GOVERNING RESPONSIBLE SOURCING
Transnational Hybrid Governance of Conflict Minerals

Master’s Thesis

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<tbody>
<tr>
<td>BGR</td>
<td>German Federal Institute for Geosciences and Natural Resources</td>
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<tr>
<td>3TG</td>
<td>Four minerals: Tungsten, Tantalum, Tin, and Gold</td>
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<tr>
<td>AIAG</td>
<td>Automobile Industry Action Group</td>
</tr>
<tr>
<td>ASM</td>
<td>Artificial and Small-scale Mining</td>
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<tr>
<td>CFS</td>
<td>Conflict-Free Smelter</td>
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<tr>
<td>CFSP</td>
<td>Conflict-Free Smelter Program</td>
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<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<tr>
<td>DRC</td>
<td>Democratic Republic of the Congo</td>
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<tr>
<td>EICC</td>
<td>Electronic Industry Citizenship Coalition</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>GeSI</td>
<td>Global e-Sustainability Initiative</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICGLR</td>
<td>International Conference on the Great Lakes Region</td>
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<tr>
<td>ITRI</td>
<td>International Tin Research Institute</td>
</tr>
<tr>
<td>ITSCi</td>
<td>ITRI Tin Supply Chain Initiative</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
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<tr>
<td>OECD Guidelines</td>
<td>OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas</td>
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<tr>
<td>OEM</td>
<td>Original Equipment Manufacturer</td>
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<tr>
<td>PPA</td>
<td>Public-Private Alliance</td>
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<tr>
<td>RSN</td>
<td>Responsible Sourcing Network</td>
</tr>
<tr>
<td>SEC</td>
<td>United States Securities and Exchange Commission</td>
</tr>
<tr>
<td>THG</td>
<td>Transnational Hybrid Governance</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNGoE</td>
<td>United Nations Group of Experts on the Democratic Republic of the Congo</td>
</tr>
<tr>
<td>US</td>
<td>United States of America</td>
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Abstract

Governing responsible sourcing is a key topic on the global agenda. Over the past decade, civil society campaigns highlighted the connection between value chains of transnational corporations and human rights issues. Private actors started to cooperate in multi-stakeholder and public-private partnerships to tackle these issues as they go beyond traditional state regulation. Moreover, public actors seek to explore new ways of regulating and influencing companies’ behavior beyond the borders of their jurisdiction.

Governance actors have proliferated and traditional state governance has developed into transnational hybrid governance (THG). This thesis specifically researches transnational hybrid governance of conflict minerals. Conflict minerals are tungsten, tantalum, tin, and gold (3TG) sourced in conflict-affected and high-risk areas. To tackle the sourcing of conflict minerals in the Democratic Republic of the Congo (DRC), a major producer, a recent wave of public regulation in the US and the ongoing negotiations on a regulatory scheme for companies in the EU add to the timeliness of this thesis. However, public actors show differing approaches to governing conflict minerals.

Therefore, this study looks at THG of conflict minerals, interactions between the public, private, and civil society actors, and the coherence of the two main public regulators, the EU and the US. By utilizing THG theory and frameworks to analyze the interactions and coherence of tools of the respective governance actors, the thesis discusses the enforcement capacity of the current THG of conflict minerals, informs THG theory and gives recommendations to improve the current governance of conflict minerals. Qualitative interviews with representatives of all three types of governance actors contextualize the findings of European automotive companies’ due diligence activities as displayed on their corporate websites.

The key finding of this thesis is that public-public coherence in transnational hybrid governance is crucial in order to increase the enforcement capacity of the entire THG. It further demonstrates that the concept of the shadow of the state is working. Therefore, the EU draft regulation should focus on a coherent public-public regulatory scheme with its US counterpart to leverage the incentives for private actors to engage in responsible sourcing.

Key words: Transnational hybrid governance, coherence, enforcement capacity, human rights, conflict minerals, public-private, due diligence, responsible sourcing
1 Responsible Sourcing of Conflict Minerals

The recent Business Supply Chain Transparency and Slavery Act of 2014, a US bill that amended the Securities Exchange Act of 1934 from July 2014 states that:

The United Nations Guiding Principles on Business and Human Rights affirm that business enterprises have a responsibility to respect human rights, and that States have a duty to ensure these rights are protected. Such Guiding Principles also clarify that the duty to protect against business-related human rights abuses requires States to take the necessary steps to prevent and address human rights abuses to workers through effective policies and regulation. (US Congress 2014, 3)

The above statement reiterates that public and private actors have to assume certain responsibilities when it comes to the protection of human rights. This sets the stage for the present thesis, which studies the governance schemes of conflict minerals originating from the Democratic Republic of the Congo (DRC). Sourcing and trade of minerals from the DRC are known to help illegal financing of conflict characterized by gross human rights violations, particularly forced labor, human trafficking, gender-based violence and the worst forms of child labor (SEC 2012, US Congress 2014).

Over the last decade, NGOs and civil society, as well as the private sector have increasingly become aware of the ethical and sustainability issues linked to sourcing so-called conflict minerals. Although much of the public focus has been centered on conflict minerals in the information and communication industry (ICT) through campaigns and documentaries such as Blood in the Mobile (Poulsen, 2010), many other industries find conflict minerals in their value chains. The 3TGs are found in a range of complex value chains as component parts for mobile phones and computers, engines in automotive and aerospace industries, medical devices and jewelry.

Recently, public regulators introduced both mandatory and voluntary frameworks in order to address these global value chains and encourage downstream and upstream companies to implement due diligence\(^1\), traceability mechanisms and responsible sourcing practices. In this wave of public regulation the EU proposed its responsible trading strategy for minerals from conflict zones in March 2014. With the words "we are committed to preventing international trade in minerals from intensifying or perpetuating conflict," (EC press release 2014) the former High Representative (HR) of the EU for Foreign Affairs and Security Policy Catherine Ashton and former

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\(^1\) The UN (2011) defines due diligence as “human rights due diligence”. As a business process, it should help the company to identify, prevent, mitigate and account for adverse human rights impacts. Due diligence is understood as an ongoing assessment of actual and potential impacts and an integration and communication of findings, which goes beyond risk assessments. The international framework developed by the OECD (2013) provides a roadmap for companies to avoid mineral sourcing that contributes to conflict. The recommendation is to establish a transparent system covering the mineral supply chain and a grievance system. The system should then influence suppliers that can mitigate the assessed risk. Public reporting on the company’s supply chain due diligence policies and practices forms another part of the guidance.
EU Trade Commissioner Karel De Gucht introduced the EU’s approach to stop funding of armed groups in conflict areas through the trade in minerals.

Most campaign groups including Global Witness, Human Rights Watch, the Institute for Human Rights and Business and Professor John Ruggie in his capacity as the author of the UN Guiding Principles on Business and Human Rights, criticized the EU’s approach in comparison to its US counterpart the U.S. Dodd-Frank Act, as being too weak due to the proposal’s voluntary character (BHR 2014). Companies would not be forced to disclose their suppliers and due diligence would not become the standard (Global Witness 2014).

In the following, the observation of potential friction between the US and EU approaches to conflict minerals serves as a starting point for this thesis. To that end, the research addresses the claim that the voluntary nature of the regulation weakens responsible sourcing policies and due diligence, taking the bigger picture of other private and public governance into account. In doing that, the thesis explores the interactions and coherence of THG (Ponte and Daugbjerg 2015) that emerged around conflict minerals with a focus on European automotive companies.

Hence, it is expected that if the EU draft regulation is coherent with the existing THG actors of conflict minerals and their governance schemes, it will strengthen the capacity of the THG as a whole and therefore encourage companies (industry, upstream and downstream) to engage in responsible sourcing of minerals and value chain governance of conflict minerals. If it is not aligning, e.g. as campaigners claim it is too weak, then companies in the EU are expected to not improve their conflict mineral value chain due diligence.

The question guiding the research is: **How do the different actors of transnational hybrid governance of conflict minerals interact and what can this tell us about their potential to incentivize companies to adopt responsible sourcing practices?**

The project will be approached by answering **two** questions:

1) **How do governance actors in transnational hybrid governance of conflict minerals interact?**

2) **How coherent and internally aligned is the transnational hybrid governance of conflict minerals?**
By governance actors, this thesis refers to public authorities and regulators, mainly the US and the EU due to their dominant sphere of influence, private schemes such as the Electronic Industry Citizenship Coalition (EICC) and initiatives like the Responsible Sourcing Network (RSN), as well as civil society platforms and campaigners, such as those conducted by Global Witness.

The first question on transnational hybrid governance (THG) interactions will be approached through Eberlein et al.’s (2014) framework to analyze interactions between governance actors. This will open up the concept of THG of conflict minerals and disaggregate it into components of governance where various public, private and civil society actors interact in different stages. The framework will allow identification of where and which governance actors interact with each other in order to narrow down the field of actors for the overall research question. The framework stems from regulatory governance theory, which helps in framing the complexity of THG (Ponte and Daugbjerg 2015).

In the second question, the potential of the THG of conflict minerals to promote responsible sourcing will be assessed through its coherence, alignment and consistency between the public actors involved. To that end, the paper will draw on Verbruggen’s (2013) criteria for coherent THG. The outcomes of this study will inform conclusions about the potential of the THG of conflict minerals to incentivize European companies’ engagement in responsible sourcing of minerals.

The topic of this thesis is first of all very timely, as the European Parliament currently discusses the EU draft regulation as tabled by the EU Commission. Second, it contributes to the works of different forms of governance, such as orchestration. Third, the study will shed light on the dynamics and coherence between public and private actors in the THG of human rights related issues in conflict prone states, such as those predominant in mineral value chains (MacDonald 2013, Eberlein et al. 2014). In addition, the research can serve as an example for other THG that regulate human rights issues in global value chains. Hence, the study of conflict mineral regulation will contribute to the knowledge about THG and its potential to influence organizational behavior (Lehr 2010, MacDonald 2013, Eberlein et al. 2014).

1.1 Structure and Chapter Outline

This chapter introduces the topic of the thesis, provides the context of transnational hybrid governance and the human rights dimension of conflict mineral value chains, as well as the research questions of the thesis.
In chapter 2, the analytical framework of the thesis on transnational hybrid governance of conflict minerals is being developed. In the context of globalization the shift of global value chains leads to a discussion of old and new forms of governance. Transnational hybrid governance frames the theoretical perspective on governance tools of public, private, and civil society actors. As a basis for the two sub-research questions, theory for the analysis of THG interactions (Eberlein et al. 2014) and coherence (Verbruggen 2013) is introduced.

In chapter 3, the methodology of the research is outlined. As a starting point, the approach and research philosophy is presented in order to support the descriptive and explanatory setup of the thesis. Following the visualized research design, a section on methods and data collection lists the collected baseline data and interview partners for the final analysis. This chapter is concluded by a section on assumptions and limitations of the research.

The focus of chapter 4 is on Governing Conflict Minerals, which provides a descriptive tool and sheds light on the complexity of conflict mineral value chains by exploring upstream, smelter and downstream level. The Landscape of Conflict Mineral Governance is analyzed and the most important actors in the categories—public, private, and civil society—are mapped along a timeline of governance triangles (Abbott and Snidal 2008, 2009).

Chapter 5 seeks to answer the guiding question of how the governance actors of the THG of conflict minerals interact, are coherent and consequently incentivize companies to engage in due diligence activities. First, using the theory from chapter 2, the desk research and interviews with governance actors inform interactions. Second, coherence theory adapted to the findings of the section on interconnections analyzes coherence between the public actors involved in THG of conflict minerals. Finally, in this context the data collected from European automotive companies is presented and analyzed.

Findings are discussed in chapter 6, which is structured in recommendations to the current governance model in general and implications for public governance specifically. Concluding remarks form chapter 7, summarizing the findings and recommendations for THG of conflict minerals, which open up a perspective for further research.
2 Transnational Hybrid Governance of Conflict Minerals

Globalization has brought changes that have to be taken into consideration for the discussion of THG of conflict minerals. These are value chains\(^2\) that became more global and shifted into multiple jurisdictions (Gereffi et al. 2005). Globally organized production processes reach beyond regulation of the nation-state and increasingly beyond intergovernmental governance due to the non-binding nature of these organizations and the lack of a global government (Abbott and Snidal 2009, Boström and Karlsson 2013, Fransen and Burgoon 2014). Governance actors have proliferated beyond the nation-state in an attempt to regulate increasingly global value chains and transnational issues (Abbott and Snidal 2009, Dashwood 2014).

These new governance schemes are characterized by the shift from solely state-based vertical governance towards more horizontal governance forms. The involvement of private actors, civil society, multi-stakeholder, and public-private institutions in governance has been a key concern in academia and policy formulation for the past decade (Abbott and Snidal 2009, Boström and Karlsson 2013, Verbruggen 2013).

As a starting point, this paper acknowledges the existence of THG of conflict minerals that is comprised of public, private and civil society actors (Ponte and Daugbjerg 2015). Transnational in that regard means governing issues in multiple jurisdictions beyond borders of certain nation-states. Hence, transnational is different to international law and treaties governing between nation-states, but not for instance transnational companies (Verbruggen 2013).

The paper analyzes the interactions and tools used between the different governance actors involved and how these are working together. Further, it questions whether the existing governance of conflict minerals is aligned, hence creating a policy space that incentivizes companies to pursue responsible sourcing and due diligence. In Verbruggen’s (2013) words, the paper is focused on the enforcement capacity of THG of conflict minerals.

The concept of THG (Boström and Karlsson 2013, Ponte and Daugbjerg 2015) will be utilized in order to understand the interactions between the various governance actors mapping them along the governance triangle (Abbott and Snidal 2008). In addition, the framework of Eberlein et al.

\(^2\) Value chains are characterized by the increasingly global production of goods and the coordination beyond the boundaries of single firms or geographies. Value chains are hence linking across companies, suppliers, networks and countries’ jurisdictions (Ponte and Gibbon 2005, MacDonald 2013).
(2014) will help to uncover the interconnections of the governance actors of the THG of conflict minerals.

Lastly, to discuss the potential of THG of conflict minerals to incentivize responsible sourcing practices, Verbruggen’s (2013, 514) four conditions: (i) the overlap of norms, objectives, and interests of transnational private regulation with public regulatory frameworks; (ii) the institutional design of regulatory enforcement; (iii) due process standards in private enforcement mechanisms; and (iv) information management and data sharing between public and private mechanisms for coherence between public and private regulatory regimes will be introduced.

2.1 Transnational Hybrid Governance

In order to define THG, it has to be distinguished between old and new forms of governance (Abbott and Snidal 2008, Lehr 2010). In old governance, governments govern through “traditional, top-down rulemaking mechanisms, including statutes, detailed administrative rulemaking, and judicial enforcement” (Lehr 2010, 150). In new governance private actors assume a role in the governance arena through standard setting and soft law, whereas governments often take on the role as catalyst or facilitator.

New governance goes beyond national borders and international law, where the prevalent tools are treaties and intergovernmental organizations. The catalyzing role of governments in new governance systems can take the form of legislation or power to create multi-stakeholder initiatives or encourage private actors to develop standards and global enforcement mechanisms. Old and new governance can coexist in different forms; co-dependence means that old and new governance go beyond complementing each other, but are integrated into one THG system, where the goals are interrelated and the failure of one system means the failure of the other (Lehr 2010, Abbott and Snidal 2008). Ponte and Daugbjerg (2015, 97) “highlight the complexity of operating THG mechanisms, given their intersection with national regulation, points of contact or parallelism with intergovernmental regimes […], and possible intra- regional disagreements (e.g. within the EU).”

Further, Boström and Karlsson (2013) distinguish between vertical and horizontal governance tools that are necessary to meet the increased demand of global governance in order to manage complex problems on a global scale. Vertical governance is for instance used in old governance and refers to hierarchical top-down structures enforced on a certain territory. The nation-state which depends on representative democracy, increasingly the European Union (EU), as well as
any type of formal organization, relies partly on this type of governance. Whereas global vertical governance is not bound by a certain territory, its enforcement of norms and standards still depends on lower levels of state governance (ibid.). By contrast, horizontal governance, in line with new governance, is a form that reaches beyond territory without being structured by hierarchy or authority. Several organizations can autonomously be involved and cut across states, businesses and civil society actors. Its tools refer to voluntary policy making and hybrids or networks of actors that engage in rule-setting initiatives (ibid.).

Public-private partnerships and multi-stakeholder initiatives, where state actors are not at the core, demonstrate an example of horizontal governance. Boström and Karlsson (2013, 384) specifically name “governance along and surrounding global product chains” as an example of horizontal governance. They further describe “policy instruments such as codes of conduct, labelling and certification schemes, various information tools, as well as voluntary agreements and contracts between actors” as the governance tools that make horizontal governance possible.

Eberlein et al. (2014, 3) call the “systematic efforts to regulate business conduct that involve a significant degree of non-state authority in the performance of regulatory functions across nations borders” transnational business governance (TBG). These have first been observed for technical standards and this concept adheres to the fact that regulation is always a product of several actors. In this case private actors are the target of the regulation, while as well shaping regulation, for instance by agenda and standard setting through participation in multi-stakeholder initiatives for example (Eberlein et al. 2014).

Both concepts—transnational business governance (Eberlein et al. 2014) and THG (Ponte and Daugbjerg 2015)—are based on transnational governance. However, TBG focuses more on the business interactions, whereas THG considers both the public and private actors and their interactions. Specifically, TBG is looking at “non-state authority to govern business conduct across borders” (Eberlein et al. 2014, 1) and their interactions with “one another, and with state-based regimes, in diverse ways” (Eberlein et al. 2014, 2). THG puts emphasis on “hybrid governance forms where public and private come together in complex configurations that include civil society, business, and a plethora of nontraditional actors” (Ponte and Daugbjerg 2015, 96). This thesis therefore utilizes the concept of THG, as it relates to the role, interactions, and coherence of public governance actors in connection with private actors.
With governance the paper refers to “the shaping of the conduct of others through network forms of organization involving a wide range of non-state actors but also government, mainly through exchange and negotiation rather than through traditional state-led regulation” (Ponte, Gibbon and Vestergaard 2011, 1). This applies specifically to THG (Ponte and Daugbjerg 2015) as the intersections between the different regulatory tools of public and private actors, vertical and horizontal governance.

Recent literature addresses the changing relationship of public and private actors in “transnational economic, social and environmental governance” (Ponte and Daugbjerg 2015, 96) and argues for the development of concerted and hybrid forms of governance, instead of seeing them as alternative modes (Abbott and Snidal 2009, Eberlein et al. 2014). The shift that has been observed towards non-state and market-based forms of governance is not seen as a diminishing of the state. “Rather, we are witnessing the birth of new hybrid governance forms where public and private come together in complex configurations that include civil society, business and a plethora of non-traditional actors” say Ponte and Daugbjerg (2015, 96).

Furthermore, the framework of orchestration developed by Abbott and Snidal (Abbott and Snidal 2008, 2009, Abbott 2012) depicts the new role of the state with increasingly blurred lines between public and private governance. Within this, Verbruggen (2013) analyzes the importance of public regulation for the enforcement of private regimes. He identifies the necessary preconditions for effective transnational regulation that bolsters not only private regulation but also the regulatory capacity of state actors. Similarly, Eberlein et al. (2014) developed a framework that enables the formal examination of the interactions between transnational hybrid governors.

The multi-stakeholder nature of THG (Ponte and Daugbjerg 2015) makes it essential to assess the governance tools of the respective actors as set out in the Governance Triangle (Abbott and Snidal 2008). The Governance Triangle, see Figure 1 below, is a heuristic tool following a rationalist approach to show the diversity of THG actors, consisting of three main actors: the state (public actors), firms (private actors), and NGOs (civil society organizations)3 (Abbott and Snidal 2008, 63).

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3 The author uses the broader terms public actors instead of states, private actors instead of firms and civil society organizations instead of NGOs in order to stay within the terminology of THG, so it can also include mixed forms of state or firm involvement.
In the following, the tools’ orchestration (Abbott and Snidal 2008) of public actors, self-regulation of private actors, and campaigning of civil society organizations will be explored. This theoretical discussion will form the foundation to analyze the respective tools deployed for the governance of conflict mineral value chains.

2.1.1 Public Actors—Orchestration

Orchestration is a tool evolving from new governance theory that pursues two major goals: “bringing the dispersed expertise, resources, and capacities of private actors into the regulatory system, and reducing the demands on public institutions” (Abbott and Snidal 2009, 547). Therefore, new governance defines global regulatory regimes based on voluntary non-state actors. Nonetheless, states still play an important role in transnational regulation (Verbruggen 2013), which leads Abbott and Snidal (2009) to conclude that public actors must orchestrate.

“Orchestration includes a wide range of directive and facilitative measures designed to convene, empower, support, and steer public and private actors engaged in regulatory activities” (Abbott and Snidal 2009, 510). This is in line with Verbruggen (2013) who sees laws and regulation issued by state authorities as a precondition for the enforcement of private regulatory regimes.

Governance of global value chains requires regulation to go beyond the borders of sovereign nation-states and hence the control of public regulation. Governance on the transnational level requires that states and international government organizations (IGOs) utilize private intermediaries for their global reach, as well as expert knowledge and competencies. As a result
public and private governance initiatives can mutually reinforce each other by increasing efficiency and legitimacy. Simultaneously, states and IGOs are enabled to regain regulatory influence. Orchestration is therefore the facilitation, support and canalization of new and existing private governance networks (Abbott and Snidal 2009). It is also expected to level the playing field and overcome weaknesses of horizontal governance (Boström and Karlsson 2013).

Two types of orchestration are mentioned in the literature that states and IGOs draw on: directive and facilitative (see Table 1 below). The first sets mandatory conditions, for instance in case companies want to engage with certain state-led organizations or for procurement reasons. Whereas, facilitative orchestration conveys power over stakeholders by means of moral and material support of private initiatives, and indirect contributions (Abbott and Snidal 2009). These forms resonate with Boström and Karlsson’s (2013) three types of dynamics between vertical and horizontal tools stirred by vertical governance. First, legislation can be passed by vertical governance in order to enable horizontal e.g. private regulation. Second, vertical governance can support horizontal by financial, symbolic through awareness raising and public support, and cognitive means for instance through providing expertise. And finally, public actors through vertical governance are able to harmonize horizontal adaptation and standards, such as labels and codes of conduct through regulation and policies that define concepts like precaution, substitution, organic and corporate social responsibility (Boström and Karlsson 2013). As we will see later, the US and EU regulation on conflict minerals draw on several of these tools and concepts in relation to governance and interaction with private actors.

Table 1: Types of Orchestration
Source: Abbott and Snidal 2009, own table.

<table>
<thead>
<tr>
<th>Directive</th>
<th>Facilitative</th>
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<tr>
<td>Mandatory Conditions</td>
<td>Moral and Material Support</td>
</tr>
<tr>
<td>o Incentives for contracting</td>
<td>o Financial support</td>
</tr>
<tr>
<td>with public organizations</td>
<td>o Provide legitimacy and moral</td>
</tr>
<tr>
<td>(e.g. procurement)</td>
<td>support</td>
</tr>
<tr>
<td>o Mandating and incorporating</td>
<td>o Indirect support</td>
</tr>
<tr>
<td>through policies and</td>
<td>o Encourage participation in</td>
</tr>
<tr>
<td>certification</td>
<td>private schemes</td>
</tr>
<tr>
<td>o Regulate auditing firms and</td>
<td></td>
</tr>
<tr>
<td>others that monitor</td>
<td></td>
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<tr>
<td>compliance</td>
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</table>

Abbott and Snidal (2009) identify a current lack of orchestration of new private governance initiatives by public actors, specifically states, and find that by expanding their orchestration function the entire regulatory system and states’ own regulatory goals could be better achieved. Similarly, Abbott (2012) and Verbruggen (2013) attribute major importance to state regulation in
order to enforce private regulatory regimes. Specifically, Lehr (2010) calls for more traditional governance in regards to conflict mineral value chains.

2.1.2 Private Actors—Self-regulation

The role of the private sector in THG is described often to fill the gap that emerged from globalized value chains reaching into jurisdictions with weaker to no governance or standards, as well as to a certain extent to anticipate state-led regulation (Abbott and Snidal 2009, Abbott 2012, Boström and Karlsson 2013).

Voluntary Corporate Responsibility initiatives, often called self-regulation, have in many industries gained in relevance (Abbott 2012, Fransen and Burgoon 2014). Collaborative voluntary initiatives and programs bring together companies eager to work on their value chains (Abbott 2012, Fransen and Burgoon 2014, Dashwood 2014). Private actors are actively involved in for instance public-private partnerships through which their “political authority […] has been extended” (Abbott 2012, 548), beyond influencing global governance through lobbying.

In horizontal and vertical governance terms, private sector initiatives can, through horizontal tools, support vertical governance. Boström and Karlsson (2013) note that private actors form horizontal governance initiatives as a response to state inactivity and perceived lack of intergovernmental regulations. Thereby horizontal governance often does the groundwork and prepares the floor for further vertical governance. The horizontal market-based approach can in that way experiment in order to find the right template, standard or idea, which can then be built on from more formal forms of vertical governance. In relation to the latter, horizontally developed tools like labels or codes of conduct may favor the implementation of state-led regulation (Abbott 2012, Boström and Karlsson 2013). However, as Ponte and Daugbjerg (2015) show in the case of biofuels, where EU regulation enabled a number of private certification initiatives to operate horizontally, it can also work the other way. This links back to the orchestration function discussed in the above section.

Motivation for companies to engage in self-regulation beyond the mandated stems mainly from pressure from civil society, customers and campaign groups. The three main incentives for companies to pursue sustainability strategies on their own or to join initiatives promoting self-regulations, such as public-private partnerships or multi-stakeholder initiatives noted in the literature, are the social license to operate, brand or reputational value, and competitive advantage (Abbott and Snidal 2008, Dashwood 2014).
This being said, authors qualify the potential of horizontal governance and its voluntary tools as it faces certain difficulties, such as inclusiveness of all actors and the free-riding problem, which makes certain elements of vertical governance necessary (Boström and Karlsson 2013). In that regard, already the threat of binding legislation can trigger softer horizontal governance initiatives (Abbott 2012, Boström and Karlsson 2013, Verbruggen 2013). Another trigger, and third dimension to new governance actors are civil society organizations that act as watchdogs and may target specific private actors through their awareness-raising campaigns, as described in the next section.

2.1.3 Civil Society Organizations—Campaigning

The third leg of THG as shown in the governance triangle (Abbott and Snidal 2009) is civil society organizations, including NGOs (Ponte and Daugbjerg 2015). NGOs in cooperation with private actors are facilitating the so-called multi-stakeholder initiatives that provide voluntary schemes and can function as standard setters (Fransen and Burgoon 2014). The tools used by NGOs are often channeled into societal pressures, conveyed through public campaigns, media and consumer expectations.

Hence, horizontal governance supports the role of NGOs and civil society to be the watchdog and monitor public and private actors (Boström and Karlsson 2013). NGOs mainly orchestrate societal pressure catalyzed through public campaigns as a means to influence public and private behavior. Consumers and media can support these efforts (Fransen and Burgoon 2014).

Civil society acts both as a convener for multi-stakeholder engagement and horizontal governance, while at the same time monitoring public and private actors, as well as incentivizing them to react to societal pressures. Norm entrepreneurs and NGOs are hence vital, as "consumers, market actors and the public must typically be 'activated' to demand particular behaviors" (Abbott 2012, 557) and need to be made aware of the specific issue at play. Abbott (2012) notes targeted private sector and industry campaigns as one of the main drivers for private sector participation in THG. The reputational pressure that companies fear can then be leveraged through media and consumer behavior (Lehr 2010, Abbott 2012).

The downside of NGO, media, and consumer attention is its fluctuation and unevenness. Civil society organizations, just as any other organization, might follow own organizational interests or go for low-hanging fruits due to funding concerns. High profile targets, vulnerable firms and issues
that are likely to appeal to a broad public audience might be preferred over other more difficult issues (Abbott and Snidal 2008, Abbott 2012).

Therefore, international relations literature highlights the role of the shadow of the state (Abbott 2012), or as Verbruggen (2013, 512) calls it “regulatory gorilla in the closet” as necessary in order to incentivize private actors to self-regulate and adhere to transnational rules and regulation. In that regard, Verbruggen (2013) identifies the four conditions, overlap of norms, institutional design, enforcement mechanisms, and information management as discussed in chapter 2.3. If these conditions are in alignment between public and private regulatory regimes, they can foster coordination and coherence of the governance scheme as such, and hence improve regulatory outcomes. In contrast, on a global level, top-down regulation on issues related to global value chains seems difficult to establish from only one group of actors. Hence, the literature suggests that in order to tackle interrelated and global problems, especially when it comes to responsible sourcing, a combination of vertical and horizontal as well as old and new governance is needed (Boström and Karlsson 2013, Ponte and Daugbjerg 2015).

As described by Abbott and Snidal (2008) it becomes clear that in order to determine the effectiveness of THG, the interactions between the various actors have to be explored. In the following, the section first analyzes interactions between regulators of conflict mineral value chains, and then compares their tools and goals.

### 2.2 Transnational Hybrid Governance Interactions

Criteria for successful combination of vertical and horizontal governance tools represent one of the key questions in regards to governance of value chains and responsible sourcing (Boström and Karlsson 2013). Boström and Karlsson (2013) show the importance of further theorization of governance interactions along the horizontal and vertical dimensions in relation to value chains and highlight the need for application within sectors across geographies.

The role of regulatory interactions for policy creation yet remains incomplete. This thesis studies the mechanisms and pathways of interaction in order to assess the regulatory capacity and performance of the THG of conflict minerals.
To answer the first question:

**How do governance actors in transnational hybrid governance of conflict minerals interact?**

The thesis deploys a framework for analysis developed by Eberlein et al. (2014). As a tool for transnational governance, Abbott and Snidal’s (2008, 2009) work on orchestration, as described above, will provide a basis to understand the interaction between the involved actors.

Eberlein et al. (2014) note the importance of interactions in THG, which have proliferated in order to correspond to the increased amount of business activities across borders. Business conduct across borders is governed through various initiatives that not only interact with each other, but also with traditional state-led tools, such as regulation and policies. Eberlein et al. (2014) propose an analytical framework that decomposes the regulatory process in order to identify key tools and points of interaction. The framework is also designed to accommodate various theoretical approaches to account for the diversity of transnational governance. In line with the definition of Eberlein et al. (2014, 2), “interactions” means the myriad ways in which governance actors and institutions engage with and react to one another. The framework (for original framework see Table 12 in Appendix 1) maps the process of regulatory governance into six components that require actors with different resources and capacities in order to perform them.

(i) framing the regulatory agenda and setting objectives; (ii) formulating rules or norms; (iii) implementing rules within targets; (iv) gathering information and monitoring behavior; (v) responding to non-compliance via sanctions and other forms of enforcement; and (vi) evaluating policy and providing feedback, including review of rules (Eberlein et al. 2014, 6)

Eberlein et al. (2014) consequently identify six questions for each component from which the following two are deployed for the analysis part of this paper, as these have been identified as contributing most to the question of interaction and help framing the further research questions. This research therefore asks first “who or what is interacting?” and secondly “how do interactions change over time?” (Eberlein et al. 2014, 6). These questions are necessary in order to explore the capacity and effectiveness of the THG of conflict minerals and prepare the analysis of coherence between the interacting governors. Table 2 below is the framework that will consequently be completed by this research.
Table 2: Analytical Mapping Tool for Interactions of Governance Actors


<table>
<thead>
<tr>
<th>Dimension of interaction</th>
<th>Component of regulatory governance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Goal/agenda setting</td>
</tr>
<tr>
<td></td>
<td>Rule formation</td>
</tr>
<tr>
<td></td>
<td>Implementation</td>
</tr>
<tr>
<td></td>
<td>Monitoring, information gathering</td>
</tr>
<tr>
<td></td>
<td>Compliance promotion, enforcement</td>
</tr>
<tr>
<td></td>
<td>Evaluation, review</td>
</tr>
</tbody>
</table>

Interactions between actors

The question of interacting entities can be observed on the micro level showing interactions between individuals and organizations, on a meso level between organizations, initiatives, and state regulators, and on a macro-level which addresses interactions between regulatory schemes. Eberlein et al. (2014) find that at this stage a meso level analysis might be most beneficial as it provides enough abstraction to identify the bigger picture, including patterns of interaction, without sacrificing empirical details. Hence, for the research on THG of conflict minerals, a meso level analysis will be beneficial to map interactions between public, private, and civil society organizations. The analysis will further be conducted on a horizontal level in order to discuss the coordination among the actors.

Changing interactions and actors

Due to the fluidity and dynamics of interactions in general, static pictures of governance schemes have only limited explanatory power, as Eberlein et al. (2014) note. The analytical value of this study will be delivered through a timeline of actors involved in the governance of conflict minerals. Since actors interact in THG, ideas and practices might be transferred and adapted to the governance actor’s purpose. The development of actors will be mapped along the governance triangle of Abbott and Snidal (2009); for a generic version see Figure 1 in section 2.1 above.

From a practitioner standpoint, experts note that effective solutions that address conflict mineral value chains need to take a holistic approach and cut across industries. Chase (2010) finds therefore a strong incentive to engage in collaborative approaches in order to improve responsible sourcing from the DRC. In addition, the characteristics of conflict mineral value chains demonstrate a certain complexity that makes multi-stakeholder initiatives a useful tool to address the issues.
involved (Lehr 2010). Hence, various stakeholders are required to interact, though the alignment and mutual reinforcement of efforts made is crucial. Therefore, the next section will give a theoretical perspective on criteria for coherent governance schemes.

2.3 Coherence of Governance Tools

In the following, the mapping of interactions between governance actors is complemented by a qualifying discussion on expected gaps between vertical and horizontal governance, and whether their different tools create obstacles or can work in coherence. Boström and Karlsson (2013, 385) find challenges between horizontal and vertical governance “through competition in the political and regulatory space or through various kinds of de-legitimizing attempts.” Self-regulation by private actors might attempt to prevent new public regulation although public regulation can encumber private ones by restricting certain standards and criteria (Boström and Karlsson 2013).

Several works discuss the effects of interaction between governance actors for the effectiveness of regulatory regimes. Research so far has highlighted the element of competition, though it does not come to a conclusion on whether this element can improve or discourage the effectiveness of the governance scheme as such (Eberlein et al. 2014). The effectiveness for instance can depend on the industry structure or on public pressure in order to arrive at higher standards through competition between regulators (Overdevest 2010). More critical voices such as Fransen (2012) argue that competition leads mainly to proliferation of standards and regulatory schemes. The following regulatory complexity could enhance possibilities of forum shopping and other strategic behavior from businesses (Eberlein et al. 2014). To overcome this discussion, in order to analyze the enforcement of THG, in specific the potential of the THG of conflict minerals along the lines of the sub-question.

How coherent and internally aligned is the transnational hybrid governance of conflict minerals?

Verbruggen’s (2013) four dimensions will be utilized for the analysis of the THG of conflict minerals. In general, Verbruggen (2013, 512) finds that to effectively enforce private regulation on a transnational level, the existence of public regulation and state presence is a necessary precondition. Hence, under certain conditions, public regulation can strengthen the regulatory capacity of private regulation and vice versa, especially on a transnational level.
The concept of enforcement capacity needs to be discussed briefly at this point. Enforcement is conceptualized as "a necessary and constitutive element of a regulatory regime" (Verbruggen 2013, 515) and "concerns the process of ensuring compliance with regulatory norms." In that regard, third parties such as public, private and civil society actors can undertake certain activities and have the capacity to enforce compliance with a certain rule (ibid.). In the case of conflict mineral regulation, the enforcement capacity should be measured against the compliance of companies with responsible sourcing standards, and more specifically if they undertake due diligence of supply chains.

In order to assess the potential of THG, Verbruggen (2013, 514) identified “four conditions that enable public regulatory enforcement to strengthen the effectiveness of private enforcement mechanisms” and hence the regulatory scheme in its entirety.

These four conditions are:
(i) the overlap of norms, objectives, and interests of transnational private regulation with public regulatory frameworks
(ii) the institutional design of regulatory enforcement
(iii) due process standards in private enforcement mechanisms
(iv) information management and data sharing between public and private mechanisms
(Verbruggen 2013, 514).

Concrete benefits of the complementarity of public and private regulation that Verbruggen (2013) finds are as follows:
1. Public enforcement capacity can benefit from the relative faster, flexible and cost-efficient approaches that come from private regulation, which can be especially useful for global value chains.
2. Private market-based mechanisms can also reinforce public enforcement through data on non-compliance and other more local information that goes beyond national jurisdictions.
3. Public regulation can reach further when including private schemes in their own policies, since this extends their reach beyond national jurisdiction.

In conclusion, under the above four conditions of public regulation, hence the state, can be key to a strengthened enforcement capacity of THG (Verbruggen 2013). The following chapter on methodology will describe the research carried out in order to explore the THG of conflict minerals in the context of global value chains.
3 Methodology

Since the purpose of this thesis is to explore the enforcement capacity of THG of conflict minerals, it is set up as a descriptive and explanatory study as opposed to a normative design (Abbott 2004, Saunders et al. 2012). As a starting point, the regulation of conflict minerals in global value chains is put into the context of human rights violations, which is a transnational issue. The interest lies in analyzing how public and private actors govern the issue of conflict minerals in different jurisdictions. In the explanatory part, the thesis discusses how the governance interconnections influence the enforcement capacity of the entire THG.

3.1 Approach and Philosophy

In order to analyze the issue of conflict minerals in global value chains, a holistic approach needs to be taken to governance. The respective regulation in the EU and US will be explained within the context of the interconnections between public, private and civil society actors in the THG of conflict minerals, this thesis is set up in line with the philosophy of critical realism (Saunders et al. 2012). Critical realism helps to identify multiple perspectives from the analysis of different levels of governance. The philosophy encourages a reflection to improve the concepts with which we interpret the world, as it acknowledges that “even intentionally constructed social structures […] have unintended effects” (Gorski 2013, 659).

Critical realism regards laws as “statements about powers” (ibid., 669) and to explain them, one has to identify the underlying structures and powers that produced it. In the descriptive part, the thesis first maps out the different actors shaping the conflict mineral agenda along a timeline. It then analyzes the interconnections and coherence between the governance actors in THG of conflict minerals in order to discuss its enforcement capacity using the example of the automotive industry in Europe. Critical realism allows a pragmatic approach to research by taking an observation as the point of departure for a theoretical discussion. Starting from the observation that civil society criticizes the EU draft regulation as too weak compared to the counterpart regulation in the US (Global Witness 2014, Steinweg and ten Kate 2013), the thesis takes an abductive approach (Saunders et al. 2012). The expectation that coherent public-public governance strengthens the entire THG of conflict minerals accounts for the observation of current governance approaches by the US and EU, the main public actors involved in the THG of conflict minerals. To find the possible explanation for this observation, THG theory is the backbone for analysis throughout the thesis. Answers to the questions derived from theory will then be found by going back to the data collected on the initial observation.
The theoretical lens is reapplied to the initial observation in several research loops refining the analysis of the issue at stake (Saunders et al. 2012, Gorski 2013). This approach has been useful throughout the thesis, which was developed in multiple rounds of moving between observation, theory and research design.

3.2 Research Design

In line with critical realism, two questions are ultimately derived from the theory of THG in order to explain the interconnections between governance actors and explore the coherence of their governance tools. The thesis first maps interacting governance actors, organizations and initiatives from the public, private, and civil society dimension and shows the change of actors along a timeline in form of the governance triangle (Abbott and Snidal 2009).

As shown in Figure 2, after an introduction and context chapter the paper poses a problem statement which is the regulation of global value chains in the light of transnational issues, such as the human rights violations in mineral value chains. This is followed by the observation that public, private and civil society actors are shaping the governance space of conflict minerals in global value chains. Following this observation, theory regarding THG interactions and coherence of governance schemes sets out an analytical framework that helps to analyze the potential of the existing governance schemes to incentivize companies to adopt responsible sourcing practices.

The design follows a qualitative multi-method approach (Saunders et al. 2012). It is executed through a qualitative review of relevant stakeholders and tools describing the specific elements of THG, as well as an in-depth contextual analysis of governance documents available online. Contextual, meaning the author selected and analyzed the documents, by taking into account the current governance discussions around the impact of the US Dodd-Frank Act and the EU draft regulation. The overview of the conflict mineral value chain configuration and the governance actors is used as a descriptive tool. An analytical discussion of the current status of the THG of conflict minerals is informed through qualitative and semi-structured interviews with key governance actors from public, private and civil-society organizations (see details in section 3.2.2). These semi-structured interviews complement the qualitative discussion and allow the author to interpret the findings of interconnection and coherence (Kvale 2007). The multi-methods design allows complementation and validation (Saunders et al. 2012) of these findings through the qualitative data collected on European automotive companies. The multi-methods approach allows analysis of the enforcement potential of the THG of conflict minerals for European automotive
companies in the light of the broader picture of THG. Below, the project model in Figure 2 visualizes the project design and the different steps taken during this research project.

![Figure 2: Model of Project Design](image)

Regarding the complexity and controversial nature of the thesis subject, the research needed to be informed by a diverse range of perspectives, confirming the choice of philosophy. The thesis was strategized around a main body of IPE literature focusing on regulation and governance, thus offers a unique and very timely take on current THG, especially in the area of sustainable value chains.

### 3.2.1 Multi-Methods Approach

The philosophy of critical realism often leads to a research design along the lines of multiple methods (Saunders et al. 2012). In this study it is also necessary to combine qualitative methods. The data collected from European automakers and their usage of conflict mineral due diligence stems from online corporate governance websites and sustainability reports. Following the realist ontology (Saunders et al. 2012), these facts are interpreted through a contextual approach by qualitative methods and applying tools, such as semi-structured interviews.
In the course of the research, the author considered a quantitative mono-method approach in the first research loop, which could have been a survey assessing the enforcement capacity of THG of conflict minerals. A larger sample of companies across industries from both the EU and US could have been a good follow-up on the OECD upstream and downstream pilots (OECD 2011, OECD 2013b). However, considering the possibilities for access to the companies, as well as their willingness to cooperate at this time, this option has been disregarded. Considering the downsides of quantitative research (Saunders et al. 2012), this approach would not have accounted for the necessity of contextualization.

Another multi-method approach was discussed in the beginning of the research. Interviewing the studied automotive companies from the Somo report (Conflict Due Diligence by European Companies, Steinweg and ten Kate 2013) which analyzes due diligence measures of European companies across industries would have contextualized the qualitative online data of the automotive sector in line with critical realism. However, due to the timeliness of the EU draft regulation, the automotive sector largely declined to participate in the study. As Interviewee 5 points out, automotive companies lobbied in favor of a voluntary scheme and commissioned the Öko-report (Manhart and Schleicher 2013). Therefore, they are currently not commenting on the EU draft regulation; this has consequently been used as a finding in itself, informing the final research design.

In the third and final loop, the design follows a solution along a multi-stakeholder setup including semi-structured interviews with ten multi-stakeholder governance actors. The interpretation of the interviews contextualizes the Somo report findings (Steinweg and ten Kate 2013) and the research results from the desktop study in a strongly holistic way. The findings give an outlook on future developments of THG of conflict minerals.

The automotive industry has been chosen as research object due to its similarities with the highly engaged ICT industries in regards to usage of 3Ts in several parts of the car (Runde and Sowers 2013), as well as the brand visibility to end-consumers. Due to the similarities it would be expected that the ICT and automotive industries show similar levels of engagement when it comes to conflict mineral due diligence. Though this is not the case, one can notice a difference in engagement levels of European and American carmakers. This observation makes it particularly relevant to research the potential of the current THG of conflict minerals to incentivize companies to adopt responsible sourcing practices using the example of European automotive companies.
The data underpinning the analysis in question 1 (see Table 3 below), is collected firstly through online available reports, the governance material of companies and initiatives. Position papers of civil society organizations, and communication about regulation, as well as a desktop research of organizations and initiatives support the mapping of existing governance actors along a timeline in the form of the governance triangle (Abbott and Snidal 2009). The data is mainly qualitative and secondary. Secondly, representatives of all three key categories of actors (two public, four private, one public-private, three civil-society) are interviewed, which provides primary qualitative data for the research. Thirdly, online available qualitative data stems from the collection of data on the participation of European automotive companies in conflict mineral due diligence. This data supports the analysis of the enforcement capacity of the THG. The search has been conducted on online available governance documents, sustainability reports and supplier codes of the 20 automotive companies in Europe (see Table 5 below) regarding their engagement in conflict mineral due diligence.

<table>
<thead>
<tr>
<th>Research Part</th>
<th>Method and Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Question 1: Interconnections</td>
<td>Qualitative data from interviews and context review</td>
</tr>
<tr>
<td>Question 2: Coherence</td>
<td>Qualitative semi-structured interviews</td>
</tr>
<tr>
<td>Overall Question: Enforcement Capacity</td>
<td>Qualitative primary and secondary data</td>
</tr>
</tbody>
</table>

Qualitative semi-structured interviews

A concept driven approach is taken to analyze the data gained through the semi-structured interviews, as well as through the archival research of available documentation. The qualitative data is organized in a matrix, also known as data display or analysis approach (Saunders et al. 2012) in order to present and structure the results.

The data and information on governance actors and their interconnections is organized along the categories of regulatory components, which are derived from Eberlein et al. (2014) (see Table 7 in section 5.1). The data extracted from the interviews has first been condensed in a summary (see accompanying CD) (Kvale 2007) and thereafter organized along the coherence criteria following Verburggen’s (2013) framework (see Table 10, section 5.2.2). Since the original framework has been designed for public-private alignment, it has been adapted in this study to public-public coherence and sub-categorized through an initial summary of themes identified in the interviews.
Qualitative data collection provides the benefit of context and relationship information, which helps afterwards to “develop a conceptual framework” (Saunders et al. 2012, 163). This method also enabled the researcher to remain flexible and adapt the research while conducting the interviews, which was necessary in order to accommodate the different backgrounds of the respective governance groups.

*Qualitative desk research*

For the online available company data, a time series perspective has been taken. The benchmark data stems from the Somo report (Steinweg and ten Kate 2013) collected before the EU draft regulation had been published in March 2014 (EC communication 2014). The second set of data stems from a collection in August 2014 after publication of the EU draft regulation. For more details on the data see section 3.2.2.

The findings of the desk research have been arranged in Table 11 to show in a coherent way the number of occurrences as a basis for analysis (Saunders et al. 2012). The four companies the Somo report identified as active in conflict mineral due diligence were registered with 1, whereas the non-active companies show as 0 in the table. In addition, the research found that one more company was active when the Somo report had been written. Hence, this research registered one more company with 1 in the baseline scenario. Consequently, the research that was carried out showed that nine companies referred to conflict mineral due diligence as a procedure in their company material, either their governance material, sustainability report and supplier code, or were part of a conflict mineral working group. These companies were registered with 1. Three companies had very little mention of conflict minerals, or would only list it as an issue in their material. These companies received a mark of 0.5. On that basis, the benchmark before the EU draft regulation was compared with the number of companies after the EU draft regulation had been released and consequently analyzed within the broader framework of THG of conflict minerals.
3.2.2 Data Collection

The thesis collects both primary and secondary data through multiple qualitative methods, in order to compensate for the deficiencies of each method.

For the first question, analyzing the interactions between governance actors, the study maps actors along the criteria developed by Eberlein et al. (2014) in order to disaggregate the process of THG. Qualitative and mainly secondary data for this part of the study, including that for textual analysis, is collected from the main reports covering conflict minerals, websites of conflict mineral initiatives and regulatory texts. Further primary qualitative information from the semi-structured interviews carried out from September to October 2014 complements the analysis.

The data for the second question stems from the semi-structured interviews, referred to in the above paragraph. Out of 43 contacted and potential interview participants, ten interviews were set up. The interviews of approximately 30 minutes were conducted with representatives of two public, four private, one public-private and three civil society organizations. The interviews took place in person in Denmark or via Skype and telephone through a set of qualitative semi-structured questions (Kvale 2007, Spradley 1979). The interview guide had been sent to participants beforehand in order to allow them to familiarize themselves with the study. A detailed list with contact details and positions can be found in Table 4 below. As outlined in this chapter, semi-structured interviews as main method of data collection fit well with the philosophy of this research and further accounts for the diversity of the data set. The semi-structured questions were adapted towards the respective governance group, which allowed follow-up with specific questions relating to the context of each governance actor. The main topics of the interview guide, which was developed by the author for this study, covered: first, an overview and background of the participant. Second, the issue of conflict minerals in general including development of the topic and initiatives involved. Third, three questions concerning the EU draft regulation, its interactions, its influence on industries in the EU going forward and the development of the issue due to the regulation. For the original interview guide, please see Figures 9 and 10 in the appendix. The transcript of the interviews can be found on the accompanying CD.

In order to control the quality and validity of responses in the interviews, at least two participants were chosen from the same governance group. Unfortunately, the representative from the OECD was not able to contribute to the study, which would have added value and enhanced the group of public governance actors. An overview of the analysis can be found in Table 10, which compares the US Dodd-Frank Act with the EU draft regulation and gives an alignment score. In order to
classify high, medium, and low alignment, each coherence category receives respectively 1, 0.5 or 0 points in order to arrive at an overall alignment score.

Table 4: Interview Partners—Interviews conducted in September and October 2014

<table>
<thead>
<tr>
<th>Stakeholder category</th>
<th>Industry</th>
<th>Organization name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Academia / Civil Society</td>
<td>Research</td>
<td>Christoph Vogel</td>
<td>Researcher</td>
</tr>
<tr>
<td>Civil Society</td>
<td>Research</td>
<td>IPIS</td>
<td>Researcher IPIS</td>
</tr>
<tr>
<td>Civil Society</td>
<td>NGO</td>
<td>Responsible Sourcing Network</td>
<td>Director and Founder</td>
</tr>
<tr>
<td>Private Governance</td>
<td>ICT</td>
<td>EICC</td>
<td>Director of Communications</td>
</tr>
<tr>
<td>Private Governance</td>
<td>Association</td>
<td>Eurometaux</td>
<td>Head of Trade &amp; Economy</td>
</tr>
<tr>
<td>Private Sector</td>
<td>Industry</td>
<td>Danfoss</td>
<td>Senior Sustainability Manager</td>
</tr>
<tr>
<td>Private Sector</td>
<td>Industry</td>
<td>Ericsson</td>
<td>Senior Policy Manager</td>
</tr>
<tr>
<td>Public Governance</td>
<td>Government</td>
<td>European Parliament</td>
<td>Assistant MEP</td>
</tr>
<tr>
<td>Public Governance</td>
<td>Government</td>
<td>European Commission</td>
<td>European Commission DG Trade</td>
</tr>
<tr>
<td>Public-private Governance</td>
<td>ICT</td>
<td>Resolve as Secretariat to PPA</td>
<td>Senior Mediator</td>
</tr>
</tbody>
</table>

Finally, for the overall research question, data on the main automotive companies in Europe has been collected. Departing from the list of 20 European automotive companies researched by Steinweg and ten Kate (2013), the study researched online available governance, sustainability, supplier code and due diligence data regarding conflict minerals. Steinweg and ten Kate (2013, 4) have two criteria for selection of the companies (see Table 5), which are (i) activity in a sector related to conflict minerals and (ii) stock listing at a Western European stock market. The primary website sources for each company are listed in Table 5 below and were last accessed on March 1, 2015, while the desk research was carried out in August 2014. In addition to researching the respective corporate sustainability website, a Google search with the key words ‘company name’ and ‘conflict minerals’ was carried out for each company listed below.

Table 5: List of Companies Researched. Sources accessed for data collection latest in March 2015

Source: Somo report, Steinweg and ten Kate 2013.

<table>
<thead>
<tr>
<th>Company</th>
<th>SOMOS 2013 Findings</th>
<th>Source - last accessed March 1, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burelle SA</td>
<td>0</td>
<td><a href="http://www.burelle.com/publications/rapports-annuels/">http://www.burelle.com/publications/rapports-annuels/</a></td>
</tr>
<tr>
<td>Daimler AG</td>
<td>1</td>
<td><a href="http://sustainability.daimler.com/reports/daimler/annual/2013/nb/English/55/suppliers.html?printDoc=1">http://sustainability.daimler.com/reports/daimler/annual/2013/nb/English/55/suppliers.html?printDoc=1</a></td>
</tr>
<tr>
<td>Finnveden</td>
<td>1</td>
<td><a href="http://www.finnveden.com/en/FinnvedenBulten/About-us/Long-term-sustainable-">http://www.finnveden.com/en/FinnvedenBulten/About-us/Long-term-sustainable-</a></td>
</tr>
</tbody>
</table>
3.3 Assumptions and Limitations

A number of assumptions and limitations are listed here in order to account for the possibilities of this methodology and results delivered by this thesis. Four main points that need to be discussed in this section relate to the timeliness of the study, caveats from the research methodology, the choice of theory and possibilities for further research.

First, the timeliness of this thesis is adding value to the research topic of THG, while at the same time delimiting the accuracy, data collection and methods of study. As mentioned above under 3.2.2, the study is limited by restricted access to private sector companies. Specifically, the automotive sector was not willing to contribute to the study due to ongoing discussions in the EU Parliament about the EU draft regulation (Interview 5). Three out of ten potential participants from the automotive sector that the author contacted declined to participate in an interview. The others have not responded to the invitations for interviews.

The study is focused on a multi-stakeholder approach which corresponds better with the early stage of the EU draft regulation. While it is important to discuss the enforcement capacity of the EU draft regulation taking the bigger THG picture into account before the draft comes into force, this is also one of the study’s biggest limitations. The full impact and enforcement capacity of the regulation, specifically direct company responses in Europe, is likely to fully emerge once the regulation is adopted. At the moment, companies are waiting for the next round of negotiations in parliament, therefore are not showing much engagement. Hence, certain responses from business might not be possible to observe at this stage. Since companies started to respond to the US legislation before it became adopted, it is expected that the study adds value in analyzing the
enforcement capacity from a theoretical viewpoint. Beyond studying THG of conflict minerals, this study also contributes to the theoretical work on THG with the finding that public-public coherence is important in various components of the regulatory process. The multi-stakeholder setup of interviews tries to overcome these difficulties. Nevertheless, it is still relatively early to study the potential enforcement capacity of the EU regulation per se. By studying the existing tools and interactions between regulators, one can conclude preliminary findings that show the potential direction and effects of the EU draft regulation in orchestration with the wider regulatory framework on European companies.

The second limitation is related to the collection of available online company data due to the lack of direct access to automotive companies. The data collection follows the assumption that companies report on their conflict mineral due diligence online. This might be limited, taking into account the above-mentioned early stage of company responses to the regulation. However, as Steinweg and ten Kate (2013, 4) also find: “International due diligence standards such as the OECD Due Diligence Guidance and the UN Guiding Principles include public reporting and external communication as an integral part of the due diligence process.” Therefore, it can be expected that leading European automotive companies would report on their due diligence activities in their corporate material.

This limitation ties into a third observation, which corresponds with Lehr’s (2010, 26) finding that companies active in private initiatives “are often far ahead of their peers in terms of their willingness to be transparent in reporting.” One can therefore argue that company level or organizational theory needs to be utilized in order to study THG of conflict minerals. Further research, following for instance Franssen and Burgoon (2014), could take into account company specific characteristics that favor engagement in conflict mineral due diligence. Similarly, value chain theory is only touched upon at a very high level in this research, as the focus of this thesis lies on governance and not value chains. To complement the study a closer comparison of automotive and electronics industry value chains could be interesting in order to isolate more variables in the search for factors influencing compliance of companies on responsible sourcing and preferences for due diligence.

In order to research public-public alignment, further research could also enlarge the focus of this thesis, which only studies the EU and US as public governance actors due to their large sphere of influence. However, more states are currently developing regulation in that regard, such as Canada, China and other countries, which will have an influence on the global enforcement
Finally, the actors that the EU draft regulation are not interacting with might be equally interesting to study, since these can give a strong indication about missing parts of the current public governance part. While recognizing the theoretical importance of public-public alignment in order to incentivize companies to engage in responsible sourcing and to tackle transnational issues, other geopolitical and economic competitiveness concerns might prevent the necessary alignment between public actors. This is a factor increasing the level of complexity of THG that cannot be taken into account as it surpasses the scope of this thesis.

On a last note, which has to be mentioned in this section leading to the descriptive part of the thesis, is that this research studies the private and civil society initiatives that are regarded as the most important actors interacting with the two public actors, the EU and US studied in this thesis. Hence, the list developed in the next chapter on Governing Conflict Minerals is not exhaustive.

4 Governing Conflict Minerals

The complexity of governing conflict minerals stems not only from the shift of global value chains into multiple jurisdictions and hence the proliferation of governance actors, but also from the cross-sectorial use of these minerals and the characteristics of mineral value chains. Hence, this chapter outlines the configuration of conflict mineral value chains and analyzes the public and private initiatives along the conflict mineral value chain in this regard. In order to map the various actors and initiatives along the value chain, the first section will look in depth into global mineral value chains containing minerals from conflict-affected and high-risk areas, and explain the upstream part from the mines to the smelters, and the downstream from the smelters to the end product, and finally the consumer (Böhme et al. 2013). In order to analyze how the current governance of conflict minerals regulates global value chains, the development of THG and its public and private actors needs to be explored.

4.1 Configuration of Conflict Mineral Value Chains

The two changes outlined in chapter 2 regarding the shift of global value chains into multiple jurisdictions and hence the necessity for THG is highly important when it comes to the issue of conflict minerals.

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4 The Enough Project and several campaign groups use the term conflict minerals supply chain, whereas the OECD uses Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. The latter appears to be more accurate because value chains are not set up to source conflict minerals, but minerals that are integrated in ICT value chains for instance. When referring to global value chains that contain conflict minerals in general across industries this paper uses the term “conflict minerals value chain” for reasons of simplification. However, when referring to specific industry value chains, there is mention of the industry value chain that contains conflict minerals—conflict minerals simplifies the OECD’s correct terminology of Minerals from Conflict-Affected and High-Risk Areas.
The complexity of conflict mineral regulations stems from these minerals being widely used across industries and sectors, as can be seen in Table 6 below (Böhme et al. 2013, Runde and Sowers 2013). The importance of global value chains has been highlighted especially for manufactured goods, such as electronic consumer goods (Chase 2010, Böhme et al. 2013). The ICT industry’s visibility to the end-customer in combination with its increased reliance on global production and consumption of 3TGs made it one of the prime targets for civil society campaigns. Documentaries like “Blood in the Mobile” (Poulsen 2010) that addressed Nokia especially, have led to the ICT sector’s lead in conflict mineral initiatives (Böhme et al. 2013). Nevertheless, conflict minerals are found in a range of complex value chains. Besides in component parts for mobile phones and computers, diverse industries are making use of 3TGs such as in engines in automotive and aerospace industries, for medical devices or jewelry (Chase 2010, Böhme et al. 2013, Runde and Sowers 2013).

Table 6: Industry Use of 3TG—Overview
Source: Data Runde and Sowers 2013, own visualization.

<table>
<thead>
<tr>
<th>Industry/Mineral</th>
<th>ICT</th>
<th>Automotive</th>
<th>Jewelry</th>
<th>Aerospace/Defense</th>
<th>Apparel/Footwear</th>
<th>Medical Devices</th>
<th>Tooling</th>
<th>Food Packaging</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tin</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Tantalum</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tungsten</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gold</td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

The following sections give an overview of the conflict mineral value chain and industries involved in the sourcing of 3Ts. Gold will not be part of the further focus of the thesis. Its sourcing and characteristics in regards to the financing of conflict are very different and have to be studied separately. This chapter in part limits the scope of the study as it sets the focus on the ICT and automotive sectors that will be studied further.
4.1.1 Upstream Companies

The mineral value chain consists of the process of bringing a raw material to the consumer market by involving a multitude of actors and companies. The upstream part of the 3T value chain covers the route of the minerals from the mines to the smelter (Böhme et al. 2013). The first step as shown in Figure 3 below is the extraction of the minerals, which in the DRC is mostly done by artisanal and small-scale mining (ASM). At this point armed groups may control mines and extort money as customs on the minerals extracted while being transported (Bourgouin and Chase 2014).

Secondly, the minerals are brought to mineral trading towns by individuals, who transport them in garbage-type plastic bags either on their backs or by truck and plane. Armed groups are found to take a share of the profit of transporters or are involved in transporting minerals themselves. Trading houses then sort the minerals and might also process them. They knowingly buy minerals both from government-controlled mines and conflict mines (Prendergast and Lezhnev 2009). The trading houses are then selling the minerals to export companies, which process the minerals before foreign traders purchase them. The exporters also send minerals to transit countries, which helps to obscure their origin. Congolese 3Ts are sent mainly by road, boat or plane to neighboring countries such as Rwanda, Uganda, and Burundi through the porous Congolese borders (ibid.).

The complexity and number of actors involved shows that the upstream part of mineral value chains poses high risks for companies. In addition, the artisanal and small-scale mining sector is illegal in the DRC, and hence unregulated which increases the risk of conflict financing (Prendergast and Lezhnev 2009).

4.1.2 Smelter Level

In contrast, the smelter level consists of a relatively limited number of facilities handling these minerals. Hence, this level represents a good entry point for companies to ensure they are not sourcing conflict minerals but comply with current regulation and responsible sourcing principles (Chase 2010, Bafilemba et al. 2014).

The smelter level represents the choke point on the path of the mineral to its end destination (Chase 2010, Bafilemba et al. 2014). The advantage of auditing smelters and refiners is the limited number of actors at this stage of the value chain (Manhart and Schleicher 2013). Focus on the upstream part of the mineral supply chain and certification of conflict-free smelters is one of the
keystones of several initiatives like the Conflict-Free Smelter Program (CFSP) (Prendergast and Lezhnev 2009), which will be shown in the following chapter. The communication around the EU draft regulation also explains as reason for its focus on the upstream part that:

Smelters and refiners are an important point in global mineral supply chains as they are typically the last stage in which due diligence can effectively be assured by collecting, disclosing and verifying information on the mineral's origin and chain of custody. After this stage of transformation it is often considered unfeasible to trace back the origins of minerals. A Union list of responsible smelters and refiners could therefore provide transparency and certainty to downstream companies as regards supply chain due diligence practices (EU proposal 2014, 4).

Once a downstream company, as shown in Figure 3, can verify it is sourcing from a conflict-free smelter the end product can be certified as conflict-free from DRC.

**Figure 3: The 3Ts Supply Chain: Structured for successful traceability**
Source: Hayes 2014.

### 4.1.3 Downstream Companies

The refiners and smelters are then selling the metals to the downstream part of the supply chain, which spans many industries and consists of several tiers. The metals go to a variety of suppliers of the OEM or customer facing company; see example below for the ICT value chain in Figure 4 (Prendergast and Lezhnev 2009). Downstream refers to the part of the value chain from the smelters and refiners onwards to the various suppliers such as component manufacturers, original equipment manufacturers (OEMs) and product manufacturers (OECD 2011).
The industries involved in the conflict mineral value chain range from ICT and automotive, which are already relatively active in responsible sourcing of 3Ts, to industries that are less known to be sourcing 3Ts. These include aerospace and defense, jewelry, packaged food, medical devices, tooling, toys, and apparel/footwear (Runde and Sowers 2013). A detailed overview of industry use of tin, tungsten and tantalum can be found in the appendix 4 (Table 13).

The following paragraphs focus on ICT and automotive industries’ involvement in the 3T value chain. Both ICT and automotive are among the most active downstream industries, as shown in Figure 5. Many initiatives that are now active across industries began in the ICT sector. Therefore, the beginnings of these ICT initiatives will be explored in the coming chapters alongside the focus on automotive industry to examine their development after recent public regulation attempts.
The ICT industry is depicted as an ideal entry point for civil society campaigns due to their visibility to end-customers as well as their major share in the sourcing of minerals (Lehr 2010). The industry’s consumption amounts to 50% of tantalum, 26% of tin, and 9% of gold (ITU 2012) and explains why the ICT sector is currently leading in attempts of sustainable mineral sourcing.

In the automotive industry, 3Ts are used in several parts of the car from audio equipment, seatbelts to fuel pumps (Runde and Sowers 2013). The brand of automotive companies is similarly visible to their end-consumers. Branding and reputation are therefore important factors for the automotive industry as well. Though, it is interesting that the automotive industry is not as active as the ICT industry in public-private partnerships and other forms of private governance, as will be shown in the next section. One can observe a difference of engagement between automotive companies based in the EU and US, as shown in a report by Steinweg and ten Kate (2013), investigating the due diligence practices of European companies that are not, and that are required to report under the Dodd-Frank Act. Hence, it is of particular interest to this thesis to investigate how public governance interacts with the automotive industry.

Challenges related to sustainability requirements pointed to by theory are disconnected upstream and downstream parts of global value chains as well as the lack of information sharing (Ponte and Gibbon 2005) and transparency in a multi-tier system (Young et al. 2010). The importance of lead firms in global value chains (Gibbon and Ponte 2008) for the trickling down of sustainability policies
throughout the value chain is stressed in academia and strengthened by the involvement of NGO campaigns and social pressure on consumer brands (Young et al. 2010, Epstein and Yuthas 2011, Fransen and Burgoon 2014). "It is now generally accepted that companies will be held responsible for all materials sourced and distributed throughout their supply chains. Legal responsibilities and ethical expectations often are imposed upon the final company or brand, not the suppliers" (Epstein and Yuthas 2011, 14).

Various drivers of change are found in global value chain literature and it appears important that actors at both ends of the value chain are taken into consideration when it comes to this. Component and equipment suppliers on the upstream end of the value chain can leverage their market dominance in order to set standards. Consumers as the last link of the downstream part are seen as major change agents in value chains (Gereffi et al. 2005). Most importantly as a third element, the overall finding is the importance of regulation as a driver of change in global value chains, as pointed out by Gereffi et al. (2005, 99): "Global-scale regulations, the ‘rules of the game’ as it were, have a profound effect on the shape and direction of change in global value chains."

In summary, these observations lead to the question of governance of conflict mineral value chains. Several multi-stakeholder and public—private initiatives have been established since the first campaign raised awareness about conflict minerals in ICT value chains. The following section will explore the landscape of conflict mineral governance, identify a timeline and study the actors in the public and private spheres of conflict mineral governance.

4.2 Landscape of Conflict Mineral Governance

This part supports section 5.1 on THG interactions as it answers the questions “who interacts” and "how do interactions change over time” following Eberlein et al.’s (2014) framework of analysis for THG. Abbott and Snidal’s (2008) governance triangle will help to visualize a timeline of changing interactions between the public and private sector, as well as civil society organizations.

As a starting point, the following desk review explores the multi-stakeholder, private, and public actors as relevant to this research in detail as part of the THG that emerged around conflict minerals to date. A short description of the main actors involved in the governance of conflict minerals is used to identify interactions between the existing tools and actors in the analysis part of the paper. The overview of organizations as relevant to this study is therefore not exhaustive.
4.2.1 Public Actors

In the first half of 2014 alone, the EU proposed a directive on conflict minerals, the SEC received the first round of conflict mineral reports and most recently the Trade Commission amended the Securities Exchange Act of 1934 through the Business Supply Chain Transparency and Slavery Act of 2014. Since the first report of the UN Group of Experts on the Democratic Republic of the Congo (UNGoE) to the UN Security Council in October 2002, governments took action, including legislative proposals to foster certification schemes and efforts to improve regional peace building and resource governance in the DRC (Chase 2010). The trend in conflict mineral regulation seems to go in the direction of more government involvement on conflict mineral regulation. This is in line with Lehr’s (2010) recommendation of effective governance of conflict minerals, which is in need of more traditional government involvement, e.g. top-down regulation. This development further validates Verbruggen’s (2013) finding on the importance of state presence and the existence of public regulation as a necessary precondition for the enforcement of private regulation, which will be analyzed for conflict mineral governance in section 5.2.

UN Security Council and UN Group of Experts (UNGoE)

In response to several UN Security Council Resolutions on the armed conflict in the DRC, the UN Group of Experts on the Democratic Republic of the Congo (UNGoE) has been established to deliver reports on the ongoing crisis in the DRC. By October 2002 a report had uncovered the link between the ongoing conflict and resource extraction. Only in 2010, when the US was signing the Dodd-Frank Act into law, did the UNGoE recommended a due diligence approach which has been supported by the Security Council Resolution 1952 that called upon all states to raise awareness and implement such due diligence. Consequently, the development of the OECD Due Diligence Guidance and its implementation in national legislation in the GLR has been initiated (Manhart and Schleicher 2013).

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

The Guidance has been developed through a first example of collaborative government-backed multi-stakeholder initiative on responsible supply chain management of minerals from conflict-affected areas. Its objective is to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices. The Guidance is also intended to cultivate transparent mineral supply chains and sustainable corporate engagement in the mineral sector with a view to enabling countries to benefit from their mineral resources and preventing the extraction and trade of minerals from becoming a source of conflict, human rights abuses, and insecurity. (OECD 2013a, 3)
The voluntary OECD Due Diligence guidance follows a five-step approach and works for upstream, as well as downstream companies that supply or source 3TGs from conflict-affected and high-risk areas. In brief, the five steps are (Manhart and Schleicher 2013, 35):

1. Establish strong company management systems;
2. Identify and assess risks in the supply chain;
3. Design and implement a strategy to respond to identified risks;
4. Carry out independent third-party audit of supply chain due diligence at identified points of the supply chain;
5. Report on supply chain due diligence.

The OECD guidance serves as the global benchmark for other initiatives, as the desk review, as well as the interviews supporting this research, showed (for full transcripts, see attached CD). Not only did the US Dodd-Frank Act and the EU draft regulation refer to the Guidance but domestic legislation in the DRC and Rwanda, as well as the ICGLR align with the OECD Guidance. Several industry initiatives, for instance the CFS, integrate the OECD Guidance and develop complementing guidance material that help companies to adhere to the five due diligence steps (Bulzomi 2014, Interviews 3, 6, 8).

**US Dodd-Frank Act**

Consequently, in July 2010, the United States Senate passed Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which contains a provision on conflict minerals. It requires publicly traded downstream companies to report to the SEC on an annual basis whether they source minerals from the Democratic Republic of the Congo (DRC) or its neighboring countries and if so, report on measures taken to determine the location of origin of minerals used (Lehr 2010). In order to comply with Dodd-Frank, the OECD Due Diligence can be followed as an international standard. Whereas, this regulation sets mandatory expectations in regards to due diligence, “the legislation has a new governance gloss because it does not tell companies how to conduct due diligence […] It likely reflects the lawmakers’ realization that they do not have the expertise to delineate in detail what an effective due diligence system looks like in a conflict zone. “ (Lehr 2010, 163).

US companies have since reacted and had to submit conflict mineral reports for the first time in May 2014. European companies are required to report to the SEC in case they have a dual listing following Section 13(a) or 15(d) (Steinweg and ten Kate 2013). In addition, the Öko-Institut found in...
its report for the German Industry Association that European Companies are often affected by the legislation as suppliers to American companies (Manhart and Schleicher 2013). The opposite can also be shown, which for instance the Somo report (Steinweg and ten Kate 2013) highlights. Only a few of the downstream lead firms in Europe are affected by the Dodd-Frank Act. For instance, only 4 out of 20 automotive companies in Europe had a due diligence system in place in 2013.

Nevertheless, in the Enough Project’s recent evaluation of the Dodd-Frank Act, the experts find that many international reforms by companies and governments have been spurred by the US regulation. In order to comply with the law, third-party conflict-free audit systems have emerged. The Conflict-Free Smelter Program and due diligence guidelines by the OECD and United Nations as outlined have been finalized in the aftermath of the regulation (Bafilemba et al. 2014). The power of the shadow of the state (Abbott 2012) will be further discussed in the analysis, chapter 5.

Even though the Dodd-Frank Act is regarded as precedential regulation requiring companies to conduct due diligence in retrospect, first reactions have seen significant criticism. Disengagement of international companies, shifting their sourcing to other producing regions and the resulting de facto embargo of all minerals originating from the DRC, has led to severe negative side effects. Local communities depending on mineral trade have been left without income and in general the trade in 3T from the DRC has plummeted. The Dodd-Frank Act was however not the only influencing factor that contributed to the de facto embargo, as described below (Steinweg and ten Kate 2013, Bafilemba et al. 2014).

**DRC Government**

In September 2010, in reaction to the Dodd-Frank legislation and increased international pressure to address the link between the minerals and conflict, the DRC mining authorities and President Kabila banned all artisanal mining activities in the provinces of North Kivu, South Kivu and Maniema. Even though the ban was lifted in March 2011, it had severe socio-economic consequences. Local communities depended on the mining income and local minerals traders had to sell their minerals at a discount. The military used the ban to increase smuggling and their control over the mine sites. In addition, international trade in 3T from the DRC plummeted and sourcing moved to other countries due to the risk of reputational damage. Hence, the negative impact resulting from the Dodd-Frank Act is often referred to as de facto embargo on the DRC 3T mining (Matthysen and Montejano 2013).
Since then the DRC government has endorsed the OECD guidance and in 2012, included the ICGLR Regional Certification Scheme and Mechanism in national legislation. It also lists validated mines in Kivu provinces (Johnson 2013).

EU Draft Regulation

In March 2014, civil society representatives held high expectations that the European Commission would adopt even stronger legislation on conflict mineral supply chains than the provisions contained in the U.S. Dodd-Frank Act. On March 5, 2014 the Commission proposed a due diligence self-assessment scheme, which makes it voluntary for companies to join. In explaining its actions, the commission pointed to unintended side effects of the Dodd-Frank Act, such as incentivizing companies to disengage or divest from countries that pose a risk to companies’ value chains (Manhart and Schleicher 2013, Bulzomi 2014).

The key features of the EU draft regulation are as follows. The EU directive creates a supply chain due diligence self-assessment system, which is voluntary in character. The focus of the scheme is the upstream part of the conflict mineral value chain, which applies to approximately 400 EU importers. Importers of 3TGs into the EU can undertake a self-certification to disclose that they are not contributing to the financing of conflict. The opt-in includes the obligation for importers to conduct due diligence along the lines of the OECD guidance. The EU will then receive the findings and annually publish a list of “responsible smelters and refiners” with the support of the OECD secretariat. This list is intended to become a tool for downstream companies to support the identification of responsible suppliers. The incentives offered to companies that opt in on due diligence include public procurement contracts and funding possibilities.

The Commission has closely mirrored the steps outlined by the OECD Guidance, drawing on the experiences of the pilot projects. The directive is global in scope and goes beyond conflict-affected areas in the DRC and Great Lakes Region (Bulzomi 2014).

In detail, the EC press release (2014, 2) lists “a number of incentives supporting the Regulation to encourage supply chain due diligence by EU companies, such as:"

- A public procurement tool set up to incentivize companies selling products containing 3TGs to public authorities;

- Financial support to encourage due diligence activities by small and medium sized enterprises (SMEs), as well as for capacity building and outreach by the OECD;
- EU companies that conduct responsible sourcing from conflict-affected countries will be recognized visibly;
- Diplomacy efforts and policy dialogue will be initiated to support other countries’ engagement for due diligence;
- Multi-stakeholder due diligence initiatives will be supported by “raw materials diplomacy”;
- Support of conflict-affected countries and areas by means of development cooperation;
- EU Member States will support the regulation through their own policies and tools.

Yet it has to be noted that this is a draft proposal of the regulation now due to be decided on in the European Parliament. One can expect that a draft proposal just as in the case of the US Dodd-Frank Act in 2010 might have some influence on the regulated entities, which will be explored in section 5.3.

In the supplement to the communication issued by the EU Commission they name the following private and civil society organizations referencing the Öko-Institut’s report (Manhart and Schleicher 2013). For 3Ts, these include the International Tin Research Institute Tin Supply Chain Initiative, Certified Trading Chains Initiative, Conflict-Free Smelter Program, Analytical Fingerprint, Solutions for Hope, Conflict-Free Tin Initiative, Public Private Alliance for Responsible Minerals Trade, PROMINES (EC communication 2014, 5). Most of them will be discussed in the following section on private actors, as far as they are relevant to the further analysis of interactions.

4.2.2 Private Actors

This section covers private initiatives concerning conflict minerals from the DRC through new forms of governance, e.g. standard setting, self-regulation, voluntary, not legally binding initiatives, and other innovative collaborations (Abbott and Snidal 2008). These private initiatives are set up by corporations and NGOs, which have been filling the gap of transnational law covering corporate responsibility towards global value chain issues, such as human rights abuses and conflict (Lehr 2010, Arimatsu and Mistry 2012). Abbott and Snidal (2008, 3) noticed the possibility of de facto mandatory participation in initiatives for global corporations, through “coercive pressure from NGOs, customer requirements, industry association rules and other forces that render them mandatory in practice.” Certain industries are more engaged in conflict mineral issues than others opposing the de facto mandatory participation the case of conflict minerals (see section 4.2). The following list gives a non-exhaustive overview of the main private sector initiatives.
EICC-GeSI

The ICT industry has been leading in private initiatives due to its complex and global value chain. Hence, as early as 2001, the Global e-Sustainability Initiative (GeSI) was formed, with the aim to apply ICT technology for the sustainable development of society at large. Currently GeSI has 31 member companies from the ICT sector and a range of partners, such as academia and international agencies, like the United Nations Environment Program (UNEP).

The Electronics Industry Citizenship Coalition (EICC) was established in 2004 to work with supply chain challenges through a standardized code of conduct and broad industry collaboration. Nearly 100 ICT companies are currently members of EICC. The breadth of companies implementing the EICC Code of Conduct also stems from the thousands of Tier 1 suppliers that are required to implement the code when supplying EICC members (Interview 6).

In 2005 the EICC and GeSI entered a strategic partnership and they have launched several projects targeting conflict minerals in value chains. These are for instance, the Conflict-Free Sourcing Initiative (see below), the former Extractives Workgroup, which is also open to companies and associations from other industries. As of November 2012, three non-member industry associations and eight partnering companies have joined. The group is comprised of three subgroups targeting the upstream, smelter, and downstream part of the conflict mineral value chain respectively. On the upstream part EICC-GeSI cooperate with certification and tracking systems. For the smelter level, it developed the Conflict-Free Smelter program, which is outlined below and referenced for smelters and refiners by the OECD and the Dodd-Frank Act. For the downstream part, the workgroup developed its Conflict Mineral Reporting Template. Both conform to the OECD Due Diligence Guidance (Runde and Sowers 2013).

Conflict-Free Sourcing Initiative (CFSI) and Conflict-Free Smelter program (CFS)

Founded in 2008, CFSI has become one of the most respected resource platforms for companies across sectors. Even though the majority of members stem from the ICT industry, representatives from other industries come from automotive, food packaging, and aerospace/defense.

In early 2011, CFSI members launched the industry-led Conflict-Free Smelter Program (CFS), which conforms to the OECD Guidance. The program addresses the choke point of the conflict mineral value chain as described in section 4.1.2 and evaluates the sourcing activities of smelters...
in order to determine if the smelter can be certified as conflict-free and be listed on the CFS online platform. When the audit program was launched in 2009 only one smelter passed as conflict free, which has since increased to 58 3T smelters listed on CFS’s website (Manhart and Schleicher 2013).

Through the program, companies can source responsibly from conflict-free smelters that are audited by the CFS and integrate the data into their own due diligence (Matthysen and Montejano 2013). Other upstream initiatives, such as iTSCI and the ICGLR mechanism complement this and are integrated in the CFS’s audits.

Despite the advantages of this program, most facilities complying with CFS are sourcing from low-risk countries, which added to the risk of the de facto embargo outlined above (Manhart and Schleicher 2013).

**Automotive Industry Action Group (AIAG)**

AIAG is an industry-led association of automakers, manufacturers, retailers, suppliers, service providers founded by Chrysler, Ford, and General Motors. Since 2010, AIAG has a Conflict Minerals Working Group that collaborates with the EICC-GeSI and its CFS, as well as with the OECD Pilot Program. Based on the EICC-GeSI template and the OECD Guiding principles, the AIAG developed an online platform for its members to file conflict mineral reports (Runde and Sowers 2013).

As reported by AIAG (2013, 2014), motivations for engaging in the conflict mineral issue beyond regulatory compliance differ between OEMs and Tier 1 suppliers. Whereas Tier 1 suppliers respond to the requests from OEMs, OEMs cite adherence to their human rights policy as the main motivational factor. Currently 44 members, mainly US-based from private organizations, NGOs, and academia are participating in the working group. Leading manufacturers are Chrysler, Ford, General Motors, Honda, Nissan, and Toyota (AIAG 2013).

Ford is among the most active members, chairing the AIAG Conflict Minerals Work Group, also sitting on the governance committee of the PPA, and participating in the MSG, and EICC-GeSI initiatives. Looking at the membership of the AIAG, one notices the dominance of American car makers, as opposed to European, with Fiat being the only active European company involved (AIAG 2014). The difference in state presence and public regulation in these two geographies
could act as one differentiation factor in private participation. This will be explored in section 5.2 where the EU and US approaches to conflict minerals will be compared.

4.2.3 Civil Society and Multi-stakeholder Initiatives

Lehr (2010, 151) characterizes multi-stakeholder initiatives as follows: “Multi-stakeholder initiatives consist of groups of stakeholders, typically some combination of NGOs, companies, responsible investors, business associations, or governments. A number exist in the corporate social responsibility space.” The following are most important for conflict mineral governance and are described in detail in order to set the stage for further analysis.

*Global Witness*

Founded in 1993, Global Witness is one of the main watchdog NGOs monitoring the conflict mineral issue, policy activities and assessing companies’ involvement in conflict minerals, as well as their reports. This campaign group has been formed as one of the first in reaction to the UNGoE report in 2002, as can be seen in the governance triangle, Figure 6 in section 4.3.

The initiative specifically campaigned for a mandatory US regulation and was defending the section1502 on conflict minerals when “US industry associations, the U.S. Chamber of Commerce, the National Association of Manufacturers (NAM) and Business Roundtable appealed the Washington, D.C. court’s decision to uphold the SEC’s final rule for Section 1502” (Global Witness 2014). Currently, Global Witness is campaigning together with 60 other international NGOs for “robust European legislation that places mandatory supply chain due diligence requirements on EU-based companies that source natural resources from conflict-affected and high-risk areas” (ibid.).

*Responsible Sourcing Network—Multi-Stakeholder Group*

Since 2009, the Responsible Sourcing Network has addressed conflict minerals in the DRC through a broad collaboration and monthly phone calls among stakeholders from the private and public sector, NGOs, and investors (Runde and Sowers 2013). These stakeholders collaborate to raise awareness, coordinate outreach and promotion of public policies in order to implement initiatives across sectors focused on the economic development in the DRC. The Multi-Stakeholder Group is comprised of three working groups. Focusing on diplomacy, it addresses root causes, by
involving the US government and others to work for peace in the region. The policy group closely interacted with the SEC in regards to the Dodd-Frank Act. These efforts are complemented by the economic development group, which encourages investments in the DRC (ibid.). The Multi-Stakeholder Group cooperates closely with the EICC-GeSI, CFS, PPA, ITRI, OECD, PACT, USAID and a number of companies (see detailed list in Appendix 2, Figure 8).

**PPA**

The US Government initiated the Public-Private Alliance for Responsible Minerals Trade (PPA) in November 2011 after reports first found negative impacts stemming from the Dodd-Frank Regulation. The Alliance is a multi-stakeholder effort between government bodies, such as the US State Department, USAID, and the ICGLR, non-governmental organizations like PACT, companies and industry organizations from the upstream part of the value chain and mainly ICT industry from the downstream part. To date, the alliance has 47 members including 14 NGOs, 3 government bodies, 26 companies, and 4 industry associations. It is set up in order to help existing sourcing mechanisms through pilot programs and resources. Its aim is to foster the supply and legitimate conflict-free minerals from the DRC in order to tackle impacts resulting from the de facto embargo as explained under point 4.2.1. Companies and industry associations are requested to support the alliance financially in order to become a member, which resulted in US$ 1.2 Mio raised to support traceability solutions (Manhart and Schleicher 2013).

### 4.3 The Development of THG of Conflict Minerals in the Governance Triangle

The following timeline based on Johnson (2013) places the above-described governance actors along the development of THG of conflict minerals displayed in the series of governance triangles in Figure 6. This overview of the development of initiatives supports the analysis of governance interactions and relations between the different initiatives and mechanisms in chapter 5.

---

5 The following overview is an extensive list of events and initiatives until the time of writing in July 2014, but the paper does not claim to be exhaustive.
As can be seen in the status of actors in the year 2002–2003 on the upper left corner of Figure 6, the issue of conflict minerals in supply chains was first taken up by the intergovernmental body of the United Nations. Upstream and larger downstream companies were approached regarding the issue of conflict minerals in 2002 and 2003 by the UN Group of Experts on the Democratic Republic of the Congo (UNGoE). Reports by the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo to the UN Security Council in October 2002 listed several European upstream companies to be indirectly linked to conflict and hence suspected to have violated the non-compulsory OECD Guidelines for Multinational Enterprises (Manhart and Schleicher 2013).

It took until 2014 and major uptake of civil society campaigns as well as voluntary private sector initiatives before public regulation requested companies listed at the SEC to report on their supply chains regarding conflict minerals for the first time due to the US Dodd-Frank Act. This timeframe
firstly indicates that human rights issues in global value chains are difficult to tackle from a public regulatory side as they go beyond the jurisdiction of a single nation state. Since then national governments, NGOs, campaign groups, and the private sector in the United States, Europe, and the Great Lakes region in Africa have been engaged in several initiatives and regulatory efforts to create a market for and foster responsible sourcing of minerals in conflict-affected areas. Well-known manufacturing companies have been working on developing due diligence mechanisms and traceability schemes throughout their value chains and across suppliers (Johnson 2013, Bourgouin and Chase 2014).

Three approaches to the connection between conflict and minerals were outlined by Poulsen’s (2010) documentary Blood in the Mobile. First, downstream companies using minerals from conflict-affected areas were approached to justify whether they were sourcing from the DRC. Second, public regulators where asked to sponsor bills prohibiting conflict minerals in Western value chains and implement structures for disclosure of mineral origins. And third, non-governmental organizations included the issue of conflict mineral in their agendas and campaigned to create awareness (Ayres 2012). Since then, THG consisting of public, private and non-governmental organizations, including industry working groups formed, has addressed the relation between mineral sourcing and conflict in various ways.

On the private sector side the ICT industry pioneered with its Electronic Industry Citizenship Coalition (EICC) established in 2004, the Global e-Sustainability Initiative (GeSI) formed in 2001 and multi-stakeholder efforts, such as the Conflict-Free Sourcing Initiative (CFSI) in 2007. The initiative and its reporting template are a well-respected resource for companies across a range of industries (Runde and Sowers 2013). The main initiative in the automotive sector is the Automotive Industry Action Group (AIAG). This development of private sector participation, as shown in Figure 6, is in line with Abbott’s (2012) observation on targeted private sector campaigns by civil society as being the main driver for private sector participation in THG.

From a public governance side, the US Dodd-Frank Act and Section 1502 on conflict minerals was signed into law in 2010. Many downstream companies were confronted with the issues around conflict minerals and requests peaked. Effects of the first mandatory public regulation on conflict minerals were twofold. On the negative side, in September 2010 a de facto embargo for minerals originating in the DRC followed a presidential ban by DRC president Kabila who suspended all artisanal mining in the provinces of North Kivu, South Kivu and Maniema (Matthysen and Montejano 2013). On the positive side, increased attention to human rights issues in global value
chains can be observed. In December 2010, the Conflict-Free Smelter Program (CFS) was launched, attempting to help companies to meet the reporting requirements under the Dodd-Frank Act. AIAG, established in 1982, formed a Conflict Minerals Working Group (Runde and Sowers 2013).

In 2011, the Dodd-Frank Act spurred the launch of initiatives and the frequency of events increased. In March 2011, the mining ban in Eastern Congo was lifted. In May, the OECD Due Diligence Guidance was published, which was endorsed by the DRC government in September. In response to the de facto embargo, the DRC government tried to establish conflict-free trading houses and Motorola and AVX launched the “Solutions for Hope” initiative in July 2011 in partnership with iTSCi (the main tag and trace initiative on the ground) to source tantalum conflict-free from DRC. In November 2011, the Public-Private Alliance for Responsible Minerals Trade (PPA) was launched by USAID in cooperation with Resolve to provide a resource platform for companies, NGOs and industry associations (Johnson 2013).

In 2012, the DRC included the ICGLR Regional Certification Scheme and Mechanism as legislation and lists validated mines in Kivu provinces. In late April 2012, armed conflict with rebels was a setback in North Kivu, which was followed by a government ban on mineral transfer across borders in DRC. This was followed by the Conflict-free Tin Initiative (CFTI), which was launched by Traxys, Motorola and RIM (Johnson 2013). After 2010, the Enough Project Campaign, Raise Hope for the Congo, published for the second time an electronics industry ranking, attesting the industry progress made in tracing, auditing, and certification efforts (Lezhnev and Hellmuth 2012). AIAG announced the development of the first conflict mineral online reporting platform, called iPoint, in coordination with EICC-GeSI in September (Runde and Sowers 2013).

From the government side, Canada and the EU followed suit and issued proposals on conflict mineral regulation in 2013 and 2014. In March 2013, Canada introduced a bill similar to the Dodd-Frank Act, but included the explicit endorsement of the OECD guidelines and added the upstream part of the value chain to the activities covered under due diligence. In April 2013, the EU Commission launched a public consultation in order to prepare its response to conflict mineral sourcing (Johnson 2013). In March 2014, the EU published its draft proposal on conflict minerals, targeting European upstream companies through a voluntary due diligence scheme (Bulzomi 2014). In July, the SEC received the first round of conflict mineral reports and most recently the Trade Commission amended the Securities Exchange Act of 1934 through the Business Supply Chain Transparency and Slavery Act of 2014.
In summary, Figure 6 visualizes the issue of conflict minerals was first taken up by an intergovernmental body, followed by a few civil society initiatives, as shown in the upper left quarter. Secondly, this triggered more civil society and private sector initiatives to become active on the topic, while the ‘state’ corner of the second quarter on the upper right of Figure 6 stays empty. The only response from government visible in that regard is an attempt to develop a tool to identify minerals from conflict regions, see German BGR. In 2010 in the lower left quarter, the force of civil society campaigning as described in section 2.1.3 can be seen. Many more private sector initiatives are being set up and existing industry associations are establishing conflict mineral working groups. Multi-stakeholder and public-private partnerships are being formed, while this development encourages the OECD to formulate their guidance document on conflict minerals, which is being piloted with upstream and downstream businesses, coordinated through civil society organizations.

Later in 2010, the first government regulation was signed into law, which pushed the topic of conflict minerals higher up the agenda, downstream companies were confronted globally and the power of the shadow of the state (Abbott 2012) can be observed as events speeded up in the following year. The lower right quarter of Figure 6 shows that with the US leading on the issue of conflict minerals other governments are pushed to follow suit, as Interviewee 3 also states:

I don’t want to say that this is forced upon Europe, but […] there is of course the Dodd-Frank Act in the US and that kind of helps speeding up a lot of the due diligences on the ground […] it was Dodd-Frank that really was, you know, the pushing force behind people, companies, wanting to implement due diligence on the ground, so there has been a legislation in the US, there has been a legislation in the region […] it seems sort of like Europe is called to do something as well […] it’s I would say more a global action that in the end is dragging Europe in […] it’s now for Europe just a matter of aligning with what is already existing, which is perhaps more difficult.

The increased activities from public governance side complete the triangle of THG; public, private and civil society actors are now all active. As described in the theory section 2.1.2, horizontal governance had been doing the groundwork to prepare the floor for further vertical governance (Abbott 2012, Boström and Karlsson 2013).

This development also underlines the statement made during Interview 9 that regulation has to be seen from a process point of view, as it takes time to develop a regulatory process for complex human rights issues in global value chains. The European Commission referred to the processes around international logging:

It was also based on an international process […] to combat illegal logging […] the EU also established a voluntary licensing system for timber products with the interested countries and then
[...] the timber regulation so a mandatory regulation was born in the EU [...] the intention is not to stop now, definitely not with this proposal but we have to look at this as a process. I mean the OECD started something, now we also started with a proposal which we believe makes sense and will improve the supply chain transparency in the EU and then [...] we have to assess the effectiveness and take the necessary steps for further improvements" (Interview 9).

Based on this section, three questions have to be answered, (1) who is interacting (section 5.1) (2) are the interactions coherent (section 5.2) and (3) does THG of conflict minerals carry the expected effects in terms of enforcement capacity (section 5.3) with a focus on the recent development of the public regulatory part. The latter makes it necessary to compare the potential of the public governance schemes, the US Dodd-Frank Act and the EU draft regulation (see section 5.2).

In conclusion, the above chapters show that private initiatives, civil society campaigns and public regulation are cooperating closely. It becomes clear that campaigns, self-regulations, such as voluntary standards, certification schemes and regulation rely on each other in order to govern the complexity of conflict minerals as an issue in global value chains.

5 Analysis of the THG of Conflict Minerals

This chapter uses the findings of the previous chapter on governing conflict minerals and connects them to the theory chapter, which provides the framework for this analysis part of the thesis. The analysis is supported by the empirical work that has been carried out during this research. Hence, this chapter seeks to answer the guiding question: How do the different actors of transnational hybrid governance of conflict minerals interact and what can this tell us about their potential to incentivize companies to adopt responsible sourcing practices?

First, the THG interactions between the governance actors described in section 4.2 will be analyzed in depth along the framework developed by Eberlein et al. (2014) in order to uncover relations between governance actors. Second, the coherence of governance tools of these actors will be analyzed utilizing Verbruggen’s (2013) set of criteria as the basis. Depending on the findings of the next sections the criteria will be adapted to analyze specifically the coherence amongst public governance actors. This will lead to a comparison between the two major public regulators, the EU and the US, as state involvement and public-public coherence is crucial for the enforcement capacity of THG, and makes an enlargement of Verbruggen’s (2013) criteria of coherence of THG necessary. Third, the European automotive sector will be studied from a time
series perspective before and after the announcement of the European draft regulation. This will give an indication of the current enforcement capacity of the THG of conflict minerals on European companies.

5.1 Transnational Hybrid Governance Interactions

Whereas the previous chapters have uncovered the complexities of conflict mineral value chains and identified the key actors in the THG of conflict minerals, this section will study how these actors interconnect in order to answer the first question:

1) How do governance actors in transnational hybrid governance of conflict minerals interact?

The framework in Table 7 below shows that (i) framing of the regulatory agenda and setting objectives is dominated by civil society and public governance, with private engagement in the case of the EU (Interview 5). As shown in the timeline in section 4.2, UNGoE and subsequently civil society groups like Global Witness advocate for the agenda of conflict minerals (Interview 6). The second step (ii) formulating rules and norms—is carried out by public governance actors. As such the OECD piloted their set of guidelines for upstream and downstream due diligence, which were largely implemented and referred to by public and private governance actors (Interview 3). However, the process is dominated by public, more vertical governance with OECD and US leading. The EU is following the global formulation of rules, which is “a global action that in the end is dragging Europe in, rather than […] Europe taking the lead on something new” (Interview 3). Implementation is carried out by a broad set of actors, with some being more recognized by global stakeholders than others, including EICC-GeSI, iPoint and CFSI, also named by the majority of interview partners. Step (iii) implementing rules within targets, is led by multi-stakeholder initiatives like MSG and business-led projects and initiatives like Solutions for Hope, EICC-GeSI, iPoint and others including limited state engagement. The PPA for instance, has been set up and funded by the US government, shortly after negative side effects of the Dodd-Frank Act came to light (see section 4.2.3).

Actors involved in step (iv) gathering information and monitoring behavior, range from civil society and private initiatives like iPoint, EICC-GeSI, CFS developing due diligence templates, to recent government databases e.g. SEC, which are monitored by civil society actors. The EU is not present in the data gathering or monitoring component, as its voluntary scheme is not intended to
publicly disclose the reports. They will gather a list of responsible importers to be published annually with the help of the OECD (Bulzomi 2014).

The government pair of public and civil society actors is (v) responding to non-compliance via sanctions and other forms of enforcement. Civil society actors are checking the reports submitted by companies. This is mandatory under the US Dodd-Frank Act and NGOs are expected to develop naming and shaming campaigns on the basis of these reports. Cases can also be taken up by the OECD national focal points by request from civil society actors (Interview 5). Beyond legal measures, the penalties include reputational damages resulting from non-compliance or insufficient reporting, as all reports are publicly available under the SEC scheme (SEC 2012, Interview 5). The EU proposal is currently not covering this component, as it is designed as a voluntary self-certification scheme, which would not actively respond to non-compliance. The announced public procurement tool (EC press release 2014) could function as a compliance incentive.

In the framework developed below for conflict mineral governance, the EU is not included as a public governance actor on step (v) compliance promotion, as the procurement incentive announced (EC press release 2014), has been questioned by several interview partners and reports (Bulzomi 2014, Interviews 3, 5, 7). Similarly, the monitoring and information gathering component number (iv) is limited in the current EU draft regulation.

Finally, in step (vi) evaluating policy and providing feedback, including review of rules is in the short term mainly carried out by civil society, specifically Global Witness (Interview 5). Business initiatives and academia, as for instance the Öko-Report (Manhart and Schleicher 2013), which was commissioned by German industry, and subsequently used as lobbying tool for the automotive industry (Interview 5) also comment on regulation and provide feedback representing their constituencies.
Table 7: Analytical Framework. Governance Actors
Source: Adapted from Eberlein et al. 2014.

<table>
<thead>
<tr>
<th>Dimension of interaction</th>
<th>Component of regulatory governance</th>
<th>Who or what interacts</th>
<th>Change over time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal/agenda setting—framing the regulatory agenda and setting objectives</td>
<td>Rule formation—formulating rules or norms</td>
<td>Implementation—implementing rules within targets</td>
<td>Monitoring, information gathering—gathering information and monitoring behavior</td>
</tr>
<tr>
<td>OECD, US, EU</td>
<td>MSG, PPA, ITRI/ITSCi, Solutions for Hope, PROMINES, EICC-GeSi, iPoint, CFSI, ICGLR Certification</td>
<td>SEC, CFSI, iPoint, EICC-GeSi, CFS</td>
<td>From civil society action to intergovernmental bodies and business to more government involvement</td>
</tr>
</tbody>
</table>
Overall, it becomes clear that even though the issue of conflict minerals in global value chains is a transnational one which requires combined horizontal and vertical governance (Lehr 2010) and THG has been established as shown in section 4.2, governance actors vary per component. Hence, three specific findings on governance relationships in THG can be distinguished.

Firstly, relations of actors per component in the THG of conflict minerals can range from one actor to all three, as visualized in Table 8. Agenda setting, as well as compliance promotion, are led by a civil-public relationship, also described in section 2.1.3 as campaigning. Rule formulation is dominated by public-public interconnections, whereas the implementation is characterized by all three governance groups. Information gathering is split between public and private actors. Civil society and private actors are then evaluating policy in the short term.

Table 8: Overview of governance interconnections.

<table>
<thead>
<tr>
<th></th>
<th>Agenda Setting</th>
<th>Rule Formation</th>
<th>Implementation</th>
<th>Monitoring</th>
<th>Compliance</th>
<th>Evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Actor</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Private Actor</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Civil Society</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Governance</td>
<td>Public-civil and public-private</td>
<td>Public-public</td>
<td>All interacting</td>
<td>Public-private</td>
<td>Public-civil</td>
<td>Private-civil</td>
</tr>
</tbody>
</table>

Secondly, the three governance tools as discussed in section 2.1 can be recognized. Agenda setting is dominated by a public-civil interconnection, also called campaigning, as well as in the case of the EU by public-private interconnections, which will be examined in more depth in the next section. Similarly, compliance promotion is driven by a public-civil interconnection, with naming and shaming campaigns from the civil society side and incentives orchestrated by public actors. Rule formation is the single component where only one category of actors is coming together, hence public-public governance can be observed here. Implementation is characterized by involvement of all three actors, with only limited public engagement, mainly in the form of orchestration since PPA and other organizations have been initiated and are being funded by public actors. Monitoring is governed by public-private actors, whereas only the US as public actor is engaging. The monitoring templates are mainly developed by private actors, which could be an indication for self-regulation. Evaluation in the short term is then mainly led by a private-civil interconnection.
To arrive at a condensed list of governance relations, public-civil interconnections are classified as the traditional campaigning relationship that has been outlined in chapter 2. Similar to campaigning are private-civil relations to some extent, however the two groups are also found to implement together, which means that some alignment can be expected. Thirdly, one main observation is that the public actors involved, namely the EU and US, are not present in the same components due to different designs of their regulations. For this study, the finding that EU and US, as public actors, are not interconnecting in the same components of regulatory governance is of high importance. The fact that public actors are dominating the rule formation component suggests the importance of public-public alignment, which will be studied further. It might directly impact the enforcement capacity of the THG of conflict minerals. Hence, it is necessary to research in more depth the coherence of the two public governance actors. The question of coherence and alignment as basis for enforcement capacity of THG of conflict minerals will be discussed in the next section. The two forms of governance relationships that need to be pursued further are firstly, public-public governance and secondly, public-private governance.

On the question of interconnectedness between the different actors, the framework highlights that in the THG of conflict minerals different tasks are taken up by varying groups of public, private or civil society actors. This finding is a topic in its own right and should consequently be studied in future research.

### 5.2 Coherence of Governance Tools

In regards to coherence between governance actors, the findings of the previous section show there are two dimensions (see Figure 7 below) that can be analyzed by Verbruggen’s (2013) criteria. As shown in section 2.3, two dimensions of alignment are needed: public-private is important due to the increasingly blurred lines between public and private sectors and public-public in order to steer the other actors, in line with the orchestration function of public actors (Abbott and Snidal 2009). However, as Verbruggen (2013) states, the shadow of the state, hence coherent public regulation is needed to act as the “gorilla in the closet”.
5.2.1 Public-Private Alignment

Coming back to the two first components of regulatory governance and separating the actors into EU and US actors, it becomes clear that the upfront part of the governance process is shaped by different actors in the EU and the US. As alluded to in the above section, the US and EU setups result in the two dominant public actors being present in different components. This makes it necessary to briefly analyze the public-private interconnections of THG of conflict mineral value chains in the agenda setting component.

Not only is there a diversity of upstream, downstream, and smelter private actors due to the complexity and industries involved in the mineral value chain as explained in section 4.1, but also the way of engagement with the public actors differs. Interviewee 7 highlights that:

one of the biggest differences is that in the US we did not participate in that [upfront] process until after the act was signed by President Obama in July 2010 because it was after Dodd-Frank passed and it was in there already then there was the opportunity to comment and influence how the [conflict mineral] rule that would be implemented in the law will be drafted. So since the legislation is already set, it wasn’t a fight over what the legislation should be, it was more of a fight over you know how the legislation should be interpreted and there is still a lot of things that the groups did not agree on, but there was quite a bit that they agreed on and so I think […] that for the EU regulation, the dynamics are a bit different.

Therefore, as can be seen in Table 9 the agenda setting component shows in the case of the EU, private actor involvement, which is not always openly visible at first glance. In the US the engagement with private actors happened only after the rule formation. In the case of the EU, for instance one of the main reports used by the EU Commission, the Öko report (Manhart and Schleicher 2013) was commissioned by German downstream companies, including the automotive sector (Interview 5). This reflects firstly the EU’s stakeholder consultation mechanism and secondly, the dynamic that downstream companies might want to prevent mandatory regulation and leave it to the upstream part to work on responsible sourcing (Interviews 5, 10), as discussed in the theory section 2.1.2. One of the key arguments in the report (Manhart and Schleicher 2013) is that the downstream companies in the EU are already engaged in due diligence exercises due to their customers’ requirements from the US and along the lines of self-
regulation (Boström and Karlsson 2013, Interview 9. This is an argument that will be explored in section 5.3, since the baseline data stemming from the Somo report (Steinweg and ten Kate 2013) shows differing results.

Table 9: Overview of governance interconnections in the upfront components of regulatory governance

<table>
<thead>
<tr>
<th></th>
<th>Agenda Setting</th>
<th>Rule Formation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Actor</td>
<td>EU, US</td>
<td>US, EU</td>
</tr>
<tr>
<td>Private Actor</td>
<td>EU</td>
<td></td>
</tr>
<tr>
<td>Civil Society</td>
<td>EU, US</td>
<td></td>
</tr>
<tr>
<td>Governance</td>
<td>Public-civil and public private</td>
<td>Public-public</td>
</tr>
</tbody>
</table>

The difference in preparing the study leads to focus on the public actors involved. Directive and facilitative orchestration as introduced in section 2.1.1 can help explain where this process stems from. In the US, the regulation was drafted before private actors could influence the implementation and in the EU the process was reversed and a public consultation process was taking place beforehand. It is therefore necessary to analyze the public-public interconnections that shape the rule formation component.

5.2.2 Public-Public Alignment

In the case of conflict minerals, taking the findings of the previous section into account public-public relations is one area where coherence is expected to be a key enabler for enforcement capacity. Verbruggen (2013) finds that effective enforcement of private regulation on a transnational level requires public regulation as a precondition. If public regulation is not coherent and pulling private actors into different directions, it is expected to decrease the enforcement capacity of the entire THG of conflict minerals and incentives for companies to undertake due diligence measures. Therefore, Verbruggen’s (2013) four conditions will be specifically utilized in the light of public-public alignment in THG, as this is expected to be the crucial relationship in order to increase the enforcement capacity of the entire THG of conflict minerals.

Following this introduction, this section aims at answering the second question:  
How coherent and internally aligned is the transnational hybrid governance of conflict minerals?
The findings of the previous chapters suggest that alignment between the US and EU regulation on conflict minerals is crucial and regarded as a basis for the enforcement capacity of THG. Misalignment in the public governance space would lead to reduced enforcement capacity, as the market needs certainty about the direction of the “gorilla in the closet” (Verbruggen 2013). Table 10 below gives an overview of Verbruggen's (2013) criteria, adapted to analyze public-public alignment. It lists the features of the respective governance actors in sub-categories specific to the conflict mineral THG comparing the approaches taken by the US Dodd-Frank Act and the EU draft regulation. Based on this overview the coherence between the public governance actors of conflict minerals will be analyzed.
Table 10: Coherence of governance criteria comparing EU and US approaches to conflict minerals
Source: Verbruggen (2013) adapted to public-public alignment.

<table>
<thead>
<tr>
<th>Coherence of governance approaches—adapted to conflict mineral specific tools and approaches</th>
<th>EU Draft Regulation</th>
<th>US Dodd-Frank Act</th>
<th>Alignment Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) The overlap of norms, objectives, and interests of transnational public regulation with public regulatory frameworks</td>
<td>Supply chain due diligence self-assessment scheme</td>
<td>Due diligence requirement if sourcing from conflict-affected area of GLR</td>
<td>high</td>
</tr>
<tr>
<td>Due diligence and responsible sourcing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Human rights and business</td>
<td>European Commission’s 2011 Communication on Corporate Social Responsibility</td>
<td>Business Supply Chain Transparency and Slavery Act of 2014</td>
<td>1</td>
</tr>
<tr>
<td>Importance to keep sourcing in the DRC</td>
<td>Not fueling the war and enable sustainable development on the ground</td>
<td>Importance of transparency, de facto embargo on minerals from DRC when first announced</td>
<td>1</td>
</tr>
<tr>
<td>(ii) The institutional design of regulatory enforcement</td>
<td></td>
<td>low</td>
<td></td>
</tr>
<tr>
<td>Voluntary versus mandatory</td>
<td>Voluntary, opt-in scheme</td>
<td>Mandatory</td>
<td>0</td>
</tr>
<tr>
<td>Targeted stakeholders (upstream, downstream, smelter)</td>
<td>Upstream portion of the 3TG supply chain, targeting 400 importers, primary importers</td>
<td>Downstream part/companies</td>
<td>0</td>
</tr>
<tr>
<td>Geographical scope</td>
<td>Global scope beyond GLR</td>
<td>Only DRC and Great Lakes region</td>
<td>0.5</td>
</tr>
<tr>
<td>Targeted material</td>
<td>3TG, unclear on secondary raw materials</td>
<td>3TG, excludes secondary raw materials</td>
<td>0.5</td>
</tr>
<tr>
<td>Incentives</td>
<td>Public procurement contracts and funding possibilities for SMEs</td>
<td>Mandatory for SEC listed companies, downstream companies request throughout supply chains</td>
<td>0.5</td>
</tr>
<tr>
<td>Directive/Facilitative Orchestration</td>
<td>Facilitative with directive elements</td>
<td>Directive with facilitative elements</td>
<td>1</td>
</tr>
</tbody>
</table>
### (iii) Due process standards in public enforcement mechanisms

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Mechanisms</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Associational structure (self-regulation)</strong></td>
<td>Voluntary, self-regulation</td>
<td>SEC listed</td>
</tr>
<tr>
<td><strong>Market mechanisms (third-party certification)</strong></td>
<td>Self-certification</td>
<td>Third-party audits required</td>
</tr>
<tr>
<td><strong>Legal Status</strong></td>
<td>No legal compliance</td>
<td>Legal requirement, determination</td>
</tr>
<tr>
<td><strong>Scope</strong></td>
<td>Around 400 importers</td>
<td>3000 companies</td>
</tr>
</tbody>
</table>

### (iv) Information management and data sharing between public and public mechanisms

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Mechanisms</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reporting framework</strong></td>
<td>List of responsible smelters and refiners (updated with help of OECD)</td>
<td>Reports publicly available under SEC and issuer’s website</td>
</tr>
<tr>
<td><strong>Certification Mechanism (self-certification, CFSI, OECD, iPoint)</strong></td>
<td>Self-certification, OECD 5 steps approach</td>
<td>Conflict minerals report, if conflict minerals in supply chain, due diligence measures references OECD 5 steps, iPoint, CSFI recognized</td>
</tr>
<tr>
<td><strong>Referenced Templates and Schemes</strong></td>
<td>Mirrors OECD guidelines, only in communication material</td>
<td>No specific schemes referenced, as all schemes recognized as long as third-party auditing</td>
</tr>
</tbody>
</table>
The following points are the main criteria that were highlighted throughout the research by either theory, like Verbruggen’s (2013) criteria, reports or informed by individual interviews with a multi-sectorial group as part of the empirical research.

**Norms, objectives and interests**

In criteria group (I) significant overlap in terms of norms, objectives and interests can be found comparing EU and US approaches. Both frameworks are based on Acts that support the strengthening of human rights in the business context (US Congress 2014, EC communication 2014). The purpose of the regulation in both public governance schemes is to reduce the negative impact of business on human rights in the context of mineral sourcing. Specifically, the due diligence scheme in the EU is set up to stop the connection to financing armed groups, while at the same time promoting sustainable development in the region. In the Dodd-Frank Act the emphasis lies on transparency in order to uncover links to conflict zones and to encourage businesses to undertake steps to mitigate this connection. Hence, it can be concluded that the objectives and norms as basis for the regulation are mainly aligned.

**Institutional design and regulatory enforcement**

In group (II) which examines the “institutional design of regulatory enforcement” (Verbruggen 2013, 512), six subgroups have to be taken into account. These include one of the main differences outlined by all interviewees, which is the mandatory and voluntary character of the respective regulation (Interviews 3, 5, 9, 10). Further sub-criteria are the targeted stakeholders, upstream, downstream of the value chain or the smelter level as explained in section 4.1, followed by geographical scope, targeted material, incentives, and finally the mode of orchestration, directive or facilitative.

The main difference between the respective public governance approaches is certainly the mandatory and voluntary dichotomy, with the EU taking the latter approach. In the media and by main civil society actors, this provoked most critiques (BHR 2014, Bulzomi 2014, Global Witness 2014). In the interviews, this study set out to reveal the de facto status of the EU draft regulation being voluntary in nature and its alignment with the US approach.

The key argument for a de facto mandatory status of the regulation is the public procurement rule that the EU is listing in its communication (EC communication 2014). This rule would require
downstream companies that want to sell to the EU, to report on conflict mineral due diligence according to the OECD guidelines. The EU is also looking to enforce this rule on a national level (EC communication 2014, Bulzomi 2014, Interviews 2, 9). The impact of the procurement incentive is questioned, as it is not anchored in the draft proposal itself. The EU draft regulation hence lacks the transparency of a mandatory scheme that can be checked by civil society and brought to a case under for instance the OECD national focal points (Interview 5).

Specifically, Interviewee 5 doubts the enforcement capacity of the EU draft regulation. By voting for a voluntary opt-in scheme the EU proposal undermines the standard character that the US regulations set for conflict mineral due diligence and the required reporting, which is checked by civil society actors (Interview 5). The voluntary character misaligns the public governance part of THG of conflict minerals and divides it into two parts, where only one has an enforcement mechanism as seen in section 5.1. This lowers the bar also on the global level and decreases the reach of THG of conflict minerals into multiple supplier relationships. Therefore, Interviewee 10 points out that for an effective framework consistent with the US regulation, the EU proposal should be mandatory.

Besides being voluntary, and even for companies that are already working on a voluntary basis in private initiatives, this adds uncertainty for the market (Interviews 1, 4) “to which extent and how the European initiative will implement this voluntary initiatives [sic]” (Interview 10).

Therefore, Interviewee 10 stresses that regardless of the regulation in Europe coming out as mandatory or voluntary, this would not change the enforcement capacity. The key is clear rules and definitions in line with the Dodd-Frank Act with a cross-regional requirement as standard for the entire sector. This minimizes a potential failure of the market to buy from elsewhere or other regions that do not have the same conflict mineral requirements.

In summary, the expectation is that the voluntary nature of the EU regulation might reach companies that are possibly already in compliance with the US Dodd-Frank Act, as they are supplying or selling internationally. The small and medium sized companies will likely be pulled in the opposite direction, hence creating misalignment with the US approach (Interview 5). The incentive structure needs to be analyzed, and the analysis of the automotive sector in section 5.3 will help to uncover the effects.

The targeted stakeholder group in the EU proposal is the upstream part, following the reasoning of Interview 9 to complement the Dodd-Frank Act as they see a gap between the targeted downstream part in the US and the upstream level, which they intend to close. Interviewee 9
sees the regulation as a benefit to the downstream companies that have to comply with Dodd-Frank. In interview 1 it was pointed out that the intended certification under the EU would not help the reporting requirements to customers with obligations to the US Dodd-Frank Act. At the moment there is no incentive for the downstream part in the EU besides the mentioned procurement rule to buy from a supposedly conflict-free upstream part (Interview 10). It can then be questioned whether the 400 importers in the EU would opt in under a voluntary scheme. If the procurement incentive under the EU scheme does not create a market demand from downstream companies in Europe, the importers would not need to opt in. From this analysis, the complementary intention leads to decreased enforcement of due diligence by downstream companies. This finding mirrors the disconnection of upstream and downstream parts of global value chains, which is one of the key challenges outlined by global value chain theory (Ponte and Gibbon 2005), discussed in chapter 2.

In terms of the geographical scope, the US regulation is focused on the DRC and Great Lakes region, which is why it is criticized as being too narrow and stigmatizing a region (Interview 3, 4). This focus allows the regulation to be targeted and provides a clear framework for the market. According to the Metals Association, the current EU draft confuses companies, and adding to the voluntary scheme, can lead to disengagement of the business sector as it becomes too complicated and costly to participate in the opt-in scheme (Interview 10). Though, talking about all regions that are at risk of conflict complements the US approach (Interview 9), which is also recognized as a positive feature by civil society (Interviews 2, 3, 5). The broader geographical scope of the EU proposal might overcome the often-cited de facto embargo of the US, motivating companies to keep sourcing from the region and undertake due diligence. In that regard, it complements and strengthens the enforcement capacity.

The targeted material in the US scheme excludes secondary raw materials. This is a point where the EU proposal is still unclear (Interview 10). This leads to a misalignment not only with the US counterparts, but also with OECD requirements and could add to decreasing enforcement capacity. In terms of incentives, the US sets out a mandatory scheme so companies listed under the SEC have a legal requirement to report, as well as pressure from civil society groups that have access to the publicly available reports. On the EU side, as outlined above, the intended public procurement rule is designed as a lever for downstream companies. Bulzomi (2014) sees the procurement as a powerful commercial tool and incentive to engage companies in Europe. Incentives per se do not constitute a misalignment.
When it comes to orchestration the US and the EU scheme are using tools from both ends of the scale. In general, the US Dodd-Frank Act is heavier in directive tools due to its mandatory character, however it also supports private governance initiatives such as PPA (Interview 8). The EU draft regulation mixes directive and facilitative elements. Mandatory conditions include incentives for public procurement. On the facilitative end, it provides indirect support for instance through raw material diplomacy (EC communication 2013). On this point the two schemes are in alignment. However, as has been shown in this section, the overall alignment in the category ‘institutional design and regulatory enforcement’ is relatively low.

**Due process standards in public enforcement mechanisms**

The associational structure stems from one of the voluntary-mandatory dichotomies. Hence, in the US all SEC listed companies have to comply, whereas in the EU importers can opt in and self-regulate. In regards to the market mechanism, the US scheme is characterized by third-party audits, whereas EU importers will be able to self-certify under the current draft regulation. In this case the coherence seems to hamper, as Interviewee 3 puts it: “the EU is kind of lowering the bar in the business and human rights debate already a little bit with this proposal […]”

As to the legal status and scope, the US scheme is legally binding for around 3000 companies listed under the SEC which helps civil society to file cases, for instance under the OECD national focal points (Interview 5). The EU proposal is not legally binding and targets the around 400 importers in the EU. This is only “a very [sic] small minority of the European companies that are involved in the trade” of products containing conflict minerals (Interview 3).

**Information management and data sharing**

The reporting framework that is set up by the US Dodd-Frank Act promotes transparency as all reports are available online on the SEC website and as a mandatory part of the regulation available on the issuer’s website (SEC 2012). This is an advantage of the mandatory character of the regulation and a main critique of the EU scheme (Interview 5). The voluntary EU proposal lists responsible smelters so that downstream companies can access this information for their due diligence. However, the self-certification promoted by the EU will not be applicable for US due diligence requirements (Interview 1), resulting in misalignment.

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6 An overview of types of orchestration following Abbot and Snidal 2009 can be found in section 2.1.1.
The certification template and process used in the US is not specified. Lehr (2010) calls it a modern policy touch that companies can follow several templates, including the EICC, iPoint and CFSI. In the EU draft, the OECD five-step approach is promoted together with self-certification (EC communication 2014).

The US Dodd-Frank Act does not reference specific templates, yet accepts them with a basis on the OECD guidelines. “Up to this point it remains unclear if the EU draft regulation would accept existing frameworks like the CFSI or iPoint as compliant with their regulation” (Interview 10). This would punish first mover companies that were engaged in private initiatives or as part of a customer request under the Dodd-Frank Act.

As a conclusion, the information management and data sharing criteria could be more explicitly mentioned by the EU draft, since it is following existing regulation where harmonization and alignment are recognized as key for enforcement capacity of all public actors involved (Verbruggen 2013, Interviews 7, 8). Yet, it remains to be seen whether this factor will lead to misalignment depending on the implementation.

Overall, the current EU draft regulation is misaligned on several points with its counterpart the US Dodd-Frank Act. Interviewee 4 comments that “as it [EU draft regulation] stands now [it] is pretty much different to what Dodd-Frank 1502 stipulates, so that could obviously be from an analytical perspective a very interesting situation, if they are not major changes in this draft regulation. […] the main problem would be that you create complete international chaos with the US having obligatory […] and that is […] also going to weaken everything that is coordination or also an exchange between international stakeholders and Congolese ones because of […] a lot of different rules then.”

One overall conclusion is that the alignment between regulatory public schemes is an important fact mentioned throughout the interviews (Interview 6). However, as interview 9 revealed, the EU draft regulation is mainly based on alignment with the OECD, whereas the alignment with the US Dodd-Frank Act has been regarded only as a second priority. Therefore, major misalignment stems from the mandatory versus voluntary design of the public governance tools, and not from the setup as such. The EU Commission’s position in regards to the EU draft regulation is particularly interesting. Interviewee 9 says the number three incentive for companies to look at the issue of conflict minerals in their supply chains after CSR agenda and reputation would be “regulatory obligations".
In regards to the enforcement capacity of THG of conflict minerals, the analysis shows that uncertainty is counterproductive to market mechanisms favoring due diligence. Hence, clear and aligned public governance signals are needed if companies should engage in sustainable sourcing. The current public side of THG of conflict minerals is only in limited parts, such as the basic objectives and purpose aligned, whereas in terms of institutional design the study finds mostly misalignment. As an overall alignment score of 6.5 points out of a possible 16, the analysis finds low to medium alignment between the US Dodd-Frank Act and the EU draft regulation. The ultimate score will vary depending on the final implementation of the EU draft regulation still pending. Currently the categories (ii) the institutional design of regulatory enforcement and (iii) due process standards in private enforcement mechanisms show very low alignment. Category (i), the overlap of norms, objectives, and interests of transnational private regulation with public regulatory frameworks as basis for both schemes is highly aligned. Depending on the implementation, the dimension (iv) information management and data sharing between public and private mechanisms is characterized by low to medium alignment (Verbruggen 2013, 514).

As shown above, the effects of the mandatory and voluntary setup of the respective regulation influence the alignment and complementarity of the two public governance schemes across several categories. Several interviewees (Interviews 2, 9) as well as the Öko report (Manhart and Schleicher 2013), argue that most companies are already required to undertake due diligence of their supply chain under the Dodd-Frank Act due to supplier relations. Proponents argue that the voluntary measures for the upstream part of the value chain complement the existing scheme and close the gap between upstream and downstream. But the Somo report (Steinweg and ten Kate 2013), as well as Interview 5 show concern that European downstream companies are not, and will not be, incentivized to engage in responsible sourcing. The next section is designed to study the European automotive industry as an example for European downstream companies, in order to shed light on the enforcement capacity of THG of conflict minerals.
5.3 Governance of Conflict Mineral Value Chains of European Automotive Companies

It has been shown in this chapter that alignment between public governance actors is the backbone for enforcement capacity in THG. However, the findings specifically for conflict mineral governance have shown that the main state actors, the EU and the US are, in significant parts, not coherent on their measures aimed at incentivizing companies to undertake due diligence of conflict minerals in order to strengthen their responsible sourcing commitment.

In this section, the potential of the THG of conflict minerals will be discussed using the example of the automotive industry in Europe. As shown in section 4.1.3, the automotive industry is the second most active global industry when it comes to private sector initiatives and conflict mineral due diligence. This section will discuss how the findings of the two previous questions inform value chain governance of automotive companies in Europe.

Empirical evidence for this analysis stems from the mapping of available online governance material from European automotive companies. European automotive companies’ responsible sourcing policies and due diligence efforts are analyzed in order to explore the enforcement capacity of the EU draft regulation in coordination with the overall THG of conflict minerals. For a summary of findings see Table 11 below.

The Somo report (Steinweg and ten Kate 2013) finds that before the EU draft regulation had been published “the large majority of companies that are not required to comply with Dodd-Frank 1502 do not conduct due diligence on conflict minerals” (Steinweg and ten Kate 2013, 1). As such during their research and before the EU draft regulation was published, five7 out of twenty European automotive companies mentioned conflict mineral due diligence measures in their sustainability reports, on their corporate governance website or in their supplier codes of conduct.

This is in line with the communication of the EU at the point of publishing the draft regulation:

A 2013 study shows that EU due diligence is not widely spread. Only 12% of companies listed on EU stock exchanges not directly subject to the US legislation refer to conflict minerals on their websites. This is partly because the OECD Due Diligence Guidance, the Dodd-Frank Act and the ICGLR framework are recent, but also because EU companies face implementation challenges (i.e. length of supply chains, multiple operators, lack of awareness). However, 150,000–200,000 EU companies—mostly downstream operators—are involved in the supply chains of the 6,000 affected US-listed companies. (EC communication 2014, 6)

7 The report (Steinweg and ten Kate 2013) finds only four companies, however this research found that Fiat was undertaking conflict mineral measures since 2012.
If the current EU draft regulation would increase the enforcement capacity of the THG of conflict minerals, more European automotive companies should look into the issue of conflict minerals. The research shows that the number of automotive companies integrating conflict mineral due diligence into existing value chain governance has grown from 5 companies at the time of the Somo report (Steinweg and ten Kate 2013) to 10.5\(^8\) companies of the same sample in 2014, when this study was undertaken. This finding gives an indication of the potential of the EU draft regulation strengthening the THG of conflict minerals to incentivize the private sector’s engagement in sustainable sourcing of conflict minerals. However, only seven are going beyond mentioning the issue of conflict minerals on their corporate website and state that they conduct due diligence of their value chain. None of these seven companies make their due diligence reports publicly available, as it is required under the US Dodd-Frank Act (see section 5.2).

The timeline of updated corporate governance material of the companies studied gives an indication that the inclusion of conflict mineral language has followed the announcement of the EU draft regulation on conflict minerals. From the 10.5 companies that have conflict minerals covered under supplier regulation or governance material, 6 mention their undertakings in their sustainability reports, which have been mainly written before the draft regulation was announced. This leads to the conclusion that the expectation of public regulation, hence the shadow of the state (Abbott 2012) already led companies to undertake measures to include the issue of conflict minerals into their corporate material. On the actual activity of conflict mineral due diligence most companies studied are taking a reactive position and are waiting for more clarity on the actual implementation of the EU draft regulation (see also Interviews 5, 10).

All automotive companies approached have declined to talk about the EU draft regulation, which is a fact in itself. This reaction underlines the finding that the European automotive companies have heavily lobbied the Commission over the past months for a voluntary opt-in scheme that targets the upstream part of the value chain (Interview 5). As discussed in section 5.2, this is one of the major misalignments between the EU and US schemes. Three of the companies listed in Table 11, Audi AG, Daimler AG and Volkswagen AG, all members of the German industry association BDI, have commissioned the Öko report (Manhart and Schleicher 2013) mentioned earlier which is, in its recommendations, very similar to the current EU draft regulation (Interview 5).

\(^8\) Companies that at least mention the issue of conflict mineral in their communications, hence showing that they are aware of the issue count with 0.5 points. BMW, GKN PLC and Volkswagen are in this category.
Table 11: Analysis of Automotive Companies’ Engagement in Conflict Mineral Due Diligence
Source: Baseline data from Somo report (Steinweg and ten Kate 2013), 2014 data sources in section 3.4—data collection, see attached CD for detailed table.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Audi AG</td>
<td>0</td>
<td>0</td>
<td>no statement</td>
<td>no statement</td>
<td>issued only every 2 years---not yet included</td>
<td>initiated Öko institut report</td>
<td>no statement</td>
<td>no</td>
</tr>
<tr>
<td>BMW</td>
<td>0</td>
<td>0.5</td>
<td>no statement</td>
<td>no statement</td>
<td>conflict minerals listed under challenges</td>
<td>none</td>
<td>no statement</td>
<td>no</td>
</tr>
<tr>
<td>Burelle SA</td>
<td>0</td>
<td>0</td>
<td>no statement</td>
<td>no statement</td>
<td>no sustainability report available</td>
<td>none</td>
<td>no statement</td>
<td>no</td>
</tr>
<tr>
<td>CIE Automotive</td>
<td>0</td>
<td>0</td>
<td>no statement</td>
<td>no statement</td>
<td>no sustainability report available</td>
<td>none</td>
<td>no statement</td>
<td>no</td>
</tr>
<tr>
<td>Continental AG</td>
<td>0</td>
<td>0</td>
<td>no statement</td>
<td>no statement</td>
<td>no sustainability report available</td>
<td>AIAG</td>
<td>no statement</td>
<td>no</td>
</tr>
<tr>
<td>Daimler AG</td>
<td>1</td>
<td>1</td>
<td>Announcing plans and vague statements---last group</td>
<td>no statement</td>
<td>currently determining the requirements to comply with Section 1502 of the Dodd-Frank Act</td>
<td>initiated Öko institut report</td>
<td>no statement</td>
<td>no</td>
</tr>
<tr>
<td>Faurecia</td>
<td>1</td>
<td>1</td>
<td>Announcing plans and vague statements---last group</td>
<td>no statement</td>
<td>no statement</td>
<td>none</td>
<td>Asks its supplier to provide disclosure of all US legislation</td>
<td>sometimes---no stringent process</td>
</tr>
<tr>
<td>FIAT</td>
<td>1</td>
<td>1</td>
<td>no statement as of Somo finding---wrong, already in 2012 they had something available due to Dodd-Frank Act</td>
<td>Regulatory pressure. In 2012 Fiat Group plans to develop a template for its suppliers to report their source(s) for these minerals.</td>
<td>Commitment: Develop a conflict mineral-free policy to improve mineral traceability and promote ethical sourcing Scope Actions 2011 Results Targets</td>
<td>AIAG</td>
<td>Exploring a methodology for suppliers to report their source(s) for these minerals, or for parts/processes that incorporate these minerals.</td>
<td>Promote social and environmental responsibility among suppliers</td>
</tr>
<tr>
<td>Finnveden Bulten</td>
<td>1</td>
<td>1</td>
<td>own procedures and systems - mid/last group</td>
<td>website no longer available</td>
<td>no sustainability report available</td>
<td>none</td>
<td>no statement</td>
<td>no</td>
</tr>
<tr>
<td>GKN PLC</td>
<td>0</td>
<td>0.5</td>
<td>no statement</td>
<td>no statement</td>
<td>no sustainability report available</td>
<td>OESA Conflict Minerals Committee</td>
<td>no statement</td>
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</tr>
<tr>
<td>Haldex AB</td>
<td>0</td>
<td>1</td>
<td>no statement</td>
<td>no statement</td>
<td>no sustainability report</td>
<td>EICC</td>
<td>from 2014 Global</td>
<td>yes - EICC</td>
</tr>
<tr>
<td>Company</td>
<td>Type</td>
<td>Statement</td>
<td>Sustainability Report</td>
<td>Available</td>
<td>Conflict Minerals Compliance Program</td>
<td>Template Sent to Suppliers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------</td>
<td>------</td>
<td>-----------</td>
<td>-----------------------</td>
<td>-----------</td>
<td>--------------------------------------</td>
<td>-----------------------------</td>
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<td></td>
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<tr>
<td>Mekonomen AB</td>
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<td>no</td>
<td>no sustainability report available</td>
<td>no</td>
<td>none</td>
<td>no</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Michelin</td>
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<td>no statement</td>
<td>none</td>
<td>none</td>
<td>no</td>
<td></td>
<td></td>
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<tr>
<td>Peugeot SA</td>
<td>0</td>
<td>no</td>
<td>none</td>
<td>none</td>
<td>no statement</td>
<td>no</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pirelli</td>
<td>0</td>
<td>no</td>
<td>referring to Dodd-Frank Act</td>
<td>23.07.2014---after EU draft directive conflict minerals due diligence initiated</td>
<td>EICC GeSi</td>
<td>Ford asks Pirelli to undertake due diligence yes---finding that no conflict minerals in their supply chain</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plastic Omnium</td>
<td>0</td>
<td>no</td>
<td>Nov 2013---Conflict Mineral Policy</td>
<td>no statement</td>
<td>none named</td>
<td>yes---see next column yes---to comply with the disclosure requirements of Dodd-Frank Act</td>
<td></td>
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<tr>
<td>Renault SA</td>
<td>0</td>
<td>no</td>
<td>Supply Chain Policy with Nissan</td>
<td>Nissan-Renault Policy on Conflict Minerals following Dodd-Frank Act</td>
<td>AIAG</td>
<td>Renault-Nissan yes---letter to supplier yes---in line with AIAG</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rheinmetall AG</td>
<td>0</td>
<td>no</td>
<td>no statement</td>
<td>no sustainability report available</td>
<td>none</td>
<td>none</td>
<td>no</td>
<td></td>
</tr>
<tr>
<td>Valeo SA</td>
<td>1</td>
<td>own procedures and systems - mid/last group</td>
<td>no statement</td>
<td>no statement</td>
<td>AIAG</td>
<td>supplier required to fill out AIAG foll US Dodd-Frank Act yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Volkswagen AG</td>
<td>0</td>
<td>no</td>
<td>mentions conflict minerals</td>
<td>Not affected by Dodd-Frank</td>
<td>Resource Alliance, Öko institut report</td>
<td>Not affected by Dodd-Frank not clear</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Total | 5 | 10.5 |
Two conclusions can be derived from the above findings:

First, as found in the interviews and section 5.2, the EU draft regulation lowers the bar in terms of due diligence reporting as it is not present in the same regulatory components, specifically in compliance promotion/enforcement and evaluation/review. Therefore European car makers are including conflict mineral language in their corporate material, but they are not obliged to report on or undertake due diligence. Hence, awareness has been increased on the issue of conflict minerals, but in terms of execution the findings of the Somo report (Steinweg and ten Kate 2013) remain valid.

Second, even though downstream companies, hence the European automotive sector is not in the scope of the current EU draft regulation, more companies have taken up the issue of conflict minerals. This leads back to Abbott’s (2012) shadow of the state, which balances the overall enforcement capacity of THG of conflict minerals. As Interviewee 5 points out, even though the EU draft regulation might not be mandatory and as aligned with the US Dodd-Frank Act as it could be, the issue of conflict minerals has been raised, more companies are aware and consumers are becoming more mobilized on the topic.

Since the two main drivers for companies to undertake due diligence measures identified are either customer requests or legislation (Interviews 1, 2, 7), it seems that European car makers and probably other downstream companies in Europe will be left out of the public scope of the THG of conflict minerals. The downstream companies are the lead firms and recognized as drivers of change (Sturgeon et al. 2008) in the global value chain of conflict minerals, so they would have the power to push due diligence requirements down the value chain.

The interviews with business-to-business\(^9\) companies in Europe confirm that requests for due diligence measures come mainly from US customers and not from their EU counterparts (Interview 1). Hence the enforcement capacity of THG of conflict minerals seems to be distorted as EU and US are not in coherence, which creates different incentives for companies in terms of reporting. In general, the automotive industry in Europe is in a waiting position to see how the regulation will be implemented (Interviews 5, 10). In order to study this issue further and come to an overall assessment of the enforcement capacity of the conflict mineral THG, it is recommended to conduct follow-up studies. These could focus on other European sectors and compare industries like the automotive industry across geographies.

\(^9\) Business-to-business (B2B companies) are companies selling to businesses and not to the end customer or consumer.
These findings suggest that even though the EU draft regulation is not in all points (section 5.2) coherent with the other public governance actor the US and its Dodd-Frank Act, it still has influence on European companies. The enforcement capacity of THG of conflict minerals on an overall level is probably lower than it could be, especially taking into account the expected compliance rate of small and medium size companies that lack the capacity of implementing voluntary frameworks (Interviews 3, 5). Nevertheless, more companies will likely implement the issue of conflict minerals into their corporate material after the EU draft regulation has been announced. This finding confirms the influence of the shadow of the state (Abbott 2012), which in the short term seems to counterbalance the lower enforcement capacity due to the misalignment between the US and EU public governance schemes.
6 Discussion and Recommendations

In this chapter the findings of the study will be discussed in the light of the overall research question. This chapter aims at distilling the findings from the analysis chapter on interaction, coherence and responsible sourcing in order to formulate recommendations for the governance model of conflict minerals, discussing implications for public regulation.

6.1 Governance Model

Overall, it can be concluded that depending on the governance component the governance of transnational human rights issues in global value chains requires all three actors in the different constellations, as shown in section 5.1. It has been shown that the analysis of THG and the actual policy work needs to go beyond the alignment between public and private actors. Certainly, the enmeshment of the public and private spheres and the combination of vertical and horizontal governance tools are key elements of THG (Verbruggen 2013, Ponte and Daugbjerg 2015). Nevertheless, to foster the enforcement capacity of THG the various components of the regulatory framework have to be taken into account and analyzed individually.

This thesis found that once THG is disaggregated into components of the regulatory process, two main dimensions can be identified:

(1) public-private and (2) public-public alignment has to be taken into the equation in order to leverage the potential of THG to incentivize companies to undertake certain actions. This shows that depending on the component private sector, public sector or civil society can be in the lead, which gives a useful framework for analysis, as well as for policy development. This thesis identified the need to look specifically at public-public alignment across geographies as a backbone for enforcement capacity of THG. This finding is of major importance when it comes to transnational human rights issues. The relatively intangible issue of human rights violations can only be tackled through regulation from different public governors, which then transcends to the private sector across jurisdictions due to global value chains.

As Lehr (2010, 171) finds, “traditional forms of government still have a role to play, especially when human rights are involved. This is particularly true when human rights violations are occurring in a conflict zone.”

What do these findings mean for governing responsible sourcing? Public actors need to become better at orchestration, also found by Abbott and Snidal (2009), and cross-jurisdictional alignment. Private actors have to be leveraged for certain components of the regulatory process.
THG also needs to be examined from a process perspective. First, this implies the interactions of public, private and civil society actors involved in the various components of the regulatory process are expected to develop and change over time. Second, this means that at least in the beginning of THG, as for conflict minerals, the public sector needs to lead the regulatory process. Hence, the public governance actors need to be aligned in order to increase the enforcement capacity of THG and the potential to incentivize companies to adopt sustainable sourcing practices.

6.2 Implications for Public Governance

Overall, the analysis found public-public coherence is key in THG. Certainly, as the study outlined, campaigning of civil society actors is often necessary in the first place, but then the public sector has to take the lead in order to create a level playing field (Interviews 5, 10). Similarly, Lehr (2010) states that more public regulation is needed in the case of human rights issues in value chains in order to arrive at a level playing field for the private sector. Therefore, public-public alignment is found to be of utmost importance for the enforcement capacity of THG.

As shown in the THG of conflict minerals, private-private and public-private coherence are taken into consideration also by regulators, as the interviews with the EU Commission and the Member of the European Parliament show. However, the intention to complement the US Dodd-Frank Act with the EU draft regulation seems to work against alignment and coherence on the public-public dimension. Whereas US-based and listed companies will be in compliance with some kind of conflict mineral due diligence, the EU does not provide market certainty and policy incentives to engage the private sector, specifically on the downstream part to introduce due diligence measures.

From a private sector perspective as shown in the interviews, European smelters are aware that EU-based importers of 3Ts might face competitiveness issues, because all other smelters on a global scale might not have to comply with the regulation (Interview 10). In interview 1, the comment was made that compliance with the EU scheme might not satisfy US regulation which will in turn increase the administrative burden for European companies that would have to comply with two parallel schemes. This in turn might limit the compliance with the EU scheme, if it remains voluntary.

Findings show that public governance actors should, when it comes to transnational issues, focus more on coherence with other public regulation already in place. Since transnational companies with regional chapters have to comply with different regulation, coherence across
jurisdictional regulation would increase the enforcement capacity overall. In the conflict mineral case, the EU should look in the strategic design of the regulation towards the US Dodd-Frank Act and align the tools necessary as described in chapter 5, so the market receives one strong signal and engages in responsible sourcing. In conclusion, mandatory or voluntary, downstream or upstream focus, the importance of transnational public governance lies in its coherence in order to provide a clear and certain public policy framework to work with private actors.

If public-public alignment has some weaknesses and is not sending clear signals to the market as discussed in the case of conflict minerals, the shadow of the state (Abbott 2012) from regulatory efforts in one jurisdiction still works to a certain extent. As shown in the case of European downstream companies, the EU draft regulation has changed the discourse in Europe and has increased awareness around the topic at company and consumer level. This has led several of the studied companies to include conflict mineral wording in their governance material. Hence, the EU draft regulation has increased the importance of the issue of conflict minerals and responsible sourcing in Europe, as well as globally, even though the alignment with the US Dodd-Frank Act is rather low as shown in section 5.2. As mentioned in section 6.1, the regulation is to be looked at from a process perspective, which leaves room for further alignment between the public governance actors at a later stage.

In summary, from a public governance perspective, the findings of this thesis mirror the current lack of orchestration of new private governance initiatives by public actors, as found by Abbott and Snidal (2008). Their conclusion is that if the orchestration function were expanded, the entire regulatory system could be improved. In the case of conflict minerals, this means the current draft regulation should for instance, as mentioned by Interviewee 10 and discussed in section 5.2, include the existing private initiatives in order to reward first movers and leverage the potential of private actors. Better aligned public governance actors will ultimately help to execute the orchestration function and therefore the current enforcement capacity of THG of conflict minerals could be improved.


7 Concluding Remarks

Globalized value chains, transnational challenges and a multitude of governance actors ranging from public, private, civil society, public-private to multi-stakeholder, all are looking for new ways of transnational governance. Without even knowing it, new stakeholders become governance actors in THG. However, the backbone for enforcement capacity of the THG of conflict minerals is still found to be the interaction between public governance actors and their alignment. This is a key finding of this thesis, which might be applicable and relevant to research when it comes to governing transnational issues.

Overall, this research discussed three interrelated topics: The interactions between governance actors of the THG of conflict minerals, coherence between the actors, and their potential to incentivize companies to adopt responsible sourcing practices.

First, the analysis of interactions of governance actors in THG of conflict minerals showed that variations of relationships between them are shaping the different components of the regulatory process. The governance actors behind THG require to be analyzed from two main dimensions in regards to coherence: These are (1) public-public and (2) public-private. Taking these two dimensions into account overcomes the zero sum game of the old and new governance paradigm, of public and private governance actors working against instead of with each other. Hence, in THG it is not only important to analyze public-private coherence and alignment of measures as discussed by Verbruggen (2013) but public-public coherence needs to be taken into account.

Second, each regulatory component of THG has to be analyzed from three points of view. First, which governance actors, public, private or civil society are involved. Second, which tool and hence which actors are leading depending on orchestration, self-regulation, or campaigning. Third, how coherent are their approaches along the components, and are the same actors engaged in the same components and what do the findings mean for the enforcement capacity of the entire system.

Third, public-public alignment has been found to be crucial for conflict mineral governance. The current misalignment between the main public governance actors in the THG of conflict minerals leads to decreased enforcement capacity and creates a gap in due diligence compliance between EU and US downstream companies. In the context of conflict minerals it has been found that the US Dodd-Frank Act and the EU draft regulation have to be coherent in order to
increase the enforcement capacity of the entire THG of conflict minerals. Studying the European automotive sector in the course of this research emphasizes that the current alignment between US and EU regulation needs to be improved in order to increase the potential of THG of conflict minerals to incentivize companies to adopt responsible sourcing practices globally. Nevertheless, the power of the shadow of the state (Abbott 2012) in the example of conflict minerals has in the short term balanced this misalignment. Awareness of the issue and the measure of conflict mineral due diligence has been raised.

Concluding, the question of further research on the topic of conflict mineral regulation and specifically the option to review the current draft legislation in three years time should be raised. As Interviewee 9 has outlined, the importance of the processes of regulation and development of regulation has to be taken into account when assessing the enforcement capacity of regulation at a certain time. In the case of conflict minerals, for instance a comparison to the timber regulation would be adequate. The timber framework also started with a voluntary partnership agreement and the EU establishing a voluntary licensing system. Hence, the current EU conflict mineral proposal has to be analyzed also as one step in a bigger process in order to complement the picture drawn by this thesis. One aspect not discussed in this study is that private regulation and initiatives are expected to strengthen the overall enforcement capacity of THG of conflict minerals as well. This could be the topic for another paper. The main conclusion for further research is that there is a need to refocus from public-private alignment to studies covering public-public alignment in THG.

Public governance actors need to take their counterparts’ existing regulation into account, once it comes to governance of transnational issues. Hence, the overall recommendation of this study for the EU Parliament, which is currently discussing the draft regulation is to look very carefully at the coherence of the EU scheme with existing public governance schemes already regulating conflict minerals.
Appendices
## Table 1: Original Analytical Framework of TBG Interactions


<table>
<thead>
<tr>
<th>Dimension of interaction</th>
<th>Component of regulatory governance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Goal/Agenda setting</td>
</tr>
<tr>
<td>Who or what interacts</td>
<td></td>
</tr>
<tr>
<td>Drivers and shapers</td>
<td></td>
</tr>
<tr>
<td>Mechanisms and pathways</td>
<td></td>
</tr>
<tr>
<td>Character of interaction</td>
<td></td>
</tr>
<tr>
<td>Effects of interaction</td>
<td></td>
</tr>
<tr>
<td>Change over time</td>
<td></td>
</tr>
</tbody>
</table>

Table 12: Original Analytical Framework of TBG Interactions
### Appendix 2

#### Sponsors

<table>
<thead>
<tr>
<th>Gold</th>
<th>Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Electric (GE)</td>
<td>International Tin Research Institute (ITRI)</td>
</tr>
<tr>
<td></td>
<td>Jesuit Conference</td>
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<tr>
<td></td>
<td>Jewish World Watch</td>
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<tr>
<td></td>
<td>Kvinna til Kvinna</td>
</tr>
<tr>
<td></td>
<td>Lotoke Silika</td>
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<tr>
<td></td>
<td>Loyola University</td>
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<td></td>
<td>LSI</td>
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<td></td>
<td>Medtronic</td>
</tr>
<tr>
<td></td>
<td>Mercy Investment Services</td>
</tr>
<tr>
<td></td>
<td>Missionary Oblates of Mary</td>
</tr>
<tr>
<td></td>
<td>Immaculata</td>
</tr>
<tr>
<td></td>
<td>National Retail Federation (NRF)</td>
</tr>
<tr>
<td></td>
<td>NE investments</td>
</tr>
<tr>
<td></td>
<td>OECD</td>
</tr>
<tr>
<td></td>
<td>Open Society Foundation</td>
</tr>
<tr>
<td></td>
<td>Warwick Business School, University of Warwick</td>
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<tr>
<td></td>
<td>Ocean America</td>
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<tr>
<td></td>
<td>PACT</td>
</tr>
<tr>
<td></td>
<td>Pamoja Tujenge</td>
</tr>
<tr>
<td></td>
<td>Partnership Africa Canada (PAC)</td>
</tr>
<tr>
<td></td>
<td>PMU, a division of Pentecostal</td>
</tr>
</tbody>
</table>

#### Tin

<table>
<thead>
<tr>
<th>SHARE: Shareholder Association for Research and Education</th>
<th>Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Lead Participants

- Boston Common Asset Management
- Calvert Investments
- Enough Project
- diaconia
<table>
<thead>
<tr>
<th>Falling Whistles</th>
<th>Eastern Congo Initiative (ECI)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Free the Slaves</td>
<td>Electronic Industry Citizenship</td>
</tr>
<tr>
<td>Motorola Solutions</td>
<td>Coalition (EICC)</td>
</tr>
<tr>
<td>Trillium Asset Management</td>
<td>EMC</td>
</tr>
<tr>
<td>US SIF</td>
<td>Fairphone</td>
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<tr>
<td></td>
<td>Finnwatch</td>
</tr>
<tr>
<td></td>
<td>Ford Motor Company</td>
</tr>
<tr>
<td></td>
<td>Freeport-McMoRan Copper &amp; Gold</td>
</tr>
<tr>
<td></td>
<td>Friends of the Congo</td>
</tr>
<tr>
<td></td>
<td>Future 500</td>
</tr>
<tr>
<td></td>
<td>Global Advanced Metals (GAM)</td>
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<td></td>
<td>Global Hands</td>
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<tr>
<td></td>
<td>Global Witness</td>
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<tr>
<td></td>
<td>Hermes Fund Managers</td>
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<td></td>
<td>Humanity United</td>
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<td></td>
<td>INGA Association</td>
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<td></td>
<td>Interfaith Center on Corporate Responsibility (CCR)</td>
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<td></td>
<td>International Corporate Accountability Roundtable (ICAR)</td>
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<tr>
<td></td>
<td>Alliance of Independent Churches</td>
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<td></td>
<td>Pole Institute</td>
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<tr>
<td></td>
<td>Resolv</td>
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<tr>
<td></td>
<td>Retail Industry Leaders Association (RILA)</td>
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<td></td>
<td>Royal Philips Electronics</td>
</tr>
<tr>
<td></td>
<td>Solidarity Center</td>
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<tr>
<td></td>
<td>SOMO: Center for Research on Multinational Corporations</td>
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<td></td>
<td>Sprint</td>
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<tr>
<td></td>
<td>Sustainalytics</td>
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<td></td>
<td>Swedwatch</td>
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<tr>
<td></td>
<td>Target</td>
</tr>
<tr>
<td></td>
<td>Tri-State Coalition for Responsible Investment</td>
</tr>
<tr>
<td></td>
<td>United States Institute of Peace</td>
</tr>
<tr>
<td></td>
<td>United to End Genocide</td>
</tr>
<tr>
<td></td>
<td>University of British Columbia</td>
</tr>
<tr>
<td></td>
<td>USAID</td>
</tr>
<tr>
<td></td>
<td>World Gold Council</td>
</tr>
</tbody>
</table>

Figure 8: Multi-Stakeholder Group Participants and Stakeholders
Source: http://www.sourcingnetwork.org/multi-stakeholder-group/
Appendix 3

Conflict Minerals
The EU Proposal’s Effect on the Industry in Europe

Interview Guide
September 2014

Background
BSR’s conflict minerals work with companies, NGOs, and investors on conflict minerals ranges from facilitating the first multistakeholder regulatory recommendations for the U.S. Securities and Exchange Commission to supporting leading companies on supply chain strategy, reporting, and stakeholder engagement. Recently, we worked with you and other companies on the OECD - Due Diligence Pilot Project.

After working on the topic with BSR’s mining practice, I, Julia Panzer, a former intern at BSR and student at Copenhagen Business School am currently undertaking a study on the governance scheme of conflict minerals.

Given your expertise in this field, I would appreciate the opportunity to speak with you in an interview of approximately 30 minutes. The purpose of the interviews is to hear the perspectives of stakeholders about the expected effects of the recent EU draft legislation on conflict minerals in the broader context of governance actors, ranging from public to private initiatives.

The results of this interview will help me in preparing an insight article and confirm my analysis of governance actors in the field of conflict minerals that I have studies in the context of my Master’s Thesis Project at CBS. For sharing your time and expertise, I would be pleased to send you a summary of key findings from my study.

Interview Guide

The following are general questions that will serve as a guide to our interview, though I may have more specific questions targeted to your expertise.

OVERVIEW
Please give a short introduction to your role and your organization’s sustainability challenges.

1. Please briefly describe your role.

2. Sustainability: Please outline the top 2-3 sustainability challenges that from your organization’s perspective are currently material for the industry (automotive, electronics) in Europe and if conflict minerals are material to companies in Europe in general.

Conflict Minerals

3. Please describe your organization’s current approach/tools to conflict minerals, (Policies, Audits of suppliers, disclosure of suppliers, CSR initiatives)
4. How do you see the issue of conflict minerals for the electronics/automotive industry in Europe evolve in the future?

5. What do you see as the primary internal and external drivers for conflict mineral due-diligence and responsible sourcing?

6. Which collaborative initiatives working on conflict minerals have the most credibility? Is your organization collaborating with other initiatives or across industries?

**EU Regulation**

7. How does the EU draft law interact (align, cooperate etc.) with other regulations, organizations and initiatives?

8. How do you envision that the electronics/automotive industry in Europe will be affected by the EU draft regulation on conflict minerals?

9. How do you see the EU draft regulation evolve and influence responsible sourcing of conflict minerals in general?

Which other organizations or companies should I talk to during the course of my research?

**Closing Remarks**

Thank you for your time. I will carefully assess and analyze the answers received during this interview process and integrate the findings into my study.

I am committed to ensuring the compliance and the ethical integrity of all research done under my Master’s Thesis project. I recognize the sensitivity of the data that will be collected during the course of this project and will endeavor that research conducted is of the highest ethical standard and is compliant with current international guidelines as they apply to research.

Please notify me in case your answers should be recorded as anonymous. If not the name of your organization might appear in my thesis next to statements you would make throughout the interview. Thank you!
### Appendix 4

**Table 13: Industry Uses of Tin, Tantalum, Tungsten and Gold**

Source: Chase 2010, 28.

<table>
<thead>
<tr>
<th>Mineral</th>
<th>Primary Uses</th>
<th>Key Industries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tin</td>
<td>• Solders for electronics (44%) and industrial applications (8.8%)</td>
<td>• ICT (e.g. cell phones)</td>
</tr>
<tr>
<td></td>
<td>• Tinplate (16.4%)</td>
<td>• Automotive</td>
</tr>
<tr>
<td></td>
<td>• Chemicals (13.9%)</td>
<td>• Jewelry</td>
</tr>
<tr>
<td></td>
<td>• Bronze (5.5%)</td>
<td>• Medical</td>
</tr>
<tr>
<td></td>
<td>• Float glass (2.1%)</td>
<td>• Food (e.g. cans)</td>
</tr>
<tr>
<td>Tantalum</td>
<td>• Electronic components such as capacitors in portable phones, pagers, PCs,</td>
<td>• ICT</td>
</tr>
<tr>
<td></td>
<td>automotive electronics (60-70%)</td>
<td>• Automotive</td>
</tr>
<tr>
<td></td>
<td>• Super alloys for jet engine and turbine components (10%)</td>
<td>• Medical (e.g. prosthetic devices, skull plates,</td>
</tr>
<tr>
<td></td>
<td>• Chemical equipment (10%)</td>
<td>etc)</td>
</tr>
<tr>
<td></td>
<td>• Carbide cutting tools (~5%)</td>
<td>• Aerospace</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Energy</td>
</tr>
<tr>
<td>Tungsten</td>
<td>• Cemented carbides (60%)</td>
<td>• Manufacturing</td>
</tr>
<tr>
<td></td>
<td>• Tungsten steel (20%)</td>
<td>• Automotive</td>
</tr>
<tr>
<td></td>
<td>• Other—super alloys, electron emitters, tungsten wire in copiers &amp; printers,</td>
<td>• Jewelry</td>
</tr>
<tr>
<td></td>
<td>electronic circuit boards &amp; heat sinks, etc</td>
<td></td>
</tr>
<tr>
<td>Gold</td>
<td>• Jewelry (80%)</td>
<td></td>
</tr>
</tbody>
</table>
References


Böhme, K., Bugajski-HochrieGL, P., and Dos Santos, M. (2013) Assessment of due diligence compliance cost, benefit, and related effects on selected operators in relation to the


OECD (2013a), OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas (2nd Edn.) OECD Publishing. Available at: [http://dx.doi.org/10.1787/9789264185050-en](http://dx.doi.org/10.1787/9789264185050-en) [last accessed March 15, 2015].


**Interviews (full transcripts, see attached CD)**


Interview 5: Member of European Parliament (MEP 2014)—conducted October 17, 2014.


Interview 7: Responsible Sourcing Network (RSN 2014)—conducted October 8, 2014.

Interview 8: Resolve as secretariat to Public-Private Alliance (Resolve 2014)—conducted October 15, 2014.
