same time should address a range of issues on the ground including good governance, rule of law and mining and trade certification. The initiative should furthermore consider a phase-in period of implementation to allow companies, especially SMEs, to adjust to it.

The full report is available in a separate document (Annex II).

## **9. Report of the accompanying study commissioned by DG Trade**

DG Trade commissioned an external study to assess due diligence compliance cost, benefits and related effects on the competitiveness of selected operators in relation to responsible sourcing of minerals from conflict-affected and high-risk areas. The tender was awarded to iPoint-systems GmbH.

As per the Terms of Reference, the attached final report of the study provides a description of the global supply chains for the 3T's and gold, outlining the type of economic operators involved in the supply chains (such as miners, traders, smelters, component producers, OEMs), the industry sectors involved (such as automotive, electronics, industrial tools, aerospace and provides a quantification of the supply chains in terms of (i) indicative percentage of the total volume of the 3T's and gold used in the supply chains for products from the sectors involved; (ii) their total production volumes and turnover; and (iii) related trade flows. The description distinguishes between activities taking place in the EU, and those taking place predominantly outside the EU market.

Furthermore, the study includes a survey of 330 large and SME companies around the world using the iPoint Conflict Minerals Platform (iPCMP) which is an on-demand software solution which enables companies to collect, manage, aggregate and report conflict minerals information, in line with the requirements of their customers and regulatory authorities.

The main conclusions are the following:

The main finding of the survey was that the majority of the participants reported relatively low cost efforts for conflict minerals due diligence and reporting, with expenditures predominantly estimated €13,500 for initial efforts (74%) and at €2,700 for ongoing efforts (63.8%), despite the fact that only 17% of the respondents were small companies with less than 50 employees. The lower and upper limit of the selectable range of costs was based on economic impact models related to the US Conflict Minerals Reporting legislation (Tulane University 2011).

Other important findings of the survey include:

- Company size and conflict minerals due diligence and reporting expenditures: there was a relatively balanced ratio between survey respondents representing small and medium-sized enterprises (SMEs), i.e. companies with less than 250 employees, and large enterprises with 250 employees and more (45% vs. 55%). Not surprisingly, a higher percentage of SMEs as opposed to large companies reported an overall initial cost estimated at €13,500 (85.1% vs. 66.2%) and overall ongoing costs estimated at €2,700 (73.9% vs. 55.5%).
- Main economic activities: more than two thirds of the respondents (67%) had their main economic activities in the manufacturing industry (ISIC C), with over a quarter (27.4%) of these respondents economically active in the manufacture of fabricated metal products, except machinery and equipment (ISIC C-25), and another quarter (23.6%) active in Other manufacturing (ISIC C-32).
- Position in the supply chain, number of suppliers: with nearly half (44%) being a Tier-1 / semi-finished manufacturer, followed by an almost an equally large group (43%) that was either an OEM / end-product manufacturer (22%) or Tier-2 (21%), the majority of the respondents had further downstream position in the supply chain. Thereby, not surprisingly the further downstream a company was and the larger the company, the more active suppliers it had.

- Department responsible for conflict minerals reporting: no single department is solely in charge of this new compliance area, i.e. conflict minerals due diligence and reporting lies in the responsibility of many departments, with the purchasing (35%) and the QM department (24%) represented more frequently in these cross-functional teams.
- Main products: within the framework of the harmonised commodity description and coding system (HS) of tariff nomenclature, nearly a third of the respondents, products can be allocated to machinery/electrical (30.4%; HS 84-85), followed by transportation (25.3%; HS 72-83) on a two digit level. On a four digit level, products of the area – parts and access for motor vehicles – dominated (18.1%; HS 8708), followed by "transmission shafts, bearings, gears, etc., parts" (5.5%; HS 8483).

The final report of the study is available in a separate document (Annex III).

## **10. Report of the Öko-Institute on conflict minerals**

The following recommendations were voiced in the Öko-Institute study commissioned by the BDI aiming at contributing to the discussion for a European approach on conflict minerals. While they do not constitute a ready-to-implement strategy, they mark important aspects and suggestions for consideration in the current policy development process:

- A policy on conflict minerals alone is insufficient to stabilise the DRC. In turn, strategies for stabilising the Great Lakes Region that do not address conflict minerals are also prone to failure. Thus, measures on conflict minerals need to be embedded into a comprehensive strategy on the DRC.
- The concept of due diligence is useful and should be supported as it helps to mitigate the risks of directly or indirectly contributing to conflict and human rights abuses. Nevertheless, extensive mandatory verification and reporting requirements can cause embargo reactions and unintended socio-economic side-effects. It is therefore recommended to rethink strategies aiming at extensive and mandatory due diligence, particularly in downstream (manufacturing) segments. Rather than investing into costly downstream chain-of-custody systems, these resources should better be used to directly support responsible mining within the DRC.
- The existing pilot projects on responsible minerals sourcing in the DRC have various positive impacts on the ground. If up-scaled and flanked by other policy and security measures, such responsible sourcing projects can help to establish “islands of stability”. Therefore, the European Union should support responsible sourcing projects with co-operation programmes as well as with its political framework on conflict minerals.
- Investments in responsible sourcing from the DRC are particularly risky. While some of these risks result from the local situation, potential reputation risks also play a role. It is therefore required to develop a mechanism that systematically benefits companies who actively engage in responsible sourcing from the DRC. This could include preferential conditions in public procurement and a visible positive attribute for companies fulfilling certain requirements.
- A potential European contribution has to be adjusted to the needs of affected people in the region. The European Union should enter into a process of dialogue with Congolese and European stakeholders as well as with the International Conference on the Great Lakes Region (ICGLR). The dialogue should aim to generate a common understanding of needs,

challenges and opportunities of a formalised and conflict-free mineral extraction, and should lead to clear commitments from all stakeholders.

- European industry and businesses should take a proactive role by supporting, developing and expanding responsible sourcing projects in the eastern DRC. Apart from direct support for on-the-ground projects, commitments to purchase a defined quantity of conflict-free material from the DRC should also be explored. These activities should be bundled into a Congo stewardship initiative, which – presupposing an ambitious character and measurable targets – should be substantially supported by the European Union.
- Many concepts and strategies on conflict minerals aim to ensure that products are to 100% conflict-free in a physical manner. While this concept makes sense in the upstream parts of supply chains, the efforts to achieve such a status significantly increase for manufacturers of complex products. As these efforts do not directly benefit people in the conflict-affected regions, it might be worth to explore alternative models for downstream industries. It is particularly recommended to explore the feasibility of concepts used for ‘green electricity’, which make sure that money paid by users of certified green electricity directly benefits producers of green electricity.

**ANNEX II**



**EUROPEAN COMMISSION**

**DIRECTORATE-GENERAL FOR TRADE**

**REPORT ON THE PUBLIC CONSULTATION**

*ON*

**A POSSIBLE EU INITIATIVE ON RESPONSIBLE SOURCING OF MINERALS  
ORIGINATING FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS**

*CONTRIBUTIONS FROM STAKEHOLDERS*

**JULY 2013**

**CONTACT:** [trade-market-access@ec.europa.eu](mailto:trade-market-access@ec.europa.eu)

# **Summary of contributions to the European Commission's public consultation on a possible EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas**

## ***Introduction***

As part of the impact assessment process, the European Commission launched a public consultation to get interested parties' views on a possible EU initiative for responsible sourcing of minerals coming from conflict-affected and high-risk areas. The Commission wanted to deepen its understanding of issues such as the sourcing and security of supply of minerals, supply chain transparency and good governance.

The Commission used the results to help it decide whether and how - in a reasonable and effective manner – to contribute to on-going due diligence initiatives and support good governance of mineral mining and trading activities especially in mineral-rich developing countries affected by conflict.

### *– The questionnaire*

The public consultation ran from 27 March 2013 to 26 June 2013. An on-line questionnaire was open to all stakeholders interested. It had 44 questions divided into eleven sections: 1) Information on respondents, 2) Rationale and existing frameworks, 3) Need and scope of a possible EU initiative, 4) Continuation of activity, security of supply and other international actors, 5) Nature of the EU initiative, 6) Lessons learned from the EU Timber Regulation, 7) Positive incentives to international corporations and businesses, 8) Economic and Competitiveness impacts, 9) Environmental impacts, 10) Social impacts, 11) Other issues.

### *– Stakeholder responses*

There were 280 replies (18 more were received after the deadline at the following email address: TRADE-INDUSTRY@ec.europa.eu) from a wide range of respondents: this report includes an executive summary and a detailed overview of responses as provided by the various stakeholders including the statistical outcome of the replies. 65% of respondents agreed to make their contributions public which are annexed to this report.

Note that the report does not reflect the opinion of the European Commission but rather aims at providing a factual account of stakeholder contributions.



## **Executive Summary**

The overall message from the public consultation requires the European Commission on the issue of responsible sourcing of minerals from conflict-affected and high-risk areas to take a consistent approach that recognises the global nature of today's complex minerals supply chains and relies on an international framework as set out in the OECD Guidance<sup>9</sup>.

According to over 83% of the respondents the private sector is interested in responsible sourcing. To this end, more than 36% of all responding EU companies indicate that they exercise due diligence on a voluntary basis while over 22% of them are preparing mandatory due diligence reports. The most compelling motivations for companies to source in a responsible way include (in ranked order): Corporate Social Responsibility (CSR) agenda, regulatory obligation, image, and consumer satisfaction.

The existing frameworks, although generally considered sufficient, are not always adequately or effectively implemented. The main apprehensions stem from the reported impossibility of tracking back the origin of the minerals, due to the complexity, length and breadth of the supply chain. There is a substantial lack of cooperation in receiving information from suppliers, especially where supply chains contain more than 5-6 tiers. Moreover, small companies in third countries are not necessarily familiar with requirements of the schemes *inter alia* due to capacity and other limitations. This results in the fact that smelters/refiners as the choke-point of the supply chains are not fully engaging in due diligence strategies.

Moreover, stakeholders agreed that the approach taken under the US Dodd-Frank Act Section 1502<sup>10</sup> has not necessarily resulted in short-term tangible results for the Great Lakes Region (GLR). Business considered the Act burdensome, impairing competitiveness and leading to higher costs for consumers. Companies claimed a competitive disadvantage as compared to operators in countries such as China, Malaysia, Indonesia, and Brazil where most of the economic actors are reported to continue to source from conflict areas without exercising due diligence.

Regarding the certification of mineral mining and trade such as those initiated by some of the producing countries of the GLR, stakeholders reported that more capacity building is required to address the deficiencies of local enforcement resulting from instable political and social frameworks.

Generally, to advance responsible sourcing practices, the business sector counts on EU assistance for clear direction on where to source or not, however not on the basis of additional rules. Flexibility represents a key aspect of due diligence management systems where the OECD Guidance represents the best reference as the only international standard available: companies require a proactive and reactive due diligence risk-based approach to progressively meet their objectives whilst having differences in their internal processes. This would allow companies to

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<sup>9</sup> 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>

<sup>10</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1502.

easily identify tailor-made solutions respecting the need of different sectors. Hence, the voluntary nature needs to be maintained.

NGOs and other organisations state that an EU initiative should maximise the existing tools (OECD) by however complementing them within an obligatory framework to ensure that the financing of armed group in conflict-affected and high-risk areas is reduced while at the same time a multi-stakeholder approach should be encouraged to foster responsible sourcing.

Furthermore, respondents encourage the EU to:

- Provide political and financial support to currently operating programmes and to allow for the gradual and on-going improvement of mineral certification;
- Avoid onerous tracking or reporting obligations;
- Limit cost and burdens of audits;
- Support the concept of identification and mitigation of risk and focus on the process of due diligence instead of taking an outcome-based approach focussed on whether the material is conflict free or not;
- Exercise the proper leverage on other key economies (China, Malaysia, Indonesia, etc.).

Against this background, the possible impacts on mining communities should be taken into account and efforts should be focused on locally reinforcing capacity-building so that the review, update, structuring and enforcement of the relevant local certification schemes can be achieved.

Finally, due to the international nature of the supply chain, 70% of respondents favor an EU initiative with a global scope covering mainly the upstream section of the supply chain (i.e. mines, traders, smelters and refiners). Moreover, the focus should be either on all minerals or on the 3Ts (tin, tantalum, tungsten) and gold. Respondents clarified that an effective EU initiative at the same time should address a range of issues on the ground including good governance, rule of law and mining and trade certification. The initiative should furthermore consider a phase-in period of implementation to allow companies, especially SMEs, to adjust to it.

## Overview of responses to the questionnaire

The summary of the responses covers the eleven sections of the public consultation and, for ease of reference, follows the numbering used in the questionnaire.

### 1) Information on respondents

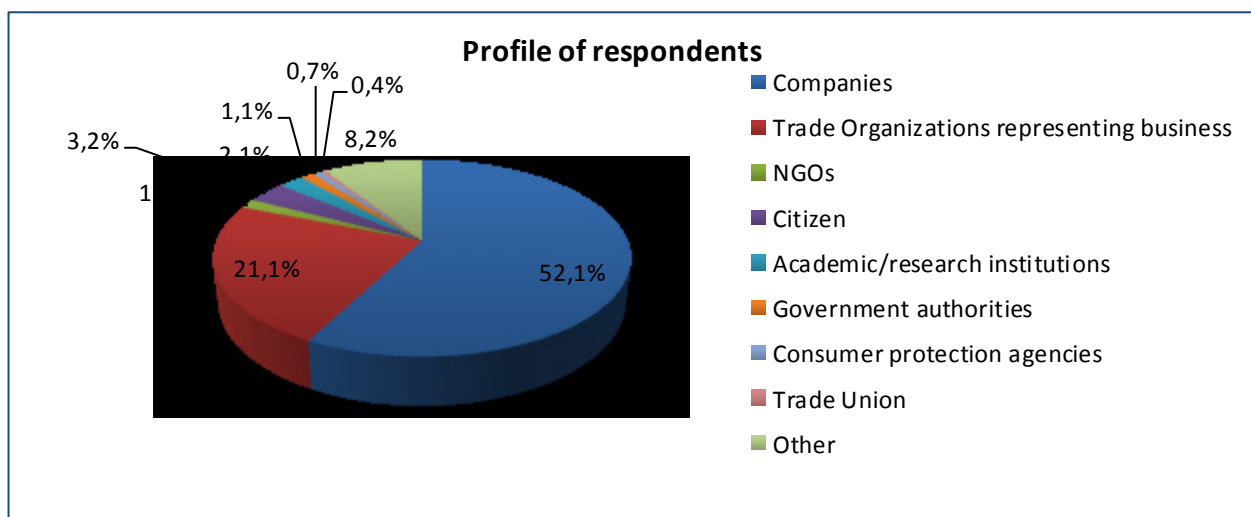
#### Q. 1.3 What is your profile?

73.2 % of total records (205 out of 280 replies) come from the business sector: 146 companies and 59 trade organisations representing business.

Specifically, companies' contributions were distributed among:

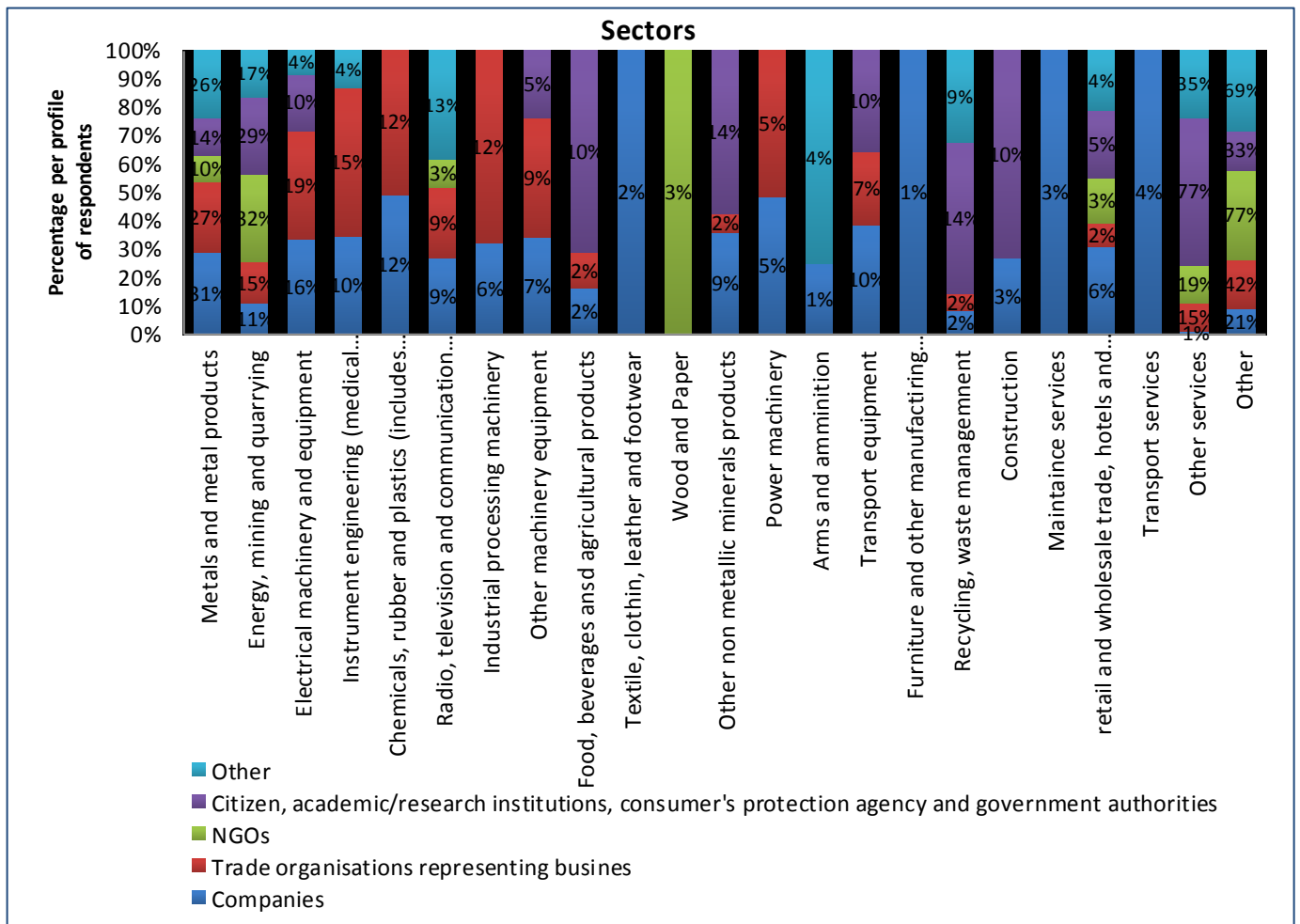
- Large companies (> 250 employees) with 98 replies (47.2% of total number records);
- Medium companies ( $\geq 50$  and  $\leq 250$  employees) with 23 replies (11.2% of total number records);
- Small companies (<50 employees) with 25 replies (12.2 % of total number records).

The NGOs sector participated with 31 stakeholders (11.1% of total number records). Citizens, academic/research institutions and government authorities contributed respectively with 9 replies (3.2% of total number records), 6 replies (2.1% of total number records) and 3 replies (1.1% of total number records). There were two consumer protection agencies (0.7% of total number records) and one trade union (0.4% of the total number records). The "other" category represented the 8.2% of total number records (23 contributions) and included consulting firms, think tanks, associations promoting responsible sourcing, and sustainability initiatives.



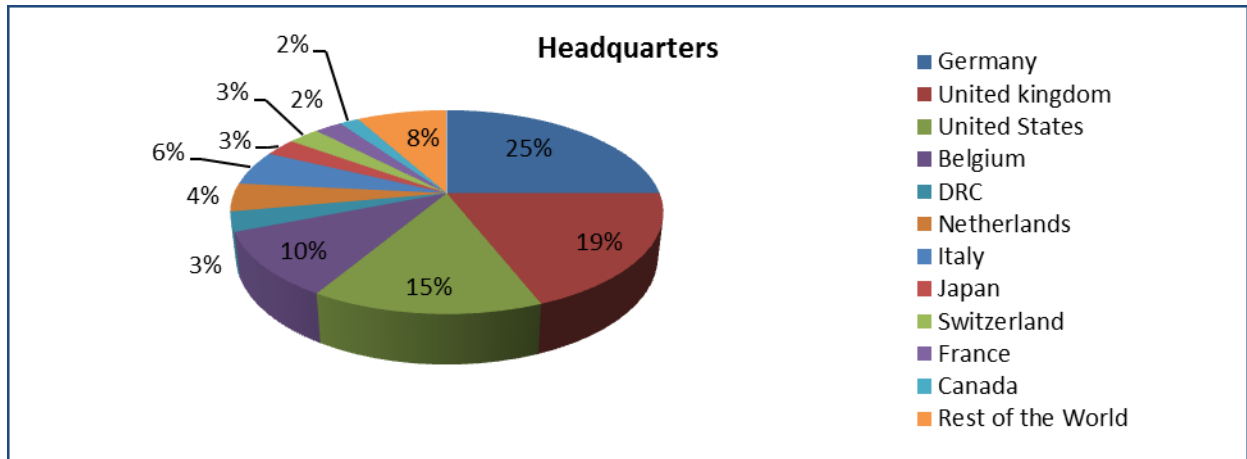
**Q. 1.4 What is your main area/sector of activities/interest?**

The principal sectors involved are metals and metal products (26.1% of total number records); energy, mining and quarrying (16.1% of total number records); electrical machinery and equipment (13.2% of total number records); instrument engineering (medical equipment, optical equipment) computers and office equipment (8.2% of total number records); chemicals, rubber and plastics (includes pharmaceuticals) (8.6% of total number records); radio, television and communication equipment (7.9% of total number records); other non-metallic minerals products (7.1% of total number records). However, the highest percentage is represented by the "other" category (36.8% of total number records), that embraces a wide range of sectors from international affairs (including human rights, environmental/natural resources policies, peace-building and sustainable development) to jewellery manufacturing; cosmetics and personal care industry; automotive component parts, systems and modules manufacturing.



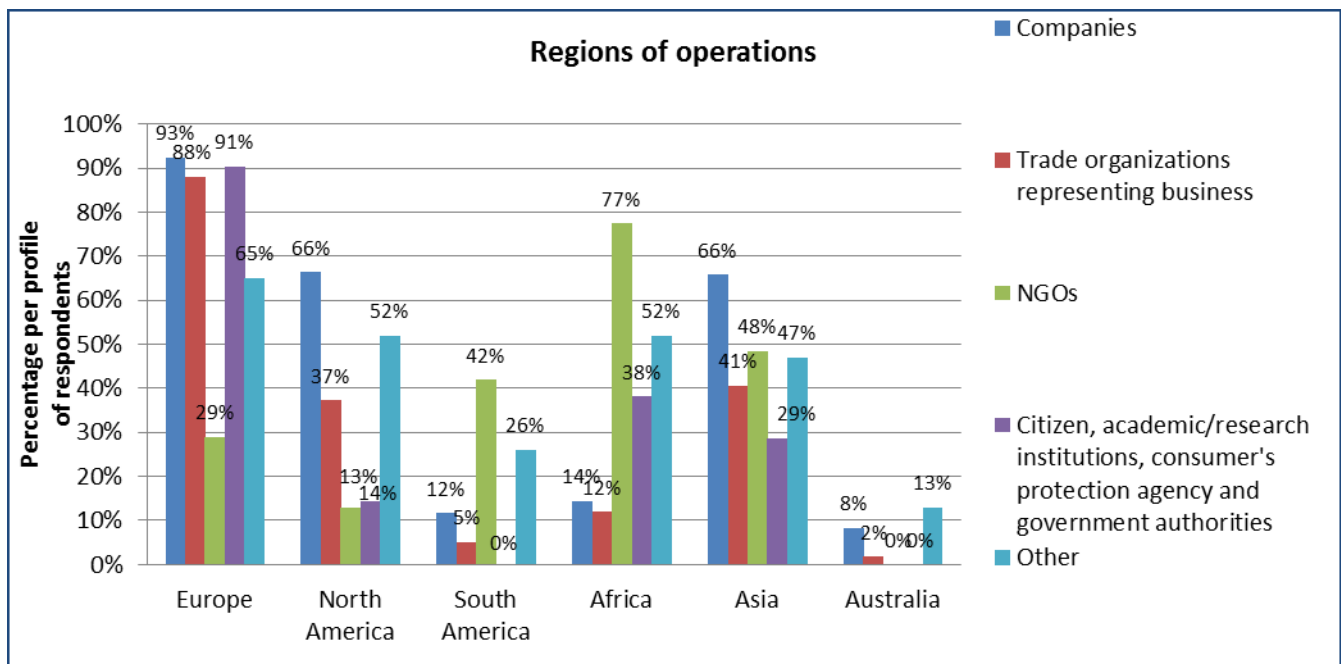
**Q. 1.5 In which country are your headquarters located?**

Stakeholders' headquarters are mainly in the European Union: Germany, the UK and Belgium are the most representative countries sharing respectively the 26.7 %, the 19.6%, and the 10.6% of total number records. Among the third countries, the United States and the Democratic Republic of Congo stand out covering the 15% and the 4.2% (of the total number records).



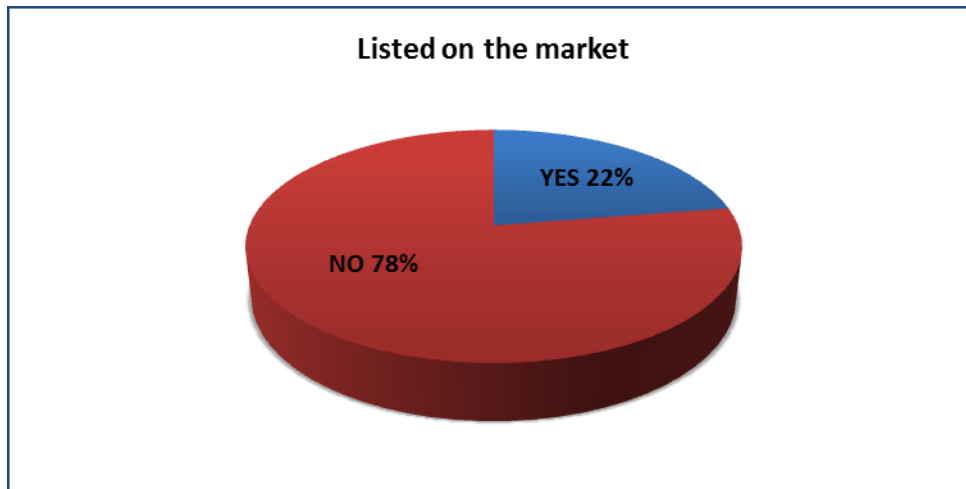
**Q. 1.6 In which regions do you operate?**

82.1% of respondents operate in Europe. Asia follows with 54.3%, then North America with 49%. Africa and South America, where most conflict and high-risk areas are located, cover 25.7% and 13.9%.



**Q. 1.7** Are you listed on a regulated market?

22.5 % of respondents are listed on a regulated market: 36 stakeholders in the EU and 26 stakeholders in the US.

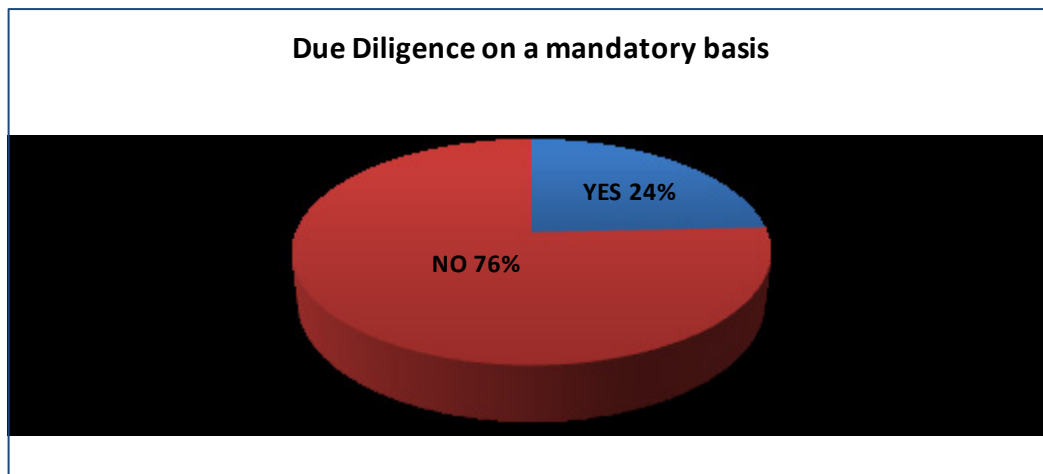


**Q. 1.8** Do you prepare due diligence reports on a mandatory basis?

75.7% of total number records do not prepare due diligence report on a mandatory basis. Specifically, 63.7% of companies and 84.7% of trade organisations do not. As regards EU-listed companies, 50% report they are preparing a mandatory due diligence report. As to all companies (including EU-listed companies) 22.4% are preparing a mandatory report.

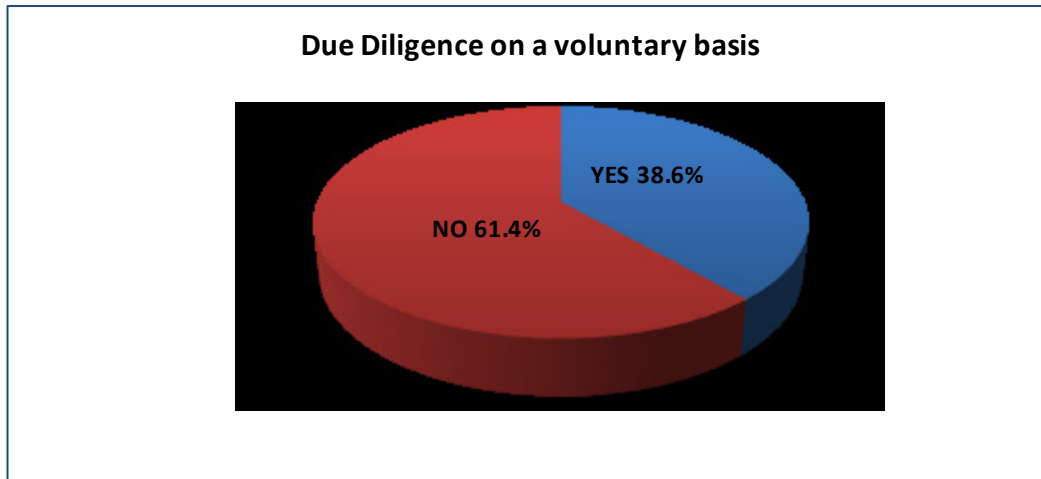
It is interesting to note that among the 23 respondents who are listed in the US (therefore likely to be subject to US Dodd-Frank Act Section 1502 reporting by 31 May 2014), 19 companies and 2 trade organisations reported they are preparing reports on a mandatory basis.

Looking at the relevant sectors, 15% of the Metals and metal products sector (more than 91% of the respondents are from the business sector) prepares due diligence on a mandatory basis. The same holds for the 21% of the Electrical machinery and equipment sector (more than 91% is from the business sector); 22% of the Energy and mining quarrying sector (55% of which is from the business sector); 36% of the sector of Instrument engineering, computers and office equipment (the 96% is from the business sector), 33% of the Chemicals and rubber and plastics sector (almost the 100% is from the business sector); 27% of the Radio, television and communication equipment sector (more than 80% from business sector). The Other machinery and equipment sector (93% from business sector) has the highest rate with 50% of respondents preparing due diligence reports on mandatory basis.



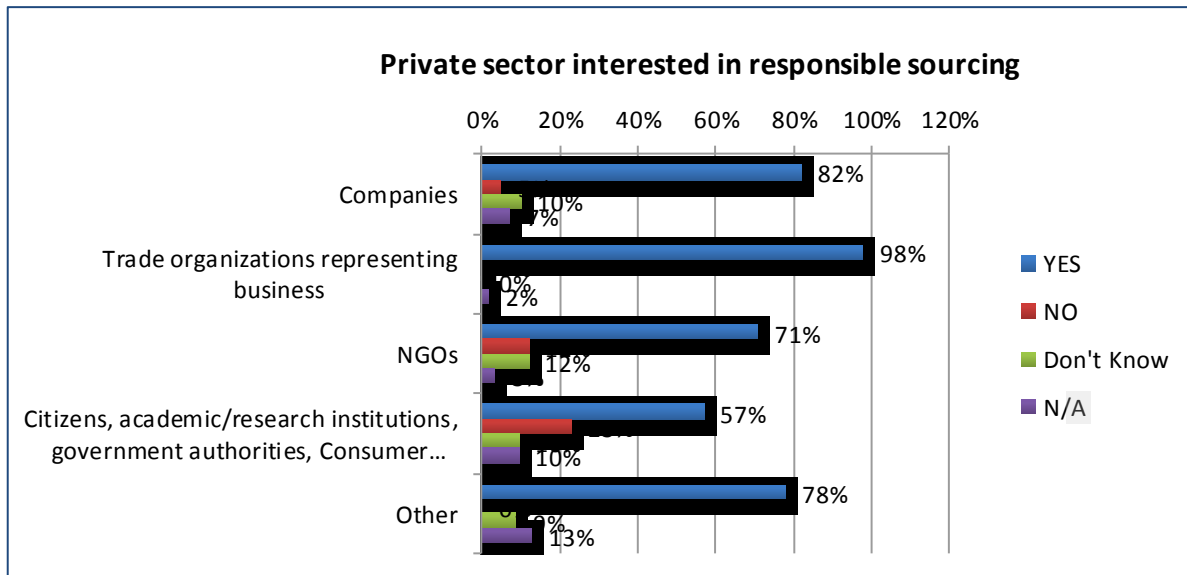
**Q. 1.9 Do you prepare due diligence reports on a voluntary basis?**

38.6% of the total number of records prepare a due diligence report on voluntary basis. A slight majority of them are companies (53.4%). As regards EU-listed companies, 66.7% report they are preparing a voluntary due diligence report. As to all companies (including EU listed companies), 36.4% are preparing a voluntary report. Looking at the relevant sectors, 45% of the Metals and metal products sector; 55.6% of Energy and mining quarrying, 52% of Instrument engineering, computers and office equipment; 62% of Other machinery and equipment are preparing due diligence on a voluntary basis. Conversely, more than 67% of the Electrical machinery and equipment sector, 58.3% same for Chemicals, rubber and plastics sector; 54.5% of Radio, television and communication equipment are not preparing due diligence on a voluntary basis.



**2) Rationale and existing frameworks**

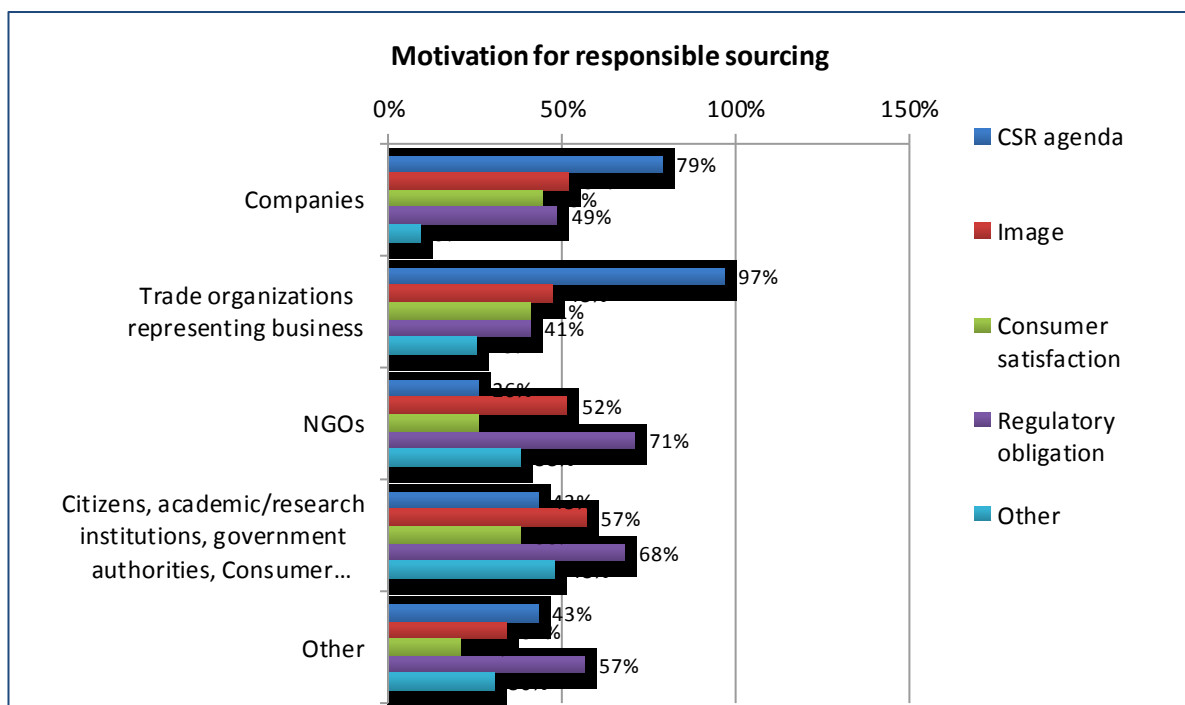
**Q. 2.1 Is the private sector interested in sourcing minerals in a socially responsible manner?**



83.2% of respondents state that the private sector is interested in responsible sourcing. As the figures show, the business sector seems to be favourably disposed towards sourcing in a responsible way (84.2% of companies and 98.3% of trade organisations representing business). This is confirmed also by NGOs (71%) and citizens, academic/research institutions, government authorities, consumer protection agencies, trade unions (57%).

**Q. 2.2** What would you consider the single most compelling motivation for the private sector to source minerals in a socially responsible way?

The main motivation for responsible sourcing is the CSR agenda: 71.1% of respondents recognise the importance of corporate self-regulation, also for the issue of "conflict minerals". The second major motivation derives from regulatory obligations (51%) followed by image with 50%, and consumer satisfaction (39%).



For 78.8% of companies, the CSR agenda is the most influential factor, then image with 52.1% of the preferences, followed by the regulatory obligation option with 48.6%. Similarly, trade organisations representing business see in the CSR agenda the most important motivation (96.6%), followed by image (47%) and regulatory obligation (40.7%). For 71% of NGOs, regulatory obligations are the key driver for the private sector to source in responsible way. Image comes right after, for 51.6% of the organisations. Citizens, academic/research institutions, consumer protection agencies, trade unions and government authorities follow the same trend (regulatory obligation 66.7%, image 57.1%).

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

73.9% of stakeholders already undertake efforts to ensure responsible sourcing: almost 80% of both the business sector (companies and trade organisations representing business) and NGOs state that they are engaged to some extent in public/private initiatives and are compliant with regulations and schemes concerning responsible sourcing. Looking at the relevant sectors, 85% of the Metals and metals products sector is already involved in responsible sourcing activities; the same is true of the Electrical machinery and equipment sector where about the 70% of respondents are undertaking efforts; Energy and mining quarrying (86.7%); Instrument engineering, computers and office equipment (92%), Chemicals and rubber and plastics sector (83%); Radio, television and communication equipment (90%), Other machinery and equipment sector (75%) also are committed.

Businesses in particular seem committed in ensuring the responsible sourcing of minerals by tracking back the origin of the minerals. In order to do so, they are implementing codes of conduct or specific sustainability



standards and principles to which suppliers are contractually committed to adhere. Some large companies request also written assurances from all suppliers that minerals do not originate from illegal mines.

A large number of companies responding to the consultation act according to the OECD Guidance and some of them are members of the UN Global Compact. Together with US-listed companies, other respondents state that they are compliant with the reporting obligations of the US Dodd-Frank Act as suppliers.

In addition, companies have participated in or are aligned with initiatives such as the Global e-Sustainability Initiative (GeSI) and the Electronic Industry Citizenship Coalition (EICC), the Conflict-Free Smelters (CFS) programme, the Responsible Jewellery Council (RJC), the Public-Private Alliance (PPA), ITRI Tin Supply Chain Initiative (iTSCi), and the World Gold Council's Conflict-Free Gold Standard.

NGOs, together with citizens, academic/research institutions, consumer protection agencies and trade unions, are engaged in collecting information on conflict mineral policy trends, and advising the actors involved on how to effectively engage suppliers with a view to obtain information relevant for due diligence purposes. They support and monitor the implementation of the above-mentioned initiatives and in particular the OECD Guidance.

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

For 57.9% of the respondents, the private sector can source or, at least, would like to source in a socially responsible way. With respect to relevant sectors, for 52% of Metals and metal products sector, responsible sourcing is achievable. Electrical machinery and equipment sectors agree with almost 60%; so does Energy and mining, quarrying (82%); Radio, television and communication equipment (54.5%), and Other machinery and equipment sector (43%). For the Instrument engineering, computers and office equipment 44% of respondents consider responsible sourcing achievable (32% don't know). For the relative majority (37.5%) of the Chemicals and rubber and plastics sector, it is unachievable.

In this regard, NGOs and citizens, academic/research institutions, Government Authorities, consumer protection agencies, trade unions have a much stronger position with respectively 87.1% and 76.2%. No differences appear among large, medium and small companies: 56% think responsible sourcing is achievable. This slight majority is explained by concerns raised as to the effectiveness of the initiatives in place.

The main problems lie in the reported impossibility of tracking back the origin of the minerals. Due to the complexity, length and breadth of the supply chain, complemented by undisclosed/illegal exports to neighbour countries or other trading countries, it is very difficult to have full assurances on sourcing responsibly. There is a substantial lack of cooperation in receiving information from suppliers (some of the companies claim less than 10% response rate), especially where supply chains contain more than 5-6 tiers. Stakeholders claim that companies or even groups of companies (in particular downstream) do not have sufficient leverage to influence their suppliers and to get feedback from them. The possible point at which this info can be obtained reliably is in the initial stage of processing of the minerals. Smelters/refiners are mostly considered the pinch point of the supply chain. They are perceived by business respondents to be taking on less of the burden of due diligence than companies further down the supply chain and hence more distant from the mining source.

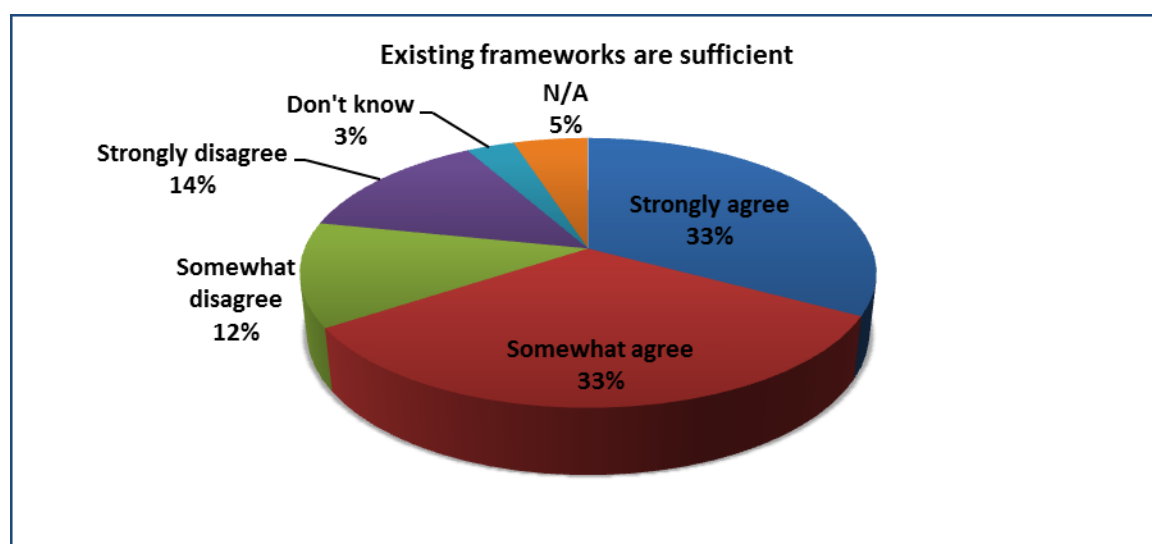
Secondly, the cumbersome and difficult process turns into higher costs (in terms of strengthening internal management, instituting the necessary IT systems, auditing, and implementation of risk-based programmes) and administrative burdens (filing reports) for companies. This is what happened specifically in the case of the US Dodd-Frank Act. It is reported that companies decided to move away, causing a de facto embargo of the targeted regions and, contributing to a deterioration of livelihoods there.

The prevalent view of businesses responding to the consultation is that where institutions are weak, where conflict is raging, the private sector cannot solve problems, which are mainly political in nature. Therefore, while of course desirable, it is clearly challenging for the private sector alone to source minerals in a socially responsible way and a comprehensive approach is required.

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

Generally, respondents reckon the UN Guiding Principles on Business and Human Rights<sup>11</sup>, the OECD Guidelines for Multinational Enterprises<sup>12</sup> and the OECD Due Diligence Guidance sufficient as they stand. There are 65.8% of total number records that to some extent express a positive opinion on these instruments.

The business sector is the main proponent of this view: trade organisations representing business and companies (both large and SMEs) agree on the sufficient degree of the existing frameworks, respectively with 83.1% and 69.4%. Also Government Authorities converge towards the business position. On the other hand, the 61.3% of NGOs and the 47.6% (relative majority) of citizens, academic/research institutions and consumer protection agencies are aligned in considering such instruments insufficient.

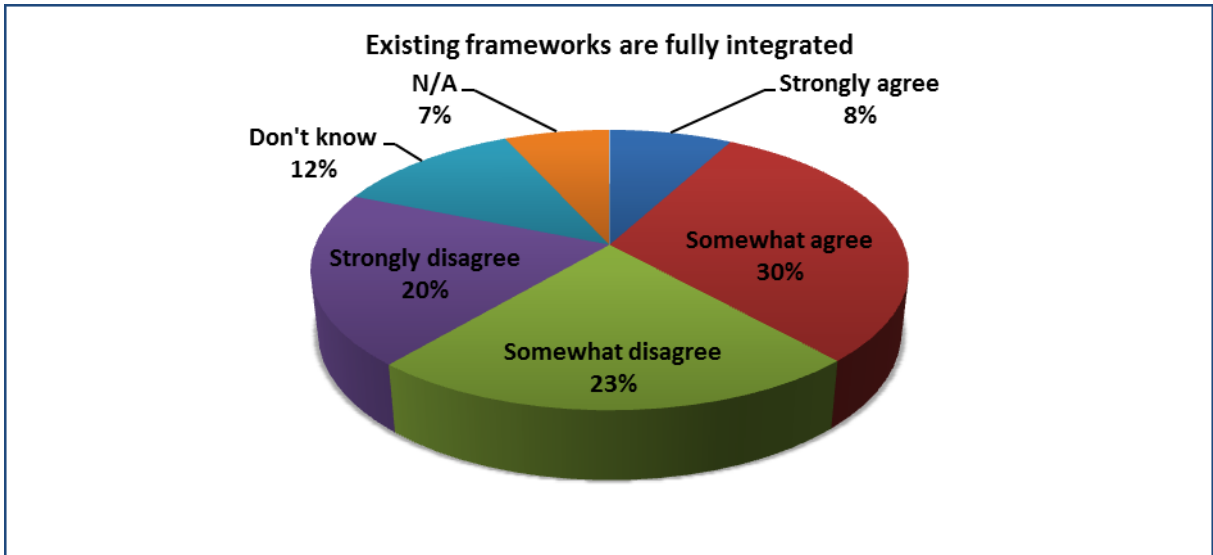


**Q. 2.5.1** Companies have already fully integrated those international instruments into corporate risk management systems.

The statistics show a substantial equilibrium between the "agree" and "disagree" positions, with respectively 42.4% and 42.9%. No absolute majority has been reached (12.1% don't know and 6.8% N/A) and the more frequent recourse to the "somewhat" option (in both cases) instead of the "strongly" option confirm a certain degree of uncertainty. However some trends can be underlined: 1) The ambiguity of the results is the consequence of the business sector's more uncertain replies (more than 20% replies are "don't know" or N/A); 2) NGOs and citizens, academic/research institutions, consumer protection agencies clearly consider the instrument not fully incorporated (71%). 3) The position of small companies does not line up with the rest of the business sector but joins NGOs position to a lesser extent (a relative majority of 44% disagrees).

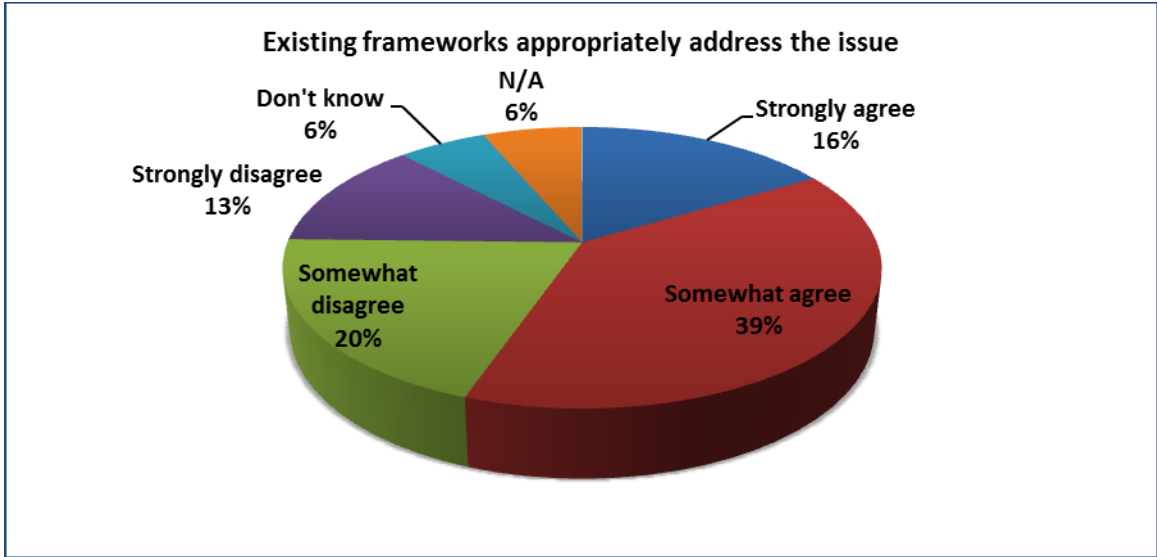
<sup>11</sup> Guiding Principles on Business and Human Rights, UN Human Rights Office of the High Commissioner, New York and Geneva 2011.

<sup>12</sup> OECD Guidelines for Multinational Enterprises, OECD 2011 edition.



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

Business sector and NGOs positions come together by recognising the adequacy of the existing instruments in addressing the issue of responsible sourcing (55.3% of the total number records). Small companies and the category of citizens, academic/research institutions, consumer protection agencies seem to have some reservations as they moderately tend towards a "disagree position" with respectively 44% and the 47.6%.



**Q. 2.5.3** If in questions 2.5 / 2.5.1 / 2.5.2 you disagree and think there is scope for improving or complementing the existing instruments, how could this be achieved?

Existing instruments could be improved predominantly in scope: an important step forward would be to ensure the participation of less engaged industries and third countries that play a key role in the supply chain (e.g. China, Malaysia). Their coverage could be improved by aiming for more buy-in from local actors and attempting to address not only traceability, but also the root causes of the problem.

The business sector largely believes that although the aforementioned instruments are appropriate to promote responsible sourcing, however they do not address the issues that drive societies' need for this due diligence. Such issues include conflict, political instability, corruption, weak governance and legal

enforcement, environmental degradation. Regardless of the private sector's engagement to ensure certain standards for responsible entrepreneurship, there is also a political side to these issues that needs to be addressed at political level. Business can only support this process but not replace it. Business claims that they cannot be made responsible for the conflicts in the regions in which they conduct trade. Business believes that the support of democratic development and good governance is primarily the task of foreign, security and development policies. Furthermore, business notes that administrative, political and security requirements are generally missing in the affected areas, therefore more action must be taken by governments and the EU to support the creation of and to bolster economic and political stability, and good governance in these countries. This requires a focus on capacity-building in the countries concerned and strong engagement with local actors and civil society. In addition, these instruments need to be complemented by initiatives that can raise the engagement and awareness of the upstream segments (miners, traders, smelters/refiners) and help the companies achieve a reliable and well-functioning due diligence system, avoiding high costs and burdensome procedures. Business claims that the players in the supply chain do not have, nor can be expected to have, the same degree of influence/leverage and control over the other players in the supply chain, and clear allocation of duties among the players would be beneficial.

Within such a complex and weak political environment of those regions, NGOs draw the attention to the necessity of making due diligence standards in existing international instruments mandatory and to the active and long-term participation of local society and public authorities. NGOs note that it is fundamental to raise awareness of those companies not yet involved and create incentives for companies that implement them fully.

**Q. 2.6 What practical lessons can we draw from existing supply chain due diligence schemes such as the OECD Due Diligence? What are the advantages and downsides for industry and producing countries?**

There is a general positive consideration of the OECD Guidance; it is often referred as the only instrument able to address the problem on an international level, and potentially exercise the proper leverage on other key economic actors (China, Malaysia, etc.). The OECD Guidance represents an overarching international framework for the implementation of due diligence systems, recognised by the UN and already endorsed by the International Conference on the Great Lakes Region (ICGLR) and several countries. It highlights a process/risk-based approach which companies can *voluntarily* refer to and use to identify and manage risks adequately.

According to the business sector, the most positive aspect of the OECD Guidance is its flexible approach: by not being so exhaustively defined, companies have indeed the necessary space to do due diligence and meet requirements whilst having differences in their internal processes. They can easily find solutions tailor-made to the need of different sectors. Consequently, the *voluntary nature* needs to be maintained. Still, some important negative aspects have been underlined.

First of all, the OECD Guidance is not sufficiently implemented and a substantial lack of awareness has been recognised by several stakeholders. The majority of the large companies' suppliers are small companies in third countries that have no information/do not value enough such due diligence schemes or have capacity limitations.

Secondly, as generic guidelines applicable indistinctly to all the different industrial sectors focussing only on four minerals, they lack practical guidance at some points as also reported in the OECD pilot project reports. Respondents are of the opinion that the OECD Guidance ought to be more tailored to different industries and better reflect product complexity. In addition, the OECD Guidance focuses on large scale mining when most of challenges lie with artisanal mining. As a result, the OECD Guidance cannot be implemented as it

stands but usually requires multi-stakeholder cooperation, outside assistance or human/financial resources in order to work up a company-specific management strategy.

Compliance costs are reported to be high, and can also be reflected in higher costs for consumers and reduced competitiveness for businesses that comply. Companies face competitive disadvantages as they lose their global market share to other countries (e.g. China, Malaysia, Indonesia, Brazil, etc.) and economic actors that continue to source from conflict areas without engaging in due diligence.

Similarly, small companies (that had raised some concerns about the adequacy of existing frameworks, Q.2.5.2.) acknowledge the OECD Guidance as a transparent, flexible, and comprehensible guide, based on a multi-stakeholder and internationally harmonised approach which involves companies, governments and NGOs. Through it, companies learn to build strong management systems, help improve working conditions in producer countries and allow for better control of the kind of minerals entering the supply chain. The Guidance is a worldwide regulatory reference, influential on companies and countries. However, implementing the OECD Guidance requires additional manpower and external help. Provided that the situation on a mine site can change daily, one of the downsides frequently mentioned is the lack of an *objective* and *measurable* definition of high-risk and conflict-affected areas.

NGOs also believe that the OECD Guidance should be taken into account as the basic document for any future initiative. It gives a clear set of positive guides rather than negative rules. The system is not aimed at reaching 100% conflict-free sourcing, but is based on best efforts. Despite some difficulties recognised in implementation (especially in the upstream part of the supply chain), the OECD Guidance provides transparency and control of the supply chain, and is a useful instrument for better CSR. It is flexible and process-driven rather than compliance-driven: it promotes responsible sourcing from conflict areas rather than avoidance. It should be implemented on a global level: as long as some countries do not play by the same rules, competitive disadvantages may occur. The OECD Guidance is increasingly accepted as the international standard for responsible sourcing and should be directly incorporated into legislation and applied to other natural resources, levelling the playing field between the US and other regions. However, respondents recognise some difficulties in the implementation of such schemes, especially on the upstream part of the supply chain, where more targeted information and capacity building measures are needed.

**Q. 2.7 What practical lessons can we draw from existing supply chain due diligence schemes adopted by third countries to promote mineral supply chain transparency (e.g. US Dodd-Frank Act section 1502)? What are the advantages and downsides for industry and producing countries?**

The business sector claims that, despite the good intentions and the merit of having raised awareness on such issue, Section 1502 of the US Dodd-Frank Act has not sufficiently taken into account the complex environments in which businesses operate. The prevalent view of business respondents is that strict, inflexible and highly burdensome legislation creates adverse results and distorts markets. Many companies have stopped sourcing minerals in the Great Lakes Region (the area targeted by this legislation) to avoid additional administrative burdens, costly reporting/auditing and use of human resources. The US Dodd-Frank Act reaches beyond the United States as EU and other companies along the supply chain can be US-listed or – and in far larger numbers - are suppliers to US-listed companies.

Contrary to the OECD Guidance which is process-based, the US Dodd-Frank Act takes compliance-based approach requiring the determination of a product as conflict-free or not. Business respondents point out that the OECD Guidance allows companies to have flexibility to address the conflict mineral issue where the risk is highest, whereas the US Dodd-Frank Act drives high administrative costs and additional reporting and auditing burdens. The Act does not consider that companies do not always interact directly with their suppliers and does not sufficiently appreciate the difficulty of obtaining information on the origin of "conflict minerals" in the purchased products.

Business respondents report that as a result of the US Dodd-Frank Act, the minerals trade in the GLR has gone underground, making it even more difficult to improve living/labour standards in the region because of falling export levels. Foreign companies sourcing outside Central Africa become more dependent on supplies from China reducing their free choice of supply; distortions of competition arise without an international level playing field. Limiting requirements to being able to declare a product "conflict-free" is not addressing in full the problem of the intended or unintended contribution of trade in minerals to the continuation of conflict and is seen as dis-incentivising legitimate trade in responsibly sourced minerals.

While the business sector underlines the negative impact of the US regulation (49 respondents use the word trade embargo when describing the consequences of the US Dodd-Frank Act), NGOs stress the unprecedented momentum for responsible mineral sourcing that the Act has stimulated by obliging companies to conduct checks in their supply chains. Industry has engaged for the first time in responsible mineral sourcing and NGOs claim that reporting expenses are lower than was initially expected. Civil society respondents acknowledge that the Act obliges the industry to be aware of the sources of its minerals, avoiding opportunistic behaviour, and to provide information to guide consumer decisions. The Act introduced important transparency and disclosure provisions. However, transparency is only one step towards responsible conduct, and must be accompanied by strong and enforceable standards, especially in producing countries where civil society lacks the capacity or safety to challenge companies.

**Q. 2.8 In some cases, mineral producing developing countries have introduced regulatory schemes to allow trade of minerals to be conducted in a socially responsible way. What is your assessment of such national or regional initiatives and regulatory schemes?**

Responses tend to converge that local regulatory schemes are considered an important contribution to mineral supply chain transparency. In the context of "conflict minerals", the prevalent view is that approaches at the level of minerals-producing countries and regions could be more promising than approaches targeting downstream actors.

Business respondents welcome these local schemes for representing the most direct way to foster responsible sourcing of minerals and ensure compliance; however, when compared to other standards, they appear to have implementation gaps due to apparent limited local cross-country alignment and to their inability to function sustainably without external support. Respondents point out that in the producer countries concerned, a dedicated regulatory framework does not always exist; it is sometimes outdated or not enforced due to the absence of secure political conditions and endemic corruption. Decisions by foreign companies to source outside Central Africa have made it difficult to test and improve local certification schemes.

The certification initiative launched by the ICGLR and the iTScI<sup>13</sup> initiative also in use in Central Africa have been mentioned as laudable initiatives dedicated to improving traceability and transparency in resource-holding countries. However, respondents point out that significant efforts remain to achieve effective implementation and enforcement in the countries concerned.

Respondents suggest that efforts should be focused on reinforcing capacity-building locally so that the update, structuring, enforcement, and harmonization (likely around international standards) of the relevant local schemes can be achieved. There is need of strong international political support to the region, a greater formalization of artisanal and small scale mining (ASM), and more engagement with NGOs working on the ground. Respondents see a role for (national/multilateral) foreign policy and development cooperation to contribute to build institutions and capacity in producing countries to monitor mining conditions carefully.

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<sup>13</sup> ITRI Tin Supply Chain Initiative.

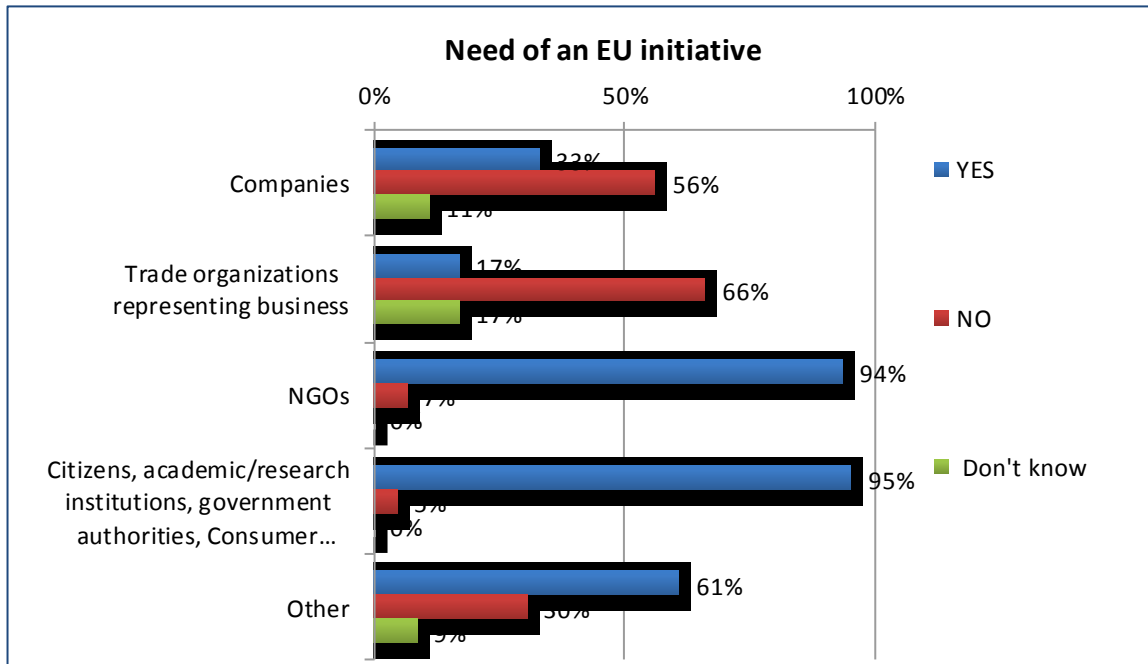
### 3) Need and scope of a possible EU initiative

**Q. 3.1** Is there a need for the EU to promote responsible sourcing of minerals through actions focused on transparency of the supply chain, in addition to what already exists in the policy landscape?

From the overall picture of the replies, it is not possible to draw any straightforward conclusion since the data show a substantial equilibrium between the YES (43.2% of total records) and the NO (46.8% of total records), to which a 10% of replies "don't know" need to be added. However, trends become sharper when we look at the specific stakeholder profiles. Companies and trade organisations position themselves against a possible EU initiative with respectively 56% and 66.1%. Nevertheless, in the case of companies, the large ones lead a much stronger position as YES replies barely reach 27.6%, while medium and small companies stick on higher rates of YES with respectively 47.8% and 40%. NGOs are, on the other hand, strongly in favour of an EU initiative, providing 93.5% of YES answers. The same occurs with respect to the category of citizens, academic/research institutions, consumer protection agencies and also government authorities (95.2%).

With respect to the important sectors, Metals and metal products respondents (more than 83% are from the business sector) do not consider the need for an EU initiative with the 66%. The Electrical machinery and equipment sector thinks that an EU initiative is not necessary either (54%). The score for the Chemicals and rubber and plastics sector is 70%. Instrument engineering, computers and office equipment do not take a strong position as 48% answered "don't know". Radio, television and communication equipment and Other machinery and equipment sector also largely chose the "don't know" option (both with the 50% of records). The Energy and mining quarrying (though 55% of respondents are from the business sector, mainly large companies) is, instead, in favor with 71%.

68% of "YES" respondents would prefer an initiative with a broad scope, on a global basis: "region-specific" and "country-specific" options reached barely 28.1% and 18.2%. The initiative would cover either the "3T's and gold" or "all minerals" options (both reached exactly the same rate of 46.3%). NGOs seem support more the latter option (72%), as does the category of citizens, academic/research institutions, consumers protection agencies and also government authorities (55%), while 50% of the business sector prefers the former. Among the other options, "other minerals" reached 24%: respondents often mention diamonds, raw materials such as cocoa, wood, copper, cobalt, platinum and uranium as possible minerals to cover.

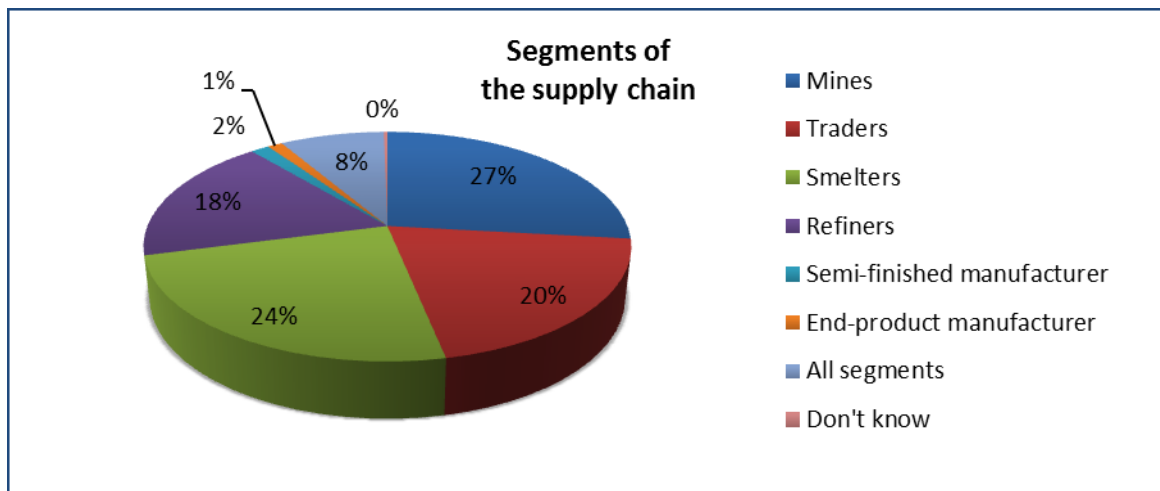


**Q. 3.2** Should the scope of an EU initiative refer to specific end-products or downstream industry sectors?

A 73.9% majority of respondents indicates that an EU initiative should not refer to specific end-products or downstream industry sector. However, 15.8% was in favour and 9.3% replied "don't know".

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

48.9% of respondents emphasize the importance for a possible EU initiative to focus on specific segments. Comprehensibly, the upstream part of the supply chain received the majority of the consensus: mines (66.4%), traders (49.6%), smelters (59.9%), and refiners (44.5%). There are no substantial differences among the different profiles of the respondents on the matter (mines and smelter are the most recurring answers). It is however interesting to notice that large companies put smelters as the primary segment to target (78.3%), reflecting their own difficulties to trace back the source through their supply chains. For the rest of respondents, mines are the principal segment.





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

For 51.9% of respondents, the EU initiative should not include exemptions for SMEs, 22.5% (mainly small and medium companies) agree, 17.9% don't know and 8.6% have selected N/A.

## **4) Continuation of activity, security of supply and other international actors**

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

For the majority of the respondents (56.4%), the EU initiative should explore ways to support security of supply of the identified minerals for the EU industry. 20% disagree while 14.3% don't know and 9.3% have selected N/A. The business sector is clearly in favour with 61.5% ("no" answers reached 15.6%). The category of citizens, academic/research institutions, consumer protection agencies and Government Authorities also agrees with the 61.9% ("no" answers reached 14.3%). Conversely, the NGOs do not seem to have a clear position as "yes" and "no" are almost even (respectively 45.2% and 41.9%).

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

The dominant view of respondents is that any EU initiative alone would not reach the necessary critical mass unless other major players are taking comparable measures as well. Respondents consider that the EU should engage more actively with China, Malaysia, Indonesia, Brazil and other important players in the global market in order to increase awareness on the complexities of the issue. Responsible sourcing is not only an issue of market access. It is a global problem that requires global solutions where trade, rule of law and humanitarian aspects are jointly taken into account. It also requires that governments, international organisations, the private sector and the civil society work closely together.

In this framework, the business sector takes the view that only a worldwide system will motivate major economies to step in. Multiple initiatives to compel supply-chain transparency would not contribute to the desired end result; rather, they would fragment and complicate the efforts currently underway. An EU initiative should recognise this and identify opportunities to engage with relevant economies.

Concerned about the unfair and undue competitive advantages these economies already enjoy, companies and trade organisations acknowledge that an initiative that only aims at the EU level (by simply setting reporting requirements for EU companies) is not likely to solve the issue on the ground and will only shift the supply of goods from the EU to the other markets. The EU could end up (eventually) with having no sustainable supply of critical minerals, thereby undermining its commercial power. Some respondents point to experience with the US Dodd-Frank Act to claim that an EU initiative alone would not motivate other major economies to engage in responsible sourcing but rather provide instead further opportunities to other major economies, with significant smelting and refining capacity, (especially China, Malaysia and Indonesia) to source minerals from any destination, while EU industry would have a more limited supply base.

These same categories of respondents are of the opinion that in order to ensure a level playing field, it is important that any initiative is agreed and implemented at an international level, via e.g. the OECD, involving as many important players as possible (including non-OECD members). The EU should focus on its support and promotion since the OECD Guidance is already a multinational approach and it is internationally harmonized that involves all stakeholders. Positively, within the framework of the OECD, together the EU and the US, would present a critical mass that would allow to significantly advance work towards the global application of transparency and responsible supply chains standards.

NGO respondents recognise that placing responsibilities only on the private sector as the main leverage to involve and motivate other governments is not an efficient way of tackling the problem of conflict minerals. Civil society replies converge on the assessment that a robust EU regulation, based on the OECD Guidance, would instead leverage other economies to adopt due diligence requirements for companies in their jurisdictions. The governments of major economies outside the EU and US may be reluctant to comply, but once their business partners are less able to sell the end products in their home markets (EU and US), there will again be an economic incentive for Asian and other governments and companies to comply. With two large economies addressing the issue (US and EU), there would be pressure on other major economies to show they are also contributing to break the link between conflict and trade in minerals. These replies claim that if the entire supply chain bears responsibility to ensure compliance, EU-based end users and manufacturers will be required to impose the conditions on their non-EU based suppliers, spreading the effects and burdens.

Citizens, academic/research institutions, and consumer's protection agencies line up with the trend emphasizing the importance of an international framework (possibly the OECD), on which the EU would base its action. Government Authorities, consider that an EU initiative is unlikely to be able to co-opt a critical mass of other economies. The main conclusion is that the EU should work closely with third countries and EU Member States and try to advocate a global level playing field.

**Q. 4.3** To the extent that the response strategies of some businesses to the US Dodd-Frank Act section 1502 provisions is to stop sourcing minerals in Central Africa, what could an EU initiative do to support both market access and due diligence concerns?

Market access is important – both for companies but also for the resource-rich producing countries as the presence of business is vital to bolster economic growth and contributing to the improvement of social and environmental standards. As it was reported with the introduction of the US Dodd Frank Act, onerous legislative requirements relating to corporate due diligence may create a "de facto embargo" which results in negative impacts for business, local governments and communities.

For the business sector, companies should be encouraged rather than penalised (voluntary schemes are preferred; see section 5) for sourcing responsibly from the region. Solutions must be pragmatic, adapted to the needs of the local community and result in a concerted effort between local governments, civil society and industry. Therefore, built-in market incentives for those market actors who are trading responsibly with the regions may help.

Respondents suggest that any EU initiative should focus on establishing public/private partnerships (e.g. the Public-Private Alliance for Responsible Mineral Trade) that aim to improve conditions of artisanal and small-scale miners, within mining regions of conflict-affected and high-risk areas. Companies again stress the importance of reaching out to smelters, by putting in place certification and/or "white lists" of conflict-free smelters.

Within the framework of the OECD, an EU initiative should also provide financial, political and public support to capacity-building of existing systems and in-region sourcing projects (e.g. like the ICGLR, CFS, iTSCI and SfH<sup>14</sup>) to stimulate responsible trade and support local economic development and stability. The OECD Guidance again recurs as the most desirable instrument. Its flexibility does not discourage companies to source from critical regions, but on the contrary might encourage them to exercise due diligence as they conduct their day-to-day business. A mandatory regime with penalties, on the other hand, will likely disengage companies from the GLR in particular.

In this sense, business respondents suggest that the EU should also focus on encouraging good governance and the rule of law in host countries. They see a role for the EU to work closely with local governments and stakeholders to improve infrastructure and investigate the illicit trade of minerals. These efforts will support ethical business operating in the region and deliver more value to the local communities in question. Complementing the efforts of in-region governments and industry initiatives through technical and financial assistance would also seemingly enable the emergence of a responsible compliance framework for the whole supply chain. In doing so, the EU would signal political and economic support to countries or regions that may be affected by the introduction of new EU measures, and serve as an important message to the business community not to stigmatize minerals produced in these parts of the world.

For NGOs, an EU initiative (mainly a regulation, see section 5) could increase the recognition of existing initiatives inspired by the best practices of the private sector and the implementation of the OECD Guidance. The EU should also cooperate with local authorities in order to strengthen good governance, investment in supporting infrastructure and solving the problems of illegal trade immediately and in an integrated manner.

Civil society respondents would wish to see an EU regulation with global geographical scope requiring companies to undertake risk-based supply chain due diligence with an emphasis on supply chains rather than

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<sup>14</sup> International Conference on the Great Lakes Region, Conflict-Free Smelters programme, ITRI Tin Supply Chain Initiative, Solutions for Hope.

on specific regions or conflicts, preventing companies from developing sourcing strategies that contribute to de facto embargos. This approach would also reduce the higher administrative cost of sourcing minerals from specific regions, which in turn encourages market access for minerals from these regions, including those that could be responsibly sourced. The EU should consider accompanying measures to encourage sustainable sourcing models for conflict-free minerals, for example by publicly highlighting best practices or exploring possibilities to develop responsible sourcing criteria in public procurement contracts. The EU could develop further guidance to help companies understand how to identify and address supply chain risks and support work by the OECD to further define specific risk indicators for companies.

## 5) Nature of the initiative

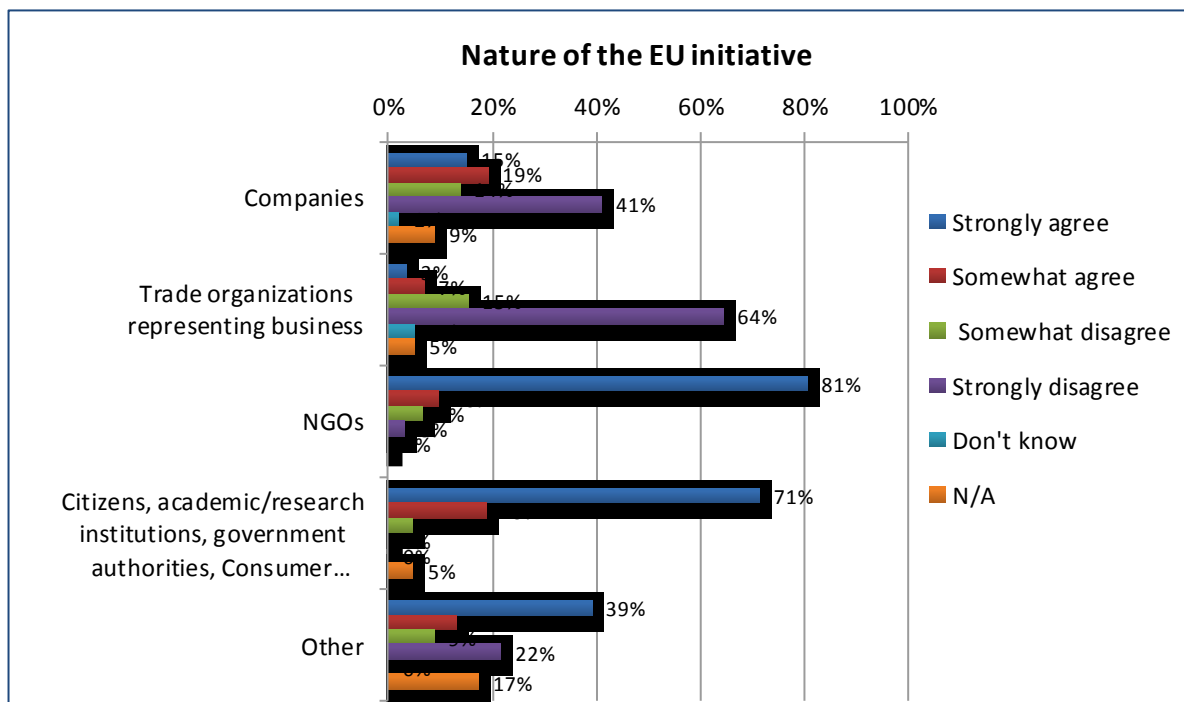
Q. 5.1 To ensure sufficient private sector participation, the implementation of an EU initiative on supply chain, due diligence should not only be voluntary but should include a degree of obligation on business operators.

Again, from a general perspective, statistics do not show a clear position. Respondents' replies are almost equally distributed between the two main positions of "agree" and "disagree", with respectively the 41% and 49%. This time, however, the two options with a stronger connotation ("strongly agree" and "strongly disagree") prevail over the lighter ones ("somewhat agree" and "somewhat disagree") with 26% and 37% against 15% and 12%. Trends become clear as we look specifically at the profile respondents.

For the business sector, an EU initiative should not entail any degree of obligation. 79.7% of trade organisations and 61.9% of companies are against a mandatory initiative. But, looking inside the companies' profiles, it becomes evident that large companies lead the trend. For 60.2% of them, any obligatory provision should be avoided (45% strongly disagree). Small- and medium-sized companies are open to a certain degree of obligation. Medium-sized companies demonstrate a 43.5% of disagreement and a higher 47.8% of agreement. The trend is even more evident with small companies where 52% agree (e.g. 66% of the small companies chose regulatory obligations as the most compelling motivation for sourcing responsibly) and 44% disagree. The sub-category of the US-listed companies (21 large companies and 2 SMEs) is in favour of a mandatory EU initiative (43.5%) while 34.8% disagree. This level of support can be attributed to a desire for mutual recognition of EU and US regulatory prescriptions on responsible mineral sourcing.

With respect to the relevant sectors, more than 61% of Metals and metal products respondents and 64% of Electrical machinery and equipment respondents disagree with the provision of a degree of obligation. So do 56% of respondents of the Instrument engineering, computers and office equipment sector; and 70% of respondents from the Chemicals and rubber and plastics sector. Radio, television and communication equipment sector disagrees with 63%. The Energy and mining quarrying sector is instead in favour with 63.2%. The Other machinery and equipment sector is also in favour with a relative majority of "agrees" (50%).

Given their statements in the previous questions, not surprisingly the 90.3% of NGOs are in favour of an obligation for business actors (more than 80.6% strongly agree). The same trend emerges for citizens, academic/research institutions, consumer's protection agencies and government authorities that agree up to a level of 94.5% (77.8% strongly agree).



**Q. 5.2** How should a scheme be designed to make sure companies keep engaging and sourcing responsibly in conflict-affected and high-risk regions rather than simply move on to different regions to source their products?

Generally, in their responses, companies ask for straightforward direction about where to source and fewer rules. Flexibility is considered the key aspect of due diligence management systems as companies need room and time in order to comply. The business sector favours a holistic approach focused on existing instruments; building up alternative systems would create the risk of increasing uncertainties and administrative burdens. An EU initiative should preferably refer to/be based on the OECD Guidance. The Guidance represents the optimal solution as it is a voluntary, risk-based and systematic framework which enables companies to exercise due diligence with relevant suppliers in a cost-effective, practical and planned way. Complementary approaches by the EU should help the companies achieve a reliable and well-functioning due diligence system (with harmonized auditing standards on the international level).

Developed through an international multi-stakeholder consultation process, the OECD Guidance has also the necessary credibility and wide acceptance to ensure a consistent approach on a global basis and exercise the proper leverage on other economies. Due to the complexities of the supply chain, businesses state that implementation is naturally a gradual process that cannot be achieved overnight and ask for a phase-in provision to allow companies, especially SMEs, to adjust their systems.

An EU initiative should prioritize the upstream part of the supply chain where trade flows are more opaque and risky. Companies suggest that smelters/refiners need to be targeted, otherwise downstream efforts are ineffective. Establishing a control point through the certification of conflict free smelters and publishing a "white list" of compliant smelters enables companies to implement an effective due diligence management system and ensure that they can source minerals conflict-free.

In the light of what is said above, mandatory schemes with penalties will likely have a discouraging effect. Companies point out that a scheme that is too prescriptive would harm the business performance without necessarily achieving corporate stated aims of positively contributing to development. Robust schemes would only duplicate the amount of the work and be extremely time-consuming and costly. Therefore, the

business sector stresses that, any EU legislative initiative needs to be recognised by third parties (e.g. US) to rationalise due diligence efforts deployed under different regulatory pressures.

Companies state that they cannot be responsible for the conflicts in the regions in which they conduct trade; their influence on these critical situations is limited. Therefore, it would be more appropriate and more effective for EU regulatory action to support the efforts of resource-rich countries to build a sustainable raw materials sector in the framework of development cooperation and foreign policy. The EU should assist locally the authorities, local communities and the NGOs, through financial and technical support. The impact of sourcing depends on the local government's conditions; improving these conditions is a foreign policy task and should not be shifted on companies.

For SMEs, an EU initiative could consider introducing a scheme with a certain degree of obligation without pushing companies to simply comply by disengaging from a conflict region but rather to identify and tackle risks. However, an EU initiative should encourage all companies to publicly disclose their sourcing practices to facilitate informed commercial partnerships. In doing so, the initiative should allow for enough flexibility and give adequate time for its proper implementation, involving the minimum possible costs for the industry, also by making sure that reporting/auditing obligations are equally required for companies sourcing from affected regions as well as for companies that do not.

SME respondents also argue that responsible sourcing should not be considered only as an issue of market access; it is a global issue that requires global solutions that take into account trade, humanitarian and security aspects at the same time. Any unilateral EU initiative that does not engage in diplomatic efforts (coordinated with the EU industry) to reach an international sourcing standard, may likely facilitate the competitive position of non-EU companies.

SMEs state that the EU should complement the effectiveness of the implementation of the OECD Guidance. The OECD is considered a transparent, flexible, and comprehensible guide based on a multi-stakeholder and internationally harmonized approach which involves companies, governments and NGOs. However, implementing the OECD Guidance requires additional manpower and external assistance. As the security situation at a mine site is fluid, one of the downsides frequently mentioned is the lack of an *objective* and *measurable* definition of risk and conflict.

NGOs observe that companies apply already good business practices, but these standards need to be enforced by national authorities (governments need to be brought on side as much as the private sector). It is fundamental to strengthen national control in the mineral sector as local authorities need to own these processes. For this reason, financing mechanisms for their implementation are required. NGO respondents observe that it would be essential to enhance at all levels the monitoring of compliance with existing national and international rules and regulations; enhance strong and independent body for compliance monitoring/law enforcement both at the national (producer) and international level; create independent observatories on mining governance and law and legal compliance.

For both NGOs and the category of citizens, academic/research institutions, consumer's protection agencies and also government authorities the OECD Guidance should be taken into account as basic document for reasons mentioned in this section and in the general replies to other questions in the public consultation. It gives a clear set of positive guides rather than negative rules. The system is not aimed at reaching 100% conflict free, but is based on best efforts. It provides with more transparency and control of the supply chain, and it is a useful instrument in the context of the CSR approach. It is flexible process-driven rather than compliance-driven on the basis of a conflict free or not determination: promotes responsible sourcing rather than avoiding to source in conflict areas. These categories consider an EU regulation based on the OECD Guidance as the best option because it would help companies understand faster how to identify and address risks in their supply chains. The EU could then develop further guidance to help define specific risk indicators

and countries for companies. However, respondents recognise some difficulties in the implementation of such schemes, especially on the upstream part of the supply chain, where more targeted information and capacity-building measures are needed.

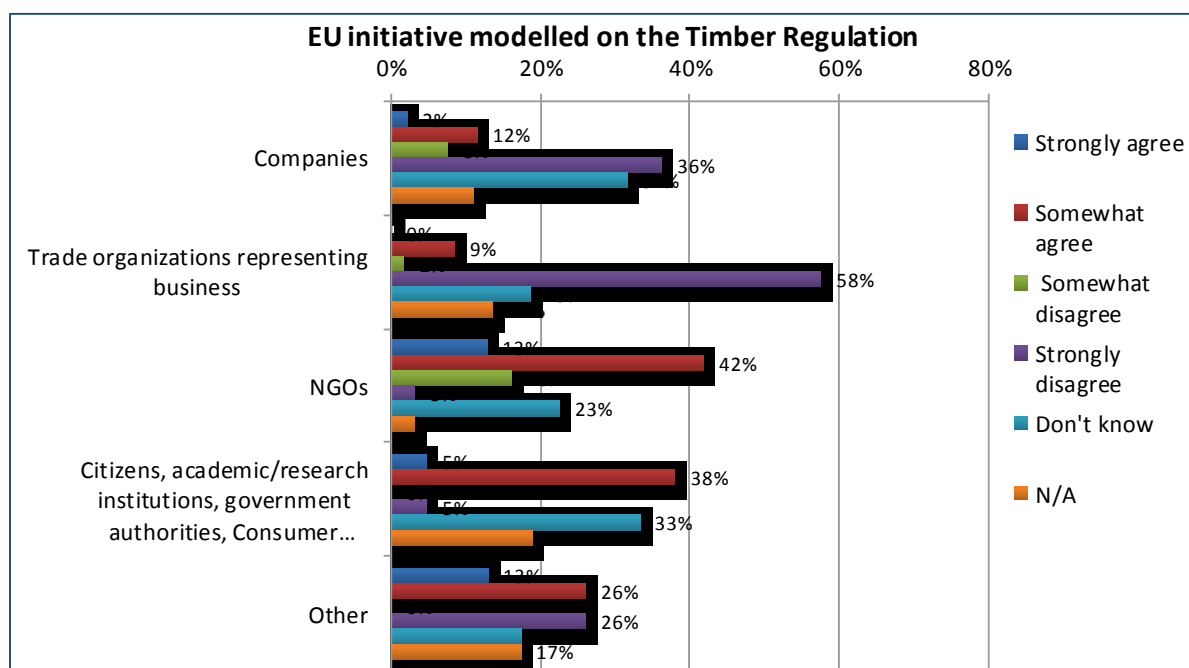
## 6) Lessons learned from the EU Timber Regulation

**Q. 6.1** The EU has some experience in promoting due diligence along the supply chain of the timber sector. Should the EU consider an initiative for minerals modelled on the 2010 Timber Regulation?

The first information that comes up from analysing the contributions on this question is the general lack of awareness/knowledge of the EU Timber Regulation. Indeed, for all the profiles of respondents the rates of both "don't know" and "N/A" options rose drastically in this section, compared to the rest of consultation (for this question, companies: 42.5% of "don't know"- "N/A"; trade organisations: 32.2% "don't know"- "N/A"; NGOs: 25.8% "don't know"- "N/A"; Citizen, academic/research institutions, consumer's protection agencies and government authorities: 50% "don't know"- "N/A").

The data, however, confirm again the dual trend that places the business sector on one side and NGOs and Citizens, academic/research institutions, consumer's protection agencies on the other. Companies and trade organisations do not see the Timber Regulation as possible model of the EU initiative (they respectively disagree with a share of 43.8% and 59.3%).

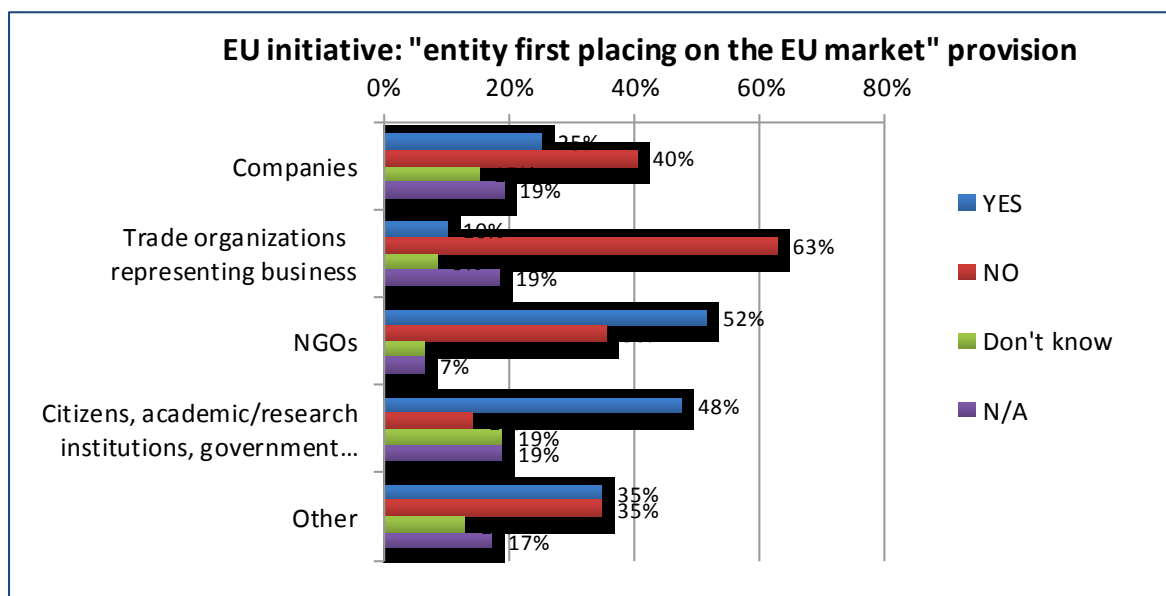
Conversely, NGOs (54.8%) and citizens, academic/research institutions, consumer's protection agencies and government authorities (44.5%) consider such regulation a fair model to take into account.



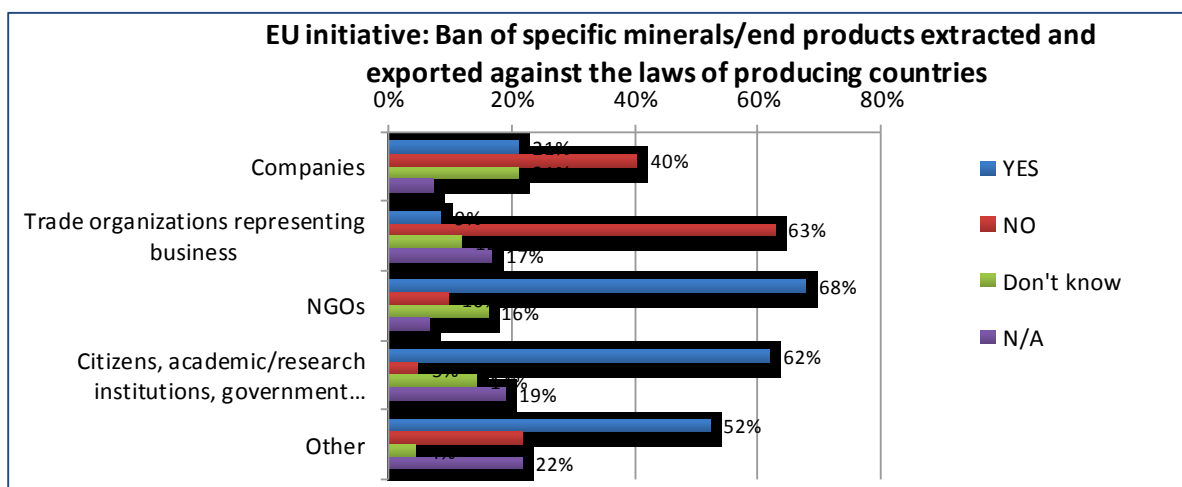
**Q. 6.2** As is the case in the EU Timber Regulation, should an EU initiative promote responsible sourcing of minerals by requiring that the entity first placing a selected mineral (processed or not) on the EU market must provide evidence of due diligence thereby giving reasonable assurance that its supply chain is conflict-free?

42.1% of respondents answered "no" and 27.5% welcome the suggestion that the entity first placing a selected mineral (processed or not) on the EU market must provide evidence of due diligence. Companies

and Trade organisations representing business were against with respective shares of 40.4% and 62.7%. Conversely, NGOs and citizens, academic/research institutions, consumer's protection agencies and government authorities agree with a share of 51.6% and 47.6%. Furthermore, the rates of both "don't know" and "N/A" are relatively high for all the profiles of respondents.



**Q. 6.3** Should the EU initiative consider preventing the placing on the market of specific minerals/end products extracted and exported against the laws of producing countries?



The same trend of the previous question is mirrored here. NGOs and Citizens, academic/research institutions, consumer's protection agencies and government authorities are in favor with a share of 67.7% and 61.9%; companies and trade organisations representing business are against with a share of 40.4% and 62.7%. Again, the rates of both "don't know" and "N/A" are relatively high for all the profiles of respondents.

**Q. 6.3.1** If yes, which laws of the mineral producing countries should be taken into account? Please be Country - specific in your examples.

Respondents generally say that companies should respect human rights and due diligence laws and international standards, including the requirement that companies carry out human rights due diligence, in countries where they operate or source from. Countries such as the DRC and Rwanda under the impetus of



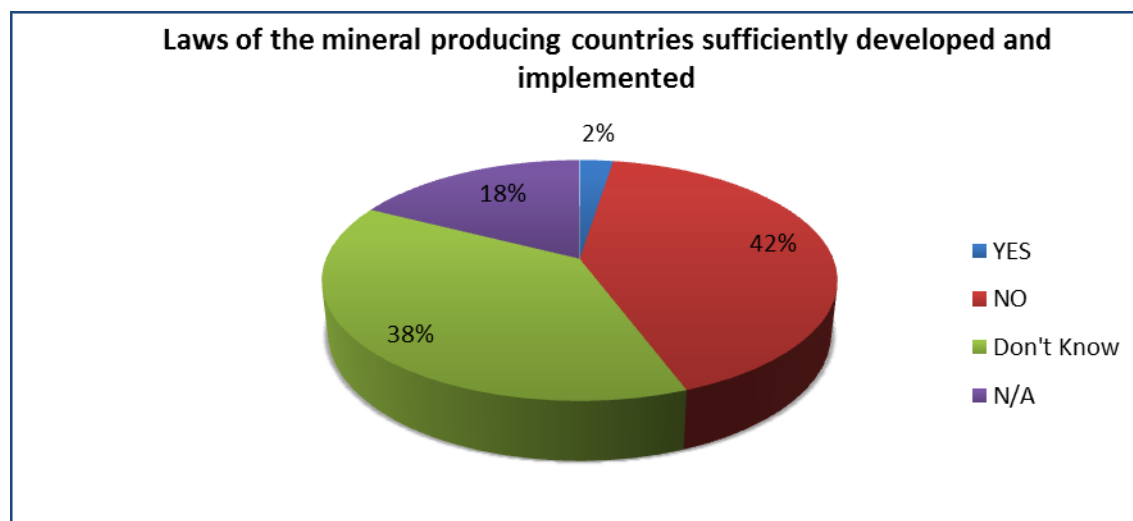
the ICGLR have already introduced domestic due diligence legislation that can help companies source responsibly and applied legislations on the mining sector (the Congolese Code Minier (2002) and Règlement Minier (2003)). However, relying only on national legislation or regional initiatives is not enough. In many cases the legal framework or implementation of national laws, such as in the DRC, is weak. Furthermore in some cases minerals that have funded conflict are reported to be exported through legal channels, underlining the need for due diligence checks. Hence, respondents suggest that the EU should support and strengthen existing laws in mineral producing countries that aim to support good mineral governance. Some of the member states of the ICGLR have integrated the OECD compliant regional certification mechanism into their respective legislative frameworks (for example the DRC, Rwanda and, soon Uganda).

Other producing countries mentioned are Angola, Burundi, the Central African Republic, Kenya, Sudan, Tanzania, Zambia, and Chile where as an example labour laws need to be taken into account.

For NGOs, in particular, the international human rights treaties ratified by the mineral producing country should be taken into account and national laws addressing corruption, financial crimes (extortion, taxation), environmental pollution and extractives. Examples are: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and Convention against Torture and other Cruel, the Inhuman or Degrading Treatment or Punishment. At the regional level, there are the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child.

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

There is an overall negative consideration of the state-of-play of legislation in the producing countries. As the pie chart shows, 2% of the respondents think that laws are sufficiently developed and implemented. Lack of a secure and stable political framework, widespread corruption and weak infrastructure are the principal reasons attributed to the challenges producing countries face in enforcing their developing legal system.



**Q. 6.4.1** If you have examples to back either opinion, please share.

For the business sector, it is too early to know the effectiveness of the 2010 Timber Regulation (the EUTR only entered into force in March 2013), and the effectiveness of such a law heavily depends on the legal enforcement capacity in each third country and region where primary products are collected and extracted. The complexity of the supply chain is not comparable between timber and minerals since minerals are less traceable and visible than wood products. Genetics can determine the source of wood and so can be directly determined by the person placing timber on the market without necessarily depending on information passed through the supply chain, which is not possible for minerals originating from conflict regions once processed.

Therefore, business respondents point out that companies cannot realistically evaluate whether a mineral is conflict-free or not using EUTR-type due diligence requirements without similar infrastructure in place: first, a mandatory scheme as such would overlap with the existing voluntary initiatives; second, by prohibiting the placement of illegally harvested timber and timber products on the EU market, the EUTR constitutes a demand-side approach, which aims to clean the EU market. If a similar approach is adopted in the case of "conflict minerals", it will only reassure that the EU internal market is kept clean of "conflict minerals" while not contributing towards improving the situation in the conflict-affected area. The problem of illegally harvested timber and deforestation is however a global one, which requires good governance (i.e. legislation and good practices in timber producing countries) and security elements (i.e. conflicts over land use) to be taken into account. EUTR is a thorough piece of legislation and expects companies to confirm "evidence of legality" and "negligible risk" in the countries of harvest for the timber products they source. This concept of "evidence of legality" is very broad and unclear. At present, even third-party certifications (such as FSC, PEFC, SFI<sup>15</sup>) are not perceived as enough to confirm "evidence of legality". By applying the EUTR requirements to "conflict minerals", business respondents are of the opinion that the EU would effectively mandate and accelerate the de facto embargo seen under US Dodd-Frank Act.

NGOs observe that in producing countries, mineral-related legislation is rarely implemented or enforced. Reasons include corruption, insufficient political will and a lack of capacity and infrastructure but also power imbalances, e.g. unequal negotiating capacities between communities, smaller producing nations and large foreign companies. Borders are non-existent, making illicit mineral flows easy.

Some countries have recently amended their mineral laws to bring them in line with international standards but enforcement remains an issue, whereas others have to implement the necessary laws. Respondents report that while the Rwandan scheme states that all minerals traded in Rwanda must be tagged and certified, the trade in "conflict minerals" is still possible because of corruption and smuggling. In addition, the scheme does not legally require conformance with the OECD Guidance in spite of the ICGLR scheme. The DRC "note circulaire" has resulted in two companies being suspended from trading but in order to be effective, monitoring and enforcement must continue.

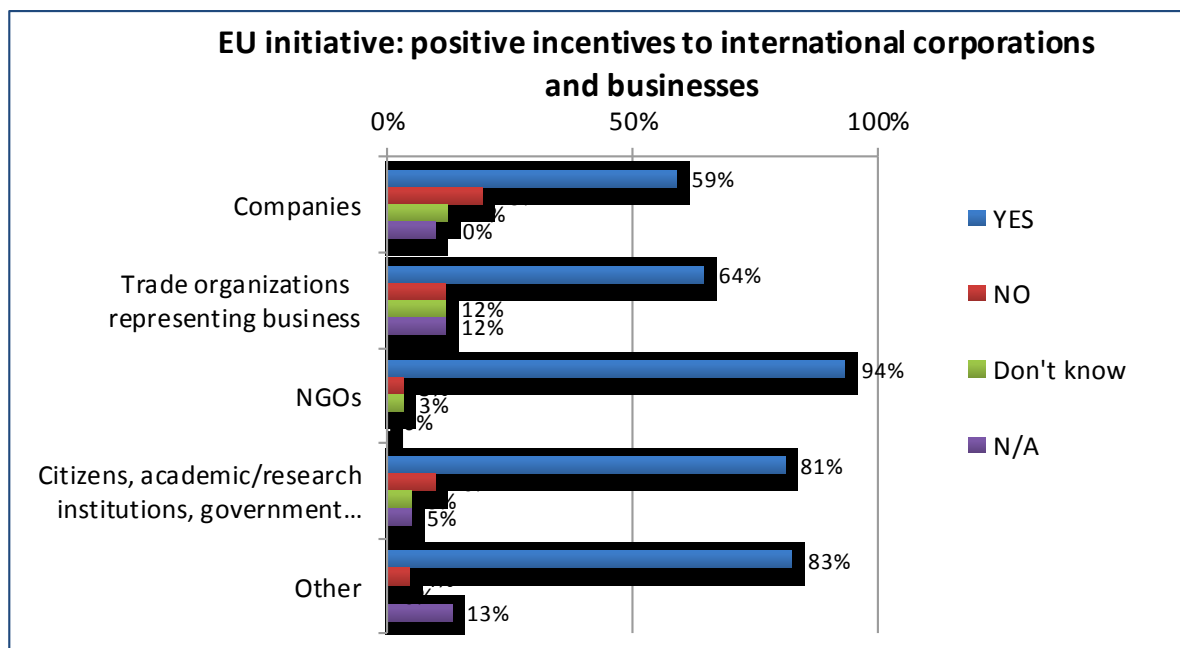
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<sup>15</sup> Forest Stewardship Council, Programme for the Endorsement of Forest Certification, Sustainable Forestry Initiative programme.

## 7) Positive incentives to international corporations and businesses

**Q. 7.1** Should an EU initiative provide positive incentives to businesses to foster clean trade from conflict-affected and high-risk areas (i.e. not contributing to adverse impacts and conflicts)?

67.5% of respondents think that positive incentives to businesses should be taken into account to foster clean trade. NGOs and citizens academic/research institutions, consumer's protection agencies and government authorities are in favor with respectively a share of 93.5% and 81%. Companies and trade organisations representing business agree with a share of 58.9% and 64.4%.



**Q. 7.1.1** What kind of incentives could be considered?

Business sector respondents mention the following incentives to foster clean trade from conflict-affected and high-risk areas:

1. Political support to producing countries in order to enhance a more stable and secure environment for the business sector;
2. Technical and financial support to producing countries;
3. Diplomatic efforts in order to engage other economies (e.g. China, Malaysia, Indonesia);
4. Technical and financial support to existing initiatives;
5. Technical and financial support to NGOs and other organisations on the ground;
6. Investments on the ground;
7. Raise awareness on consumers;

Specific incentives for the business sector are:

1. List of certified conflict free smelters ("white list") and/or list of not conflict free smelters ("blacklist");
2. Incentives for smelters (not specified);
3. Tax breaks;
4. Public-private partnerships (e.g. PPA);
5. Public Procurement;

6. Certification of compliance (either on the EU level or locally) at a voluntary and cost-free basis;
7. Self-certification (e.g. US Safe Harbour for Privacy: companies self-certify to the government that they are compliant and the company's name is posted on the website);
8. Labels/stamp of excellence for companies' continued responsible participation (similar to the FSC stamp - Forest Stewardship Council) which would encourage the end consumers to buy the stamped products over the competition;
9. "Award" to companies that source minerals responsibly from the DRC and surrounding regions;
10. Harmonised auditing standards;
11. Price -related incentives;
12. Registry for "clean trade products";
13. Education programmes available to companies.

According to the NGOs and the category of citizens, academic/research institutions, consumer's protection agencies and government authorities, in order to incentivise the business sector, the EU should:

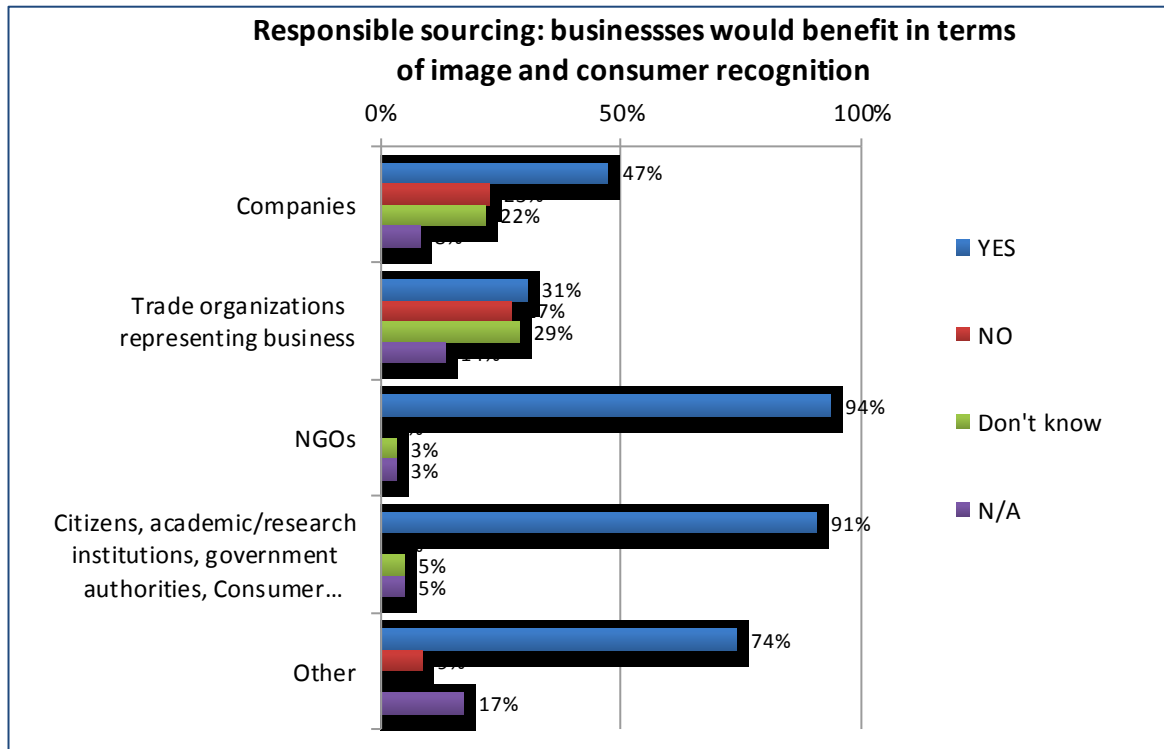
1. Support in-region sourcing projects to stimulate responsible trade and support local economic development;
2. Support local development and security sector reform, engaging in political dialogue, hence working to turn such "high-risk areas" into "moderate-" or "low-risk areas";
3. Develop on-the-ground solutions in cooperation with local government, national and international civil society and business communities;
4. Support governments in the region to investigate and combat the stream of illegitimate minerals starting from the mine;
5. Act as a neutral broker on "resource related conflicts", bringing together relevant parties, design resolution roadmap, and give each player their responsibilities.

In particular the EU should:

1. Avoid extra administrative burden and duplication of existing regulation if it does not have a direct positive effect on the population and livelihood in conflict areas;
2. Recognise good reporting practices or adopting a weighting scheme whereby responsible sourcing practices are recognised during public procurement;
3. Link company violations of the scheme to ineligibility for competing under public procurement;
4. Provide financial incentives but in individual cases (such as encouraging companies to co-finance pilot projects, for example);
5. Provide trade finance incentives, such as reinsurance and risk insurance and export credit;
6. Encourage stock markets to include such companies in sustainability indices, if appropriate;
7. Envisage the labelling of products that comply with standards to help consumers arrive at informed choices;
8. Facilitate the dissemination of reports from companies reporting on their due diligence obligations; achievements and results by, for instance, centralizing and hosting said reports on a web page accessible to the public. The EU could also specify which initiatives it endorses, and recognises as compliant with its requirements. However, a "name-and-shame" approach, or ranking of companies by level of reported compliance could unduly distort the competition between operators;
9. Provide industry and consumer education on the importance of not pulling out of conflict and high-risk areas.

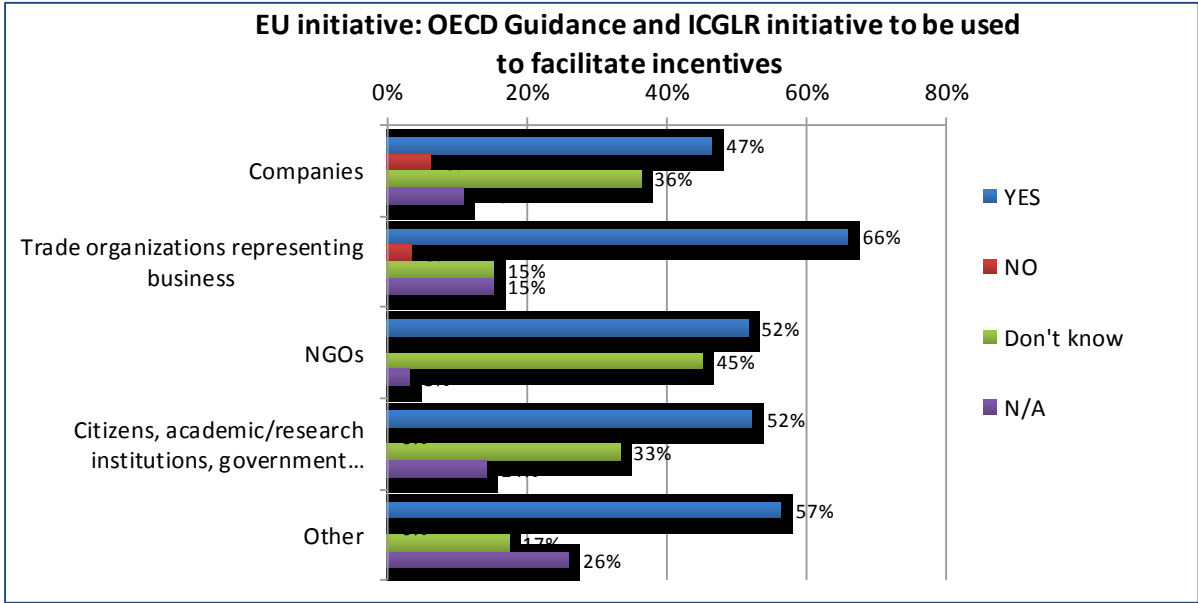
**Q. 7.2** Business would benefit in terms of brand image and consumer recognition by complying with an EU initiative on responsible sourcing.

54.3% of the respondents think that the business sector would benefit in terms of brand image and consumer recognition by complying with an EU initiative on responsible sourcing. Again, NGOs and citizens, academic/research institutions, consumer's protection agencies and government authorities have a much clearer position, with respectively 93.5% and 90.5% of replies agreeing on the statement. Companies and trade organisations representing business seem more doubtful with 47% and 30% of consensus.



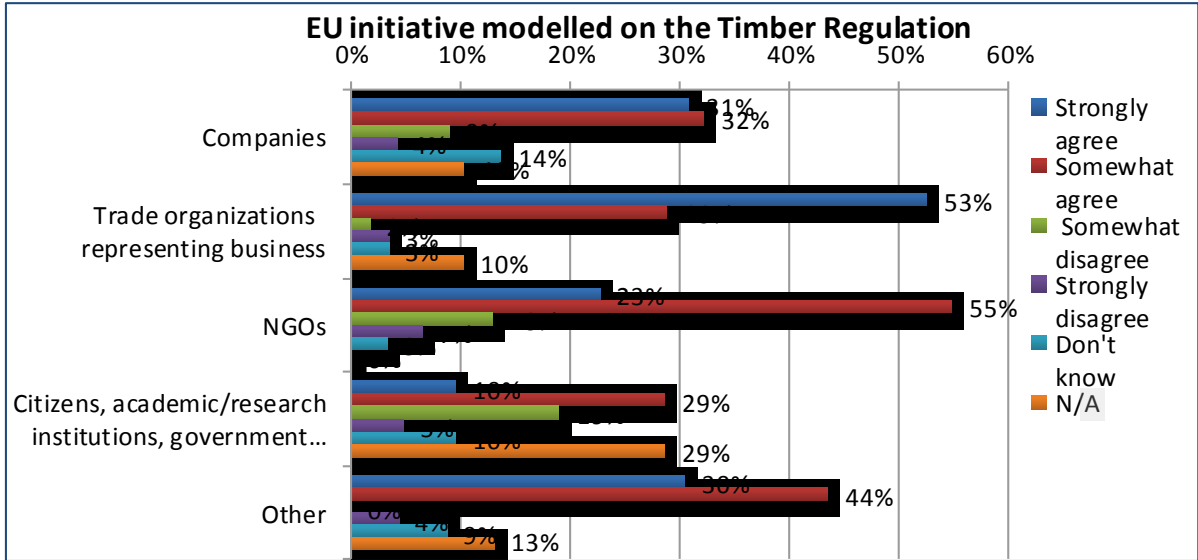
**Q. 7.3** Can existing frameworks such as OECD Due Diligence Guidance or certification initiative by the International Conference on the Great Lakes Region be used to facilitate incentives considered by the EU?

For 52.5% of respondents, the existing framework such as the OECD Guidance or the initiative by the ICGLR represent an important benchmark to be used to facilitate incentives within a possible EU initiative. Companies and trade organisations representing business are well disposed towards these instruments (46.6% and 66.1% answered "yes"). The same happens for NGOs (51%) and the category of citizens, academic/research institutions, consumer protection agencies and government authorities (52%). Still, a higher rate of "don't know" and "N/A" answers needs to be taken into account.



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

67.5% of respondents believe that the current initiatives put in place by the private sector allow the promotion of responsible sourcing from conflict-affected and high-risk areas. 12.5% disagree while those who replied "don't know" and "N/A", reach the 20.3% totally. Specifically, companies and trade organisations representing business agree with 63% and 81.3% (the latter with a higher rate of "strongly agree" - 52.5%). NGOs also positively acknowledge the existing private initiatives (77.4%). Citizens, academic/research institutions, consumer protection agencies and government authorities are more uncertain, as only 38.1% agree.



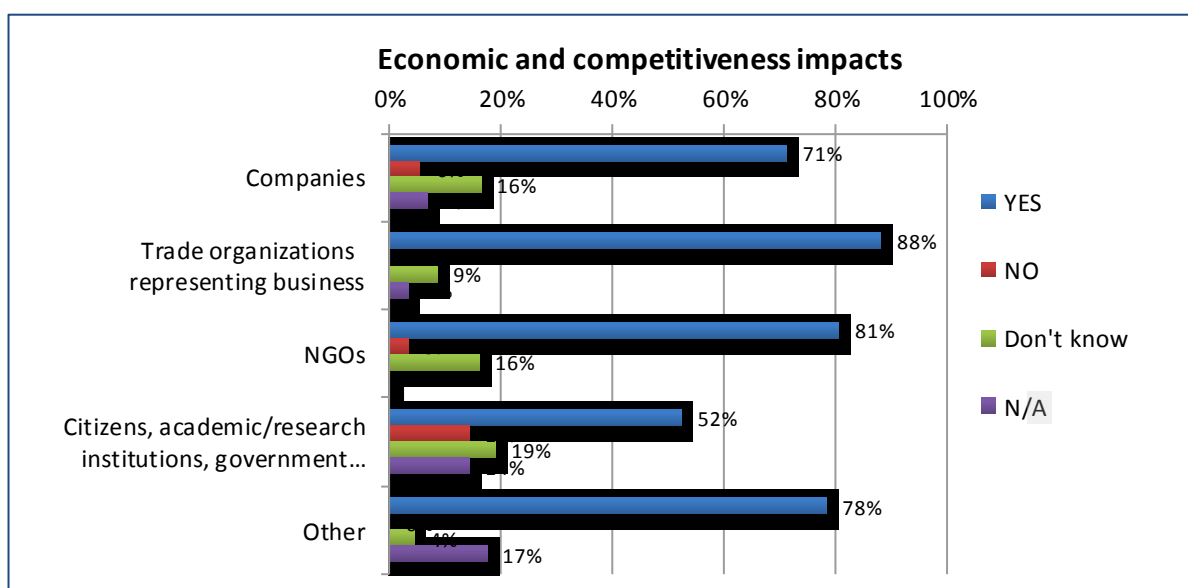
**Q. 7.5 How can governments complement private sector led initiatives? Are there examples of positive incentives provided by governments in non-EU jurisdictions?**

To summarise replies to this question, governments play more than a complementing role. Unless governments act on the need to build a strong basis by ensuring security on the ground and combatting bribery, private sector initiatives are not likely to be successful in mitigating conflicts. Nevertheless, governments can complement by improving and promoting regulations and regional initiatives such as different sourcing initiatives, hence creating a more level playground. Foreign governments ought to promote and reinforce (financially and technically) initiatives like the Conflict Free Smelter programme, by facilitating, via embassies, dialogue with local authorities. Governments can play a pivotal role in coordinating joint public and private sectors' initiatives for in-region due diligence programmes (e.g. the Public-Private Alliance for Responsible Minerals Trade - PPA). They can also complement private sector initiatives through diplomatic channels by engaging and encouraging other countries to adopt uniform legislations and ensure that they minimize the reporting burden on business actors. In addition to that, they should be engaged in providing courses and legal statures (e.g. Sierra Leone), in order to create a solid educational background in understanding due diligence responsibilities and raise awareness about responsible sourcing. Efforts to practically address long-lasting root problems (which cannot be addressed by the private sector) need to be put in place.

## 8) Economic and competitiveness impacts

**Q. 8.1 Would you expect any competitiveness impact (positive or negative) should the EU undertake a supply chain due diligence initiative on minerals originating from conflict-affected and high-risk areas?**

The majority of respondents (75%) envisage some impact on competitiveness, in case of an EU initiative on responsible sourcing. For 71.2% of companies and 88.1% of trade organisations representing business, an EU initiative would bring about either positive or negative effects on the market and competitiveness. As for NGOs, more than 80% share the same views as the business sector. The group of citizen, academic/research institutions, consumer protection agencies and government authorities seem to be less aware of the economic impact of a possible EU initiative (the 52% answered "yes", but more than 33% did not answer or chose the "don't know" option).



**Q. 8.1.1 If yes, what impact do you expect for the upstream industries?**

The business sector observes that the impact depends on the nature of the EU initiative, and could be positive or negative. If the EU put in place an initiative based on regulation, this would create more costs (not borne by competitors) and administrative burden for downstream industry to use minerals from conflict areas, causing distortion of mineral supply/access and a de facto embargo as the downstream industry would avoid sourcing in those regions. This could lead to a collapse of local economies and heavily affect competitiveness of the upstream industry in these regions. Miners, traders and exporters would not have market for their (clean or unclean) products. It is likely to expect the same unintended consequences of the US Dodd-Frank Act.

On the other hand, if the EU succeeded in stimulating and encouraging the demand for clean minerals from conflict regions on the basis of a global initiative, then the upstream industry in those regions would compete on the world market for metals, on a level playing field for conflict vs. non-conflict regions.

For NGOs, these effects can best be dealt with by means of a strong regulatory framework on an international level that allows for the creation of a level playing-field (NGOs acknowledge that if regulations are only applicable on regional basis, only for EU companies, this automatically will lead to a distortion of competition).

In the medium-/longer-term, NGOs state that after a scheme has been implemented properly, companies' costs are absorbed and conditions at the mines are likely to improve, thereby making them more attractive to investors and international sourcing. Increased monitoring on the ground will prevent illegal exploitation and help curtail corruption and improve local governance. Infrastructure is expected to improve which should result in even cheaper production costs.

Economic growth would bring benefits for upstream companies, and responsible trading would allow downstream companies to market themselves as "conflict-free", which could help them to gain a competitive edge on international markets.

**Q. 8.1.2 If yes, what impact do you expect for the downstream industries?**

For the business sector, binding legislation (without an internationally bound agreement) would impose significant administrative costs to EU companies (especially the ones with complex value chains). This will ultimately harm their competitiveness as discussed more than once in this report. Similar phenomena of trade embargos, as those following the US Dodd-Frank Act section 1502, may be also created, limiting access to third country markets and to security of supply of minerals for the EU industry. Furthermore, unless mutual recognition is achieved with the US regime, EU-US dual-listed companies will have to face more costs and bureaucracy.

However, if an EU initiative encourages upstream companies to participate in the due diligence efforts, this might make traceability efforts easier for the downstream industry. Additionally, there could be some benefits for the industry, in terms of better customer relationships (trust) along the supply chain, CSR performance, image and reputation reliability would be enhanced. Complying would represent a competitive differentiator towards consumers singling out companies that are committed to act responsibly.

On the other hand, NGOs remark that such initiatives can lead to better governance and market stability at local level. Hence, over a longer term, this could translate into benefits such as less corruption and reduced reputational damage due to a company's association with disreputable individuals or groups or presence in conflict-affected and high-risk areas. A more stable production area will also benefit shareholders as companies find themselves dedicating fewer resources to mitigate social, political and economic risks. This



could lead to higher shareholder dividends as the company expends fewer resources and capital to resolve problems associated with high-risk areas. It could also be a potential marketing tool for companies.

**Q. 8.2 What would be the possible impact of non-action?**

The business sector believes that non-action from the part of the EU at the level of binding legislation should not be perceived as non-action at all. Strong political action should be taken towards the direction of further supporting existing workable initiatives in resource-holding countries, within a coordinated international framework. Inaction on the part of the EU at the level of binding legislation should not be perceived as inaction on the side of industry, either. The market has already reacted with respect to this issue. Suppliers and purchasers are already cooperating to implement risk-based frameworks for responsible sourcing. Various sustainability initiatives have been/are being deployed. Non-action would give the existing due diligence schemes more time to work. It would also allow to better assess the effects of Section 1502 of the US Dodd-Frank Act, and to draw useful lessons on the advantages and shortcomings of those different schemes.

A "non-action" option is, on the contrary, not considered acceptable by the NGOs. It would contribute to widespread insecurity and violence in areas where conflicts are linked to trade in minerals, the effects of which would be felt first and foremost by local communities. Moreover, it would hamper the development of stable, sustainable economies and a transparent mining sector, which in turn impacts on the prospects of international corporations investing in those areas. Again, seen from the eyes of NGO respondents, "non-action" would entail continued reputational risks for EU companies operating in high-risk areas; loss of momentum for global efforts to strengthen political and resource governance in affected areas; the perception that EU does not take the issue seriously. EU action to break the links between minerals and conflict through responsible sourcing would help to reduce the negative political, developmental and humanitarian impacts of resource-fuelled wars.

**Q. 8.3 In case a due diligence system will be proposed, what would be the expected impacts both in terms of administrative burdens and compliance cost (e.g. cost of collecting relevant information and cost of auditing). If you already apply due diligence please provide exact information on your costs.**

Business states that an EU initiative or the addition of any legal requirements on companies to report on their due diligence would lead to companies incurring significant costs and administrative burdens. For companies with long and complex supply chain the burden of having to manage requests, providing relevant information and being audited would be extremely high, especially for those located at the end of the supply chain. Note however, that the responses received were not specific as to how high these costs could be.

The majority of business respondents state that it is unrealistic to provide expected impact in terms of administrative burdens and compliance costs to a new due diligence system without any information being provided on what this new due diligence system would include or how it would operate. Moreover, any estimation would further depend on other aspects such as size of the company, scope, other initiatives already implemented.

Business reported that moderate estimates of the costs implied by the US Dodd-Frank Act though, show that they will reach 7 to 9 billion USD in 2014 for about 6000 US-listed companies and companies in their supply chains. Costs will also significantly impact the less well regulated artisanal production sector which may also be the least able to afford such burdens. Administrative and compliance costs, while significant, are more impactful to small companies who do not have the internal resources available for a due diligence programme.

In one case a small company respondent claimed that the current cost of industry and government initiatives is around \$200,000 per month. Plus, at least 50 hours per month in man power will be needed.

A large company estimated that it will incur more than \$10 million per year to implement an EU "conflict minerals" law based on the following facts: they have over 2,000 direct material suppliers and more than 10,000 indirect suppliers. They sell more than 40,000 distinct parts/products.

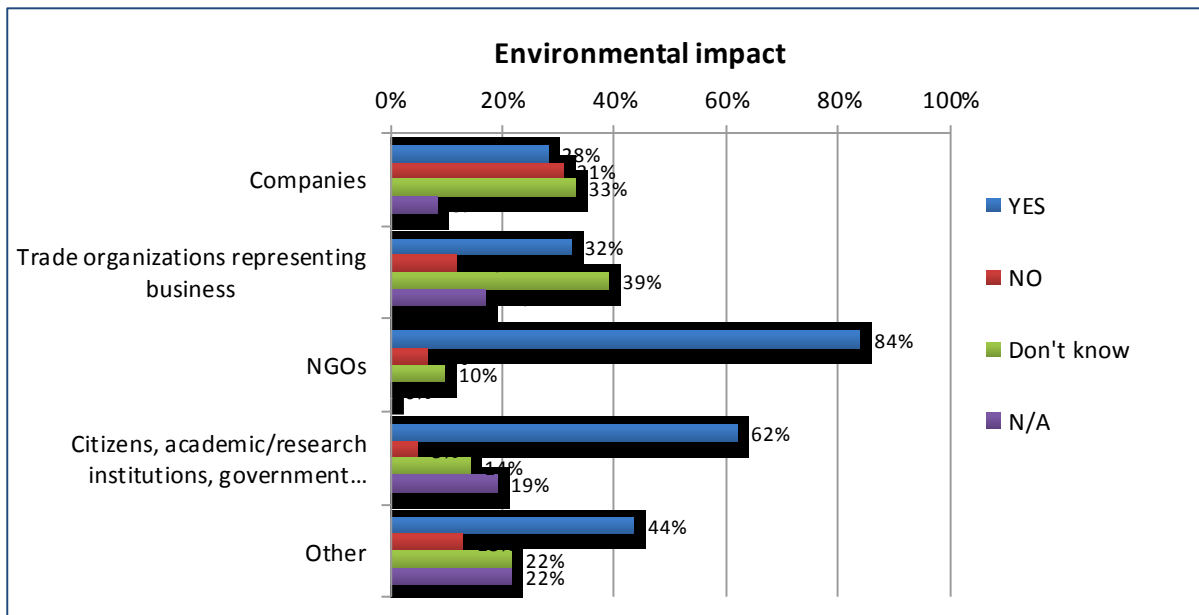
Conversely, NGOs emphasize that properly implemented due diligence schemes could break the link between mining and conflict and help stimulate local economic development.

If a new but different reporting tool is devised, it would require companies to re-organise internally at EU and global level, which would be very expensive. The EU should be able to build on or incorporate the existing schemes and regulations that companies are already applying which would prevent unnecessary additional costs. Mechanisms will certainly raise costs but such costs, if within an international standard practice, would be shared between all companies in the supply chain and be limited. The 2011 "Claigan Environmental" study sent in as a submission to the US Security Exchange Commission prior to the adoption of the final rules for Section 1502 of the US Dodd-Frank Act shows that administrative burden and cost of due diligence compliance are not as high as suggested by some. As mentioned by NGO respondents, the study estimates compliance cost 22% lower than their initial estimate of 0.03% of revenue for the first year, reducing by 50% in the two subsequent years. "Green Research" concludes that compliance costs tend to decline over time as companies become familiar with requirements, are manageable for companies of all sizes, and are best addressed by joining industry-wide initiatives.

## 9) Environmental impacts

### Q. 9.1 Would you expect any environmental impact (positive or negative) should the EU undertake a supply chain due diligence initiative on minerals originating from conflict-affected and high-risk areas?

As for the environment, business sector respondents seem to be more uncertain about any positive or negative impacts. Indeed, 28.1% of companies and 32.2% of trade organisations representing business acknowledge the possibility of some kind of consequences, respectively 30.8% and 11.9% select no; while "don't know" and "N/A" reach more than 40% for both the profiles. Conversely, NGOs are firm on this issue as 83.9% of the respondents answered "yes". Similarly, the group of citizens, academic/research institutions, consumer protection agencies and government authorities estimate a certain impact on the environment (61.9% of "yes").



**Q. 9.1.1** If yes, what impact do you expect?

For the business sector, positive impacts will be limited to the extent to which the regulation covers environmental sustainability issues. Negative impacts are related to the possible withdrawal of regulated companies from conflict-affected and high-risk areas in response to the EU regulation, which would not only reduce country revenue and employment but could also result in replacement by less environmentally responsible companies from other regions, with a resulting shift towards illegality. Assuming the EU initiative is not accompanied by the active involvement of other third-country economic actors' such as from China, mineral flows would likely to be diverted towards non-EU/US countries with less rigorous or no environmental standards and norms, and thus result in negative impacts on the environment (water, air and soil pollution, energy efficiency, carbon leakage, etc.).

Business respondents consider that an initiative that contains measures to encourage the formalisation of artisanal and small scale mining, within an appropriate legal framework, and measures against illegal mining might be expected to have significant environmental benefits (including, in the case of artisanal gold mining, a reduction in mercury usage).

Conversely, NGOs, together with citizens, academic/research institutions, consumer protection agencies and government authorities, strongly believe that an EU initiative would encourage more formalisation and legalisation of the mining sector. This has been shown to be one of the most important factors leading to better practices, including environmental practices, in the long term.

These respondents report that the mineral mining industry in developing countries is associated with significant environmental damage. Requiring EU companies to undertake comprehensive supply chain due diligence would significantly reduce the risk of EU companies being involved in causing significant environmental damage. Due diligence would help companies better understand their supply chains and manage risk. Improvements in the monitoring and control of mine sites can result in closer attention to environmental controls. While an EU initiative should focus on acute conflict financing and human rights, companies looking along their supply chains may find other risks, including those related to environmental damage, which can then be addressed at the same time. In addition, a better knowledge of their supply chains will enable those companies that have made environmental commitments regarding their activities to positively influence and or demand that their suppliers also adhere to these environmental standards.

**Q. 9.2 What would be the possible impact of non-action?**

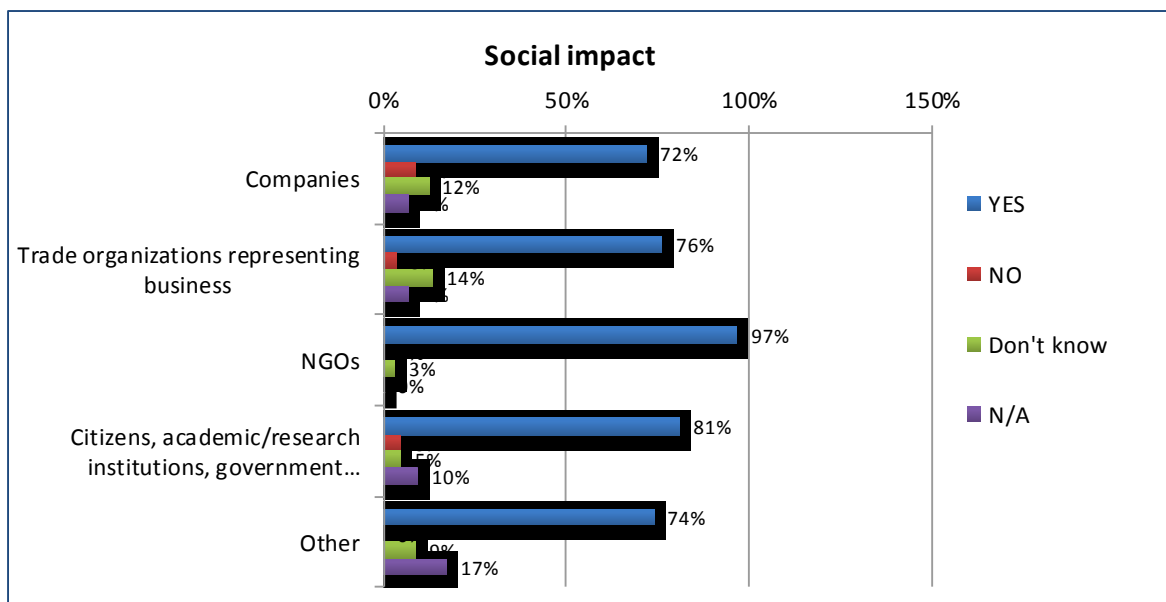
Companies and trade organisations representing business are certain that non-action by the EU would not prevent the industry from working on schemes to ensure ethical sourcing (including environmental impacts). Responsible mining, mineral and metal producing companies are aware of the need to maintain their operating licences and sustainable supply chains and are therefore committed to apply the necessary due diligence to reduce business risks (including environmental liabilities) independent of government intervention. Voluntary CSR initiatives are increasingly being undertaken, and will have a positive impact. Industry and private-sector initiatives have begun and need time to take effect. The best actions of the EU would be to support and encourage those initiatives already underway. Non-action would be preferable to a supply chain solution since it would also avoid perverse effects in Central Africa and non-value added transaction costs for industry.

For NGOs, a "non-action strategy" would enable EU companies to be complicit in causing significant environmental damage in countries with weak regulatory systems. In such countries, national and local authorities are often weakly equipped to hold companies accountable: their legal system is not adequate so that communities are unable to seek compensations for harm they suffer. Non-action would be detrimental and could lead to irreversible environmental damage that could impact communities, countries and ecosystems. The mining industry is a high-risk industry in terms of its environmental impact. Extractive operations have caused severe environmental damage, including the destruction of large areas of intact old-growth forest, coupled with the heightened risk of dangerous flooding; serious air, water, and soil pollution; soil erosion, along with the loss of agricultural productivity and the increased risk of landslides; and sedimentation, which increases flood risk and renders waterways unusable for transport, fishing, and drinking. Numerous communities have suffered because of their proximity to mining operations, and have reported higher rates of disease and mortality. Non-action would worsen these impacts. Without regulation and permits, there are no site visits, no expectations in regards to conforming to environmental laws and it is likely that the environmental situation will only get worse.

## 10) Social impacts

### Q. 10.1 Would you expect any social impact (positive or negative) should the EU undertake a supply chain due diligence initiative on minerals originating from conflict-affected and high-risk areas?

76.4% of respondents recognise the possibility of a positive/negative social impact. Indeed, the rates are very high for all the profiles (in the case of NGOs, almost the 100%).



#### Q. 10.1.1 If yes, what impact do you expect?

According to the business sector, a responsible sourcing initiative without local counterpart and global implementation is more likely to result in a negative social impact similar to the consequences of the "de facto embargo" resulting from disengagement of the region due to obligations under the US Dodd-Frank Act. Business perceptions on the social impact of a possible EU initiative are well documented elsewhere in the report.

Some respondents quoted from work published by the UN Group of Experts on the Democratic Republic of Congo, warning that the de-facto embargo of certain countries would lead to an increase in conflict mineral-smuggling and would encourage illegal trade of minerals to neighbouring regions. This can in turn destabilise entire regions and deprive the country of origin from badly needed tax returns. Companies acknowledge however some positive impacts that might include a higher consumer interest and a better company reputation.

According to NGOs, from a producing countries' perspective, an EU initiative, if implemented properly, (by taking into account also crime, poverty and other social issues) would promote conflict free-economies and reduce financial flows to warring parties, changing conflict dynamics and potentially reducing conflict. It would also increase government incomes through taxation and reduced corruption allowing governments to invest in improved public services. In the artisanal sector, it would contribute to improve labour and security conditions in the mining sites (higher wages and economic development in mineral producing areas, less social dislocation and humanitarian and infrastructure costs associated with conflict); to demilitarise mining areas; to improve population security; to allow for more time and resources to be invested in building up longer term, sustainable economic development activities; to decrease in unsustainable immigration flows from currently very unstable areas; to increase mineral value on local and international markets ("conflict-

free" status), improving household revenue for artisanal miners and their families, allowing local communities to invest in development (infrastructure, literacy, health care, etc.). Within the European Union, it would increase consumer (and investor) awareness and protection.

Local involvement is crucial in order to produce a positive social impact. An EU initiative without local counterparts is more likely to result in a negative social impact similar to the consequences of an "embargo".

NGOs have witnessed substantial improvements in terms of miners' safety at work, thanks to existing due diligence initiatives (e.g. Motorola Solutions for Hope in Katanga, Conflict Free Tin Initiative in Kalimbi/Nyabibwe, etc.). They reported that local cooperatives start buying equipment such as helmets, boots and water pumps for the miners and stabilizing mineshafts with wooden piles in order to prevent accidents. Miners' income has increased to more than a double and because of increased cash flow in the region, women's networks have started saving to buy products which they sell to the miners in order to support their families. And while much is still to be done in terms of livelihoods diversification and investment into social projects, it is clear that exploitation of natural resources becomes humanized when regulated.

**Q. 10.2 What would be the possible impact of non-action?**

Again, the business sector highlights that a possible non-action on the side of the EU does not mean any progress on the sides of industry/business. Various sustainability initiatives and progress on sustainability by large companies show that companies do take this issue seriously and will continuously improve their activities and drive progress within their supply chain, including the sourcing of minerals and metals. Business respondents restate arguments used elsewhere in replies to the public consultation questionnaire that the main responsibility is on governments and donors and that political engagement needs to be stepped up.

Business sector notes that "action" should not only be seen in terms of a possible mandatory EU initiative on due diligence within corporate supply chains. Instead, the EU should take action to combat the absence of basic governance, security and accountability in conflict-regions. Instead of a regulation that burdens the sake of the region on industry's shoulders, the EU should increase their efforts to stabilize the region with goal-oriented development aid and diplomacy. While companies admittedly have an important role to play in responsible sourcing, it is only strong and coordinated action from governments and the international community which can succeed in addressing the primary causes of violence in the DRC and surrounding area.

For NGOs and citizens, academic/research institutions, consumer protection agencies and Government Authorities, non-action would be detrimental as it would allow the continuation of violence and human rights violations. It would also jeopardise any risk-mitigation and post-conflict reconstruction efforts giving armed groups economic reasons to continue fighting. These respondents also view "non-action" as entailing a lack of transparency and protection for consumers (and investors).

## **11) Other issues**

**Q. 11.1 If there are any other issues that are not mentioned in this questionnaire that you would like to address, please use the space below to set them out.**

No significant inputs have been provided. Respondents generally resorted to this section either to give further details on specific questions or to communicate that additional information would be submitted via email.