



Conflict minerals

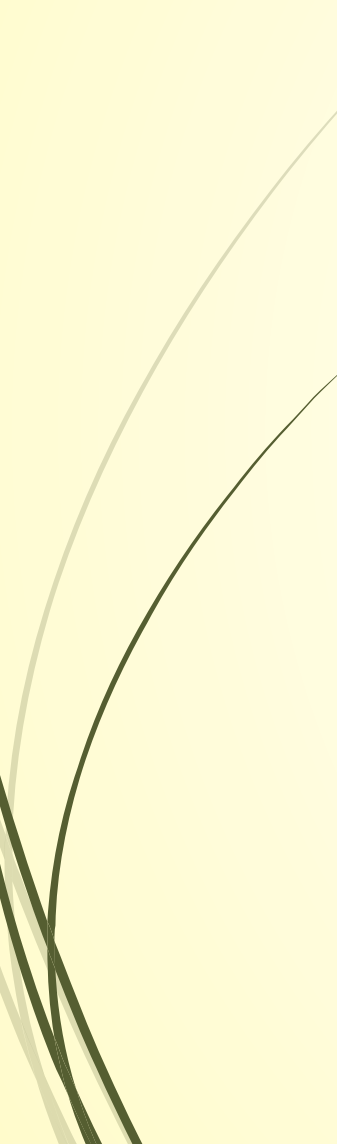
Linde Griebhaber

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University of Zurich



Content

- Conflict minerals
 - (Discussions on) Regulations on conflict minerals
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Conflicts and natural resources

- Within the last 60 years, 40% of intra-state conflicts where in some way linked to natural resources
 - Due to climate change, conflicts over natural resources (i.e. water) might increase in the future



Source: <http://www.fairphone.com/projects/tantalum/>

Conflict minerals

- OECD speaks of „minerals from conflict-affected and high-risk areas“

Conflict-Affected and High-Risk Areas

Conflict-affected and high-risk areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc. *High-risk areas* may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law.

- Currently reference is mainly to: tantalum, tin, tungsten, gold from the Eastern DRC and adjoining regions where they might be used to finance conflicts
- Video: <http://www.enoughproject.org/conflictminerals101>

USA – Dodd Frank Act Wall Street Reform and Consumer Act I

- 2010: passed in Congress
- Target group: those, where “conflict minerals are necessary to the functionality of a product manufactured by such person“ Section 1502 (b) (2)(E)
- Need to determine source of their minerals
- 2- (resp. 4-)year period for setting up systems, companies may deem it „undeterminable“ whether their minerals come from this region or whether it financed armed conflict

USA – Dodd Frank Act Wall Street Reform and Consumer Act I

- ▶ Section 1502 (b) (1)1 (A) “[...] the Commission shall promulgate regulations requiring any person described in paragraph (2) to disclose annually [...] whether conflict minerals [...] did originate in the Democratic Republic of the Congo or an adjoining country and, in cases in which such conflict minerals did originate in any such country submit to the Commission a report that includes, with respect to the period covered by the report—
 - ▶ (i) a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals, which measures shall include an independent private sector audit of such report submitted through the Commission that is conducted in accordance with standards established [...]
 - ▶ (ii) a description of the products manufactured or contracted to be manufactured that are not DRC conflict free (‘DRC conflict free’ is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country), the entity that conducted the independent private sector audit in accordance with clause (i), the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the effort to determine the mine or location of origin with the greatest possible specificity.”

USA – Dodd Frank Act Wall Street Reform and Consumer Act III

➤ Positive:

- Seems to have effect that companies refer on their website to conflict minerals
- Indirect effect: not only companies listed on US stock exchange report but also their suppliers

➤ Criticism:

- Too narrow geographical scope as well as too narrow in terms of minerals
- Some argue this has resulted in a de-facto ban of minerals from the DRC and neighbouring regions (various reasons for this)
- => de facto ban leads also to difficulties for providers from conflict free regions/smelters within DRC



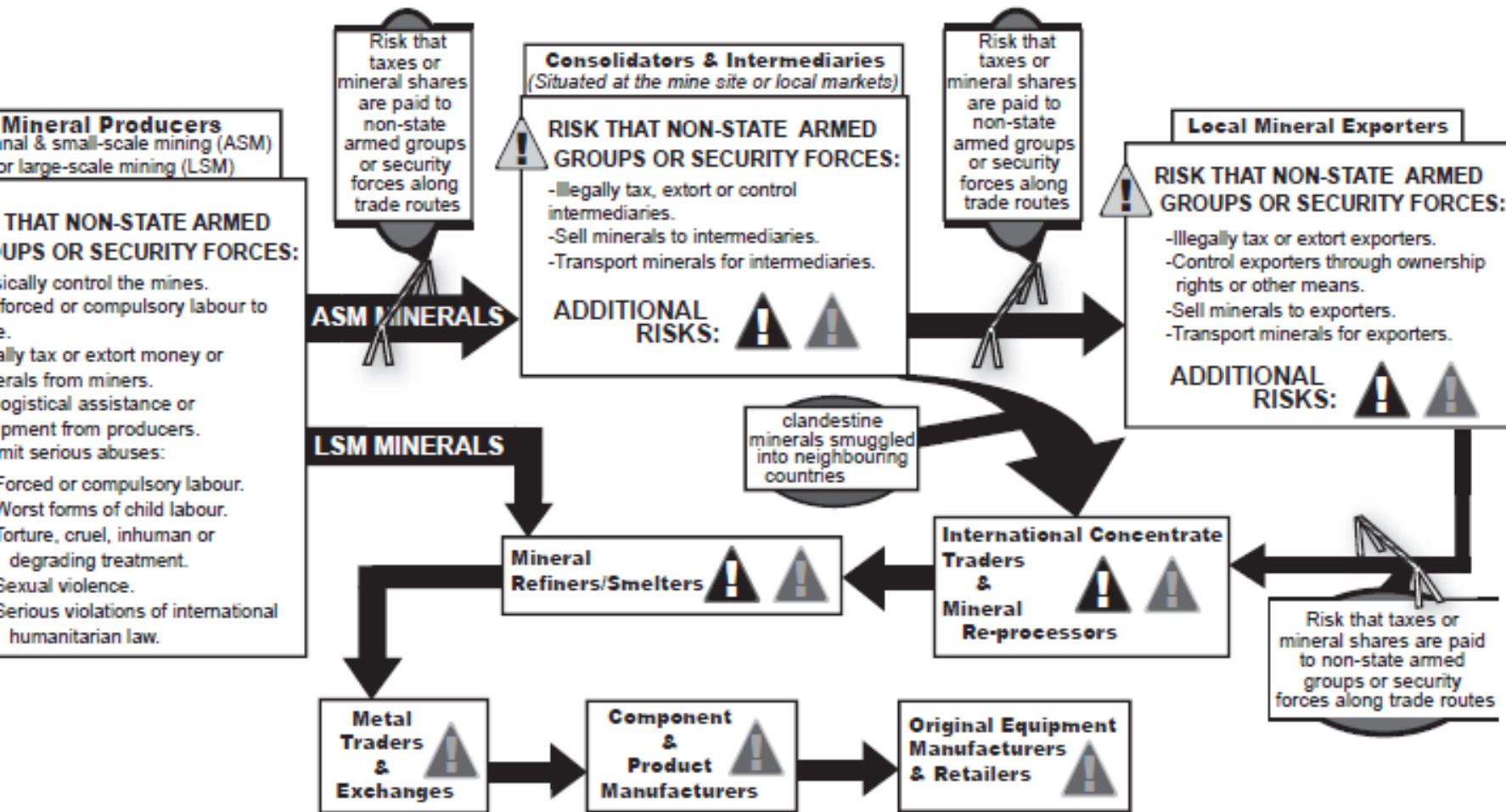
OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

- Main guidance used for due diligence assessment
- Adopted in 2011
- Developed in collaboration with governments, international organisations, industry, civil society
- Voluntary
- Content
 - Provides a due diligence framework
 - Exemplary mineral supply chain policy
 - Risk mitigation measures and indicators for measuring improvements
 - Specific guidance for the “three T” (tin, tantalum, tungsten) and one for

OECD due diligence framework

- 5 steps of the framework:
 - “Establish strong company management systems“ (includes a.o. establish and communicate a policy on conflict minerals; control mechanisms, engagement with suppliers)
 - “Identify and assess risk in the supply chain“
 - “Design and implement a strategy to respond to identified risks“
 - “Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain”
 - “Report on supply chain due diligence”

Figure 1. Risks in the supply chain of tin, tantalum and tungsten from conflict-affected and high-risk areas



LEGEND

[Warning Icon] = -Risk of direct or indirect support to non-state armed groups through the extraction, transport, trade, handling or export of minerals.
 -Risk that public security forces are present for purposes other than providing security.
 -Risk related to contracting of security forces, public or private.

[Warning Icon] = -Risk of non-existent or inadequate due diligence for a responsible supply chain of minerals from conflict-affected and high-risk areas (as recommended in this guidance).

[Warning Icon] = -Risk of bribery to conceal or disguise the illicit origin of minerals, to misrepresent taxes, fees and royalties paid to governments for the purposes of mineral extraction, trade, handling, transport and export.
 -Risk of fraudulently misrepresented information on mineral origin, transportation routes, chain of custody and the circumstances of mineral extraction, trade, handling, transport and export.

Risks within the supply chain

Source: OECD, 2013, 35

European Union

- 2014: Proposal from EU Commission
 - Target group: Union importers of minerals
 - Minerals targeted: 3Ts and gold
 - World wide focus, not only DRC
 - Voluntary system of self-certification for importers, who declare to follow OECD guidelines
 - Importers need to communicate their mineral supply chain policy (needs to be consistent with OECD model policy)
 - Need to establish grievance mechanism
 - Need to be validated and have independent third party audits conducted
 - Annual reporting
- EU Commission to prepare list of responsible smelters and refiners

Switzerland I

- 2012: Interpellation by Ursula Wyss regarding due diligence for minerals from conflict and high risk areas
- Resonse of the Bundesrat:
 - “Der Bundesrat hat bereits [...] festgehalten, dass Schweizer Unternehmen [...] den nationalen Gesetzen der Schweiz und aller Staaten, in welchen sie tätig sind, unterstellt sind. Insbesondere in Ländern, in welchen sich der Rechtsstaat noch im Aufbau befindet, und in Konfliktgebieten wird von multinationalen Unternehmen zudem erwartet, dass sie neben der Einhaltung der gesetzlichen Vorgaben auch im Rahmen einer verantwortungsvollen Unternehmensführung (Corporate Social Responsibility, CSR) besondere Sorgfaltspflichten wahrnehmen.“
 - “Der Bundesrat verfolgt dennoch die Situation in Hochrisiko- oder Konfliktgebieten und erwartet von Schweizer Unternehmen, dass sie in diesen Gebieten eine erhöhte Sorgfaltspflicht zur Vermeidung von Menschenrechtsverletzungen oder einer indirekten Unterstützung der Konflikte treffen, indem sie beispielsweise die Massnahmen der OECD-Guidance anwenden.“

Switzerland II

- 2013: Mineral report of the inter-departemental platform on minerals to the Bundesrat
 - “Empfehlung 9: Die Schweiz soll sich weiterhin für multilaterale Initiativen zur Erhöhung der Transparenz von Produktflüssen – wie die OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas – einsetzen und deren Standards umsetzen. Sie soll zudem wie geplant dieses Jahr mit der „Better Gold Initiative“ eine Wertschöpfungskette für fair und nachhaltig abgebautes und gehandeltes Gold lancieren. [...]“
 - „Empfehlung 13: Die Schweiz soll ihr bisheriges bilaterales und globales Engagement im Bereich Entwicklungs- und Ostzusammenarbeit zur Förderung der Guten Regierungsführung weiterführen und gezielt vertiefen, so namentlich in den Bereichen demokratische Kontrollmechanismen, Stärkung der staatlichen Kapazitäten sowie der effizienten Verwaltung von Einnahmen aus dem Rohstoffabbau. Damit werden die rohstofffördernden Staaten grundsätzlich gestärkt, um Risiken wie Geldwäscherei, Korruption, Kapitalflucht oder Steuervermeidung vorzubeugen.“


Initiatives I

- Global e-Sustainability Initiative (GeSI)
 - Established in 2001
 - Members: more than 30 companies, partners (i.e. WRI, UNEP, WBCSD)
 - Working groups: Communications, climate change, energy efficiency, e-waste, public policy, supply chain
 - Focus a.o. on avoidance of conflict minerals

- Electronic Industry Citizenship Coalition
 - Established in 2004
 - Members: almost 100 electronic companies
 - Common Code of Conduct, companies need to conduct risk assessment of facilities and auditing of certain percentage of high risk facilities

Initiatives II

- GeSi/EICC Conflict Free Smelter Program
 - Established in 2010
 - Provide online annual list of conflict free smelters
 - Developed conflict minerals reporting template to facilitate information transfer on smelters, refiners and country of origin
- Further initiatives, such as Conflict Free Tin Initiative, Solutions for Hope (focus on tantalum)
- Fairphone



Thank you for your attention!

References I

- Bundesrat, n.d.: Curia vista, Geschäftsdatenbank, 12.3741 – Interpellation, Sorgfaltsprüfung für Rohstoffe aus Konflikt- und Hochrisikogebieten, http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20123741, accessed: 24.10.2014
- Brot für alle/Fastenopfer, 2013: Hintergrundinformationen, Wie viel Blut steckt in unseren Computern und Handys?, http://www.brotfueralle.ch/fileadmin/deutsch/2_Entwicklungspolitik_allgemein/F_HTNR/Kurzinfos_Web_txt_de_131018_cb.pdf, accessed: 21.10.2014
- Eidgenössisches Departement für auswärtige Angelegenheiten/Eidgenössisches Finanzdepartement/Eidgenössisches Departement für Wirtschaft, Bildung und Forschung, 2013: Grundlagenbericht Rohstoffe, Bericht der interdepartementalen Plattform Rohstoffe an den Bundesrat
- EU Commission, 2014a: EU Trade Commissioner Karel De Gucht: Ensuring minerals from conflict zones are sourced responsibly, http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152234.pdf, accessed: 24.10.2014
- EU Commission, 2013b: Proposal for a Regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas, http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152227.pdf, accessed: 24.10.2014

References II

- ▶ Finnwatch/Swedwatch, 2012: From Congo with no blood: Recent developments relating to the sourcing of conflict-free minerals from the Democratic Republic of Congo
- ▶ Global Witness, 2011: The Dodd Frank Act's Section 1502 on Conflict Minerals, http://www.globalwitness.org/sites/default/files/library/110916%20Summary%20briefing%20on%20Dodd%20Frank%201502%20_2_.pdf, accessed: 21.10.2014
- ▶ Global Witness, n.d.: Excerpt of Dodd-Frank Wall Street Reform and Consumer Protection Act, http://www.globalwitness.org/sites/default/files/pdfs/excerpt_of_us_financial_reform_act_2010_section_1502_en.pdf, accessed: 24.10.2014
- ▶ OECD, 2013: OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, second edition, <http://www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf>, accessed: 21.10.2014
- ▶ SOMO, 2013: Conflict due diligence by European Companies, somo.nl/publications-en/Publication_4003, accessed: 21.10.2014
- ▶ US SEC, 2014: Fact sheet, Disclosing the use of conflict minerals, <http://www.sec.gov/News/Article/Detail/Article/1365171562058#.VEpoOBYqPM0>, accessed: 24.10.2014