

Comparative table of the EU proposal on conflict minerals with existing schemes

Comparing different regulatory approaches on responsible trading of conflict minerals

Executive summary

The objective of this comparative table is to help facilitate the work of EU policy makers to define a complementary and effective approach in pursuit of conflict free. Conflict minerals is a complex issue that requires the engagement of multiple stakeholders, including governments, the private sector and civil society. There is a clear need to promote real change, and we believe the Commission proposal is a step in the right direction.

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10 September 2014

The objective of this comparative table is to help facilitate the work of EU policy makers to define a complementary and effective approach in pursuit of conflict free minerals. The undersigned associations welcome the European Commission's proposal for a regulation on conflict minerals and support the three goals of the EU integrated approach to responsible sourcing:

- Breaking the link between minerals extraction, trading and the financing of armed conflict
- Supporting a market in the EU for responsible traded minerals that originate in conflict regions
- Improving the ability of EU operators throughout the supply chain to comply with existing due diligence measures.

The proposed Regulation would complement existing US legislation on responsible sourcing of conflict minerals (Dodd-Frank Act) and contribute to the harmonisation of global compliance programmes. We are pleased to see that the Regulation will exert pressure on importers of conflict minerals to source from smelters and refiners that are verified as being conflict-free. In addition, the list of smelters and refiners that the Commission would publish, and the information developed by responsible importers, would assist companies with their due diligence inquiries under the US Dodd-Frank Act.

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EU Regulation

ISSUE	EU Proposal	Dodd-Frank Act (DFA)	Comments
Approach	Voluntary self-certification program	Mandatory disclosure requirement	<p>The self-certification programme is embedded in a wider comprehensive approach to promote responsible sourcing of minerals based on the OECD due diligence guidelines. Different initiatives, such as Conflict Free Sourcing Initiative (CFSI) and the Conflict Free Tin Initiative (CFTI) have so far proven to be both effective and cost efficient. A voluntary approach carries less risk of a de-facto embargo.</p>
Focus	Upstream (importers of minerals, metals listed in Annex A)	US Publically traded listed companies (upstream + downstream)	<p>Concentrating on upstream supply chain operators and on facilitating transmission of quality information in the supply chain leverages the appropriate point in the supply chain and is consistent with the OECD Guidance, with industry initiatives, such as the Conflict-Free Smelter Program (part of CFSI), and complements the Dodd-Frank Act. Beyond the pinch point of smelters, it becomes exponentially more difficult to identify the origin of metals.</p>
Geographical Scope	"Conflict-affected and high-risk areas"	DRC and adjoining countries	<p>Today, supply chain due diligence initiatives are largely focused on the DRC and the Great Lakes Region. This focus was identified at the highest international level in a UN Security Council Resolution. It is imperative that a consistent process and criteria is defined for identifying areas as conflict-affected and high risk for the purposes of the EU regulation.</p>

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<p>Definition of Conflict-Free</p>	<p>Not defined. Designed to support further compliance with the OECD Guidance and with a process-oriented focus</p>	<p>Product may be described as DRC conflict-free if it does not contain minerals that directly or indirectly benefit armed groups in the DRC and adjoining countries</p>	<p>OECD Guidance does not define conflict-free. It provides due diligence guidance to help companies respect human rights and avoid contributing to conflict through their sourcing decisions. The OECD describes their views on conflict-free in a letter to the SEC dated 29 July 2011.</p>
<p>Minerals Scope</p>	<p>Tantalum, Tungsten, Tin, Gold (3TGs)</p>	<p>3TGs</p>	<p>A focus on 3TGs achieves coherence between the EU and US policy approaches. Alignment of mineral scope would allow the current initiatives to mature.</p>
<p>Institutional bodies responsible</p>	<p>Competent authorities in Member States</p>	<p>Securities & Exchange Commission (SEC)</p>	<p>Responsibility should lie with public authorities that have the appropriate expertise and capacity to effectively implement and enforce the requirement, aiming to avoid market fragmentation within the EU.</p>
<p>Due Diligence Approach</p>	<p>OECD Guidance Five-Step Framework</p>	<p>Nationally or internationally recognized Due Diligence Framework. May use OECD Guidance</p>	<p>Companies support the five-step framework in the OECD due diligence guidance.</p>
<p>Auditing</p>	<p>Audit required for importers that have volunteered to participate</p>	<p>Audits are to be levied against companies that file DRC conflict free or if they have determined whether the conflict minerals financed have benefited armed groups, starting in 2015</p>	<p>A common approach to auditing is necessary. At an industry level, voluntary initiatives focus audits at smelters/refiners in the supply chain consistent with Step 4 of the OECD Guidance.</p>

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<p>List of smelters/refiners</p>	<p>Based on information provided by Member States, COM shall make publicly available a list of responsible smelters and refiners</p>	<p>Worldwide list of 3TG minerals processing facilities to be put together by US Dept of Commerce 30 months after law's entry into force</p>	<p>It is important to have a common list of known smelters/refiners. Current industry initiatives list smelters/refiners that are compliant with the Conflict-Free Smelter Program, LBMA's Responsible Gold Program (London Bullion Market Association), RJC's Chain of Custody Certification Program (Responsible Jewellery Council).</p>
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EU Joint Communication

ISSUE	Joint Communication	US Policy Measures	Comments
<p>Public Procurement</p>	<p>COM and Member States to include requirements for respecting OECD Guidance in procurement contracts</p>	<p>N/A</p>	<p>There should be a consistent approach to public procurement incentives across Member States and Commission.</p> <p>Performance clauses should aim to encourage the uptake of due diligence at a company level. It is companies, not products, that follow the OECD Guidance and we recommend that this language be revised to ensure implementation is consistent with the international due diligence framework. Such an approach would enable consistency across the EU and also allow for the flexible application of due diligence as recognized in the OECD Guidance. Public procurement should address all 3TG containing products.</p>
<p>Consumer information</p>	<p>Member States to consider complimentary initiatives in the area of consumer info and labelling</p>	<p>SEC filing posted on company's website</p>	<p>Avoid market fragmentation. Annual reporting on supply chain due diligence is Step 5 of the OECD Guidance. Consistent with the EU Directive on disclosure of non-financial and diversity information, companies should have the flexibility to disclose relevant information in the way they consider most useful.</p>

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<p>"In-region" sourcing and responsible minerals trade</p>	<p>EU supports ICGLR Regional Initiative on Natural Resources. Member-State activity.</p>	<p>US support ICGLR Regional Initiative and Public-Private Alliance for Responsible Minerals Trade. USAID activity in DRC supports responsible minerals trade.</p>	<p>In-region sourcing and the development of systems to enable responsible trade from conflict areas should be a priority. Without such in-region efforts, due diligence further downstream may result in unintended embargo of all material from an area.</p>
<p>Outreach to countries with minerals/metals processing facilities</p>	<p>Outreach to countries w/smelters, including an int'l conference</p>	<p>State Dept diplomatic and commercial outreach</p>	<p>Outreach to smelters is important to help boost participation in industry's Conflict-Free Smelter Program and equivalent initiatives. There is an opportunity for EU and its economic partners to collaborate on outreach to countries with minerals/metals processing facilities</p>
<p>Institutional bodies involved</p>	<p>European Commission, External Action Service, EU Member States, European Parliament</p>	<p>State Department, USAID, SEC, Commerce Dept.</p>	<p>Institutional bodies involved at international level include UN Security Council Group of Experts on DRC, ICGLR, OECD</p>
<p>SMEs</p>	<p>Financial assistance available for Small and Medium Sized Enterprises via the COSME (Competitiveness of Enterprises and Small and Medium-sized Enterprises) program.</p>	<p>SEC rule extends phase in period for product descriptions to 4 years for SMEs (vs. 2 years)</p>	<p>It is critical that SMEs receive administrative and financial support to implement conflict-free systems.</p>