

Imports of minerals from conflict areas

Mineral-rich countries afflicted by conflicts may face a vicious circle, under which revenue from illegally extracted resources feed armed revolts. To break this link, international organisations and the European Parliament have called for the setting up of due-diligence systems for firms in the mining supply chain. The Commission submitted in March 2014 a proposal instituting a voluntary due-diligence system aimed at importers and upstream producers of tin, tantalum, tungsten and gold (hereafter 3T&G). The report by the International Trade Committee, to be discussed in the May plenary, introduces some important amendments with respect to the nature and scope of the due-diligence obligations.

Background

While mining output can contribute to economic growth, minerals can also add to ongoing conflict in resource-rich regions. In Africa, a continent holding [30%](#) of the world's mineral resources and where mining output represents [24%](#) of GDP, [27](#) conflicts are known to be resource-related. The role of mineral resources in [prolonging unrest](#) in the Democratic Republic of Congo (DRC) has been recognised since the beginning of 2000, when global and [EU](#) actions were taken to stop the diamond trade from financing conflicts. The role played by other mineral resources was also acknowledged, but international action began only in 2010 when the OECD adopted its [Due Diligence Guidance for Responsible Supply Chains of Minerals](#) and the [UN Security Council Resolution 1952 \(2010\)](#) called for nations to urge traders importing goods from RDC to exercise due diligence in supply-chain management. The UN call was implemented in 2010 by the US through Section 1502 of the [Dodd-Frank Act](#), enacting mandatory due-diligence rules for US-registered companies. After a [consultation process](#), the European Commission submitted a proposal in March 2014 for a [regulation setting up a Union system for supply-chain due diligence](#), based on self-certification by responsible importers of tin, tantalum, tungsten, their ores, and gold originating in conflict-affected and high-risk regions.

The Commission proposal

The [Commission proposal](#) takes a very different approach from that implemented by the US. First of all, it proposes **voluntary** participation by firms, second, it is applicable to the sourcing of the 3T&G minerals and ores **from any conflict area** (not only from the Great Lakes Region) and, finally, it focuses only on **upstream producers** (smelters and refiners) and **importers** of the 3T&G.

Responsible importers' obligations

Importers willing to exercise due diligence can self-certify as 'responsible importers' by declaring to the Member State competent authority that they comply with the following requirements:

- Provide documentation and information regarding the minerals and metals in line with the requirements set out in the OECD Due Diligence Guidelines;
- Comply with the OECD Due Diligence Guidance Standards (inter alia, prohibition on profiting from serious human-rights abuses associated with mining operations, money laundering, bribery and tax-evasion, and supporting non-state armed groups directly or indirectly);
- Communicate to suppliers and the public their supply-chain policies for minerals and metals from conflict areas and incorporate supply-chain policy engagements within contracts and agreements with suppliers;
- Create in their management structures responsibilities for the implementation and record-keeping of supply-chain due diligence;
- Assess risks of adverse impacts stemming from their supply chains (such as serious human-rights abuses, bribery, money-laundering operations...) and address them in a risk-management plan to mitigate adverse impacts should they occur, as well as establishing an early warning risk-awareness system.

Monitoring and Review

Responsible importers would have to organise independent third-party audits verifying compliance with the above-mentioned obligations. Member States would have to designate competent authorities to monitor the implementation of the regulation and to conduct ex-post checks in cases where substantiated concerns have been raised. Member States would also be in charge of devising rules in case of infringement of the obligations. Member States would also be required to submit yearly reports on the implementation of the regulation, on the basis of which the Commission would issue a report every three years. A review of the functioning and effectiveness of the regulation would take place three years after its entry into force and every six years thereafter.

Additional measures proposed in the Joint Communication

The Commission and External Action Service (EEAS) issued a [Joint Communication](#) recognising the need to supplement the proposed regulation with additional measures aiming at rewarding responsible firms and promoting due diligence in third countries. These measures include, inter alia, financial support for companies to adopt responsible sourcing, including the exploration of further funding possibilities for SMEs, and adapting the Commission's public procurement rules so as to purchase only 3T&G products respecting due diligence, thereby creating incentives for downstream producers to choose responsible suppliers. Additional measures include raising awareness and visibility of responsible firms and building on political and raw material dialogues with third countries. The communication calls for the due-diligence approach to be integrated within European development cooperation policy as well as national due-diligence frameworks, so as to arrive at an integrated EU approach for responsible sourcing.

Discussions in Parliament and the Committee report

The [draft report](#) was presented by Iuliu Winkler (EPP, Romania) in February 2015 ([2014/0059 \(COD\)](#)). After the Development Committee (DEVE) gave its [opinion](#), [amendments](#) were tabled in March. The [International Trade Committee \(INTA\) voted](#) on amendments in April 2015.

Nature and scope of the obligations

The most controversial discussion concerned the nature and scope of the obligations. The DEVE Committee opinion suggested mandatory obligations on the entire value chain, from upstream to downstream traders and producers. A voluntary framework, focussing only on upstream producers and traders, was perceived to be ineffective as competitive pressures could result in non-participation instead of greater voluntary participation, if downstream producers, not bound by the due-diligence scheme, decided not to favour 'responsible' firms. The [choice of a voluntary framework](#) by the Commission was motivated by the fact that a mandatory requirement could reinforce the diversion of sourcing away from the RDC and other Great Lakes Region countries with negative impact on the respective national ([mining output represents important revenue for the DRC](#)) and global economies ([65 to 80% of the reserves of tantalum](#) are located in DRC). [The report tabled by INTA](#) proposes a compromise. It includes a mandatory requirement for upstream producers (smelters and refiners), while setting up a voluntary scheme for importers and proposes the introduction of labels for downstream producers. Further changes regarding the scope of the regulation concern the definition of conflict areas. The amended proposal suggests a more precise, albeit more restrictive, definition of what a conflict or high-risk area is.

Creating coherence with other schemes and policies

A number of amendments have been introduced to ensure that additional measures within the Joint Communication become an integral part of the regulation. These additional measures are considered fundamental to the success of the regulation, as they aim at reducing compliance costs and providing a system of incentives for firms to behave responsibly. One amendment requires the Commission to review the financial assistance for companies to adopt responsible sourcing, and draws attention to the particularity of SMEs. The introduction of an equivalence procedure for industry due-diligence schemes, in order to avoid duplication of audits, is also suggested in the report.

Monitoring and review

Finally, some amendments address the monitoring and review system. Some of these proposals were made by the Netherlands in the Council, and were taken up by the rapporteur. The Dutch proposal would replace third-party audits, giving monitoring authority to conformity-assessment bodies established or designated by the Member States, and sets a series of criteria for the independence of these bodies.