

Brussels, 17 September 2010

Dear Sir, Dear Madam,

Subject: Consultation Raw Materials Initiative

Fatal Transactions is an international network of NGOs and research institutes working towards transforming Fatal Transactions of conflict resources into Fair Transactions that contribute to sustainable peace and reconstruction in Africa. The Belgian Network for Natural Resources is an informal network of Belgian NGOs that work on the issue of natural resource management in developing countries.

Fatal Transactions and the Belgian Network on Natural Resources welcome the fact that the European Commission is reaching out to stakeholders through this consultation as a means to gather input for the next steps it will undertake in the framework of the EU Raw Materials Initiative.

The Raw Materials Initiative is based on three pillars:

- (1) ensure access to raw materials from international markets under the same conditions as other industrial competitors;
- (2) set the right framework conditions within the EU in order to foster sustainable supply of raw materials from European sources;
- (3) boost overall resource efficiency and promote recycling to reduce the EU's consumption of primary raw materials and decrease the relative import dependence.

As two networks comprised of mostly development organizations and research institutions concerned with natural resource management and resource conflict in developing countries, we will focus only on the first pillar: the policy outlined as well as the subsequent actions pursued.

According to the 2008 communication, the first pillar comprises raw materials diplomacy, international cooperation, and EU trade and regulatory policy. *Please find our responses to the questions on the trade policy area on page 2.*

Moreover, the text makes mention in this pillar of the obvious case for coherence between EU development policy and the EU's need for undistorted access to raw materials in order to create win-win situations. *Please find our responses to the questions on the development policy area on page 4.*

However, we believe that this EU policy coherence runs not only in the direction of creating an enabling international trade environment to facilitate the implementation of the Raw Materials Initiative. The opposite must also be questioned: **are the EU policies promoted by the Raw Materials Initiative, as well as their foreseen and unforeseen consequences, coherent with EU development policies and objectives? This perspective is insufficiently reflected in the strategy and in the consultation format, so we have taken the liberty to add a number of suggestions separately, on page 5.**

1. Policy area – trade

Question 7 – Do you think that the importance of trade is adequately reflected in the work carried out so far in the Raw Materials Initiative?

We believe that the importance of trade is adequately reflected in the Raw Materials Initiative. However, we believe that the differentiation between trade partners remains vague and untransparent at this stage.

On the one hand, the Trade report states that “there is no question that limitations to the supply of raw materials may be justified (for example on environment or development grounds)” and that “these justifications need to be framed on the basis of clear rules and applied in a non-discriminatory manner”.¹ The recent global economic crisis, with its immediate and far-reaching impact on raw materials exporting countries, demonstrated yet again that certain protective measure for resource-rich countries might warrant consideration. On the other hand, the report admits that “these deliberations need to be formulated with due respect of the negotiating process and to date have essentially been made on an ad hoc basis in the context of specific negotiations or existing agreements”².

We are concerned that in this context trade partners from the developing world risk finding themselves bargaining for, rather than exercising, their right to sovereignty over their natural resource endowment. With this untransparent approach, we suspect that it will be difficult to guarantee that all cases warranting exceptions also obtain them. For instance, it is unclear to third parties under which circumstances the bans on export duties (including the mining industries) in the free trade agreements with Central America and with the Andean Community were obtained.

We would therefore suggest that the European Commission develop a more systematic approach, clearly defining the grounds on which the EU will refrain from imposing bans on restrictions on supply of raw materials, and on which it will not “take vigorous action to challenge measures which violate WTO or bilateral rules, using all mechanisms and instruments available”.

While the trade report indicates the Commission’s intention to “continue to take steps to further improve its thinking in this important area”, we strongly suggest that the **development of the concrete framework for how the trade dimension of the Raw Materials Initiative is to apply to developing countries be treated as a priority.**

Question 8 – Do you have any comment regarding the main findings of DG Trade activity report? What activities should be prioritized? Are there, in your opinion, additional activities not mentioned in the report which should be pursued in this strategy?

The trade dimension of the Raw Materials Initiative revolves mostly around pillar 1 – “ensure access to raw materials from international markets under the same conditions as other industrial competitors”. However, **the question the EU has to date not seriously engaged in yet is: which raw materials from which countries?** The Raw Materials Initiative states that “The fact that some important raw materials sources are located in parts of the world that do not have a market-based system, and/or are politically and/or economically unstable poses

¹ European Commission, DG Trade: “Raw materials policy, 2009 annual report” pages 6 and 12

² European Commission, DG Trade: “Raw materials policy, 2009 annual report” page 13

particular risks”³. However, it is our view that **dealing in raw materials sourced from parts of the world that are politically or economically unstable also implicates responsibilities and duties for the EU**. Amongst these is the duty to protect all human rights within its sphere of influence.⁴

For instance, one of the raw materials listed by the Raw Materials Supply Group as critical, is tantalum, with a “large share of production in DRC [Democratic Republic of Congo]”⁵ It has been well documented by many, amongst which the United Nations⁶, that the exploitation and trade of this element in war-torn Eastern DRC continues to contribute to the violence by way of financing armed groups, intensifying fighting over certain mineral-rich areas, stimulating corruption and attracting international criminal cartels. To date, European trading houses have been supplying the EU market with tantalum from Congo and Rwanda without regard for the circumstances under which it was obtained.

For some minerals, such as diamonds, international mechanisms exist that require all traded diamonds to be certified as not being conflict diamonds. Furthermore, the USA has already introduced regulations to ensure that companies perform due diligence when trading in potential conflict minerals⁷. It is unacceptable that the very EU policy on the supply of raw materials does not include any provisions on how the EU intends to deal with the issue of conflict resources being supplied to EU manufacturers. We recommend that the EU develops and enacts similar binding measures as a response to such situations.

Besides contributing to ongoing violence and conflict, civil society organizations regularly report on mining companies, amongst which European, committing human rights abuses or not adhering to social and environmental standards when operating in fragile or failed states. If the EU does not do anything about this, it is in effect contributing to a global ‘race to the bottom’ in terms of environmental, social and economic conditions for mining projects. Therefore, any EU policy on the supply of raw materials should also stipulate how it will deal with such behaviour of European companies abroad, and be especially vigilant of which projects it funds with instruments such as the European Investment Bank.

The trade dimension of the Raw Materials Initiative is mostly focused on the discouragement or penalisation of export restrictions on raw materials in third countries. However the raw materials supply policy should also consider the need for “fairer” trade in natural resources, which would include environmental, social and human rights import criteria in certain cases.

The Raw Materials Initiative as it currently stands is missing an **analysis of the implications of sourcing raw materials from fragile states, failed states, conflict and post-conflict areas, and countries with high corruption rankings. The raw materials supply strategy should include the EU’s concrete policy responses in these different scenarios**. It is necessary but not sufficient to work on governance in general, as suggested in the

³ COM(2008) 699 – “The Raw Materials Initiative: Meeting our critical needs for jobs and growth in Europe”: page 3

⁴ As described in the “Protect, Respect and Remedy” framework of John Ruggie, Special Representative of the UN Secretary General on human rights and transnational corporations and other business enterprises.

⁵ European Commission, DG Enterprise and Industry: “Critical Raw Materials for the EU – Report of the Ad-hoc Working Group on defining critical raw materials”, version of July 30 2010, page 38

⁶ Various reports by the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo. See for instance the November 2009 report by the Group of Experts (S/2009/603) concluding that armed groups in eastern DRC continue to control and profit from the extraction and trade of these minerals.

⁷ Section 1502 “Conflict Minerals” of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which became law on July 21st, 2010.

development aspect of the Raw Materials Initiative. For specific cases such as conflict minerals or proven human rights abuses by European companies, specific measures must be at the EU's disposal. **The need for a steady supply of critical raw materials to the EU should not be at the cost of human lives. Ultimately, sustainable extraction and exploitation of raw materials is a crucial determinant for the sustainability of supply of raw materials and therefore in the EU's own interest.**

2. Policy area – Development

Question 11 – What specific actions would you consider most relevant needed in the following areas:

- *Good governance;*
- *Infrastructure / investments;*
- *Geological knowledge / skills.*

We believe that good governance is a priority as it increases the likelihood of good policies and implementation thereof in the other policy areas. General interventions on governance, infrastructure, finance management, such as those included in budget support, are therefore necessary, but insufficient. This is because state apparatuses dealing with extractive industries are particularly vulnerable to good governance challenges such as corruption and opacity due to the large sums of money these industries involve and generate. Support tailored to the governance and management of natural resources is in place.

Yet, so far, the development aspect of the Raw Materials Initiative has been vague and ad-hoc in our view, citing existing initiatives (involvement in Kimberley Process, FLEGT, EITI) or very general measures, such as the provision of general budget support.⁸ A specific EU thematic [development] policy addressing the very raw materials the Strategy deals with is missing as is capacity within the DG for Development. Few country strategy papers make specific mention of the extractive industries.

If the Raw Materials Initiative is to be accompanied by development policies aimed at creating a win-win situation, **it is necessary for the Commission to develop a development policy specifically for this purpose, and allocate the necessary resources to it. Within that framework, the Commission can determine on a country-by-country basis, which cooperation is most appropriate to maximise the development potential of natural resources, for the benefit of the partner country as well as trade with the EU.**

Question 12 – Regarding transparency, what measures do you believe the EU should take to foster revenue transparency in the mining industry in raw material resource rich countries? What are your views regarding existing initiatives currently being taken in this area, namely by the Extractive Industries Transparency Initiative (EITI)?

It is our opinion that transparency is a powerful tool to achieve more accountable governance. We would welcome the EU's continued support for the EITI and call on all EU member states to accede to the EITI as a way of legitimising a collectively owned international instrument. Additionally, we recommend increased promotion of EITI++ which could serve as a helpful resource for financing the above outlined actions necessary to

⁸ COM(2008) 699 – “The Raw Materials Initiative: Meeting our critical needs for jobs and growth in Europe”: pages 6 and 8

promote good governance and sustainable natural resource management in developing countries.

The USA recently passed a law requiring energy and mining companies registered with the U.S. Securities and Exchange Commission to disclose how much they pay to foreign countries and the U.S. government for oil, gas, and minerals.⁹ This is a growing trend, with the International Accounting Standards Body also considering requiring country-by-country reporting. We urge the European Commission to pass legislation for the same level of transparency, by including mandatory transparency requirements applicable to the extractive industries in the review of the EU Transparency Obligations Directive.

Question 13 – Concerning the recent agreement between the European Commission and the African Union Commission, in your view, what concrete objectives, targets and deliverables should be included in such a partnership?

In the case of Africa, we recommend the following specific actions as a way for the Commission to support the African Union Commission in the implementation of the Africa Mining Vision:

1. Support African States to (re)negotiate mining contracts that clearly define and shape fair benefits to the State and contribute to minimizing any negative impacts on the environment and human rights of people.
2. Support African States in developing high standard Mining and Environmental Codes and in ensuring that existing codes are implemented
3. Support African States and other (international and national) initiatives to ensure access to remedy for victims of corporate abuse by mining companies
4. Shaping a framework that invites and stimulates mining companies to operate in due diligence to and respect of human rights. Such a framework should include for instance:
 - a. conditions for financing by the EIB, subsidies, and export credits
 - b. sustainability criteria for the import of raw materials,
 - c. transparency regulations regarding origins of raw materials, revenues and royalties paid
 - d. binding regulation of European corporations' liability for extraterritorial activities of their subsidiaries

3. Policy coherence

While we welcome the inclusion of a development component within the Raw Materials Initiative, this does not necessarily guarantee that the other policies in the strategy are coherent with development objectives. **For any EU strategy, mechanisms should be in place to monitor the coherence with other EU policies**, our particular interest being EU development policies and objectives. We believe that the vigilance over policy coherence should be more robust than the way it is being reported on now in the yearly trade reports. While the Raw Materials Initiative spans different policy areas, it is DG Enterprise & Industry and DG Trade that feature most prominently in the policy development and implementation so far. We suggest that the Commission objective of Policy Coherence for

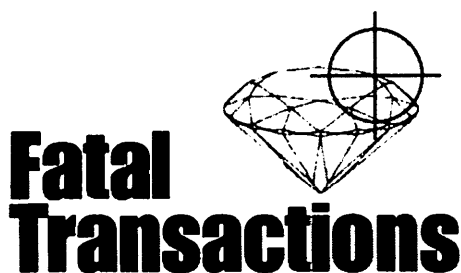
⁹ Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173), signed into law July 21st,

[2010.http://en.wikipedia.org/wiki/Dodd%E2%80%93Frank_Wall_Street_Reform_and_Consumer_Protection_Act](http://en.wikipedia.org/wiki/Dodd%E2%80%93Frank_Wall_Street_Reform_and_Consumer_Protection_Act) - cite note-actions-0

Development¹⁰ can be better assured if DG Development also takes more ownership of this initiative, with its own yearly reports for example. The resulting communications could be treated by not only the competitiveness Council and related Commissions in the European Parliament, but also those related to development.

There is furthermore a case for coherence with other EU policies, for example those on supply of energy. It is our experience that many of the supply risks and the operating environment for energy raw materials such as oil, gas, and uranium are similar to those of critical non-energy raw materials. Environmental risks associated with exploitation are also often similar. Moreover, the policy responses in the area of development could benefit both sectors. We recommend that the European Commission exchanges best practices in the management of all related policy areas so as to ensure some level of coherence in the EU's approach to supply of all raw materials from third countries.

Thank you for your consideration. For further inquiries, please do not hesitate to contact Marie Müller, BICC/Fatal Transactions, International Coordinator: mueller@bicc.de.



Members:

BICC - Bonn International Center for Conversion, IKV Pax Christi, IPIS - International Peace Information Service, Niza - Netherlands Institute for Southern Africa, Broederlijk Delen, Medico International, Oxfam Novib, University of Wroclaw, Group Chad, OCIPE - Office Catholique d'Informations et d'Initiatives pour l'Europe/Jesuit European Office

| Broederlijk Delen, Commission Justice et Paix – Belgique Francophone, and OCIPE are also members of the

Belgian Network for Natural Resources

¹⁰ COM(2009)458 "Policy Coherence for Development – Establishing the Policy Framework for a whole-of-the-Union approach"