

A CONFLICT MINERALS REGULATION THAT WORKS

STRENGTHENING THE EUROPEAN COMMISSION'S PROPOSAL FOR A "REGULATION SETTING UP A UNION SYSTEM FOR SUPPLY CHAIN DUE DILIGENCE SELF-CERTIFICATION OF RESPONSIBLE IMPORTERS OF TIN, TANTALUM AND TUNGSTEN, THEIR ORES, AND GOLD ORIGINATING IN CONFLICT-AFFECTED AND HIGH-RISK AREAS"

The trade in natural resources fuels some of the world's most deadly conflicts and worst forms of human rights abuse. Resources like gold, diamonds, tungsten, tantalum, jade, timber, and tin, provide funding to armed groups and abusive security forces, and stand as economic impediments in the way of peace. The resource trade also promises many fragile and conflict-affected areas a chance for much-needed investment and development. In order to deliver on this promise, however, companies must commit to sourcing and trading these resources responsibly. This is where the EU must show leadership by doing more to promote and support responsible sourcing in Europe.

The Central African Republic is in the midst of a deadly conflict fuelled in part by the country's abundant natural resources. Over half the population is in need of humanitarian assistance.¹ One in four has been displaced from their home by the conflict.

Since its suspension from the Kimberley Process in May 2013, 140,000 diamond carats (worth around US\$24 million) are estimated to have been smuggled out of CAR. The illicit gold trade is estimated at 2 tonnes per year (worth around US\$60 million). At the Ndassima mine alone, former Séléka forces collect approximately US\$150,000 in taxes per year from gold production, which is estimated at 180 kg per year.²

The EU is a major trading hub for many of the natural resources that are at risk of funding conflict and human rights abuses. The EU is the world's largest economy, the world's largest trading block, and home to 500 million consumers.³

In 2013, the global trade in tin, tantalum, tungsten and gold (3TG) ores, concentrates, and metals was worth in excess of €123 billion.⁴ **The EU accounted for almost a quarter of this trade.** Millions of euro worth of 3TG enters the EU every year from high-risk and conflict-affected areas, including parts of countries such as Afghanistan, the Central African Republic, Colombia, the eastern DRC, Myanmar, and Zimbabwe.

The EU is also the second largest importer of mobile phones and laptops in the world, and three of the top six importers of mobile phones are located in the EU. In 2013 the EU imported mobile phones to the value of €29.5 billion, as well as €26.5 billion in laptops, €13 billion in electronic circuits, and €3.8 billion in gold jewellery. These products all contain 3TG that may have funded conflict or human rights abuses. With this kind of global influence, the EU has a duty to ensure its trade is responsible.

The Commission's draft proposal to regulate the trade in conflict minerals will do little to change the current situation. It is voluntary, meaning companies can choose whether to comply. It is open only to direct importers of ores and metals, thereby leaving out minerals found in manufactured and part-manufactured products. And, it covers only a handful of the natural resources driving conflict and human rights abuses worldwide.

A narrow voluntary scheme is a backwards step that undermines international responsible sourcing standards. OECD Due Diligence Guidance has been available to companies sourcing and trading natural resources from conflict-affected and high-risk areas since 2010. This Guidance operationalises the existing UN Guiding Principles on Business and Human Rights by setting out a practical five-step framework for companies along the supply chain to carry out risk-based due diligence. The EU made a commitment to promoting this Guidance in May 2011.⁵

“[A] move to make reporting entirely optional risks leaving the most responsible companies exposed while those least attentive to their human rights responsibilities continue their current practices undeterred.”

John Ruggie, author of the UN Guiding Principles on Business and Human Rights, in an open letter to José Manuel Barroso, President of the European Commission.⁶

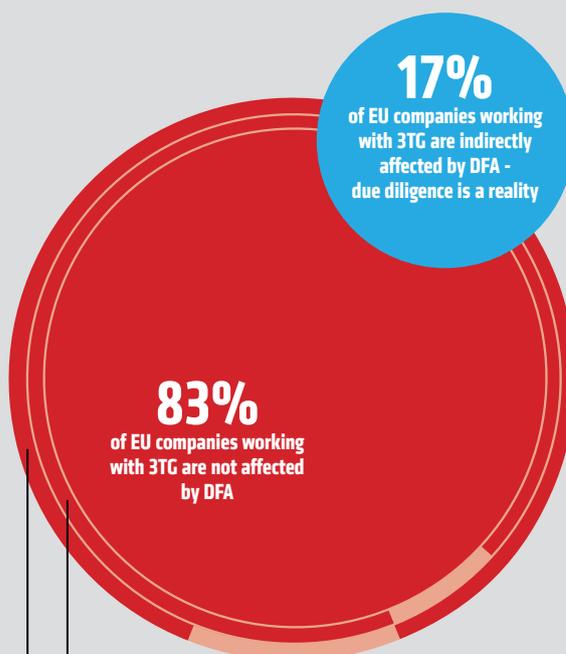
OECD Guidance is based on the idea that companies right along the supply chain should put in place processes that help them identify, mitigate, and publicly report on risks in their supply chains. This process envisions companies throughout the supply chain working together by sharing information about identified risks and what has been done to address them. It is not the responsibility of a single link in the chain.

The voluntary scheme proposed by the Commission applies only to a handful of EU companies that directly import 3TG ores and metals. By proposing another voluntary scheme, but which applies to far fewer companies than existing international standards, **the Commission risks undermining a fundamental principle of the OECD Guidance and the UN Guiding Principles.**

Voluntary measures do not change companies’ sourcing practices. The OECD Guidance has been available to companies since 2010, yet survey data reveals that few European companies have put in place the due diligence processes it recommends.⁷

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



Of these companies, **93%** do not mention a conflict minerals supply chain policy on their corporate websites or in their annual reports, according to survey data from DG Trade.

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The European Commission's Impact Assessment estimates that the current proposal only targets 419 EU companies, or 0.05 per cent of the EU companies that trade or process tin, tantalum, tungsten ores and their metals and gold.⁸ This is a missed opportunity to support EU companies already committed to due diligence, and to ensure EU companies speak with one unified voice when seeking the cooperation of smelters and suppliers, including those located outside the Union.

Red tape is a red herring. Mandatory due diligence requirements based on the OECD Guidance would not impose significant burdens on business. Progressive companies, business leaders, investors, and consumers have all publicly supported calls for a mandatory regulation covering companies at all stages of the supply chain. Responsible sourcing is a business opportunity, not a challenge. It helps companies learn more about their supply chains; build in new innovations; meet due diligence requirements in other jurisdictions; and position themselves as sustainable and responsible brands to consumers and investors alike.

“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.⁹

Risk-based due diligence is not overly burdensome. The OECD Guidance offers “an on-going, proactive and reactive process” that is flexible in its approach and based on a process of ongoing improvement over time.¹⁰ The nature and extent of the due diligence a company is expected to carry out therefore depends on its individual circumstances, including its size and the scale, complexity and level of risk in its supply chain. The Commission's Impact Assessment states that the economic costs of implementing due diligence for EU importers, including SMEs, are “expected to be manageable—if not minor—over the long run for most companies”. These are estimated at 0.014

per cent (initial costs) and 0.011 per cent (annual recurrent costs) of annual turnover.¹¹ Companies that already have responsible systems in place, or are members of industry schemes, will face further cost efficiencies.

Risk-based due diligence reforms harmful parts of the trade, whilst encouraging responsible trade from conflict-affected and high-risk areas. It is not a trade restriction or trade embargo. Instead, it expects companies to put in place processes designed to ensure their trade is responsible and sustainable. Furthermore, as the current EU proposal does not single out a specific geographic region, but is global in its scope, it does not create the kind of uneven regulatory landscape that may cause market distortions. The Commission's Impact Assessment argues that as the current voluntary proposal “targets the minerals in scope regardless of origin” it will “create a level playing field for conflict and non-conflict regions” and alleviate the potential risk of market distortions.¹² This is equally, if not more, true of a mandatory approach. Normalising the process of due diligence and risk reporting is the best way to promote responsible sourcing from conflict-affected and high-risk areas.

Ultimately this is also a question of **transparency**. A voluntary scheme gives consumers, investors and regulators no assurance that companies are taking concrete steps to avoid fuelling conflict and serious human rights abuses. Strong, binding regulation is needed. It's good for business. It's good for consumers. It's good for the communities that supply many of the resources we take for granted. And, it's good for Europe.

But don't take our word for it.

What the **2014 Sakharov Prize winner**, Dr Denis Mukwege, has said about the Commission's proposal:

“All the money is coming here. We can tackle that here together. We want a stronger law, it can't only be the responsibility of companies. We are waiting for it still.”

Dr. Denis Mukwege, The Huffington Post, 25 November 2014.¹³

What investors have said:

“The reporting mechanism should be mandatory” and “should apply to any European company that manufactures or contracts to manufacture products containing 3TG that is necessary to product functionality or manufacture.” (...) *“This approach will ensure that key actors throughout the supply chain—both dealers in raw materials and relevant manufacturers—operate within an international framework comprised of consistent rules.”*

EUROSIF, on behalf of responsible investors representing €855 billion in assets under management.¹⁴

What leading business voices have said:

“As a former senior executive in the resources sector, I know that supply chain due diligence—whereby companies identify, mitigate, and report on risks along their supply chains—is vital to any successful and sustainable business. It helps companies discover previously unknown risks, learn more about their supply chains and build in innovations. (...) This is an opportunity, not a challenge.”

“Right now, MEPs have a rare chance to shape the future of the trade in conflict minerals. They can help companies source responsibly from some of the most fragile states on earth and ensure that the lives of millions of people are better off as a result.”

Peter Nicholls, a former Vice President of Commercial within the Rio Tinto Group, and current CEO of Walk Free’s Global Business Authentication.¹⁵

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 **70 Bishops**.¹⁶

What major companies have said about supply chain due diligence in other sectors:

Ethical supply chains are “absolutely” more profitable.

IKEA

A good reputation “more than pays for itself” in the long run.

Tesco

Comments made in the Joint Committee report on the Draft UK Modern Slavery Bill, April 2014, which includes a proposal that companies be required to report on the due diligence undertaken on their supply chains in respect to modern slavery.¹⁷

The European Union has a fundamental role to play in implementing international human rights law and business and human rights standards. As the EU develops its new CSR strategy, it is vital that it lives up to this responsibility by ensuring the effective protection of human rights in the context of business activity and by promoting corporate transparency and accountability. A key step towards this is a strong, binding regulation on responsible sourcing of conflict minerals. The Commission's proposed voluntary approach is not enough.

Endnotes

- 1 Numbers from the UNHCR and the European Commission, Fact Sheet, The Central African Republic, <http://www.unhcr.org/pages/49e45c156.html>
http://ec.europa.eu/echo/files/aid/countries/factsheets/car_en.pdf
- 2 Figures from United Nations, Final report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013), 29 October 2014, S/2014/762, http://www.un.org/ga/search/view_doc.asp?symbol=S/2014/762
- 3 European Commission, Website for DG Trade, <http://ec.europa.eu/trade/policy/eu-position-in-world-trade/>
- 4 All data from UN Comtrade. The data reflects all imports of materials covered by the codes on p.78 of the Commission's Impact Assessment. It reflects the Commission's own methodology in including trade within the borders of the EU. Data reflects reported imports into EU-28 from World of mobile phones (851712), laptops (847130), gold jewellery (711319), and electronic circuits (8542).
- 5 European Commission, Impact Assessment, p.8, http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152229.pdf
- 6 John Ruggie, Letter to European Commission on conflict minerals reporting, <http://www.shiftproject.org/news/john-ruggie-submits-letter-european-commission-conflict-minerals-reporting>
- 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>.
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- 9 Peter Nicholls, "Conflict minerals: EU can save lives and boost profits," The EU Observer, 28 November 2014, <http://euobserver.com/opinion/126718>
- 10 OECD (2013), "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas", p.13 and p.15, available at <http://www.oecd.org/fr/daf/inv/mne/mining.htm>
- 11 European Commission, Impact Assessment, p.5, p.47 and p.53 http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152229.pdf
- 12 European Commission, Impact Assessment, p.49 including note 41 http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152229.pdf
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- 14 EUROSIF, Responsible Investor Statement, <http://www.eurosif.org/investor-statement-on-eu-proposed-conflict-mineral-regulation/>
- 15 Peter Nicholls, "Conflict minerals: EU can save lives and boost profits", The EU Observer, 28 November 2014, <http://euobserver.com/opinion/126718>
- 16 CIDSE, "Catholic leaders' statement on conflict minerals", <http://www.cidse.org/publication/item/646-catholic-leaders-statement-on-conflict-minerals.html>
- 17 Joint Committee report on the Draft Modern Slavery Bill (UK), April 2014, <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtselect/166/16>

How can Member States and MEPs create leading EU legislation?

- The opt-in scheme should be replaced by a **mandatory requirement** for companies covered by the law to carry out and report publicly on their supply chain due diligence efforts, in line with the OECD Guidance.
- The **scope of companies covered by the law should be broadened** from the limited number of primary importers of covered materials, to include operators who place covered resources or products on the EU market for the first time.
- The proposal's **material scope should be widened** to include any natural resources produced in conflict-affected or high-risk areas where extraction or trade risks contributing to, or being associated with, human rights abuses and conflict.
- The proposal's global geographical scope should be maintained, however the definition of 'conflict-affected and high-risk areas' should be replaced with the OECD definition.

For more information, visit: www.globalwitness.org/conflictminerals/



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