



June 2015

EU REGULATION ON CONFLICT MINERALS:

WHAT THE EUROPEAN PARLIAMENT VOTE MEANS FOR MEMBER STATES

The European Parliament voted on 20 May for a strong and binding law to tackle the trade in conflict minerals. MEPs from a broad spectrum of political groups and states supported a law that would legally require companies importing key minerals into Europe, including those contained in products, to source responsibly.

By overhauling the weak voluntary scheme proposed by the European Commission in March last year, the European Parliament has sent a clear signal that companies along the whole supply chain must source responsibly. Its message is unambiguous and echoes calls from [civil society](#), [consumers](#), [investors](#), and [religious leaders](#).

This briefing calls on Member States to give their backing to the Parliament's position, and sets out the key elements of the Parliament's proposal.

The conflict minerals trade

The trade in minerals has funded violence and brutal armed groups around the world. For example, in the Central African Republic, Colombia, and the Democratic Republic of Congo, the minerals trade has been partly responsible for fuelling deadly conflicts that have displaced 9.4 million people.¹

As the world's largest trading block and home to 500 million consumers, the EU is a major trading hub for many of the minerals that are at risk of funding conflicts and human rights abuses around the world, such as tin, tantalum, tungsten and gold

('3TG').² Significant volumes of 3TG enter the EU as ores and metals. In 2013, global imports of 3TG ores, concentrates, and metals were worth over €123 billion; the EU accounted for about 16 per cent of these.³

Large quantities of these minerals also enter the EU as part of a wide range of products, such as light bulbs, jewellery, circuit boards, engines, and mobile phones. The EU is the second largest importer of mobile phones and laptops in the world, and three of the top five importers of these products are in the EU.⁴

At the moment, companies bringing minerals into the EU are under no legal obligation to check their supply chains and very few have chosen to comply with existing voluntary standards endorsed by the EU.⁵ This means that European companies risk fuelling the very conflicts and human rights abuses that are the focus of EU aid and development efforts.

OECD Due Diligence Guidance has been widely endorsed as the international responsible sourcing standard for companies using and trading minerals from conflict-affected and high-risk areas. This Guidance operationalises the existing UN Guiding Principles on Business and Human Rights by setting out a practical five-step framework for all companies along the supply chain to carry out risk-based due diligence. The EU endorsed the Guidance in May 2011.⁶

In March 2014, the European Commission published a legislative proposal designed to regulate the trade. But the Commission's draft [would do little](#) to change the current situation. It sets out an entirely voluntary self-certification scheme, meaning companies can choose whether to comply. The scheme would be open only to direct importers of ores and metals, thereby leaving out minerals found in manufactured and part-manufactured products. Another voluntary scheme would add little to the status quo and risks undermining international responsible sourcing standards the EU has endorsed.

A ROLE FOR MEMBER STATES

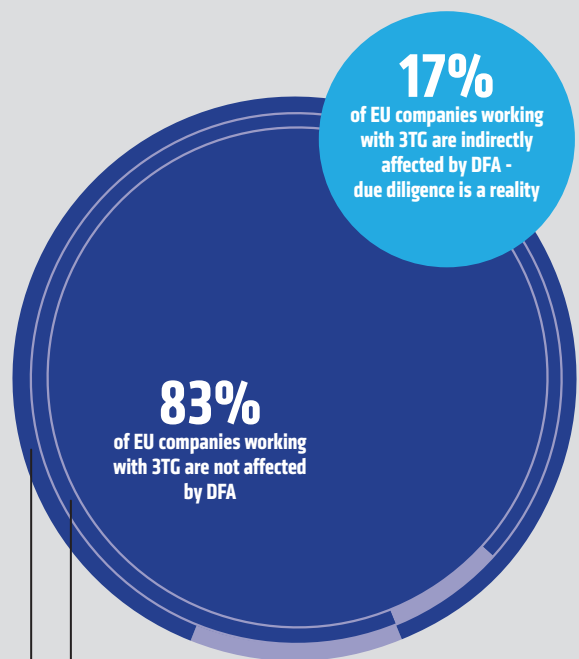
As they consider a response to the Parliament's proposal, Member States have a landmark opportunity to deliver on their obligation under international human rights law to protect against human rights abuses, by ensuring their businesses source minerals responsibly. If the Council of the European Union matches the Parliament's commitment to responsible sourcing, the EU's Regulation could set a clear and progressive standard for companies, investors and consumers.

The Council has a chance to make supply chain due diligence the norm, rather than the exception. It can do so by endorsing the Parliament's commitment to responsible sourcing, by legally requiring all companies bringing these minerals into Europe—in any form—to be part of this process.

[Business leaders](#), [investors](#), [religious leaders](#), [consumers](#), and [civil society](#) have all publicly supported strong, mandatory due diligence rules. Member States should heed these voices and ensure that this law makes a genuine difference to efforts to clean up a trade which for too long has caused such devastation.

According to the European Commission, up to 17% of EU companies working with 3TG are already indirectly affected by US Dodd-Frank Act section 1502, as they supply to US customers that are required to do due diligence on their supply chains. For these companies, supply chain due diligence is already a reality.

Of the EU companies working with 3TG and not already affected indirectly by mandatory US legislation, 93% do not mention a conflict minerals supply chain policy on their corporate websites or in their annual reports, according to recent DG Trade survey data. According to recent SOMO data, 88% of EU listed companies surveyed do not mention conflict minerals on their websites.⁷



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KEY ELEMENTS OF THE EUROPEAN PARLIAMENT'S POSITION

The amendments adopted by the Parliament in May represent a decisive move to overhaul the Commission's narrow, voluntary scheme, and to convert it into a law that offers an effective and workable response to the trade in conflict minerals. The Parliament has made it clear that responsible sourcing is the responsibility of the whole supply chain, by requiring companies bringing 3TG into the EU to take steps to identify, address, and publicly report on specific risks in the chain. Critically, the Parliament has also acknowledged that companies at different points in the supply chain have different roles to play in this process, and that responsible sourcing is a flexible process based on improvement over time.

Responsible sourcing obligations for the entire supply chain

A **new Recital 9(a)**, makes clear “the need for due diligence along the entire supply chain from the sourcing site to the final product (...).”⁸ The draft Regulation achieves this by making a clear distinction between the roles of companies at different points in the chain. It sets out separate responsible sourcing obligations for two groups of companies: (1) EU-based importers of raw materials and (2) ‘downstream’ companies trading components and products that contain these minerals.

EU-based importers of raw materials

The Parliament's text requires companies such as metal processors, refiners and mineral and metal traders who import 3TG ores, concentrates and metals into the EU to carry out supply chain due diligence and publicly report on their efforts to do so. **Amendment 154** states that the Regulation “lays down the supply chain due diligence obligations of all Union importers who source minerals and metals falling within the scope of this Regulation, in accordance with the OECD Due Diligence Guidance”.⁹

The practical detail of these obligations is set out in Articles 4 to 7 of the Regulation. For example,

companies are required to develop a company policy that sets out their commitments to responsible sourcing (a model policy is available in the OECD Guidance), and to put in place a chain of custody or traceability system that allows them to better understand their supply chains (Article 4). They are expected to use this information to identify risks, and implement a strategy to address them (Article 5). These companies are also required to carry out an independent third-party audit of their due diligence practices, subject to an exemption (**Article 6**)¹⁰, and to publicly report on the due diligence they are doing (**Article 7**).

Downstream companies

The obligations of downstream companies, such as manufacturers who first place products containing these minerals—like mobile phones and cars—on the European market, are set out in **Amendment 155**. This requires them to “take all reasonable steps to identify and address any risks arising in their supply chains for minerals and metals coming within the scope of this Regulation”, in accordance with the OECD Guidance. They must also “provide information on the due diligence practices they employ for responsible supply chains”.¹¹

These amendments therefore differentiate between the obligations of downstream companies and those of companies closer to the source of the raw materials, but also better align the draft Regulation with international standards by engaging the whole supply chain in the process. Due diligence is most effective when it involves companies throughout the chain—it allows them to share information, to develop industry schemes and other best practices, and to collectively influence and leverage suppliers inside and outside the EU. It also levels the playing field and makes it easier for EU companies to comply with responsible sourcing requests from customers in other countries, such as in the U.S.

Responsible sourcing is flexible and based on progress over time

The text adopted by the Parliament makes clear that the standards expected of a company should be tailored not only to its position in the supply chain, but also to other relevant factors in order to ensure that due diligence is feasible for all companies—it is not a ‘one size fits all’ approach.

Amendment 135 states that “[t]he exercise of due diligence must be tailored to the activities of the undertaking in question, its size and its position in the supply chain”.¹²

In this context, the Parliament has considered the role of, and challenges facing, small and medium enterprises (SMEs). **Amendment 10** asks the Commission to monitor and report on the impact of responsible sourcing on SMEs, and to provide technical assistance and financial aid to SMEs through its COSME programme.¹³ Under **Amendment 136**, the Commission “working with industry schemes and in accordance with the OECD Guidance, may provide further guidelines on the obligations to be met by undertakings (...) to ensure that the system involves a flexible procedure that takes into account the position of SMEs”.¹⁴

The amendments also recognise that due diligence is a process of ongoing improvement—it does not expect 100 per cent guarantees. New **Recital 9(a)** states that “In line with the nature of due diligence, the individual due diligence obligations (...) should reflect the progressive and flexible nature of due diligence processes”.¹⁵

Responsible sourcing is not a trade restriction or embargo

Responsible sourcing through risk-based due diligence is a well-established, widespread practice not only in the extractive industry, but also in other sectors. It is not a trade restriction or a trade embargo. Responsible sourcing requirements ask companies to identify and manage risks in their supply chains. Disengaging entirely from regions or countries is neither responsible, nor a requirement of due diligence.

The Parliament’s proposal encourages companies to engage with fragile and conflict-affected areas by endorsing practical guidance to make sure companies do so responsibly and transparently. When doing business in higher risk environments, it makes sense to take extra care.

Furthermore, the Parliament’s proposal does not single out a specific geographic region, but is global in its scope. The Commission has argued that by targeting the minerals in scope “regardless of

origin”, its own scheme will “create a level playing field for conflict and non-conflict regions” and alleviate the potential risk of market distortions.¹⁶ The same is true of the Parliament’s proposal.

The role of industry schemes

Industry schemes offer important tools that can help companies do their due diligence better and more effectively. Strong conflict minerals legislation in other countries has, in recent years, encouraged the development of many such industry schemes. The Parliament’s proposal therefore recognises that “many existing supply chain due diligence systems could contribute to achieving the aims of this Regulation” and “could be recognised in the Union system (...)” (**Amendment 9**).¹⁷

It is important, however, that provisions relating to industry schemes are not limited to the handful of schemes already in existence, as is currently the case under **Amendment 9**. This limitation risks discouraging much-needed innovation and competition in this sector, as well as the development of industry schemes that cover a wider range of conflict-affected and high-risk areas. Further, the EU’s Regulation must make clear that participation in an industry-regulated scheme cannot take the place of a company’s individual responsibility to carry out and report on its due diligence.

Accompanying measures

Tackling the lucrative trade in conflict minerals will not, on its own, put an end to conflict, corruption or human rights abuses. The Regulation’s responsible sourcing requirements must form part of a comprehensive approach by the EU that includes other initiatives, such as supporting governance reform and addressing related development needs.

The Parliament has recognised the importance of developing a set of “accompanying measures” designed to ensure the EU takes an integrated and comprehensive approach to addressing conflict and human rights abuses. **Amendment 55** requires the Commission to submit a legislative proposal for such accompanying measures within two years of the law being adopted, followed by an annual performance report.¹⁸

EU CONFLICT MINERALS REGULATION : WHAT OTHERS ARE SAYING

What investors are saying:

"We strongly urge the European Parliament to strengthen its proposal in the upcoming vote by expanding the scope of the legislation to ensure that all companies placing minerals on the market, in raw form or contained in semi-finished or finished goods, are legally required to source responsibly." (...)

"... a mandatory and inclusive approach will stimulate a level of robust supply chain due diligence and reporting that a narrow, voluntary opt-in scheme simply cannot inspire. A mandatory scheme applicable to companies throughout the entire supply chain can effectively generate adequate company reaction that will tangibly limit investor risk and increase legitimate extractive sector revenue streams in conflict-affected and high-risk areas..."

Statement by global investors, including BNP Paribas Investment Partners and EUROSIF.¹⁹ EUROSIF previously published a statement on behalf of investors representing \$855 billion in assets under management.²⁰

What Dr. Denis Mukwege, Winner of Sakharov Prize 2014 has said:

"Recently proposed legislation [by INTA] would require European Union smelters and refiners to ensure the responsible importing of tantalum, tin, gold and tungsten. Unfortunately, transparency would remain voluntary throughout the rest of the supply chain. When the European Parliament votes on the proposal next month, a commitment to responsible sourcing must be made mandatory for all businesses that could potentially bring conflict minerals into Europe. If not, the legislation now under discussion risks undermining global attempts to clean up the trade."

Dr. Denis Mukwege, Winner of Sakharov Prize 2014, International New York Times, 22 April 2015.²¹

What responsible business is saying:

"When companies together commit to due diligence, by sharing information and ideas, it creates new business opportunities in many of the regions that need sustainable and responsible investment the most. This is an opportunity; not a challenge."

Peter Nicholls, a former Vice President of Commercial within the Rio Tinto Group, and current CEO of Walk Free's Global Business Authentication.²²

What religious leaders have said:

"We are encouraged by the progress made as a result of Members of the European Parliament championing payment transparency in the extractive industries in 2013. It is now time to continue on this positive path, with ambitious and binding rules to promote supply chain due diligence by companies concerning natural resources sourced from high-risk or conflict-affected areas."

Open statement signed by 140 Church leaders from 38 countries on 5 continents.²³

What SMEs are saying:

"For Nager IT, as a responsibly producing SME, it is essential that a mandatory responsible sourcing and due diligence requirement is not limited to the importers of raw materials, since manufacturers do not normally buy from them directly. Instead such a requirement must apply to all intermediate and part product manufacturers, as well as for manufacturers of end-products, such as us. Compliance and public accountability can only be achieved if due diligence responsibilities are shared by all companies in a supply chain."

Nager IT e.V., small to medium sized company.²⁴

ENDNOTES

- 1 UN Refugee Agency, August 2014, <http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Regional%20Update%20-%20CAR%20Situation%20%2330.pdf>; UNHCR Country Operations Profile for DRC, <http://www.unhcr.org/pages/49e45c366.html>; Ignacio Gómez G, 2012, 'Colombia's black-market coltan tied to drug traffickers, paramilitaries'; The Center for Public Integrity, 4 March 2012, <http://www.publicintegrity.org/2012/03/04/8284/colombia-s-black-market-coltan-tied-drug-traffickers-paramilitaries>; Consultoria para los Derechos Humanos y el Desplazamiento (CODHES), 'El Desplazamiento Forzado y la Imperiosa Necesidad de la Paz: Informe desplazamiento 2013,' June 2014.
- 2 European Commission, Website for DG Trade, <http://ec.europa.eu/trade/policy/eu-position-in-world-trade/>
- 3 All data from UN Comtrade (converted to Euro), <http://comtrade.un.org>. The data reflects all imports of materials in the forms covered by the HS codes on p.78 of the European Commission's Impact Assessment, available at: http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152229.pdf. These estimates differ from the Commission's own methodology by excluding trade within the borders of the EU.
- 4 Data for 2013 from UN Comtrade (<http://comtrade.un.org/>). Data reflects reported imports of mobile phones (Code 851712) and laptops (Code 847130). In 2013, Germany, UK and the Netherlands were the third, fourth and fifth largest importers of mobile phones and laptops in the world.
- 5 Data from the European Commission, Impact Assessment, p.13, p.19, p.23, and p.36. Data reflects surveys carried out by DG Trade, and the Dutch organisation SOMO. See SOMO, 'Conflict due diligence by European companies', November 2013, <http://somo.nl/news-en/sourcing-of-minerals-could-link-eu-companies-to-violent-conflict>
- 6 See OECD (2013), 'OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas', available at <http://www.oecd.org/fr/daf/inv/mne/mining.htm>. Written in close collaboration with industry and governments, the Guidance has been endorsed by European Member States, forms the basis of mandatory requirements in the US, and has been committed to in 12 African countries.
- 7 Data from the European Commission, Impact Assessment, p.13, p.19, p.23, and p.36. Further details on these companies have not been made available for reasons of data protection. Data reflects surveys carried out by DG Trade, and the Dutch organisation SOMO. See SOMO, 'Conflict due diligence by European companies', November 2013, <http://somo.nl/news-en/sourcing-of-minerals-could-link-eu-companies-to-violent-conflict>
- 8 See Amendments 71, 91 and 112 which introduce a new Recital 9(a).
- 9 See Amendment 154 which amends Article 1, paragraph 2.
- 10 Subject to an exemption for 'certified responsible importers of smelted and refined metals'.
- 11 See Amendment 155, which introduces Article 1, new para 2a.
- 12 See Amendment 135, which introduces a new paragraph 2(b) in Article 1.
- 13 See Amendment 10, which amends Recital 12.
- 14 See Amendment 136, which introduces new paragraph 2(c) in Article 1.
- 15 See Amendments 71, 91 and 112 which introduce a new Recital 9(a).
- 16 European Commission, Impact Assessment, p.49 including note 41.
- 17 Amendment 9, which introduces a new Recital 11(b).
- 18 Amendment 55, which introduces a new Article 15(a).
- 19 'Global Investors Urge European Parliament to Adopt Stronger EU Conflict Minerals Legislation', 13 May 2015, available at: <http://www.eurosif.org/news-events/press-releases/>
- 20 'Investor Statement on EU Proposed Conflict Mineral Regulation', October 2014, available at: <http://www.eurosif.org/investor-statement-on-eu-proposed-conflict-mineral-regulation/>
- 21 Dr. Denis Mukwege, 'Tracing the Source of 'Conflict Minerals'', International New York Times, 22 April 2015, <http://www.nytimes.com/2015/04/23/opinion/tracing-the-source-of-conflict-minerals.html>
- 22 Peter Nicholls, 'Conflict minerals: EU can save lives and boost profits', The EU Observer, 28 November 2014, <http://euobserver.com/opinion/126718>
- 23 CIDSE, 'Catholic leaders' statement on conflict minerals', available at: <http://www.cidse.org/publication/content/publications/business-a-human-rights/conflict-minerals/catholic-leaders-statement-on-conflict-minerals.html>
- 24 Nager IT, 'Position paper on the proposal to introduce the OECD Guidance on a mandatory basis', 31 March 2015.