

5 December 2012

Addressing the challenge of minerals originating from conflict-affected countries (conflict minerals)

KEY MESSAGES

- 1 The conflict in the Great Lakes region in Africa is extremely complex. Business can play a constructive role with governments to help address the situation by increasing transparency in the trade of conflict minerals.
- 2 BUSINESSEUROPE is concerned about the impact of the Dodd Frank Act at global level.
- 3 The EU should avoid the duplication of the Dodd Frank Act. An alternative, more tailored approach based on public-private partnership, that would not undermine existing initiatives, is preferable.

WHAT DOES BUSINESSEUROPE AIM FOR?

- *Companies and industry associations from different sectors should join forces, use their technical expertise and assess how existing initiatives can be used and further expanded to other sectors and at the EU level.*
- *Closer cooperation between business, the European Commission and the European External Action Service should be established.*
- *Via its Permanent Representations in the countries of the Great Lakes region, the EU can actively support the voluntary activities of European companies.*

KEY FACTS AND FIGURES

In 2010, the U.S. SEC proposed a rule to address the humanitarian situation in the Great Lakes Region in Africa and clean the supply chain of conflict minerals	Conflict minerals, as defined by the Dodd Frank Act are: gold, tin, tantalum and tungsten or their derivatives	The Democratic Republic of Congo (DRC) is in “conflict” for 15 years
On 22 August 2012 the U.S. SEC adopted the Dodd Frank Act Section 1502 on the use conflict minerals	These minerals have various applications in a number of sectors: aerospace, automotive, chemicals, energy, electronics	The DRC is the origin for: 13% of tantalum, 4% of tin, <1% of tungsten and <1% of gold



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Introduction

In an effort to address the issue of trade in minerals that indirectly or directly may be a source of financing for ongoing conflicts, such as in the case of the Democratic Republic of Congo (DRC) and the Great Lakes region of Africa in general, in August 2012 the U.S. Securities and Exchange Commission (SEC) adopted rules pursuant to Section 1502 of the Dodd Frank Wall Street Reform and Consumer Protection Act relating to the use of conflict minerals. These rules require companies publicly traded in the U.S. to conduct due diligence throughout their supply chains and disclose the origin and use of gold, tin, tantalum and tungsten in their products.

Discussions have started in Brussels on the adoption of similar EU-wide legislation addressing the traceability of minerals imported into the EU market. BUSINESSEUROPE recognises the need to ensure responsible sourcing of these minerals and can support targeted and proportionate action by the European Union that would be in line with existing industry efforts to increase the transparency in the supply chain of these minerals.

While European industry cannot solve the conflict in the Great Lakes region of Africa, it can nevertheless play an important supporting role by helping to increase supply chain due diligence in the trade of these minerals.

1. Concerns with the impact of the Dodd Frank Act

The legal direction that was followed by the U.S. with the Dodd Frank Act has raised a number of concerns, already before it being properly implemented¹:

- a. The Dodd Frank Act has not improved the situation in the Great Lakes region by clarifying the supply chain of conflict minerals. A de facto trade embargo has

¹ According to the final rule, companies will be required to disclose their first reports on the use of conflict minerals in their supply chain by 31 May 2014 (for the year 2013).

been applied against minerals from the DRC and its neighbours since 2010. A decrease of 90% in the DRC's exports has been reported in the third quarter of 2011. In this context, mass unemployment and social unrest may in turn become additional sources of conflict. NGOs are also becoming increasingly critical of the negative impact that the Dodd Frank has on the humanitarian situation in the region².

- b. To avoid the burden of complying with Dodd Frank Act provisions, many companies may prefer to source these minerals from outside the region further weakening economic development.
- c. Dodd Frank is also creating a dual market for these four minerals in the Great Lakes region. Unlabeled minerals are sold at around 25% of their cost to smelters – believed to be located primarily in China. There are concerns that these are being relabeled as “conflict-free”.
- d. Although the Dodd Frank only applies to U.S. listed companies, supplier companies, including SMEs, that are part of the listed companies' supply chain will be required to conduct due diligence and provide information on the source of these four minerals. Therefore, Dodd Frank Act has a large global impact that the European Commission should take this into account in its future decisions.
- e. The complexity and length of global supply chains in many industries, significantly add to the administrative burden and costs that companies will have to bear in order to comply with the Dodd Frank Act.
- f. Although the Dodd Frank Act indicates the OECD Due Diligence Guidance as one of the possible ways for companies to conduct due diligence, there are some incompatibilities between the two. The OECD takes a risk based approach, allowing for industry initiatives and is strongly aligned with the UN Guiding Principles on Business and Human Rights. It is not a check-list that companies will need to implement per se, but rather a process³. On the contrary, the Dodd Frank Act takes a product-level approach. For companies that produce tens of thousands of different goods, this type of due diligence will prove both unmanageable and costly and will make the OECD guidelines redundant.

² For instance, see Center for Global Development working paper 284, “What’s wrong with Dodd-Frank 1502? Conflict minerals, civilian livelihoods, and the unintended consequences of western advocacy”.

³ OECD five-step process: 1) Strengthening company management systems to improve traceability of conflict minerals in the supply chain, 2) Risk assessment, 3) Actions to respond to risks, 4) Auditing and 5) Public disclosure



2. A path for action at the European level

Rather than a European version of the Dodd Frank Act – with its unintended consequences on exports from the Great Lakes region – BUSINESSEUROPE proposes an alternative, more tailored approach based on a public-private partnership.

This approach would have several advantages and most notably to bring state and non-state actors together to tackle this challenge.

- The role of the European Industry

Companies are aware of their social responsibility and concerned about the human rights situation related to conflict minerals. Efforts to increase transparency in the use of conflict minerals throughout their supply chains are welcome. Industries are already working extensively to develop due diligence within this area. A number of voluntary initiatives focusing on establishing management structures that ensure clean processes are already in place, such as in the electronics and precious metals sectors, such as the Electronic Industry Citizenship Coalition – Global e-Sustainability Initiative (EICC-GeSI)⁴. These initiatives are positive because they incentivise mines in the Great Lakes region to certify as conflict free by creating a market for their products.

Together with EU, companies and industry associations from different sectors should come together and using their technical expertise, assess how different initiatives could be used and expanded to other sectors and at the EU level. This process should start with a dialogue which BUSINESSEUROPE can organize with the relevant industries of the supply chain. From there, we can assess existing projects and what could be done further.

- The role of the EU institutions

The Commission and the EEAS should engage more with business in the development of projects on a voluntary basis. The EU should avoid duplication and the increase of administrative burden and costs for European companies in the field of conflict minerals by promoting complementary approaches to existing international standards such as the OECD Guidance and the Dodd Frank Act. Mutual recognition mechanisms should at least be in place for companies that will need to apply Dodd Frank requirements.

The existing industry-led initiatives and multi-stakeholder initiatives, such as the Conflict Free Smelter programme⁵, the Conflict-Free Tin Initiative (CFTI)⁶ and the Kimberly process, could be further supported and reinforced. Furthermore, new

⁴ For an overview of EICC-GeSI activities aimed at improving the transparency in the supply chain you may refer to:
http://gesi.org/files/Reports/Extractives%20Workgroup%20Whitepaper%20FINAL%2006_25_12.pdf

⁵ For more information: www.conflictreesmelter.org

⁶ The Conflict-Free Tin Initiative (CFTI) is a public-private initiative to source conflict free tin from the Kivus region of the Eastern DRC, involving the Dutch Ministry of Foreign Affairs, companies (Philips, Tata, RIM, Intel, Motorola Solutions) and NGOs (PACT as the main one).



initiatives that would cover the remaining three conflict minerals – gold, tantalum and tungsten – could be developed in close cooperation with the European industry.

We should highlight that these voluntary approaches can only function with active participation from the Commission and EEAS and member state governments as full partners in the projects.

The EU can, via its local Permanent Representations in the DRC and other countries in the region, actively support the voluntary activities of European companies, adding to the legitimacy and functioning of these initiatives.

Conclusion

The Commission should not rush a decision to propose binding EU-wide legislation on conflict minerals which could make the situation worse in the region. In considering what action to take, the EU should avoid imposing requirements on industry that will duplicate those contained in Dodd Frank. While Dodd Frank applies only to companies that are issuers on US exchanges, this category includes many large companies headquartered in the EU. Moreover, since companies subject to Dodd Frank will need to promulgate its requirements contractually through their supply chains, its effect will be nearly universal. Thus, “mirror” legislation by the EU will not contribute substantially to resolution of the core problem. Rather, it will have the unintended consequence of adding confusion to the process and drawing resources away from existing efforts.

Rather than impose parallel reporting or other supply chain obligations on companies, the EU should take a leadership role by taking direct action in support of existing initiatives. Such direct action could involve the sort of initiatives described above, but also could include direct support – both diplomatic and financial – of the governmental efforts on the ground in the DRC region to certify and control conflict-free sources of minerals.

If the EU is to take action similar to the Dodd Frank approach, then it should be towards the direction of complementing and helping the international harmonisation and alignment of efforts, avoiding duplication of existing burdensome systems. Rather the EU should make sure that existing successful voluntary industry-led initiatives are strengthened and that it works towards regulatory convergence and mutual recognition with the U.S.

BUSINESSEUROPE is ready to offer a platform for dialogue and exchange of ideas with the European Commission and the EEAS on how to take this forward.