

Minerals from conflict areas Existing and new responsible-sourcing initiatives

SUMMARY

Revenue derived from the extraction of and/or trade in minerals in resource-rich developing countries may be used to finance internal armed conflicts, as witnessed in countries like the Democratic Republic of the Congo (DRC).

The specific guidelines for the DRC issued by the United Nations (UN), and the more general guidance from the Organisation for Economic Cooperation and Development (OECD) on the responsible sourcing of certain minerals from conflict-affected areas, address this link, and form the current international normative framework.

The first domestic legislation tackling so-called conflict minerals was passed in 2010 by the US Congress. It requires US-listed companies to disclose whether or not their products contain certain minerals from the DRC or its neighbouring countries. In parallel, work on a regional regulatory framework in the Great Lakes Region of Central Africa and on (mostly industry-led) mineral traceability and certification schemes has gained momentum.

Following a public consultation on a potential comprehensive EU legal framework, the European Commission (EC) is due to decide on the form of future action later this year. Stakeholder groups believe any potential EU legislation should have broader scope than US law, in terms of material and geographic range. EU industry, for its part, has been a strong proponent of voluntary, supply-chain transparency schemes.



In this briefing:

- Issue definition
- International normative framework
- National legislative responses
- Supply-chain transparency initiatives
- EU policy and legislation
- Stakeholders' views
- Further reading

Issue definition

The example of the Democratic Republic of the Congo (DRC) demonstrates how mineral extraction in developing countries may fuel or aggravate internal armed conflicts characterised by extreme levels of violence. In an effort to sever the linkage between mineral extraction and conflict finance, the UN and the OECD have developed guidelines for companies sourcing minerals from conflict areas. While the US has introduced legally binding requirements for corporations, the EU has yet to enact similar legislation despite calls from the European Parliament and others. On 26 June 2013, the EC concluded a [public consultation](#) on a comprehensive [EU supply chain initiative](#) for responsible sourcing of minerals originating in conflict-affected and high-risk areas. Based on this and on an impact assessment, the EC is expected to decide [later this year](#) on whether to submit a legislative proposal inspired by the current international normative framework, regional standard-setting and national regulatory initiatives.

International normative framework

UN Due Diligence Guidelines

Based on a 2004 mandate, the UN Group of Experts on the DRC (UNGoE) proposed a five-step, risk-based due diligence [concept](#) in 2010:

- Strengthening company management systems;
- Identifying and assessing risks in supply chains;
- Designing and implementing a strategy to respond to identified risks;
- Ensuring independent third-party audits;
- Publicly disclosing supply-chain due diligence and findings.

In its legally binding [resolution 1952 \(2010\)](#) on the DRC, the UN Security Council (UNSC) endorsed this concept and called upon all States to urge importers, processing industries and consumers of Congolese mineral products to exercise due diligence, by applying the guidelines.

Indirect pressure on all companies concerned to comply with the UN guidelines results from the power vested in the [UN Sanctions Committee](#) for the DRC to impose targeted sanctions against companies not exercising due diligence.¹

OECD Due Diligence Guidance

The OECD incorporated the UN five-step concept into its own 2011 [Due Diligence Guidance](#) for responsible supply chains of minerals from conflict-affected and high-risk areas. Unlike the UNSC resolution, which also mentions timber and charcoal, the OECD only covers tantalum, tin, tungsten and gold (collectively known as 3TG). The recommendations are voluntary and non-binding in nature. They have global application, as their geographical scope is not limited to the DRC and its neighbouring countries. The OECD has published a [simplified manual](#) which integrates

Regional standard-setting

In 2006, the International Conference of the Great Lakes Region (ICGLR, comprising [12](#) states) agreed on a regional [PACT on Security, Stability and Development](#). It includes a Protocol against the Illegal Exploitation of Natural Resources. The ICGLR's 2010 [Lusaka Declaration](#) sets out tools for joint efforts to curb illegal exploitation of natural resources including a regional certification mechanism. The declaration calls for national implementation of these tools and for the ICGLR initiative to be the overarching system for transparency in the region, aligned with existing transparency and certification initiatives

The ICGLR [Regional Certification Mechanism](#) (RCM) is a regional tracking and certification system for tin, tantalum, tungsten, and gold meeting standards set out in a [certification manual](#). The RCM includes mineral tracking from mine site to export, and regional mineral tracking. Although export certification became obligatory from December 2012, the system is not yet fully [operational](#). A 2013 UN [report](#) highlights achievements in standard-setting and significant challenges for implementation. Both [Rwanda](#) and DRC integrated the RCM into domestic law in 2012.

the OECD guidance into the Regional Certification Mechanism for the Great Lakes Region (ICGLR RCM).

National legislative responses

US legislation

In July 2010, the US Congress adopted the [Wall Street Reform and Consumer Protection Act](#) (Dodd-Frank Act). Section 1502 is the first piece of national legislation to address the issue of conflict minerals. These are defined as cassiterite, columbite-tantalite, wolframite and their derivatives (tin, tantalum and tungsten respectively), and gold.

US law sets out disclosure requirements for all US-listed companies required to report annually to the US Securities and Exchange Commission (SEC), and which source conflict minerals from the war-torn DRC² or its nine neighbours³. By enhancing supply-chain transparency, it aims to break the link between mineral extraction and conflict finance.

Section 1502 affects EU companies either directly, as US-listed companies, or indirectly in their capacity as suppliers to US companies.⁴ There are currently no equivalent EU-level legal requirements for EU-listed companies.

Companies faced a long period of legal uncertainty, with the SEC only publishing its [implementing rules](#) in August 2012. A first uniform reporting deadline was set for May 2014. The rules were [challenged](#) by the US Chamber of Commerce, the National Association of Manufacturers (NAM) and the Business Roundtable. In July 2013, the Washington DC District Court upheld the rules, but this decision was recently [appealed](#).

The final SEC rules provide for the following [three-step procedure](#):

- Exposure to conflict minerals: companies must determine whether the law's material scope applies to them.
- Reasonable country of origin inquiry and specialised disclosure (SD) form: if conflict minerals are necessary and in the corporate supply chain, companies must establish the origin of the minerals and disclose this in the SD form. If there is no evidence that the minerals used originate from the countries covered, the process ends there.
- If the inquiry reveals that the minerals were sourced from the countries covered, a conflict minerals report must be filed. It must include the due diligence measures performed, concerning the mineral's source and the custody chain, in line with a nationally or internationally recognised due diligence framework. The report needs to be accompanied by an independent auditor's report and a description of the products that are "not DRC conflict-free", their country of origin and the facilities (smelters/refiners) used to process the "conflict minerals".

During a [transitional phase-in period](#) of two to four years (depending on the size of the business) companies are allowed to report that the status of the minerals sourced is "undeterminable". There is no [de minimis exception](#) for small quantities. Specific rules exist for conflict minerals sourced from recycled or scrap metal. Companies do not face [penalties](#) if they disclose that they have sourced conflict minerals, provided they have exercised due diligence. The list of conflict minerals covered by Section 1502 is not exhaustive, and may be broadened by the US Secretary of State.

Impact of the US legislation

The requirement under Section 1502 for companies to disclose on their website whether they are sourcing minerals labelled "DRC conflict free", or on the contrary, "not

DRC conflict free" has created significant [reputational risks](#). These come on top of the expected high compliance costs, and an extensive administrative burden not incurred by companies sourcing minerals outside the region. The law's [disincentives](#) for sourcing minerals from the "covered countries", coupled with the scarcity of traceability and certification schemes on the ground to perform supply-chain due diligence have prompted many companies to pull out of the region altogether.

This in turn has led to a de facto embargo of minerals, notably from eastern DRC where mineral trade is estimated to account for roughly [90%](#) of export revenue, and a drastic decline in prices. Trade statistics for 2010 and 2011⁵ show mineral exports from the DRC declining dramatically since the adoption of Dodd-Frank. The impact of the US law was compounded by the [ban on mining](#) imposed by President Joseph Kabila in the DRC's eastern provinces from September 2010 to April 2011.

One of the unintended consequences of the US legislation was that large numbers of artisan miners in the DRC's eastern provinces found themselves without work, and because of the lack of alternative options for making a [living](#) were forced to join armed groups or engage in mineral smuggling.

Criticism

The main criticism of the US law has been that it was passed without any substantive African involvement⁶, thus imposing an [outside solution](#). Instead of reducing violence, this contributed to the [emergence](#) in 2012 of the recently defeated [M23 militia](#).

Some [observers](#) stress that the aim of cleaning up the mineral trade in order to reduce violence amounts to simplifying a complex conflict, as violence is rooted in political disputes needing a political solution. [Others](#) deplore the fact that the US law's focus has diverted international attention away from other major issues, such as poverty, corruption and land conflicts, preventing a comprehensive solution from emerging.

Catalysing effect

At the same time, the US law has acted as a catalyst for a legislative proposal in Canada: In March 2013, [Bill C-486](#), proposing a Canadian Conflict Minerals Act, was introduced into the House of Commons. Although the draft bill is modelled on the US law, there are significant [differences](#) in its material and geographic scope. The US law has also encouraged government-sponsored or industry-led mineral tracking and certification systems (see next section), which have gradually been rolled out, increasingly enabling companies to execute supply chain due diligence as an alternative to an embargo.

Democratic Republic of the Congo (DRC) legislation

Section 1502 triggered a series of DRC government decrees, ordering the public disclosure of mineral contracts in May 2011, mandatory 3TG and gold certification in June 2011 and compliance with the UN and OECD Due Diligence frameworks in September 2011.⁷ In February 2012, the DRC government [transposed](#) the ICGLR RCM into domestic law. Companies operating in the DRC's mining sector must now perform due diligence checks at all levels of the supply chain, in line with the OECD standard.

In May 2012 the domestic law was enforced, when, based on previous findings of a 2011 UNGoE [report](#), the economic activities of two Chinese mineral traders, TTT Mining (exporting as Congo Minerals and Metals) and Huaying Trading Company, both based in eastern DRC's North Kivu province, were [suspended](#). They were accused of having sold untagged minerals to Chinese smelters/refiners which did not require tags or due

diligence checks on their supply chains. The suspension was [lifted](#) in May 2013. In June 2012, a ban on all cross-province mineral transfers was imposed to combat smuggling.

In November 2012, the UNGoE [reported](#) that regulatory and enforcement action in the DRC had so far resulted in an overall decrease of mineral exports from the east of the DRC and in a rise in mineral smuggling, notably of gold, to neighbouring countries.

Supply-chain transparency initiatives

Voluntary [mineral traceability and certification initiatives](#) focus on the upstream supply chain including smelters/refiners. Most are still at an early stage, notably in conflict-affected areas like North and South Kivu (DRC). Their alignment with the evolving ICGLR RCM and complete territorial coverage in Rwanda and DRC is far from being [achieved](#).

The [mineral supply chain](#) can be divided into upstream segments comprising mine sites, ore traders and smelters/refiners, and downstream sections consisting of smelters/refiners, metal traders, component manufacturers and retailers.

Government-supported initiatives

The **Certified Trading Chains Initiative (CTC)** was devised by the German Federal Institute for Geosciences and Natural Resources (BGR) prior to the adoption of Dodd-Frank. It pursues two aims: to develop a mine-site-certification system in Rwanda and the DRC to formalise artisanal and small-scale mining (ASM), and to support the national implementation of the ICGLR's RCM. The project includes standard-setting, an audit mechanism, and certification. CTC certifies that the minerals and metals produced by ASM comply with five principles: traceability, fair working conditions, security and human rights, community development and protection of the environment.

The **Conflict-Free Tin Initiative (CFTI)** was initiated by the Dutch government in 2012. Industry partners participating in the initiative source conflict-free tin from South Kivu (DRC) based on new tracking and tracing procedures, supported by a so-called "closed-pipe" supply scheme with pre-determined key suppliers.

Industry-led initiatives

Since 2008, the UK-based International Tin Research Institute (ITRI) has developed a tagging system – **Tin Supply Chain Initiative (iTSCi)** – for traceability in the upstream mineral chain (from mine to smelter level) for tantalum, tin and tungsten. It provides for regular independent risk assessments and audits. It currently operates in Rwanda and in the DRC's Katanga province. An [extension](#) of iTSCi to cover the DRC's Kivu provinces, Uganda and Burundi, and further to the entire Great Lakes Region, depends on funding.

Solutions for Hope (SfH) was launched in July 2011 by US firm Motorola Solutions, to establish a source of conflict-free tantalum in the DRC. It also involves other IT companies, smelters and mining companies. It provides a new sourcing model and, like CFTI, uses a closed-pipe supply line with an identified set of key suppliers. The programme's mines are located in the DRC's Katanga province.

The **Conflict Free Smelter Programme (CFS)** was launched in 2010 in cooperation between US-based EICC ([Electronic Industries Citizenship Coalition](#)) and GeSI ([Global e-Sustainability Initiative](#)). It provides third-party evaluation of the procurement and processing of tin, tantalum, tungsten and gold by smelters and refiners with a view to verifying the origin of the minerals.

The **World Gold Council (WGC)** represents 23 members of the international gold industry, accounting for about 60% of global production. In October 2012, it launched the [Conflict-Free Gold Standard](#), which is global in scope and stretches from the mine site to the gold refiner.

The **Responsible Jewellery Council (RJC)** is a non-profit, standard-setting and certification organisation. In March 2012, the RJC launched its [Chain-of-Custody \(CoC\) Standard](#) for the precious-metals supply chain, covering gold and platinum group metals.

The **London Bullion Mark Association (LBMA)** represents the wholesale market for gold and silver. In January 2012, it published the LBMA Responsible Gold Guidance which its refiners must respect.

Two 2013 reports on a one-year pilot phase in implementation of the OECD guidance [downstream](#) and [upstream](#) reveal a growing preparedness of industry to use available in-region schemes to perform due diligence. However, the reports also expose the difficult security dynamics, the militarisation of mines and local vested interests in mineral smuggling, which seriously undermine the still fragmented traceability and certification efforts.

EU policy and legislation

Policy

In its 2008 [raw materials initiative](#), the EC limited itself to stressing its continual support for voluntary international initiatives to promote transparency in the extractive sector, such as the [Kimberley Process Certification Scheme](#)⁸ which regulates the international trade in rough diamonds, and the [Extractive Industries Transparency Initiative \(EITI\)](#). Enacting mandatory EU legislation to enhance transparency in the extractive industries was added to the agenda more recently.

The EC's [2013 report](#) on the implementation of the EU's raw materials initiative outlines current EU policy for the promotion of revenue transparency in the extractive industries and supply-chain transparency. This policy builds on existing transparency initiatives, including the 2005 [Forest Law Enforcement, Governance and Trade \(FLEGT\)](#) scheme and the [2010 EU Timber Regulation](#). It promotes the [OECD Guidelines for Multinational Enterprises](#) and Due Diligence Guidance beyond OECD countries and provides political and financial support to the ICGLR initiative.

Legislation

As for revenue transparency in the extractive industries, the EP adopted amendments to the EU [Accounting](#) and [Transparency](#) Directives in June 2013. They introduce standards equivalent to those set out in [Section 1504](#) of the Dodd-Frank Act for all listed and large unlisted extractive companies in the EU, and also cover the logging sector. The US Act requires certain publicly traded extractive companies to disclose their payments to governments in host countries and to the US Government, the primary objective being to reduce corruption.

Based on the EU [Corporate Social Responsibility agenda 2011-2014](#), the EC submitted a [proposal for a directive](#) on the disclosure of non-financial and diversity information by certain large companies and groups. This covers environmental, social and employee-related matters, anti-corruption and human-rights aspects of the business's operations, as well as diversity of board members. The EP is due to debate the proposal in 2014.

As for a possible legislative proposal on supply-chain transparency, in June 2013 the EC [highlighted](#) that EU action to complement and/or support on-going due diligence initiatives in this field "must also take into account the administrative cost burden for the industry to avoid withdrawal of operations from those countries." In a September 2013 [speech](#), Trade Commissioner, Karel De Gucht, stressed the need for an EU initiative that "builds on existing obligations and approaches rather than coming into conflict with them".

Stakeholders' views

[NGOs](#) call for EU legislation to have a broader material and geographic scope than the US law, i.e. to apply to *all* natural resources produced in *any* conflict-affected or high-risk area, and to require the first EU importer of natural resources, or products containing them, to perform supply-chain due diligence in line with the OECD standard. They argue that future EU legislation should go beyond the mandatory supply-chain due diligence of the EU Timber Regulation. This should include an obligation for independent audits and public disclosure of corporate due diligence efforts, and provide for a sanctions mechanism.

The [US Congressional Research Service](#) highlights the need for a more comprehensive approach for eastern DRC's complex security, governance and human rights challenges, which are unlikely to be tackled with trade-centred efforts alone. In the same vein, the [German Öko-Institut](#) argues that EU action on conflict minerals needs to be embedded in a holistic strategy for the DRC. It stresses that extensive mandatory reporting requirements may result in embargoes and entail socio-economic side-effects for the local population. Therefore, it takes the view that, rather than investing in costly downstream chain-of-custody systems, resources should be invested at the upstream end of the supply chain, i.e. in directly supporting responsible mining in the DRC. In concrete terms, the EU should support the up-scaling of existing in-region pilot projects by taking measures conducive to creation of an enabling environment. It should also provide for investment incentives for companies actively engaging in the responsible sourcing of minerals from the DRC. In addition, the EU should engage more intensively with the ICGLR to advance work on formalising the DRC's mining sector.

Like [BusinessEurope](#), the US-based electronic industry's global trade association [IPC](#) points to the unintended effects of Dodd-Frank Section 1502. It invites the EU to concentrate on measures promoting existing supply-chain due diligence programmes, including support for in-region transparency and governance initiatives. Against the backdrop of daunting security and corruption challenges prevailing in the DRC, and the resulting feasibility problems industry faces in complying with the US requirements, IPC warns the EU against implementing "similar and potentially conflicting or duplicative requirements". It calls for a thorough cost-analysis to be carried out prior to the adoption of new legislation, to avoid putting EU industry at a global disadvantage.

European Parliament

In its 2010 [resolution](#) on failures in protection of human rights and justice in the DRC, the EP welcomed the new US 'Conflict Minerals' Law and called on the Commission and the Council to envisage a legislative initiative based on this model. In its 2011 [resolution](#) on the DRC, the EP repeated its call for the Commission to submit a legislative proposal similar to Section 1502 of the Dodd-Frank Act, to address the issue of conflict minerals which fuel the war and mass rape in the DRC.

Further reading

[Breaking the links between natural resources and conflict: The case for EU regulation](#) / A civil society position paper, September 2013.

[Coming Clean. How supply chain controls can stop Congo's minerals fuelling conflict](#) / Global Witness, 2012.

[Conflict minerals – An evaluation of the Dodd-Frank Act and other resource-related measures](#) / A. Manhart and T. Schleicher, Öko-Institut e.V. Institute for Applied Ecology, August 2013.

[In Focus: BRG Support for Mineral Certification in the African Great Lakes Region](#) / Federal Institute for Geosciences and Natural Resources (BGR), 2012.

[What's Wrong with Dodd-Frank 1502? Conflict Minerals, Civilian Livelihoods, and the Unintended Consequences of Western Advocacy](#) / L. Seay, Centre for Global Development, Working Paper 284, January 2012.

Endnotes

- ¹ [Conflict Minerals: The Search for a Normative Framework](#) / L. Arimatsu and H. Mistry, Chatham House, 2012, p. 18.
- ² The DRC faces extreme poverty and low human development ([Human Development Index 2013](#): ranked 186 out of 186) despite significant natural resources, a phenomenon frequently found in resource-rich countries: the "[natural resource curse](#)". Corruption in DRC is endemic ([Corruption Perceptions Index 2012](#): ranked 160 out of 176) and resource governance highly opaque ([Resource Governance Index 2013](#): ranked 39 out of 58). A critical assessment of the effectiveness of EU support for the DRC can be found in [Court of Auditors' Special Report No 9](#), 2013.
- ³ These countries are: Angola, Burundi, Central African Republic, Democratic Republic of the Congo (DRC), Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia.
- ⁴ A 2013 SOMO analysis of the publicly disclosed due diligence efforts of 186 EU-listed companies that use minerals covered by Dodd-Frank Section 1502 reveals that the impact of this US law on EU companies appears to be very limited. Only 19 companies (or 11%) have a dual listing in the US and are compelled to report to the US Securities and Exchange Commission (SEC). They are therefore directly affected by Dodd-Frank Section 1502. Of these 19 companies, 14 (79%) mention the issue on their website, while only five (21%) do not. Of the companies that are only EU-listed and are not directly affected by Dodd-Frank Section 1502, 20 companies (12%) have a due diligence statement on their website, whereas 147 companies (88%) do not. According to SOMO, this finding suggests that those companies that are not forced by law to address conflict minerals are not exercising due diligence aimed at avoiding conflict minerals in their supply chains. [Conflict Due Diligence by European Companies](#) / Research Centre for Multinational Corporations (SOMO), October 2013.
- ⁵ [The formalisation of artisanal mining in the Democratic Republic of the Congo and Rwanda](#) / International Peace Information Service, a Belgium-based research institute, December 2012, pp. 49-50.
- ⁶ [Special report on the "The ICGLR Regional Initiative against the Illegal Exploitation of Natural Resources \(RINR\) and other Certification Mechanisms in the Great Lakes Region: Lessons Learned and Best practices"](#) / United Nations Economic Commission for Africa, Sub-Regional Office for Eastern Africa (SRO-EA) June 2013, p. 30.
- ⁷ [Conflict Minerals in Central Africa: U.S. and International Responses](#) / N. Cook, CRS Report for Congress, July 2012, p. 28.
- ⁸ In 2011, Global Witness [left](#) the Kimberley Process pointing to major shortcomings. The KP has also attracted criticism from former strong supporters such as S. Blore and I. Smillie, [An ICGLR-based tracking and certification system for minerals from the Great Lakes Region of Central Africa](#), March 2010.

Disclaimer and Copyright

This briefing is a summary of published information and does not necessarily represent the views of the author or the European Parliament. The document is exclusively addressed to the Members and staff of the European Parliament for their parliamentary work. Links to information sources within this document may be inaccessible from locations outside the European Parliament network. © European Union, 2014. All rights reserved.

Photo credits: © isoga / Fotolia.