8 MAY 2015

global witness

AN EFFECTIVE RESPONSE TO THE CONFLICT MINERALS TRADE

WHY THE INTA APPROACH TO THE PROPOSED CONFLICT MINERALS REGULATION WOULD FAIL TO TACKLE THE TRADE EFFECTIVELY

This briefing sets out a response to the report adopted by the Parliament's Committee on International Trade (INTA) on 14 April, and is not intended to be a comprehensive analysis. Global Witness has previously published a joint position paper on other aspects of the EU's conflict minerals initiative.[1]

The report adopted by INTA on 14 April has been presented by some of its members as the most effective option to tackle the trade in conflict minerals. The rapporteur has claimed that the proposed regulation is "efficient" and would achieve its underlying aim: to "break the link between mining and trade in minerals and metals and the financing of illegal armed groups".[2]

Unfortunately, the reality is not that simple.

An **effective** scheme is one that makes sure all the tin, tantalum, tungsten and gold entering the EU is sourced responsibly, and in line with international due diligence standards the EU has already endorsed.[3] The Regulation proposed in INTA would likely fall short on both counts.

1. Why the INTA proposal is not "effective"

INTA's proposal leaves the European Commission's narrow, voluntary scheme largely untouched.[4]

Like the Commission, INTA has focused on a small number of European companies that import four key minerals—tin, tantalum, tungsten and gold ('3TG')—into Europe. According to the Commission's own research, this amounts to only 19 metal processors, one gold refiner, and approximately 300-400 manufacturers and traders.[5]

INTA has amended the Commission's proposal by including a mandatory due diligence scheme for the 19 European processors and one gold refiner which import 3TG into the EU.[6] Other importers of the very same minerals, such as manufacturers and traders, are not covered by this scheme. For them, responsible sourcing remains entirely voluntary. INTA has also proposed that the Commission should establish a voluntary opt-in labelling scheme for a third category of "downstream" companies, which are yet to be defined.

For the vast majority of companies importing 3TG into the EU—whether in raw form or within products like circuit boards, electronics, cars or engines—responsible sourcing therefore remains entirely optional.[7]

As a result, INTA's scheme still allows significant volumes of 3TG to enter the EU unchecked.

It would fail to give companies, investors and consumers any assurances that the products they buy, or the companies they invest in, have not financed conflict or fuelled serious human rights violations.

* European Commission would establish criteria for a voluntary opt-in labelling scheme scheme for "downstream" companies. Those companies are not defined.

The figures are taken from the European Commission's own Impact Assessment, p.21 and p.36, and exclude European smelters and refiners that process or refine recycled material. Global Witness has not verified any of these figures.

2. Trade flows not covered by the INTA proposal

In 2013, global imports of 3TG ores, concentrates, and metals were worth in excess of €123 billion. The EU accounted for about 16% of these imports, through the direct import of minerals in these forms.[8]

But large quantities of 3TG also enter the EU in different forms, for example within components and products, such as light bulbs, safety glass, jewellery, circuit boards, engines, and mobile phones. The impacts this trade can have on conflicts and human rights abuses is no less significant.

By ignoring the significant volumes of 3TG found within products imported into the EU, INTA's proposal is far from an "efficient" response to the trade in conflict minerals.

3. Minerals imports within mobile phones

As an example, a closer look at the EU's imports of mobile phones helps put the ineffectiveness of INTA's proposal in perspective.

The EU is the second largest importer of mobile phones in the world, after the United States. Three of the top six importers of mobile phones in the world are located in the EU.[9]

In 2013, the EU imported just under **240 million** mobile phones. Mobile phones typically contain a number of minerals, with some studies estimating about 8.1g of 3TG in a standard mobile phone.[10] This means approximately **1944 tons of 3TG** entered the EU as part of these mobile phones alone in that year.[11]

Many electronic devices contain even greater amounts of 3TG than mobile phones. For example, more than 70% of the global tantalum production is consumed by the electronics industry.[12] Vast amounts of tantalum are therefore included in electronic products that are imported into the EU.

Beyond electronics, the Commission has identified 14 other sectors that use 3TG, including the machinery and equipment, medical equipment, toys and jewellery manufacturing sectors.[13] As the largest single market in the world, and home to over 500 million consumers, the EU is a significant global actor in all these sectors.[14]

4. Why the trade in products matters

The trade in these final and semi-finished products matters because they often contain minerals that have been processed outside the EU, and so are not captured by the scheme proposed by INTA.

As an example, the EU imported around €17 billion in mobile phones from **China** last year, amounting to roughly 66% of total EU imports of mobile phones.[15] China, in turn, imported large quantities of 3TG, including from conflict-affected and high-risk areas where enhanced due diligence is an important part of sourcing responsibly. In 2013, as an example, China, imported over **4,000 tons** of tin, tungsten, tantalum and gold ores and concentrates, worth in excess of €107 million, from Colombia, the DRC, Rwanda, and Burundi. China sourced 23 per cent of its tantalum ores and concentrates (by weight) from these four countries.[16] These are countries where revenues from the extraction and trade of minerals have in some cases provided funding to armed groups. Due diligence encourages companies to source from conflict affected and high-risk areas, but in order to do so responsibly, it is critical that the entire supply chain exercise good risk-based due diligence.[17]

> *"Recently proposed legislation 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."*
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> **Dr. Denis Mukwege,** Winner of Sakharov Prize 2014, International New York Times, 22 April 2015.[18]

5. How can the regulation be made more effective?

An effective regulation must ensure all 3TG that enters the EU is sourced responsibly, not just some of it.

The EU has a chance to make supply chain due diligence the norm, rather than the exception. It can do so by requiring all companies bringing these minerals into Europe—not just European smelters and refiners—to source responsibly.

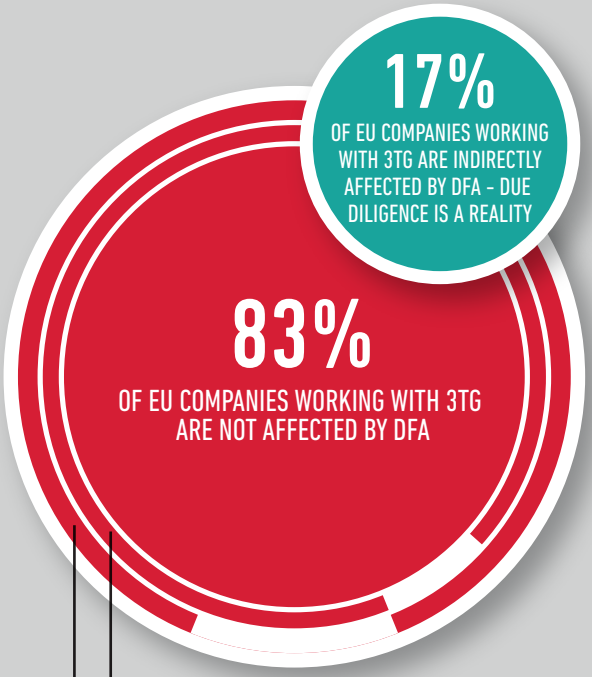
INTA's largely voluntary approach will not be effective. Those opposed to embracing supply chain due diligence may argue that the voluntary schemes proposed by INTA for importers and 'downstream' companies can plug these gaps. But research and experience shows that voluntary measures do not change companies' sourcing practices. The OECD Guidance, which operationalises the UN Guiding Principles on Business and Human Rights, has been available to companies since 2010, yet survey data reveals that very few European companies have put in place due diligence processes.[19]

Supply chain due diligence is not a new concept. In the minerals sector, due diligence has been internationally endorsed as a tool to help companies along the supply chain source minerals responsibly from fragile and conflict-affected areas. It forms the basis of the OECD Guidance, which has been endorsed by the EU and all European Member States.[20] The OECD Guidance already forms the basis of mandatory requirements in place in the US, and has been committed to in 12 African countries.

The EU should not miss the opportunity to use its commercial leverage to encourage responsible sourcing globally—by regulating all importers. The EU cannot regulate foreign mines, processors and other companies. But if all European importers of 3TG, in any form, collectively commit to responsible sourcing, this would encourage processors and manufactures outside of the Union to participate in the due diligence process and so increase the effectiveness of the Regulation.

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 DFA, 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.[21]



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5. (continued) How can the regulation be made more effective?

The labels and certificates introduced by INTA would not effectively incentivise responsible sourcing. Labels and certificates are driven by a 'one size fits all' approach, unlike the process-based approach of due diligence. The OECD Guidance does not expect 100% perfection or a uniform standard for all companies at a particular point in time. Instead, it is flexible in approach and expects companies to make "reasonable" efforts and proactive improvements over time. This in-built flexibility would be lost in a system based on labels or certifications. Labels also tend to work in favour of larger companies who face lower compliance costs.

The EU should base its system on international due diligence standards—not on trying to trace each mineral for each product. Due diligence under the OECD Guidance is based on the idea that companies along the supply chain should put in place processes that help them work together to share information on identified risks and what has been done to address them. The type and extent of due diligence depends on the size of a company, its leverage over suppliers, and its position in the supply chain. A manufacturer, for example, is not expected to track a mineral to its country or mine of origin.

Parliamentarians have a crucial opportunity on 20 May to vote in plenary session for a strong, consistent regulation that covers all imports of 3TG—not just some of them. Only then can we claim that Europe's conflict minerals regulation is effective and helps break the links between the trade in minerals, and conflict financing and abuse.

Progressive companies, business leaders, investors and consumers have all publicly supported calls for binding regulation covering companies importing 3TG—in any form.

What others are saying

"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.[22]

"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.[23]

"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., a responsibly producing small to medium sized company.[24]

How responsible sourcing works

UPSTREAM COMPANIES
SUCH AS SMELTERS AND REFINERS

Smelters and refiners work their suppliers to trace supply chains back to their origin, and look for risks along the way, including at mine sites, along transport routes, and in trading centres

DOWNSTREAM COMPANIES
SUCH AS THOSE MANUFACTURING PRODUCTS

Companies contact their suppliers and work together to trace their supply chains back to smelters/refiners

1 GOOD MANAGEMENT SYSTEMS

PUT IN PLACE GOOD SYSTEMS, INCLUDING:

- A supply chain policy that sets out your commitments to avoiding conflict financing or abuses. A model policy is available in the OECD Guidance
- Incorporate this policy into your supplier contracts
- Put in place a chain of custody or supply chain traceability system, and a mechanism for voicing concerns
- All this can be done with help from an **industry scheme**

2 RISKS IN YOUR SUPPLY CHAIN

- What are the risks in your supply chain?
- How are you dealing with them?
- Review information gathered against your policy, and implement a strategy to respond to risks you find

3 INDEPENDENT AUDITS

Smelters and refiners should carry out and publish **independent audits** on their due diligence

4 PUBLICLY REPORT

- By 31 March each year, submit documentation to competent authority, including policy and independent audit
- Make information on due diligence available to customers, and publicly report as widely as possible on actions you have taken under Steps 1, 2 and 3

GOOD MANAGEMENT SYSTEMS 1

PUT IN PLACE GOOD SYSTEMS, INCLUDING:

- A supply chain policy that sets out your commitments to avoiding conflict financing or abuses. A model policy is available in the OECD Guidance
- Incorporate this policy into your supplier contracts and put in place a mechanism for voicing concerns
- All this can be done as part of an **industry scheme**

RISKS IN YOUR SUPPLY CHAIN 2

- Take reasonable steps to identify **smelters/refiners** in your supply chain and assess their due diligence
- Review information, such as audits, against your policy and implement a strategy to respond to the risks you find

INDEPENDENT AUDITS 3

- Use reasonable efforts to make sure your **smelters/refiners** carry out independent audits on their due diligence
- This can be done with help from industry schemes

PUBLICLY REPORT 4

Publicly report, as widely as possible, on the actions you have taken under Steps 1, 2 and 3

End notes

[1] An overview of Global Witness' briefings and public statements on the EU's proposed conflict minerals regulation is available at: https://www.globalwitness.org/campaigns/conflict-minerals/conflict-minerals-europe-brief/

[2] 'MEPs split over conflict minerals legislation', Parliamentary Magazine, 14 April 2015, available at: https://www.theparliamentmagazine.eu/artcles/news/meps-split-over-conflict-minerals-legislation; 'No more dirty money from conflict minerals trade', EPP Group press release, 14 April 2015, available at: http://www.eppgroup.eu/press-release/No-more-dirty-money-from-conflict-minerals-trade-

[3] 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; See European Commission's Impact Assessment, p.8, available at: http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152229.pdf

[4] See European Commission, Press Release, 5 March 2014, available at: http://europa.eu/rapid/press-release_IP-14-218_en.htm

[5] The figures reported are taken from the European Commission's own Impact Assessment, p.21 and p.36. Global Witness has not verified these figures. The INTA proposal and the Commission's statistics also exclude European smelters and refiners that process or refine recycled material.

[6] Figures are based on the European Commission's Impact Assessment, p.21 and p.36. Global Witness has not verified these figures.

[7] The list of minerals and metals covered by INTA's proposal are listed in an Annex. For companies further downstream, INTA proposes that the European Commission establish criteria for a certification scheme for companies "operating downstream of the minerals supply chain" (Article 11a). Those companies are not defined.

[8] All data from UN Comtrade (converted to Euro). 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. These estimates differ from the Commission's own methodology by excluding trade within the borders of the EU.

[9] Data from UN Comtrade. Data reflects reported imports of mobile phones covered by HS code 851712.

[10] This consists of 6.6g of tin, 0.83g of tungsten, 0.04g of tantalum and 0.63g of gold. Based on these estimates, approximately 1,584 tons of tin, 199 tons of tungsten, 9.6 tons of tantalum and 151 tons of gold entered the EU in mobile phones in 2013. Source: Data from UN Comtrade and The Royal Society for the Encouragement of Arts, Manufactures and Commerce (RSA), Action and Research Centre's, The Great Recovery: Redesigning the Future, June 2013, p.9. Tantalum estimate based on the weight of one tantalum capacitor. All estimates based on mobile phone weight of 130g, with one tantalum capacitor. Estimates of the 3TG content of a mobile phone vary across studies.

[11] Data from UN Comtrade. Data reflects reported imports of mobile phones (HS code 851712).

[12] Polinares Working Paper, March 2012, p.1, available at: http://www.polinares.eu/docs/d2-1/polinares_wp2_chapter16.pdf

[13] European Commission, Impact Assessment, Annex I/7, p.80.

[14] EU Position in World Trade, DG Trade, available at: http://ec.europa.eu/trade/policy/eu-position-in-world-trade/

[15] Data from UN Comtrade (http://comtrade.un.org/). Data reflects reported imports of mobile phones (HS Code 851712).

[16] Data from UN Comtrade. Data reflects reported import data of tin, tantalum, tungsten and gold ores, concentrates, and metals as captured by the HS codes listed in the table on p.78 of the European Commission's Impact Assessment.

[17] See case studies in 'Country Breakdown' and 'A Conflict Minerals Regulation That Works', available at: https://www.globalwitness.org/campaigns/conflict-minerals/conflict-minerals-europe-brief/

[18] 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?_r=0

[19] 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, available at: http://somo.nl/news-en/sourcing-of-minerals-could-link-eu-companies-to-violent-conflict. UN Guiding Principles on Business and Human Rights, available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

[20] The EU made a commitment to promoting the OECD Guidance in May 2011. See European Commission, Impact Assessment, p.8, http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152229.pdf

[21] 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-mineralscould-link-eu-companies-to-violent-conflict.

[22] EUROSIF, Investor Statement on EU Proposed Conflict Mineral Regulation, available at: http://www.eurosif.org/investor-statement-on-eu-proposed-conflict-mineral-regulation/

[23] Peter Nicholls, 'Conflict minerals: EU can save lives and boost profits', The EU Observer, 28 November 2014, http://euobserver.com/opinion/126718

[24] Nager IT, Position paper on the proposal to introduce the OECD Guidance on a mandatory basis', 31 March 2015.