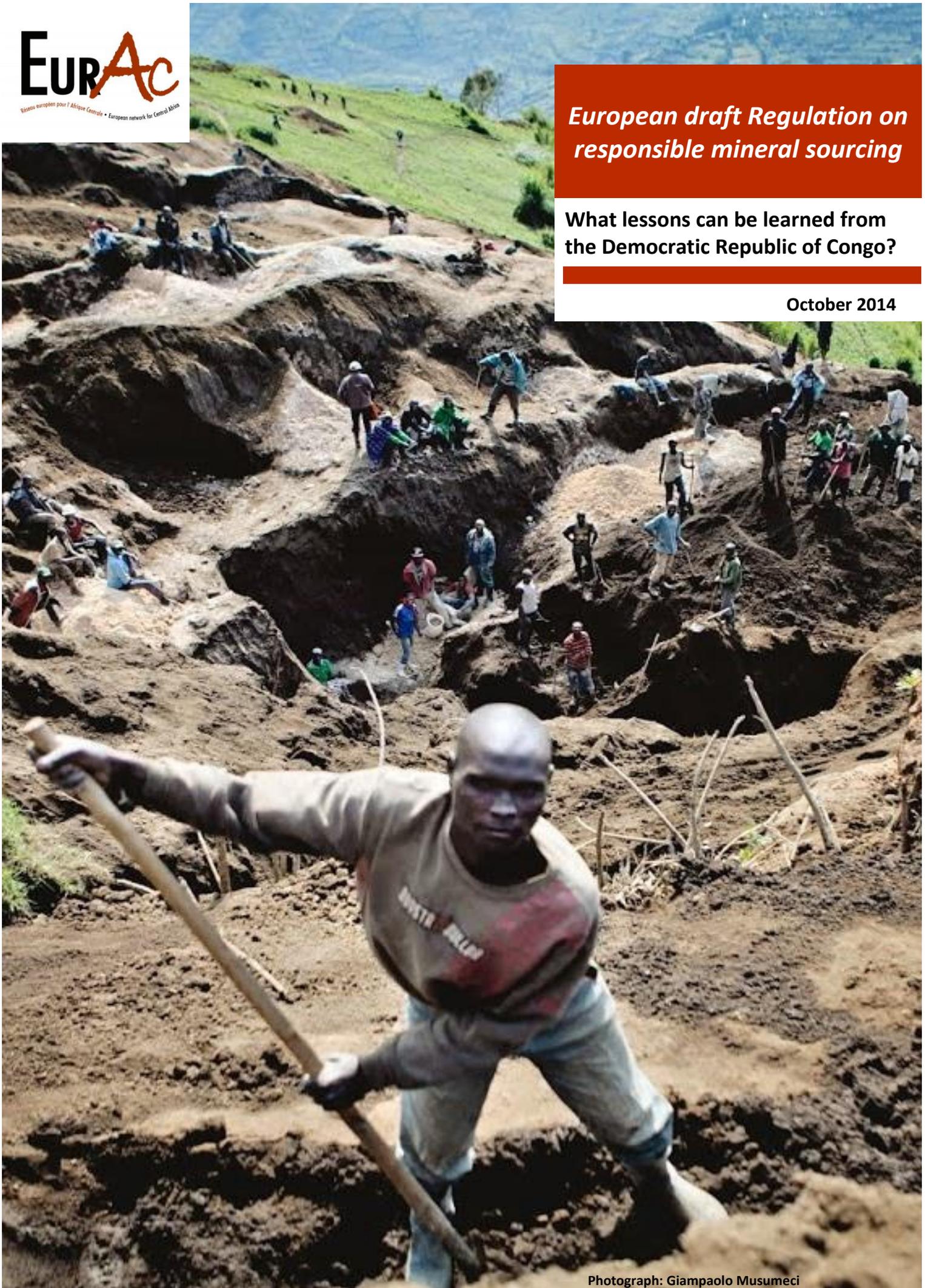


*European draft Regulation on
responsible mineral sourcing*

**What lessons can be learned from
the Democratic Republic of Congo?**

October 2014



Photograph: Giampaolo Musumeci

A NECESSARY DEBATE ON ‘CONFLICT MINERALS’ IN DRC

On 5 March 2014, the European Commission presented an initiative to address the issue of ‘conflict minerals’. This initiative comprises two instruments; the first is a legislative instrument falling within the EU’s competence in trade and introducing a ‘responsible sourcing’ system for minerals coming from conflict-affected and ‘high-risk’ areas ([draft Regulation](#)); the second is a [Joint Communication](#) setting out a series of measures to promote such a responsible sourcing (referred to below as ‘Accompanying Measures’).

Remarkably, the Commission’s proposed responsible sourcing system is voluntary; companies importing 3Ts-minerals¹, their ores, and gold into Europe will be able to choose whether or not to check and report on the risks of funding the armed groups active in conflict-affected or high-risk areas. Furthermore, this system will only apply to a limited number of companies. According to the European Network for Central Africa (EurAc)ⁱ, the Commission’s response to the issue of ‘conflict minerals’ is **too weak** to break the links between the exploitation of natural resources and conflict in Eastern DRC² (see our **RECOMMENDATIONS** and **EURAC POSITION** in the following two points).

The main arguments used to justify the inadequacy of the European system generally refer to section 1502 of the US Dodd-Frank Act³, which, according to its detractors, would have a mainly negative impact in DRC. In other words, the DRC’s experience would demonstrate that the introduction of compulsory supply chain measures for a large number of companies, as was the case with the Dodd-Frank Act, would be doomed to failure. The EU’s decision to target only a limited number of companies and allow them to decide whether or not to act responsibly would be the most effective response to the issue of ‘conflict minerals’, it is argued. According to EurAc, the validity of the arguments based on the negative perceptions of the impact of the US legislation raises a number of questions.

The discussions surrounding the proposed EU Regulation seem to have intensified the **debate on the lessons to be learned from the many initiatives launched in DRC** to fight against the phenomenon of ‘conflict minerals’⁴. EurAc would like to contribute to this debate by setting out in this document the **ANALYTICAL BASES** of its position and recommendations. These bases aim at clarifying the **main lessons** to be learned from DRC to date. Taking into account the many different facets of the Congolese artisanal mining sector, this clarification exercise will inevitably involve a certain **degree of complexity**. The analytical bases are therefore presented in **4 chapters**, each addressing one of the main issues raised by ‘conflict minerals’ in DRC.

These analytical bases lead us to conclude that the Dodd-Frank Act cannot yet be considered a failure. It cannot be argued that a purely voluntary system, such as the one proposed by the EU, will be more successful on the ground (see **chapter III**). Principally, it seems that in order to achieve their aims, American and European legislative initiatives must be accompanied by **measures to provide support and an improved framework for the artisanal exploitation and trade of minerals in DRC** (see **chapters I-II-IV**).

Responsible sourcing from DRC is possible (**chapter IV**). Given the socio-economic importance of artisanal exploitation in DRC (**chapter II**) and its role in the insecurity affecting the country (**chapter I**), **the EU and its Member States must do more than merely encouraging responsible sourcing**. They have a duty to make it **mandatory**.

ⁱ EurAc has 39 member organisations from civil society in 12 European countries. These organisations work on and in the Great Lakes Region. They support civil society organisations in Burundi, Democratic Republic of Congo (DRC) and Rwanda in their efforts to promote peace, human rights and development.

RECOMMENDATIONS

Regarding the draft Regulation presented by the European Commission:

- EurAc recommends that the European *Parliament and Council*

1. amend it in such a way as to replace the voluntary self-certification system with a **mandatory** requirement for companies to carry out and report publicly on their supply chain due diligence efforts, in line with the OECD Guidance;
2. maintain the **global** geographical scope of the legislative proposal, while adopting a definition of 'conflict-affected and high-risk areas' that is as close as possible to that proposed by the OECD Guidance⁵;
3. broaden the scope of companies covered by the Regulation, currently limited to primary importers of minerals and/or metals, to include the **main companies that place** in Europe finished or semi-finished products containing the 3Ts and gold.

Regarding the Accompanying Measures to the draft Regulation, as set out in the Joint Communication:

- EurAc recommends that the *European Commission* and the *European External Action Service (EEAS)*:

4. provide more detailed information to the European Parliament, the Member States, the States and civil society organisations of the Great Lakes Region on the **type of measure actually envisaged** by the EU in the three areas of intervention identified in the Communication (initiatives for the private sector, political dialogue and development cooperation) and on how these measures will be **funded and implemented**;
- EurAc recommends that the *European Commission*, the *EEAS* and the *Member States*:
5. increase their **support to ICGLR's⁶ Regional Initiative against the Illegal Exploitation of Natural Resources (RINR)**, and encourage the **ICGLR member States of the** to respect their commitment to implement the 'Protocol on the Fight against the Illegal Exploitation of Natural Resources', made in 2010 during the Lusaka Special Summit on the illegal exploitation of natural resources;
 6. support a **formalisation process of the artisanal mining sector** in DRC that recognises the importance of the artisanal sector for the Congolese people and that organises its coexistence with the industrial sector. EU support should focus on **strengthening the legislative framework** (revision of the 2002 Mining Code), **the administrative services** responsible for applying it (DGM, SAESCAM, Mining police, etc.), **the artisanal miners**, the **mining cooperatives** and the **local communities**. This strengthening should aim at :
 - guarantee **greater protection** for artisanal miners and the women who work in the mines;
 - define the **areas reserved** for artisanal exploitation ('*Zone d'Exploitation Artisanale*', ZEA);
 - clarify the mechanisms for **settling land conflicts** between the owners who hold the (traditional or formal) land rights and those who hold the mining rights;
 - increase **understanding of current standards** at national and international level;
 - offer **incentives to local stakeholders** (miners, cooperatives and companies) for joining the formal sector;
 - develop **trust** between miners and the Congolese authorities.
 7. provide continuous, coordinated support to **Security Sector Reform (SSR)**, particularly in order to end illegal involvement of the Congolese army in the exploitation and trading of minerals ;
 8. support the **disarmament, demobilisation and reintegration (DDR)** efforts for a number of armed groups still active in the Eastern DRC to open the door to their lasting reintegration into society and end instability;
 9. encourage and consider investment in **transport and communication infrastructures**. Opening up isolated regions will have a positive impact on economic activities and on security situations, and will increase the chances of the most isolated mining areas to benefit from the various initiatives that aim at introducing a responsible mineral sourcing from DRC.

EURAC POSITION

I. Draft Regulation

The Commission's draft Regulation introduces a system allowing businesses importing 3Ts-minerals, their ores, and gold to the EU **to choose** whether or not to opt-in and self-certify as 'responsible', i.e. as having checked the risks that their supply chains contribute to fund conflict or serious human rights violations. Importers that choose to join the system will have to conduct due diligence on their supply chains, in accordance with the related OECD framework⁷ (referred to below as 'OECD Guidance'). The draft Regulation states that information submitted by self-certified importers to EU Member States must be sent to the European Commission, which will use it to draw up a list of 'responsible' smelters and refiners (Article 8). No sanctions will be imposed nor on importers that choose not to self-certify, neither on those that choose to do so but that do not respect the provisions of the Regulation.

The main strength of the draft Regulation is that it is **global in scope**. In fact, 'responsible' importers will have to carry out checks in all regions from which they are sourcing, where such localities are identified as areas *'in a state of armed conflict, fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses'*⁸. In this way, the European proposal differs from the US Dodd-Frank Act, which focuses only on Central Africa and on DRC in particular (see **ANALYTICAL BASES**, chapter III). 'Conflict minerals' are in fact a global problem and are not limited to DRC⁹.

However, the Commission proposal makes it difficult to create a truly responsible European supply chain, mainly due to two aspects of the legislative proposal: on the one hand, the **voluntary nature** of the self-certification system and on the other hand, the **limited number of companies** potentially covered by this system.

Regarding the first aspect: a legislative proposal intended to regulate the private sector should not be a purely voluntary measure.

- It should be stated that although the voluntary standards in the OECD Guidance have been available to businesses since 2010, very few companies have chosen to apply them. 80 % of the 186 European companies studied by the NGO SOMO do not publish any information on whether or not they check the risk that their supply chains fund conflicts or human rights violations¹⁰. A cost-benefit analysis commissioned by the European Commission in 2013 showed that only 4 % of the 330 businesses studied were voluntarily reporting on their due diligence practices¹¹. The impact of voluntary regulations on business practices is extremely limited, even when the public regulator restricts itself to applying transparency rules. **It is therefore difficult to establish the added value of the European Commission's legislative proposal**. In the area of due diligence, it was not until the adoption of the Dodd-Frank Act that companies began to change their sourcing practices from DRC¹² (see also **ANALYTICAL BASES**, chapter III).
- The choice of a voluntary measure can also be contested in view of the international obligations of the EU and its Member States. The International Bill of Human Rights specifies **the obligation for States to protect human rights**, and was itself further elaborated in other international treaties and standards, such as the United Nations '[Protect, Respect and Remedy](#)' Framework. In virtue of this obligation, States have a duty to ensure that businesses operating in conflict zones are not involved in human rights violations. **Companies themselves have a responsibility to respect these rights**, including the responsibility to ensure human rights due diligence. However, with the voluntary approach of the European Commission's draft Regulation, it is **citizens/consumers** who are ultimately responsible for protecting and respecting these rights. If States do not introduce mandatory measures for companies, it would be up to European citizens to

differentiate the 'good' from the 'bad', using their consumption choices to penalise companies that have chosen not to source responsibly.

In addition, the self-certification system proposed by the Commission doesn't expect that European consumers have access to information enabling/allowing them to differentiate the companies sourcing responsibly or not (see second aspect below).

Regarding the second aspect, a self-certification system aimed solely at companies importing 3Ts-minerals, their ores, and gold (smelters, refineries and traders) to Europe is not satisfactory.

- The scope of companies covered by the legislative proposal does not include 'end users' of the 3Ts and gold, i.e. companies that sell component parts or finished products containing those minerals. According to the Impact Assessment commissioned by the European Commission prior to the publication of the draft Regulation, the importers targeted by the legislative proposal represent barely 0.05 % of Europe-based companies¹³. If all the importers in question voluntarily decided to join the self-certification system, which is unlikely, only around 400 (European and non-European) companies might be certified as 'responsible' importers¹⁴.

The draft Regulation's voluntary nature and restricted scope of companies are even more questionable as the European market represents 25 % of global trade in the 3Ts and 15 % in gold¹⁵. **In view of the size of the European market**, a mandatory approach that also applied to other categories of companies would allow the EU to have a real leverage effect on markets and on companies' supply chain practices.

According to a [recent analysis by the NGO Global Witness](#), the EU represents almost one quarter of the global trade in 3Ts and gold minerals and metals, i.e. a trade volume of € 28.5 billion. In 2013, the EU imported approximately € 19 billion of these minerals directly from DRC and its nine neighbouring countries. These minerals also entered the EU in the form of components for a large number of products, such as laptops and mobile phones. Also in 2013, the EU imported 240 million mobile phones and more than 100 million laptops, at an estimated value of € 58 billion. In the same year, Germany was the largest European importer of mobile phones and laptops, followed by the United Kingdom, the Netherlands and France.

It is time that the EU changes tack and listen to the **citizens' expectations** for a fairer and more sustainable economic model. A number of **trade and investment opportunities** are currently available to European companies in countries producing natural resources. However, **peace and respect for human rights** are essential conditions for **development** in these countries. The creation of **shared prosperity** between Central Africa and the European continent requires the EU to change its approach, particularly as regards the responsible sourcing of minerals from conflict-affected and high-risk areas.

II. Joint Communication

In their Joint Communication, the Commission and the European External Action Service (EEAS) present the EU's responsible sourcing initiative as complementary to its foreign and cooperation policy. The document proposes several 'Accompanying Measures' that will strengthen the impact of the European Regulation and are intended to reflect the EU's 'integrated approach' in the area of responsible sourcing. This 'integrated' approach aims to (1) reduce the possibilities for funding armed groups, (2) improve the ability of EU operators to comply with existing due diligence frameworks, and (3) reduce global markets 'distortions' affecting minerals coming from conflict-affected or high-risk areas. As regards DRC, the Communication refers directly to the [EU Strategic Framework for the Great Lakes Region](#), which is intended to fight against the illegal exploitation of natural resources and support their transparent and sustainable management¹⁶.

The Communication sets out 13 types of action in 3 areas of intervention: 5 incentives for the **private sector**¹⁷, 3 forms of **political dialogue** with third countries¹⁸ and 5 areas for **development cooperation** with third countries¹⁹. It is difficult to judge the actions proposed by the Joint Communication, as they are extremely **vague**. The actions in point C. '*Fighting poverty and rebuilding the economy*' (p.12) of the EU's Strategic Framework for the Great Lakes Region are slightly more elaborated, but no detailed information are provided on how the EU intends to implement them.

Further information should therefore be provided on the EU's planned measures in the context of its 'integrated approach' for a responsible mineral sourcing, particularly as regards **development cooperation** with DRC and the other countries in Central Africa.

The EU's Instrument for Stability (IfS) currently devotes € 5.5 million to 3 projects fight against the phenomenon of 'conflict minerals' in the Great Lakes Region²⁰: support for the implementation of the ICGLR's Regional Initiative against the Illegal Exploitation of Natural Resources (€ 3 million), support for the OECD Secretariat in promoting its Guidance on due diligence (€ 1 million) and strengthening the capacity of local non-state actors to manage contentious issues related to access to land and natural resources (€ 1.5 million over 2 years).

The actions listed in the Joint Communication and the EU Strategic Framework, as well as those currently being implemented under the IfS budget, make us doubt that the EU has correctly assessed **the development issues related to the artisanal mining sector in DRC** (see **ANALYTICAL BASES**, chapter II). In this respect, **these actions should form integral part of the European Council and Parliament debates that will take place within the framework of the adoption process of the draft EU Regulation.**

Firstly, the available information says nothing about how the EU intends to distance itself from international initiatives on 'conflict minerals', which are created with little consultation with local actors, but are, rather, imposed upon them. These actors have therefore not been able to understand the objectives of the initiatives and perceive them as measures imposed from abroad that are not directly profitable to them²¹. **If the EU addresses demands to these actors involved in the artisanal mining sector, it should start by helping them to understand, take on board and comply with these requirements.** If the EU ignores the local actors' problems in complying, it risks increasing the economic fragility of the populations dependent on the sector and preventing the effective implementation of the different initiatives promoting responsible sourcing (see also **ANALYTICAL BASES**, chapter IV).

Secondly, it must be noted that only limited resources are currently dedicated to supporting local stakeholders. Only € 1.5 million over two years have been devoted to the capacities of local non-state actors. This funding only targets local civil society organisations, through two regional workshops, support for greater coordination between them and grants for 12-month projects²². However, the Joint Communication commits the EU to 'building [third countries] further capacity to implement the national due diligence frameworks'. On the one hand, this capacity-building should be extended to other types of actors directly involved in artisanal activities rather than just civil society organisations. On the other hand,

it should go further than the management contentious issues related to land and to natural resources, to more generally cover the capacity to control artisanal mining and manage the practices of this sector (**ANALYTICAL BASES**, chapter IV).

The EU must therefore develop specific Accompanying Measures to support the **formalisation** of the Congolese artisanal mining sector and the **capacity of the local stakeholders** (miners, mining cooperatives, provincial services, companies and civil society organisations) to respect exploitation conditions in compliance with the OECD's due diligence framework. In doing this, the EU would distance itself from the US, which have unfortunately omitted to reinforce the adoption of the Dodd-Frank Act with measures for bridging the gap between the provisions of section 1502 and the lack of (technical and financial) capacity of the local stakeholders to regulate the artisanal mining sector (see also **ANALYTICAL BASES**, chapter IV).

The reference in the Joint Communication to the EU's [Raw Materials Initiative](#) (RMI) also leads us to question to what extent development issues linked to artisanal mining in DRC have been taken into account. The RMI intends to combat the 'market distortions' affecting the **price of minerals** that are 'critical' to the European economy²³, in order to guarantee the security of the EU's supply. This is an aggressive trade strategy that aims to eradicate any measure by the countries producing these minerals to **protect** their resources or to generate **fiscal revenues** for their own development (quotas, taxes, etc.)²⁴. However, the formalisation of the artisanal mining sector, which would facilitate the creation of a responsible supply chain from DRC, is largely linked to the miners' ability to **access a fair sales price** for their minerals (see **ANALYTICAL BASES**, chapter I). In addition, the artisanal mining sector's contribution to development in DRC also involves the organised contribution of some of the revenues it generates to the **national, provincial and local public finances** (see **ANALYTICAL BASES**, chapter II). This contribution, for example, would allow the Congolese Government to cover part of the costs generated by the formalisation of artisanal mining and fund local development. Therefore, the reference to the RMI does not seem consistent with an 'integrated' EU approach that takes account of the development issues related to mining in DRC.

Another key problem apparently not covered by the Joint Communication measures is the **illegal involvement of the Congolese army (FARDC)** in the exploitation and trade of artisanal minerals (see **ANALYTICAL BASES**, chapter I). The Accompanying Measures should make it possible to respond to (1) the **weakness of the management and the democratic control of the Security Sector** in DRC, which prevents the army from achieving its mission of protecting the territory and the population, and (2) the **problems in the justice system** that perpetuate the impunity of members of the security forces responsible for crimes against the population and/or illegally involved in the trade of natural resources. The EU had been involved in reforming the Congolese army through its EUSEC mission since 2007²⁵, but decided to close this mission at the end of 2014. An 'integrated' EU approach to the responsible sourcing of minerals from DRC should lead the EU and its Member States to continue to support Security Sector Reform (SSR) in DRC, particularly the reform of the FARDC, and to maintain regular political dialogue with the Congolese authorities on the implementation of the SSR process.

It is feared that the actions contained in the Joint Communication and the EU's Strategic Framework, as well as those currently being implemented under the IfS, will not lead to the sustainable formalisation of the Congolese artisanal mining sector **in the next few years**, although a responsible supply chain from DRC to Europe is already necessary. The best way to accelerate the process is **to engage all the public and private stakeholders** involved in supply chains to the EU. Here again, **the draft EU Regulation's voluntary approach and limited scope of companies should be abandoned.**

ANALYTICAL BASES

Chapter I. 'Conflict minerals', not 'conflicts for minerals'

This chapter explains why a strong, ambitious EU legislation (**recommendations 1-2-3**) and accompanying measures on security aspects (**recommendations 7-8-9**) are necessary.

Certain voices have been denouncing the fact that the many initiatives designed to fight against the phenomenon of 'conflict minerals' in DRC are inappropriate insofar, as these minerals are not a root cause of the conflicts affecting Eastern DRC for the last 15 years²⁶. These initiatives are said to overestimate the role of minerals in the violence and, therefore, hit the wrong target.

It is true that over the last few years, certain analyses have reduced the conflict in DRC to a bloody struggle to access and control the country's natural resources. This **harmful simplification** can be explained by the need of certain campaigns to send an easily understandable message to the public. By doing so, it omits to mention **other key factors**, such as the decline of the Congolese State and army, the impoverishment of the population, ethnic tensions, land conflicts, the lack of communication infrastructures and the isolation of certain parts of the country.

However, the exploitation and trade of natural resources continue to play a **major role** in insecurity at local and regional levels, and justify the **specific measures** to fight against this phenomenon. For more than ten years now, United Nations²⁷, journalists²⁸ and NGOs²⁹ reports described and condemned the fact that different national and foreign armed groups active in DRC have for many years been funded by the country's artisanal mining, particularly the exploitation of the 3Ts and gold. Despite the existence of these many reports, the response of the international community remains limited.

It is important to stress that the armed groups employ many different economic strategies and that the illegal trade in minerals is just one component of these strategies³⁰. It is often difficult to establish clearly the level of involvement of particular groups in the exploitation and trade of natural resources. For example, M23 has never developed a strategy to directly control mining territories³¹, but *'has always strived to form alliances with local armed groups that clearly control the mining sites'*³². Some of these alliances were formed before the integration of the former CNDP into the FARDC in March 2009³³.

It should be stressed that the **'conflict minerals' issue has not disappeared** in DRC. The security situation in many mining areas has not improved over the last year, despite the recent defeat of M23 and the joint military operations by the Congolese army and MONUSCO against the ADF and the APCLS. Of the 1,088 artisanal mining sites visited by IPIS³⁴ in the provinces Orientale (Ituri), North and South Kivu, Maniema and in northern Katanga, 504 are experiencing *'military interference'* (illegal taxation) and in 46 cases there have been reports of forced labour³⁵. On 313 sites, the observed interference is attributable to the Congolese army (FARDC)³⁶.

Although it is important not to **exaggerate the role of minerals** in conflict dynamics and instability affecting Eastern DRC, it is nevertheless important to **consider** this role. It should be recognised that ending the illegal trade of minerals will not directly end the conflict. However, it would be **underestimating the importance** of this trade to reduce it to a simple concomitant factor in the conflict and a simple *'means to finance military operations'*³⁷. According to the scientific literature, natural resources can affect three aspects of a (social or armed) conflict: the outbreak, the duration and the intensity³⁸. In the case of the armed violence in Eastern DRC, the minerals are mainly affecting the **duration of the conflict**, through the *'looting mechanism'*³⁹ used by certain armed groups to finance their activities, but also (and especially as regards the DRC at the moment) through the *'greed mechanism'*⁴⁰.

Money from the artisanal mining sector (illegal taxes) is **not only used to finance combat and military conquests** (purchase of arms and equipment). It also funds the **personal enrichment** of certain senior

officers in the Congolese army (FARDC) or rebel groups, certain members of the authorities and the local elites: *'the sector is regulated by an informal administration, with taxes and other duties specifically benefiting local chiefs and soldiers, as well as several administrative services that 'siphon off' some of the money that should go to the public Treasury'*⁴¹. The beneficiaries of this traffic sometimes employ armed groups when a conflict of interest appears between them, thus fuelling the violence around the mining sites. This was the case in the past in Walikale, Rubaya and Mukungwe.

Interest in the illegal trade of Congolese minerals is not just **local**, but also **regional**: *'several mafia networks have been developed in the province (of South Kivu), with ramifications for neighbouring countries'*⁴². According to the United Nations, *'98 per cent of the [artisanal] gold produced in DRC [in 2013] was smuggled out of the country'*, with a value of between \$ 383 million and \$ 409 million and losses for the Congolese State of \$ 7.7 million to \$ 8.2 million in tax revenue⁴³. This **gold** is exported primarily to Burundi, Uganda, Tanzania, and South Sudan, and is then transferred either to Dubai, one of the main global hubs for the gold trade, or to Dar es Salaam⁴⁴. As regards the **3Ts**, the United Nations confirm *'a continuing pattern of smuggling to Rwanda ... While there is residual smuggling to Uganda and Burundi'*⁴⁵. A key incentive is the significant price differences between DRC and Rwanda⁴⁶.

Certain **countries in the region therefore have an interest** in the illegal trading of Congolese minerals which is facilitated by insecurity and instability in Eastern DRC. The **beneficiaries** of this trade in neighbouring countries may be individuals, often members of the local elite, or members of the State apparatus. These different interests could partly explain Uganda and Rwanda's contribution to the instability caused by certain groups in DRC, as documented over the last few years by the United Nations Group of Experts on DRC. Either the neighbouring States **tolerate** the involvement of their citizens in the illegal activities of armed groups in DRC, or they directly **facilitate or support** these activities themselves.

The perpetuation of the conflicts in Eastern DRC can therefore be partly explained by the fact that **a number of stakeholders have more to gain from instability and insecurity** than from peace and the formalisation of the economy: *'the Congolese actors (...) prefer to organise and maintain constant but low-level insecurity rather than seeing the security situation improve. This choice facilitates the illegal exploitation of natural resources and the continued unrest in territories in which they can collect arbitrary taxes'*⁴⁷.

A **balanced and objective** approach to the issue should consider the illegal exploitation of natural resources as one key factor, among others, contributing to the perpetuation of insecurity in DRC. To this effect, initiatives to break the links between natural resources and conflict are **necessary but not sufficient**. They must be part of a global peace-building approach in DRC that takes account of the complexity of this conflict.

Chapter II. The artisanal mining sector: not only a question of peace, but also of development

This chapter explains why the EU must support formalisation of the artisanal mining sector that recognises its importance for the Congolese population (**Recommendation 6**)

Contrary to the idea generally conveyed in public opinion, artisanal mining in the DRC is an established practice and not illegal per se. It was authorised in the 1980s by president Mobutu, when it was mainly concentrated on the provinces of Kasai and Katanga. Artisanal mining in Kivu at the time focused on the gold concessions operated by the former Belgian company Sominki before undergoing substantial development following the coltan boom in 1999-2000⁴⁸. The Congolese Mining Code, adopted in 2002 and pending revision since 2012, established a legal framework for regulating the industry⁴⁹, and permits artisanal mining in specific areas (“*zones d’exploitation artisanale*”, ZEA).

The artisanal mining economy is a major survival economy on which an estimated **10 million Congolese** – 16% of the population – are directly or indirectly dependent⁵⁰. In addition to the workers (artisanal miners), whose number is estimated at **2 million** across the DRC, there are: *‘all the people who revolve around the sector for transportation, preparing food, etc.’*⁵¹. When compared to the working Congolese population as a whole (estimated at 30 million people), these figures are not to be overlooked – especially when one considers that the industrial mining sector provides only 20,000 to 30,000 direct and indirect jobs in the DRC.⁵²

However, the artisanal sector has **contributed little to the development of DRC** at local⁵³ or national level. Of course, this should be attributed in part to the insecurity in the country and the illegal interference of armed groups and the Congolese army in mining and the artisanal minerals trade. But the explanation also lies in the **mismanagement of the sector by the authorities in Kinshasa and in the provinces**. The Congolese Government does not seem to have a clear vision or policy about the future of the sector.⁵⁴ Will it ultimately be condemned to make way for industrial mining? Or is it envisaged that the two sectors – artisanal and industrial – will exist side-by-side, as demanded by civil society in the East of the country? At present there is no common vision and no clear ideas, which is fuelling the uncertainty around the dual nature of the formal and informal sectors since *“agents of the state are present on all the artisanal sites (the Division des Mines, SAESSCAM, the Police of Mines, FARDC, the chef de territoire, etc.) and manipulate the legal framework for their own ends”*.⁵⁵

According to professor Stefaan Marysse, the way the artisanal sector operates is one of the main “black holes” for mining revenue in the DRC. The value of illegal exports of artisanal gold, equivalent to 98% of production in 2013, is between 383 and 409 million dollars⁵⁶. Across the artisanal sector as a whole, fraud is said to lead to an **annual shortfall of around 100 million dollars in the State budget**⁵⁷. Considering the estimated scale of global reserves for tantalum (25%) and tin (7%) in DRC⁵⁸, and the estimated value of the Congolese artisanal gold production⁵⁹, the collection and redistribution of artisanal mining revenue is a major issue for DRC’s development.

Despite the importance of **development issues outlined briefly in this chapter**, it is to be feared that they are not taken into account in the EU’s current responsible sourcing strategy. In light of this, as explained in **EURAc POSITION** (see point II), the Accompanying Measures being proposed in the Joint Communication and those that are currently being implemented by the European Commission and the EEAS do not seem satisfactory.

Chapter III. Section 1502 of the Dodd-Frank Act: what lessons can be learned?

This chapter explains why a strong and ambitious EU legislation (**recommendations 1-2-3**) is necessary.

Following the international community's awareness, a number of binding and voluntary initiatives have been introduced over the last few years to address the issue of 'conflict minerals'. Central Africa, and more particularly DRC, has become the main laboratory for public and private efforts at international, regional and national level to implement certification, traceability and mineral supply chain due diligence⁶⁰. **Section 1502 of the Dodd-Frank Act** is the most frequently discussed initiative in current debates on the draft EU Regulation. These discussions generally refer to the **voluntary nature of the proposed EU system**.

A report commissioned by the Federation of German Industries⁶¹, and produced by the Öko Institute⁶², seems to have helped to invalidate the mandatory approach of the US legislation in the eyes of certain sections of the public and the European Commission. It refers to **certain negative perceptions** of the impacts that the adoption of the Dodd-Frank Act in 2010 would have had in DRC. These negative perceptions reduce these impacts to the consequences of the withdrawal of some of the main international purchasers of Congolese 3Ts (*end-users* and the smelters that supply them)⁶³. This resulted in difficulties for Congolese 3Ts to access the international market and, consequently, in a drop of their prices. This 'de facto embargo' had serious socio-economic repercussions in the provinces concerned.

In this respect, we can criticise section 1502 for its **too strict** and **geographically limited interpretation** of the OECD Guidance on due diligence⁶⁴. The US legislation introduces 'conflict-free' labelling only for Congolese minerals, whereas due diligence is first and foremost a process for identifying and managing risks that should be applied in every conflict-affected or high-risk region of the world that produces minerals. The draft EU Regulation seems to have learned certain lessons from the shortcomings of section 1502. **However, these do not justify the voluntary nature of the EU system.**

It is important to point out that if the EU's self-certification system became compulsory, and not voluntary as it currently is, it would not necessarily be appropriate to compare the effects it may have in DRC with the negative perceptions of the impacts of the US legislation :

Firstly, because there are considerable differences in the approach of the two initiatives, so making the European system compulsory would not place the same requirements on companies as the US legislation.

Secondly, as is demonstrated in the rest of this chapter, because these negative perceptions only reflect a very small part of the lessons that can be learned on the ground.

The detractors of the Dodd-Frank Act generally omit to mention that its adoption in July 2010 was followed between September 2010 and March 2011 by the **suspension of artisanal mining activities** decided by President Kabila. The problems of Congolese artisanal products to access the international market, as observed in 2010, and the resulting socio-economic difficulties, were therefore not only caused by the US legislation. It is true that the 'de facto embargo' is partly attributable to the adoption of section 1502 of the Dodd-Frank Act in 2010, and that **in certain areas** it promoted the illegal smuggling of Congolese minerals to neighbouring countries⁶⁵. However, reducing the effect of section 1502 on the above-mentioned facts or even, as some do, blaming the Dodd-Frank Act for most of the problems encountered by miners and local communities, seems to demonstrate a **simplification of reality** that is just as **harmful** as reducing the conflict in DRC to a fight to control its natural resources.

Section 1502 of the US Dodd-Frank Act only entered into force in January 2013 and set the date for companies to submit their first due diligence reports at 2 June 2014. Only 1,315 companies have so far done this, of the 6,000 identified by the US financial authorities. The initial analyses of the available reports suggest that, with a few exceptions, the majority of the companies declarations lack relevant information⁶⁶. The companies targeted by section 1502 must considerably increase their efforts to ensure that their reports amount to more than a simple 'box-ticking' exercise and lead to real reforms in their supply chains.

So it will be **a few more years before categorical and definitive conclusions** can be drawn on the effects of the Dodd-Frank Act on companies' supply chain practices.

The same applies to the impacts of section 1502 in DRC. According to a recent IPIS study, **'the initiatives' effects overlap**, sometimes **supporting** and sometimes **contradicting** one another. As such, **none of the initiatives' impacts can be assessed in isolation**⁶⁷. Generally speaking, the security and socio-economic effects of the initiatives observed at ground level vary **depending on the local context of the exploitation and trading of the minerals**: the least isolated regions, most closely monitored by the international community and the local stakeholders, have seen a gradual improvement in their socio-economic situation (although it still falls short of its pre-presidential suspension level) and increased security. On the other hand, no improvement has been observed in the socio-economic or security situation in more remote areas which have not yet profited from more concrete initiatives to resuscitate trade⁶⁸.

The more obvious effect of the Dodd-Frank Act is that it has forced all the public and private stakeholders involved in the artisanal mining sector, both in DRC and abroad, to **acknowledge their responsibilities**. It has encouraged several States, (US, China and Canada) and the private sector (traders, smelters and end users) to **take a stand** and define **targeted actions** on the issue of 'conflict minerals'. After turning their backs on Congolese 3Ts in 2010, several parties involved in the supply chains have decided to **engage or re-engage in DRC**, through initiatives such as the [Conflict Free Tin Initiative](#)⁶⁹ (Kalimbi mine in South Kivu) for tin, [Solution for Hope](#)⁷⁰ (Mai Baridi mines in Kisengo and Luba mines in Katanga) or [Making Africa Work](#)⁷¹ (Kisengo mine in Katanga) for tantalum. These initiatives feed into the Conflict Free Smelters (CFS) programme,⁷² created in 2011 by the EICC and the GeSI ([Conflict Free Sourcing Initiative](#)). These closed-pipe projects allow the companies involved to work together throughout the supply chain (from the mine to the end-product) to identify and manage the risks in the mines and along the trade routes. It is more than likely that these initiatives would not have been implemented **without the adoption of the binding requirements set out in the Dodd-Frank Act**.

As regards the **other effects of the US legislation** in DRC, the observation in the field from 2010 to the current day has led us to make several observations that nuance the sometimes hasty conclusions of the pro- or anti-Dodd-Frank positions. Although it is true that the *de facto embargo* has had negative economic consequences locally in the concerned Congolese provinces, it has also led to **decreased revenue for the armed groups** and an **improved security situation** for certain mining sites⁷³. These observations apply primarily to the 3Ts, **not to gold**. In fact, in many regions, such as North Katanga, the miners reacted to the decline of the 3Ts sector by moving into the informal gold sector⁷⁴; *'gold is not closely monitored and can easily be smuggled out of the country, its prices are not affected by the international scrutiny on conflict minerals. In early 2013, for example, the discovery of the Musebe gold mine attracted approximately 15,000 creuseurs. Other sources indicate that there may be up to 30,000 miners in the site*⁷⁵. This means that 80% of the artisanal miners in the 2013-2014 IPIS mapping study are working in the gold sector⁷⁶.

Chapter IV. Responsible sourcing from DRC is possible... under certain conditions!

This chapter explains why a EU legislation making due diligence mandatory (**recommendation 1**) and Accompanying Measures supporting the formalisation of the artisanal mining sector and the capacity of the local actors are necessary (**recommendations 4-5-6**).

In addition to the OECD Guidance on due diligence, section 1502 of the Dodd-Frank Act and the closed-pipe projects set up by the private sector, other national and international initiatives promote the certification of mines, the traceability of minerals and supply chain due diligence. Although the following list is not exhaustive, it is important to mention:

- the **legislation in DRC and Rwanda**, adopted in 2012, making due diligence compulsory for all companies operating in the 3Ts and gold sectors. According to recent information, the current revision of the Congolese Mining Code will increase compulsory due diligence in DRC;
- the **qualification and certification process for mining sites in Eastern DRC**, officially introduced by Ministerial Decree in February 2012; this aims to establish the security and social conditions of mining sites through three categories: red (unsatisfactory, no certification), orange (satisfactory but not enough for certification) and green (entirely satisfactory, certification awarded).
- the **six tools of the Regional Initiative against the Illegal Exploitation of Natural Resources (RINR)**⁷⁷, adopted by the Heads of the ICGLR Member States. These tools include the issuing of a **regional ICGLR certificate guaranteeing the minerals' mine of origin**. In DRC, only minerals from mining sites certified by the Government as 'green' can receive an ICGLR certificate.

The draft EU Regulation is **below the legal standards** already in force in DRC and other ICGLR member States, as well as in the United States, where due diligence is mandatory for companies. The EU is **diluting these standards**, instead of helping to create a level playing field in the markets. Importers choosing not to join the Commission's self-certification system will still be able to access the European market.

By doing this, the Commission has not taken account of the **position of the European Parliament** of February 2014 promoting European legislation that includes legally binding provisions for companies involved in mineral supply chains to Europe⁷⁸.

The security improvements due to the efforts to demobilise and disarm the armed groups in Eastern DRC have allowed **progress to be made in the qualification and certification process of mining sites** over the last few months. The security and social conditions of 86 artisanal sites are currently considered sufficiently good to be validated as 'green' by the Government⁷⁹; 17 of these sites are in North Kivu, 9 in South Kivu, 45 in Maniema and 15 in northern Katanga. This number remains low considering the 497 artisanal sites (out of 1,088) that the IPIS recently identified as 'free' of involvement by armed groups⁸⁰, although it represents **significant progress**.

The same applies to the ICGLR **certification mechanism** on the origin of minerals in DRC: since its launch in July 2013, the country has issued 924 regional certificates; 733 for gold, 145 for tin and 45 for tantalum. The compliance of certain certified batches of minerals, particularly gold ones, with the standards of the ICGLR (themselves inspired by the OECD Guidance) is questionable. But here too, this recent progress is encouraging and creates **real opportunities for responsible supply chains from DRC**.

On the ground, these initiatives are facing **feasibility and reliability problems**, principally due to governance and security issues. These problems are not new. Even in 1996, it was already observed that given the weakness and corruption of the central Government, the DRC's wealth was within the grasp of any group violent and determined enough to impose its control by force⁸¹. Governance *'has traditionally been a significant flaw in Eastern DRC, and more than ever it is an essential issue to ensure the success of the initiatives (...)* Monitoring and certifying the artisanal mining sector cannot be sustainable in the long term without heightened capacity of the local, provincial and national administration'⁸².

The processes for site qualification and ICGLR certification of products still face several major hurdles: **massive mining fraud** in the surrounding countries to the east (Uganda, Rwanda, Burundi and Tanzania), a the **incapacity of the administrative services** and the **non-payment of the salaries** of the officials responsible for managing the artisanal sector, the **slowness of the mining site qualification process**, the **heavy involvement of the FARDC** in the illegal exploitation and trade of minerals (62% of cases of '*military interference*' observed by IPIS).

Minerals can now be sourced responsibly from DRC, primarily thanks to recent progress in the mine qualification and mineral certification systems. These are key stages in the implementation of responsible supply chains from DRC. Indeed, certification, traceability and due diligence are in fact complementary and mutually supportive. Without a **reliable certification** and **traceability mechanisms**, a widespread responsible sourcing from Eastern DRC will remain hypothetical.

Unfortunately, the reliability of the certification and the traceability of minerals in DRC are undermined by the **(technical and financial) inability of the local authorities** to manage the artisanal mining sector. In this respect, it is unfortunate that the US have omitted to support section 1502 with measures that reinforce the capacity of the local actors to manage the artisanal mining sector. **The EU must not repeat this error.**

The EU and its Member States must therefore develop specific **Accompanying Measures to support the formalisation** of the Congolese artisanal sector, particularly the mine qualification processes and the ICGLR certification mechanism, and the **capacity of the local actors** (miners, mining cooperatives, provincial services, companies and civil society organisations) to respect exploitation conditions in compliance with the due diligence standards set out by the OECD.

ENDNOTES

- ¹ Tin, tantalum (also called 'coltan') and tungsten.
- ² The Democratic Republic of Congo.
- ³ The US Dodd-Frank Wall Street Reform and Consumer Protection Act, adopted by American Congress in 2010, includes a section (1502) that obliges companies listed on the New York stock exchange whose products contain tin, Tantalum, tungsten or gold to report whether these minerals are bought in the DRC or neighbouring countries. If the minerals do originate in the DRC, a company is then required to disclose (in a public annual report) the due diligence measures it has taken to avoid purchasing minerals that might fund armed groups or human rights violations.
- ⁴ ['Congo-Kinshasa: Conflict over conflict minerals'](#), *Africa Confidential*, vol.55/n°20, 10 October 2014.
- ⁵ OECD, [OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#), OECD, second edition (2013), p.13.
- ⁶ International Conference on the Great Lakes Region.
- ⁷ OECD, [OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#), OECD, second edition (2013).
- ⁸ See Article 2 of the Draft Regulation (p.5).
- ⁹ A civil society position paper: [Breaking the links between natural resources and conflict: the case for EU regulation](#), 16 September 2013.
- ¹⁰ SOMO, [Conflict due diligence by European companies](#), November 2013.
- ¹¹ European Commission, [Assessment of due diligence compliance cost, benefit and related effects on selected operators in relation to the responsible sourcing of selected minerals](#), SWD (2014) 53 Final, 5 March 2014, p.61.
- ¹² Anna Bulzomi, [The EU draft law on conflict minerals due diligence: a critical assessment from a business & human rights standpoint](#), *IPIS Insights*, 30 April 2014.
- ¹³ European Commission, [Assessment of due diligence compliance cost, benefit and related effects on selected operators in relation to the responsible sourcing of selected areas - Final Report](#), 25 September 2013.
- ¹⁴ European Commission, [Frequently Asked Questions - Responsible sourcing of minerals originating conflict-affected and high-risk areas: towards an integrated EU approach](#), 5 March 2014.
- ¹⁵ *Ibidem*.
- ¹⁶ European Commission and European External Action Service, [A Strategic Framework for the Great Lakes Region](#), JOIN (2013) 23 Final, 19 June 2013, p.12.
- ¹⁷ These actions include financial support and visibility for companies that source responsibly and the introduction of a performance clause in some European Commission public procurement contracts.
- ¹⁸ 1- Dialogue that already exists in the areas of development, trade and security; 2- Specific dialogue with countries where most of the smelters/refiners are located (China, Malaysia, Indonesia, Thailand and Russia); 3- 'Resource diplomacy' that has been developed since 2008 as part of the EU's Raw Materials Initiative.
- ¹⁹ 1- Transposing the OECD Due Diligence Guidance into national due diligence frameworks and legislation; 2- Building further capacity to implement the national due diligence frameworks; 3- Supporting advocacy and political dialogues in the countries concerned between local and central Government authorities, civil society organisations and business operators; 4- Creating visibility for the actions carried out and the results achieved by the producer countries; 5- Joint projects on sustainable mining and good governance, which primarily address the special nature of artisanal mining.
- ²⁰ These projects are funded through the EU's Instrument for Stability (IfS).
- ²¹ Ken Matthysen and Andrés Zaragoza Montejano, ['Conflict Minerals' initiatives in DR Congo: Perceptions of local mining communities](#), IPIS/EurAc, November 2013.
- ²² The implementation of capacity building of non-state local actors is part of the third phase of the EU-UN Partnership on Land, Natural Resources and Conflict Prevention. The planned budget for financing the 12-month projects is € 600,000.

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- ²³ Tungsten is included in the list of 20 critical minerals recently updated by the European Commission ([COM \(2014\) 297 final](#)). Tantalum and tungsten were included in the [previous list](#) of 14 critical minerals. Tantalum has been removed from the new list because it now represents a lower risk of supply for the EU.
- ²⁴ Frédéric Triest, 'L'approvisionnement en minerais des Européens, à n'importe quel prix?', in *La Revue Nouvelle*, November 2013 / No. 11, p.58-66.
- ²⁵ EUSEC (European Union Security Sector Reform Mission in the DRC) is funded under the budget of the Common Security and Defence Policy (CSDP). It supported the reform of the FARDC, reaping fragile but significant results in the areas of strategic advice, training, human resources management and payment of wages.
- ²⁶ Christof Vogel, [Eastern DRC: Stop Fixating on Conflict Minerals](#), *Think Africa Press*, 23 June 2014.
- ²⁷ See the [Final Report](#) of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (2002); [Reports](#) of the United Nations Group of Experts on the Democratic Republic of Congo (2004-2014).
- ²⁸ Colette Braeckman, *Les nouveaux prédateurs. Politiques des puissances en Afrique centrale*, Fayard, 2003.
- ²⁹ International Alert, [Etude Sur le Rôle de l'Exploitation des Ressources Naturelles dans l'Alimentation et la Perpétuation des Crises de l'Est de la RDC](#), October 2009; Global Witness, [Exploitation des ressources naturelles et droits de l'homme en République démocratique du Congo de 1993-2003](#), 17 December 2009.
- ³⁰ See in particular the United Nations Group of Experts on the Democratic Republic of Congo, [Final Report 2011](#), United Nations Security Council, S/2011/738, 2 December 2011, p.25-78.
- ³¹ IPIS, [Mapping Conflict Motives: M23](#), IPIS/EurAc, November 2012.
- ³² Coordination of the North Kivu Civil Society, *Six Vérités des organisation de la Société civile du Nord-Kivu dans le secteur des Ressources naturelles, en réponse à la lettre ouverte adressée aux gouvernements, entreprises, organisations non-gouvernementales et autres acteurs travaillant sur la thématique ses "minerais du sang"*, 22 September 2014.
- ³³ M23 is a rebel group formed in April 2012 by members of the former CNDP who were integrated into the FARDC following the signature of peace agreements of 23 March 2009. The name "M23" refers to these agreements: the group justifies its rebellion by arguing that the Government did not respect the terms of the agreements.
- ³⁴ [International Peace Information Service](#).
- ³⁵ IPIS, [Analysis of the interactive map of artisanal mining areas in Eastern DR Congo: May 2014 update](#), October 2014.
- ³⁶ The other major armed groups listed by the IPIS are as follows: Raïa Mutomboki, NDC, FDLR, Mai-Mai Yakutumba, Mai-Mai Simba, Mai-Mai Kem, FRPI and Mai-Mai-Morgan.
- ³⁷ Christoph Vogel and Ben Radley, [Open Letter](#), 9 September 2014.
- ³⁸ Anne-Sylvie Berck and Alexia De Jonghe, *Des conflits liés aux ressources naturelles. Les cas de la République Démocratique du Congo. Quel impact sur la souveraineté alimentaire?*, Commission Justice et Paix Belgique francophone, 2007/No. 1.
- ³⁹ Michael Ross, 'How do Natural Resources Influence Civil War? Evidence from Thirteen Cases', in *International Organisation*, No. 58/winter 2004.
- ⁴⁰ Paul Collier and Anke Hoeffler, '[Greed and Grievance in Civil Wars](#)', in *Oxford Economic Papers*, n°56/2004, p.563-595; James Fearon and David Laitin, 'Ethnicity, Insurgency and Civil Wars', in *American Political Sciences Review*, vol. 97, February 2003/n°1.
- ⁴¹ Célestin B. Bucekuderhwa, Guillaume Bidubula, Eddy Balemba, 'Vulnérabilité et stratégies de gestion des risques dans les zones d'exploitation minière artisanale. Le cas des creuseurs d'or de Mukungwe, Burhinyi et Luhwindja', in *Cahiers Africains/Afrika Studies* No. 82 (2013), p.107.
- ⁴² Janvier Kilosho Buraye, Gabriel Kamundala Byemba and Adamon Ndungu Mukasa, 'Traçabilité des produits miniers dans les zones de conflit au Sud-Kivu', in *Cahiers Africains/Afrika Studies* No. 82 (2013), p. 133.
- ⁴³ United Nations Group of Experts on the Democratic Republic of Congo, [Final Report 2013](#), United Nations Security Council, S/2014/42, 23 January 2014.

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- ⁴⁴ Alan Martin and Bernard Taylor, [All that Glitters is Not Gold: Dubai, Congo and the Illicit trade of Conflict Minerals](#), Partnership Africa Canada, May 2014.
- ⁴⁵ United Nations Group of Experts on the Democratic Republic of Congo, [Final Report 2013](#), United Nations Security Council, S/2014/42, 23 January 2014, p.45.
- ⁴⁶ In October 2013, for example, a kilogram of tin sold for 4 dollars in the mines of South Kivu, compared to 8 dollars in the trading centres of Bukavu, and 15 dollars in Kamembe in Rwanda.
- ⁴⁷ Théodore Trefon (2013), *Congo, la mascarade de l'aide au développement*, Academia/L'Harmattan, Louvain-la-Neuve, December 2013, p.87.
- ⁴⁸ The price for this mineral at the time reached 350 dollars per kilo.
- ⁴⁹ The Code aims to curb illegal practices, enhance the safety of artisanal miners, avoid conflicts over natural resources and prevent human rights violation. It divides jurisdiction for the sector between the Ministry of Mines (who delimit artisanal mining areas), provincial Governors (who grant cards for trading in artisanal mining products) and the heads of the Provincial Mines Division (who grant mining cards).
- ⁵⁰ World Bank, [République Démocratique du Congo. La bonne gouvernance du secteur minier comme facteur de croissance](#), Report No. 43402-ZR, May 2008, p.8.
- ⁵¹ According to Stefaan Marysse, professor at the University of Antwerp and director of the Belgian Reference Centre for Expertise for Central Africa (CREAC), interviewed in ['Exploitation minière congolaise: artisanat versus industrie'](#), *Glo.be*, 25 April 2014.
- ⁵² Stefaan Marysse and Claudine Tshimanga, 'La renaissance spectaculaire du secteur minier en RDC. Où va la rente minière?', in *Cahiers Africains/Afrika Studies* No.82 (2013), p.28.
- ⁵³ Commission Episcopale pour les Ressources Naturelles (CERN, Episcopal Commission for Natural Resources), *L'impact de l'exploitation minière sur l'économie et le social de Walikale*, Conférence Episcopale Nationale du Congo/CENCO (National Episcopal Conference of Congo), December 2013; Catholic Relief Service (CRS), Commission Episcopale pour les Ressources Naturelles (CERN) and CCFD, *Étude des besoins. Communautés minières de Luttwinja, Mukungwe, Ninja et Nzibira (Sud Kivu – RDC)*, October 2011.
- ⁵⁴ Frédéric Triest, [Le secteur minier artisanal à l'Est de la RDC : état des lieux et perspectives](#), Commission Justice et Paix Belgique francophone, May 2012.
- ⁵⁵ Stefaan Marysse and Claudine Tshimanga, 'Les "trous noirs" de la rente minière en RDC', in *Cahiers Africains/Afrika Studies*, No.84 (2014), p.152.
- ⁵⁶ United Nations Group of Experts on the Democratic Republic of Congo, [Final Report 2013](#), United Nations Security Council, S/2014/42, 23 January 2014.
- ⁵⁷ Stefaan Marysse and Claudine Tshimanga, 'Les "trous noirs" de la rente minière en RDC', in *Cahiers Africains/Afrika Studies*, No.84 (2014), p.162.
- ⁵⁸ Janvier Kilosho Buraye, Gabriel Kamundala Byemba and Adamon Ndungu Mukasa, 'Traçabilité des produits miniers dans les zones de conflit au Sud-Kivu', in *Cahiers Africains/Afrika Studies* No.82 (2013), p.117.
- ⁵⁹ The province of South Kivu alone produces some 4,800 kg of artisanal gold annually. See Stefaan Marysse and Claudine Tshimanga, 'Les "trous noirs" de la rente minière en RDC', in *Cahiers Africains/Afrika Studies* No.84 (2014), p.159.
- ⁶⁰ Didier Verbruggen, Evie Francq and Jeroen Cuvelier, [DRC Guide to Current Mining Reform Initiatives in Eastern DRC](#), IPIS, April 2011.
- ⁶¹ *Bundesverband der Deutschen Industrie* (BDI).
- ⁶² Andreas Manhart and Tobias Schleicher, [Conflict minerals. An evaluation of the Dodd-Frank Act and other resource-related measures](#), Öko Institute, August 2013.
- ⁶³ This withdrawal can be explained by the fact that, when it was adopted in July 2010, the Dodd-Frank Act did not give any detailed information about the implementing rules of Section 1502, thereby creating legal uncertainty among companies covered by the Section. Furthermore, as these same companies could not reasonably guarantee that none of the minerals they bought in Central Africa funded the armed groups that are active in the DRC, the "reputational risk" of being associated with the violence in the DRC became too great for them.

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- ⁶⁴ OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, OECD, first edition (2010).
- ⁶⁵ Sarah Zingg Wimmer and Filip Hilgert, [Bisie. A one-year snapshot of the DRC's principal cassiterite mine](#), IPIS, November 2011, p. 1 and 9; Ken Matthysen and Andrés Zaragoza Montejano, ['Conflict Minerals' initiatives in DR Congo: Perceptions of local mining communities](#), IPIS/EurAc, November 2013, p.36.
- ⁶⁶ Global Witness, [Global Witness warns that majority of inaugural conflict mineral reports are inadequate](#), 2 June 2014.
- ⁶⁷ Ken Matthysen and Andrés Zaragoza Montejano, ['Conflict Minerals' initiatives in DR Congo: Perceptions of local mining communities](#), IPIS/EurAc, November 2013, p.7 and 41.
- ⁶⁸ *Ibidem*, p.3.
- ⁶⁹ The participants in the initiative are as follows: IM Metals & Alloys, Alpha, Apple, BlackBerry, Fairphone, HP, ITRI, Malaysia Smelting Corporation Berhad (MSC), Motorola Solutions, Nokia, Netherlands Ministry of Foreign Affairs, Pact, Royal Philips, Tata Steel and Traxys.
- ⁷⁰ The participants in the initiative are as follows: AVX, BlackBerry, Coopérative Des Artisanaux Miniers du Congo (CDMC), FandX, FairPhone, Flextronics, Foxconn, Global Advanced Metals (GAM), HP, Intel, Mining Minerals Resources (MMR), Motorola Mobility, Motorola Solutions and Nokia.
- ⁷¹ This initiative was set up by Kemet, a capacitor manufacturer.
- ⁷² As at 25 April 2014, the CFS programme had approved 85 smelters and refineries worldwide as "conflict free", and 110 others as being committed to the assessment process and audit programme.
- ⁷³ United Nations Group of Experts on the Democratic Republic of Congo, [Final Report 2012](#), United Nations Security Council, S/2012/843, 15 November 2012, p.5. See also Sarah Zingg Wimmer and Filip Hilgert, [Bisie. A one-year snapshot of the DRC's principal cassiterite mine](#), IPIS, November 2011.
- ⁷⁴ See the United Nations Group of Experts on the Democratic Republic of Congo, [Final Report 2012](#), United Nations Security Council, S/2012/, 15 November 2012, p.53.
- ⁷⁵ Ken Matthysen and Andrés Zaragoza Montejano, ['Conflict Minerals' initiatives in DR Congo: Perceptions of local mining communities](#), IPIS/EurAc, November 2013, p.31.
- ⁷⁶ IPIS, [Analysis of the interactive map of artisanal mining areas in Eastern DR Congo: May 2014 update](#), October 2014.
- ⁷⁷ The six tools are as follows: (1) the mechanism for regional certification; (2) harmonisation of national legislation; (3) the regional data-base on the flow of minerals; (4) the formalisation of the artisanal mining sector; (5) the promotion of the Extractive Industries Transparency Initiative (ITIE); and (6) the early warning mechanism.
- ⁷⁸ European Parliament, [Report on promoting development through responsible business practices, including the role of extractive industries in developing countries](#), 2013/2126(INI), 19 February 2014, p.12.
- ⁷⁹ The procedure for qualifying and certifying sites involves sending joint teams of experts appointed by the various partners (Mining Administration, SAESSCAM, Police for Mines, BGR, MONUSCO, Civil Society and FEC) into each of the Eastern provinces.
- ⁸⁰ IPIS, [Analysis of the interactive map of artisanal mining areas in Eastern DR Congo: May 2014 update](#), October 2014.
- ⁸¹ High Commissioner for Human Rights, [Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003](#), United Nations, August 2010.
- ⁸² Ken Matthysen and Andrés Zaragoza Montejano, ['Conflict Minerals' initiatives in DR Congo: Perceptions of local mining communities](#), IPIS/EurAc, November 2013, p.42.