



**Mr Karel De Gucht**  
Commissioner for Trade  
European Commission  
Rue de la Loi 200  
BE-1049 Brussels  
BELGIUM

17 July 2014

Dear Commissioner,

I am writing to you with regards to the EU initiative on responsible sourcing from conflict-affected and high-risk areas. BUSINESSEUROPE has been actively engaged in discussions around this issue since 2011. With this letter, I would first of all like to reiterate our commitment as European business representatives to effectively contribute to a viable solution to the problem of the nexus between conflict and illegal exploitation of minerals and provide a first general reaction to the recently published EU initiative.

BUSINESSEUROPE overall welcomes the importance the EU attaches to securing EU supplies of raw materials, to responsible sourcing of minerals and to the work carried out by the OECD in this field. We recognise that the EU proposal is an effort to address the problem of the use of trade as a finance source for conflict in a comprehensive manner – not only through regulatory solutions in the area of trade via the draft Regulation, but also by providing a general framework for policy action, through the accompanying joint Communication of the European Commission and the External Action Service. We also take note that the Commission has chosen a system approach focused on upstream actors, which seems to be considerably more effective and less bureaucratic than the product-based approach pursued by the U.S. Dodd Frank Act section 1502.

The EU initiative on responsible sourcing should be in line with other EU policies and initiatives, such as the EU Raw Materials Initiative. In this context, I would like to share BUSINESSEUROPE's views on the EU initiative on responsible sourcing as a whole and bring to your attention a number of elements on which the European business seeks more clarity.

#### The general framework for policy action

1. The EU initiative should be part of a comprehensive approach, integrated with other policies and actions on the ground. Emphasis should be put on promoting good governance and security issues in the conflict-affected and high-risk areas. In this regard, the role of the local EU delegations is essential, as our diplomats and experts could provide valuable assistance to local authorities. We would have preferred to see more measures and positive incentives in the joint Communication for promoting responsible mining in the conflict regions. Currently, the lack of a



general policy framework in the conflict-affected regions is the source of uncertainties for companies which take on their shoulders all responsibility to minimise risks.

2. A sustainable solution to the problem also necessarily requires the involvement of other regions in the world, besides the EU and the US for two reasons. First, without strong collaboration and commitment at global level, all efforts will be in vain. Important partners, that play a significant role in the supply chain of the minerals covered by the EU and US initiatives, need to join discussions at the UN and the OECD more actively and consistently. Second, unless our trading partners take up the OECD Due Diligence Guidance and put in place similar strategies, the competitiveness of EU companies will unavoidably be affected. A strong EU raw materials diplomacy is indeed required. We appreciate that the Communication sets ambitious targets, and we look forward to see them materialised.

#### The EU Initiative

3. The EU initiative should clearly recognise existing schemes based on international standards – such as the OECD Due Diligence Guidance – and accept complementarity with those schemes as well as with voluntary initiatives. In this manner, EU companies, especially SMEs, would not be required to multiply their annual reporting and auditing activities, reducing the implementation costs and ensuring a more efficient resource management in applying responsible sourcing initiatives in an effective manner. European business is also concerned by the fact that the obligations for responsible importers under the EU initiative go beyond international standards, for instance as regards third-party auditing requirements, which may significantly increase implementation costs. In this context, existing auditing schemes, CFSP for instance, should be recognised as equivalent. Furthermore, it should be ensured that commercially sensitive information is excluded from publication requirements.
4. Furthermore, the EU should seek to synchronise its approach with the US. We recognise that one of the Commission's objectives through the initiative on responsible sourcing is to help EU companies that fall under the Dodd Frank Act section 1502 requirements to better comply with the US regime. Achieving equivalence between the EU and US schemes is not an automatic process. It is however crucial for European industry that we arrive at such a result. We therefore call on the Commission to intensify these efforts with US counterparts.
5. Precise definition of the 'conflict-affected' and 'high-risk' areas is essential, as the current term leaves room for interpretation and uncertainty. A list of countries should be regularly updated and published, giving operators sufficient time to adjust to the changes. Furthermore, the definition of 'importer', cornerstone of the proposed EU Regulation, should also be more precise and according to the categories listed in the Annex.
6. It is also important that the scope of mineral coverage in the EU scheme is not expanded further, in order to include minerals, or other raw materials, for which not enough experience with implementing responsible sourcing initiatives exists. The



EU should follow closely developments at international fora. It took time before the OECD Due Diligence Guidance Supplements on Tin, Tungsten, Tantalum (3Ts) and Gold were produced and became operational. And it will take more time before additional Supplements can be approved and adopted.

7. As regards the performance clause for public procurement, included in the joint Communication, it is crucial that the criteria which the European Commission will be using in their internal public procurement procedures are clearly specified. It is understandable that the measure seeks to boost the uptake of the EU initiative by importers. However, this constitutes an extremely complex and costly product-based approach that requires the origin of minerals to be retracted over the entire supply chain, which includes a significant number of SMEs. As the original intention of the EU was to get round these approaches, which were particularly criticized after the adoption of the U.S. Dodd Frank Act section 1502, we would seek more clarifications from the part of the Commission on how this measure would help incentivise companies and how SMEs – which are not familiar with Due Diligence procedures – would be further supported in this context. It is also unclear at the current stage whether Member States – and at which level – will be required to implement the same criteria as the Commission in their public procurement procedures.
8. Finally, although we support the intention of the Commission to produce a number of Guidelines, BUSINESSEUROPE believes that the key elements of the Regulation should be defined in the course of the decision making process and in the text, not after the adoption of the Regulation. Additional clarifications beyond these elements will be useful to help Member States' responsible authorities implement the Regulation requirements, clarify the publication requirements with respect to commercially sensitive information and explain how the performance clause will work in practice for public tenders. We would also like to underline that the Guidelines should not be adopted before the legislative procedure is finalised, as they should be up-to-date with the final Regulation text.

We thank you for your attention and remain committed to a constructive dialogue and at your disposal if you require further information.

Yours sincerely,



Markus J. Beyrer

CC:

The Rt. Hon. Baroness Ashton, High Representative of the EU and Vice-President.  
Mr Andris Piebalgs, Commissioner for Development.  
Mr Bernd Lange, Chair of the INTA Committee in the European Parliament.  
The letter will also be shared with the Italian Presidency.