

# Accompanying Measures to the EU Regulation on the Responsible Sourcing of Minerals

Towards a strengthening of the governance of the artisanal mining sector in the DRC



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In June 2017 the European Parliament approved the European Regulation for the responsible sourcing of minerals originating from conflict-affected and high-risk areas. The European Network for Central Africa (**EurAc**) does not hereby intend to discuss the content of the new regulation but it rather wishes to focus on the “**accompanying measures**”, the non-legislative measures meant to ensure the effective implementation of the regulation. Based on a state of the art of the artisanal mining sector in the DRC and on an analysis of the accompanying measures envisioned by the European Union (EU), **EurAc** addresses the institutions of the EU with a set of recommendations aiming at filling the gaps in the accompanying measures for the DRC that our analysis highlighted.

## Impact of the European Regulation: the need to support an improved governance of the artisanal mining sectors

The European Regulation on the responsible sourcing of minerals from conflict affected and high-risk areas aims to change sourcing practices by companies that import minerals from

those areas, in particular gold and minerals commonly known as ‘3Ts’,<sup>1</sup> so as to establish a transparent control system in supply chains and one that reduces the risks of financing armed groups and human rights violations. This system is generally referred to as ‘**due diligence**’. The adoption of the Regulation concludes a legislative process that has lasted three years, during which time **EurAc** argued for the introduction of a mandatory due diligence system in line with the standards of the Organisation for Economic Cooperation and Development (OECD), for companies located both upstream and downstream in the supply chain. Regrettably the position of **EurAc** and of several other European civil society organisations has only been followed in part: the new legislation developed within the framework of the trilogue contains numerous flaws.<sup>2</sup>

The impact of the new Regulation should thus be assessed from two perspectives. First, a **security** perspective: the impact of the Regulation in terms of the fight against the financing of armed groups through mineral trade. Second, a **socio-economic** perspective: the impact of the Regulation in terms of responsible

<sup>1</sup> Tin, Tantalum and Tungsten

<sup>2</sup> **EurAc, ‘EU: Conflict minerals agreement reached as exemptions added’**. Press release, 22.11.2016

mineral supply from affected areas. From both of these perspectives, the risks are all to be found upstream in the supply chain at the level of the mine and its surrounding communities.<sup>3</sup> To improve and create conditions that will allow the Regulation to have a positive impact on the ground, the EU and its Member States need to promote important and ambitious accompanying measures aimed generally at improving the local governance of the artisanal sector.

### The Congolese artisanal mining sector: towards a model that promotes local development

The role of artisanal mining in the local economy of the eastern Democratic Republic of Congo (DRC) is vital, especially when compared to the industrial mining sector, which is more limited in terms of employment and income redistribution. It is also viable in economic terms (return on investment).<sup>4</sup> Therefore, it is important to remember in the European context that the Congolese artisanal mining sector should not be reduced exclusively to the question of ‘conflict minerals’, but that it also encompasses other important issues.

The challenge of managing the artisanal mining sector is not simply a security question but also relates to problems of **local development** and of the economic survival of millions of people living in the eastern DRC. In the artisanal mining sector the average monthly wage of a digger may be estimated between 40 and 13 US dollar, which is higher than the average incomes in the agricultural sector (USD 17), small business (USD 20) or public administration (USD 25). Furthermore, artisanal mining indirectly supports economic activities in the areas of transport, hospitality, leisure, tool making and local trade. As a result of its redistributive dimension, this sector is key to sustaining the consumption of goods and services at a local level. The artisanal mining sector also allows access to foreign currency and acts as a general trigger for economic exchange, facilitating the circulation of money in eastern DRC, in large urban centres as well as in small towns in the interior of the region.

Although armed groups can rely on other sources of revenues, the exploitation and the trade of minerals still influences **important conflict dynamics** affecting eastern DRC. The main mechanism through which armed groups make a profit out of artisanal mining is **illegal taxation** of actors along the chain (diggers, traders etc.). Some armed groups are also involved in mineral trade and some are, to a certain extent, **directly involved in the exploitation of mining sites**. To this day armed groups are still involved in the exploitation of almost half of all mining sites in eastern DRC. The Congolese armed force (FARDC) are clearly the group that is involved the most. **Gold** is by far the most targeted mineral by armed groups.

According to **EurAc**, to tackle the issue of “conflict minerals” is to go beyond the single issue of armed groups. In order to break the link between natural resources exploitation and the financing of armed groups, it is necessary to put the issues of the **governance of the artisanal mining sector** at the heart of the **measures envisioned by the DRC and its international partners**.

The future of artisanal mining in DRC highlights a crucial question regarding the kind of model to put in place with regards to the management of natural resources. **Will the exploitation of minerals follow a model that promotes employment and wealth redistribution in favour of the local population, or one that promotes the development of the industrial extractive sector?**

A response to this question requires a ‘political’ vision regarding the place and role that the artisanal sector should occupy in the future of the Congolese economy. It is also necessary that a sufficient number of important stakeholders – amongst the Congolese authorities, donors, buyers, but also amongst sector actors themselves, such as the artisanal miners, cooperatives, traders – adhere to this vision so that artisanal mining can develop in line with the desired management model. **EurAc** and its members uphold the idea that it is a **legitimate economic sector**. It certainly presents problems in terms of child labour, of health and safety

<sup>3</sup> EurAc, ‘Accompanying measures to the EU Regulation on the responsible sourcing of minerals. Towards a strengthening of the governance of the artisanal mining sector in the DRC’, 22.03.2017

<sup>4</sup> Kamundala G, Marysse F. & Mukotanyi I. (2015), ‘Viabilité économique de l’exploitation artisanale de l’or au Sud Kivu face à la compétition des entreprises minières internationales’ [Economic viability of artisanal mining of gold in South Kivu in the face of competition from international mining companies], in Marysse S. & OmasomboTshonda J., *Conjonctures congolaises 2014. Politiques, territoires et ressources naturelles : changement et continuité*, Cahiers Africains, n°86, p.167-196

<sup>5</sup> Joint Communication to the European Parliament and the Council. Responsible sourcing of minerals originating in conflict-affected and high-risk areas, Towards an integrated EU approach, JOIN/2014/FINAL

standards as well as of environmental standards. It must also be acknowledged that it is also a sector that rarely benefits neighbouring communities in more than economic terms, notwithstanding the multiplicity of local needs (for health centres, schools, land development, roads etc.). With a clear political vision on its future and the **proper framework** in place, the artisanal mining sector could positively contribute to local development.

### Accompanying measures

In 2014 the European Commission and the European External Action Service (EEAS) published a Communication<sup>5</sup> describing the EU's strategy aimed at securing a high level of participation by EU businesses in the due diligence mechanism. The Communication puts forward thirteen types of measures covering three different areas of intervention: five incentivizing measures for the private sector,<sup>6</sup> three types of policy dialogue with third countries,<sup>7</sup> as well as five development cooperation axes with third countries.<sup>8</sup> The latter aim in particular to build 'further capacity to implement the national due diligence frameworks.' Following the publication of the joint Communication, the EU's High Representative, Federica Mogherini, and the Commissioners for Trade and for Development, Cecilia Malmström and Neven Mimica, announced their decision, in a letter of 20 March 2015, to allocate 20 million Euro towards the accompanying measures for the 2016-2020 period. The **European Parliament** has also taken a position on the matter, having voted on 20 May 2015 to adopt Amendment no. 55,<sup>9</sup> which proposes to introduce an article (15a) on accompanying measures directly into the text of the Regulation. The amendment also calls for accompanying measures to include targeted development cooperation with third countries, as well as support for '**placing local enterprises in a better position** to comply with this Regulation'.

Based on our understanding of the challenges in the DRC's artisanal mining sector, **EurAc** has identified three main gaps in the current approach adopted by the EU and its Member States:

- 1 The limited financial resources allocated to strengthening the governance of the artisanal mining sector:** We note the absence of measures to combat mining fraud towards DRC's neighbouring countries and the limited financial resources allocated to the formalisation of the sector, particularly in relation to the traceability and qualification of mining sites.
- 2 The limited attention paid to local actors:** The EU appears to have adopted a 'top-down' approach in prioritising development cooperation funding for international agencies (the OECD, the International Conference of the Great Lakes Region (ICGLR), United Nations agencies), rather than local actors. For example there is a marked lack of European support for the Congolese Mining Division and the Supervision and Assistance Service for Small-Scale Mining (SAESSCAM). Equally the role of the Congolese Armed Forces (FARDC) in the illegal exploitation of 3Ts and gold has not been addressed, despite the fact that the security sector reform programmes in the DRC provide the EU with a means to intervene in this regard. Although some German cooperation programmes do so, non-state actors, such as mining cooperatives and civil society, are given very little support and are not involved in the governance of the artisanal sector.
- 3 Vagueness regarding the strengthening of political dialogue with the Congolese government and with other countries in the Great Lakes region:** none of the measures announced appear to include political dialogue that would specifically relate to the exploitation and trading of 3T and gold produced in the DRC. A strengthened dialogue between the EU and the Congolese government is nevertheless highly necessary in order to address governance issues. These additional efforts at dialogue are all the more necessary **at the regional level** given the weak results achieved through regional mechanisms (ICGLR) in terms of illegal mineral trade originating from the DRC.

<sup>6</sup> These actions include support to financing and visibility of businesses that source responsibly and the insertion of a clause regarding performance in some of the European Commission's public procurement contracts.

<sup>7</sup> 1. Existing policy dialogues in relation to development trade and security; 2. Specific dialogues with countries where the majority of smelters/refiners are located (China, Malaysia, Indonesia, Thailand and Russia); 3. 'Resource Diplomacy' developed since 2008 in the framework of the EU's Raw Materials Initiative.

<sup>8</sup> 1. Transposing the OECD Due Diligence Guidance into the national due diligence frameworks of third parties; 2. Building the capacity of countries to implement national due diligence frameworks; 3. Supporting political dialogue in the countries concerned between local and central government authorities, civil society organisations and the private sector; Giving visibility to the actions carried out and the results achieved by the producer countries; 5. Joint projects on sustainable mining and good governance, also taking into account the specificity of artisanal mining.

<sup>9</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0204+0+DOC+PDF+VO//EN>

## RECOMMENDATIONS

Considering that the EU Regulation for the responsible sourcing of minerals will not enter into force until 2021, the EU and its Member States have sufficient time to develop, finance and implement solutions to fill the gaps mentioned above, relating to the accompanying measures currently envisaged for the DRC.

In that regard **EurAc** proposes that, between now and 2020, the EU and its Member States implement the following recommendations:

### In general

**1** Given that no Member State – except Germany, Great Britain and the Netherlands – currently appears to be developing projects along the lines of the accompanying measures to the European Regulation for the DRC, we strongly urge the other 25 EU Member States to develop such measures without further delay;

**2** Considering the importance of the artisanal mining sector for the economies of the eastern DRC provinces and the communities that depend on it, accompanying measures should also be developed that support the formalisation of the artisanal mining sector and that secure its coexistence with the industrial mining sector;

**3** Considering the risks of dispossessing and weakening artisanal miners and small traders inherent in various initiatives aimed at formalising the artisanal sector, accompanying measures for the DRC should also be developed that incentivise actors to join the formal sector, in particular allowing them to sell their products at attractive prices compared to those in the informal sector;

**4** Considering the limited attention given to local actors in the majority of the accompanying measures envisaged by the EU and its Member States, we recommend the development of measures for the DRC that involve, as far as possible, local state actors (political decision-makers, administrations) and non-state actors (artisanal miners, mining cooperatives, civil society, businesses);

**5** Considering the risk of inconsistency in the accompanying measures relating directly or indirectly to

the DRC, the EU should create a dialogue and coordination mechanism between donors with a view to guaranteeing such consistency and ensuring that an overall and comprehensive European approach for the responsible sourcing of minerals in the DRC is implemented.

### On incentivising measures for businesses

**6** The EU should prioritise the granting of financial and visibility assistance, such as envisaged in the incentivising measures, to businesses that responsibly source 3T and gold in conflict-affected and high-risk areas, and avoid granting such assistance to businesses that choose to boycott those areas.

### On political dialogue with the DRC and other states in the Great Lakes region

**7** The EU and its Member States should strengthen political dialogue in the following areas:

**a** governance problems in the artisanal mining sector: a dialogue with the Congolese government on this issue is highly necessary, in particular in relation to the dysfunctions in SAESSCAM and the Mining Division. The impunity of members of the Congolese Armed Forces involved in the illicit exploitation and trade of 3T and gold should be directly addressed in the framework of the dialogue between the EU and the DRC;

**b** harmonisation of mineral prices and mining taxes on a regional level: dialogue should be strengthened between, on the one hand, the EU and

its Member States, and, on the other, the countries in the Great Lakes region, in order to compensate for the inadequate results achieved by the ICGLR on the issue.

### On development cooperation in the DRC

**8** Increase resources and diversify measures to strengthen the governance of the artisanal sector in the DRC, particularly in the following areas:

**a** combatting mining fraud with neighbouring countries

**b** the process of certification of artisanal mining sites: Support from the EU and its Member States for this process is desirable in order to enable artisanal mining zones to meet due diligence standards;

**c** the formalisation of the gold sector: The EU and its Member States should develop specific plans aimed at responding to the many problems in the gold sector (armed group interference, fraud). The setting up of a traceability system for 'conflict-free' gold that can be implemented on the ground should be a priority;

**d** traceability in the 3T sector: The EU and its Member States should support the introduction of at least one alternative traceability system to the one in place, in order to break up the de facto monopoly<sup>10</sup> in place for the 3T;

**e** the strengthening of state services responsible for overseeing the artisanal sector, in particular SAESSCAM and the Mining Division;

**f** the illegal involvement of the Congolese armed forces in the exploitation and trade of 3T and gold: the EU and its Member States should take

advantage of their support for Security Sector Reform to combat the impunity enjoyed by members of the Congolese Armed Forces involved in illicit mineral mining;

**g** the revision of the 2002 Mining Code: the EU and its Member States should encourage the Congolese government to resume the process of revising the Code and take into account civil society's demands in relation to the management of the artisanal sector;

**h** mining cooperatives: The EU and its Member States should develop specific projects aimed at building the capacity of cooperatives, in order to strengthen their democratic functioning and their role in defending the interests of artisanal miners;

**i** the role of Congolese civil society: there are several Congolese non-governmental organisations (NGOs) based in the eastern DRC that are strongly rooted in mining areas and have real expertise in the artisanal sector, as well as in the procedures and standards concerning responsible sourcing. These NGOs should be supported in particular in their advocacy and training work vis-à-vis the Congolese authorities at national, provincial and local levels.

<sup>10</sup> The ITRI Tin Supply Chain Initiative (iTSCI).